Section calendar

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

November 14
C1476: Telephonic Seminar – Section Service CLE: Mechanics of Board Certification

November 29
Executive Council Meeting
Tampa Airport Marriott

December 12
CLE 1477: Telephonic Seminar – Child Support Enforcement & Passport Issues

2013

January 23
FLS “Tips & Nibbles” seminar for exam registrants

January 24
Committee Meetings

January 26
Executive Council Meeting

January 25-26
AAML & FLS Marital & Family Law Certification Review Conference

February 20
CLE 1479: Telephonic Series Part 1 “Non-Divorce Issues a Divorce Lawyer Needs to Know: Probate, Guardianship, Elder Law

March 8
CLE 1478: Children’s Issues
Live & webcast - Fort Lauderdale

April 10-13
FLS Spring In-State Retreat
Gasparilla Inn, Boca Grande

May 15
CLE 1480: Telephonic Series Part 2 “Non-Divorce Issues a Divorce Lawyer Needs to Know: Probate, Guardianship, Elder Law

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The Commentator is prepared and published by the Family Law Section of The Florida Bar.

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Articles and cover photos to be considered for publication may be submitted to Sarah Sullivan, Editor, at SSullivan@fcsel.edu.

MS Word format is preferred for documents, and jpg images for photos.
Message from the Chair

This is my first chair’s message for the Commentator. I became Chair of the Family Law Section at the end of June and the time is flying by; it’s already October! I look forward to a productive and successful year with your support.

My focus this year is on communication — how positive communication can improve our relationships — with our clients, opposing counsel, judicial officers, and our families and friends — and our lives.

These first few months of my term have certainly been busy. We enjoyed an informative and entertaining weekend in Captiva at the gorgeous South Seas Island Resort for a well-attended Leadership Retreat from July 12-14th. While we encountered some stormy weather, it did not prevent us from taking advantage of the many activities and fun available at the resort. Our section lobbyists, Nelson Diaz and Edgar Castro, with the help of Legislation Committee co-chairs Thomas Duggar and Heather Apicella, did a wonderful job of taking us through the complex and convoluted legislative process that goes on in Tallahassee every year. We also had the pleasure of meeting Nelson’s and Edgar’s beautiful wives and absolutely adorable baby daughters! I hope all of those who attended left with a better understanding of how the section and its committees, as well as The Florida Bar, function — and how best to communicate with the members of each! Congratulations to Loreal Arscott, Victoria Cruz-Garcia, Sarah Kay, and Robin Scher, who received scholarships to attend the retreat!

Retreat activities included bocce, kayaking, and games involving candy. The children — and the adults — had a great time with that last activity. The shelling was wonderful and the location magnificent. This little piece of Florida — Sanibel and Captiva — is breathtakingly beautiful.

At the beginning of September, we journeyed west to Wyoming for the fall retreat. We stayed at the Jackson Lake Lodge in Moran, Wyoming, which is located in Grand Teton National Park. Approximately 50 section members and their guests had a fabulous time in a spectacular setting. Not only did we enjoy the magnificent mountains, lakes, and wildlife of Grand Teton National Park, but we also marveled at the geysers, mud pots, waterfalls, and attractions of Yellowstone National Park. The weather was perfect, the food delicious, and the company superb. It was a great opportunity for hiking, kayaking, floating down the Snake River, star gazing, wildlife photography, horseback riding, and fishing — a real outdoors vacation. A highlight of the trip was a “Horse Whisperer” demonstration at nearby Diamond Creek Ranch, where cowboy Grant Golliher treated us to an inspiring show of how to develop trust using respect and discipline; it was truly amazing and fit perfectly with this year’s theme of communication — all forms. Many thanks to Dr. Debi Day and Laura Davis Smith for their presentations on, of course, communication — persuasive communication — written, verbal, and nonverbal. And to my very good friend Claudia Willis, who checked out the Jackson Lake Lodge in March (when the facility was closed and vacant, snow was abundant, and the lodge resembled the hotel in “The Shining”).

Shortly after coming back from the Wild West, we traveled to St. Petersburg for our fall meetings. I hope that all those who attended the meetings agree that Friday meetings are better than the Wednesday meetings we have had in the past in conjunction with The Florida Bar meetings.

We have a large number of committee members led by hardworking and enthusiastic members. Bob Merlin and Doug Greenbaum chair the always lively Alternative Dispute Resolution Committee. These folks have three hour meetings!

Loreal Arscott and Judy Migdal Mack, chairs of the Children’s Issues committee, invited two great speakers — Professor Michael Dale from Nova Southeastern University, and attorney Lou Reidenberg, who presented on the need for lawyers for children in dependency cases. Their lecture was both informative and interesting.

Debra Welch and Julia Wyda graciously agreed to chair the Continuing Legal Education committee for a second year. They and their diligent committee members have already put on a number of excellent and well attended CLE seminars and they have many more scheduled in the upcoming months. Be sure to check out the upcoming seminars at www.familylawfla.org.

The Domestic Violence committee is ably chaired by Robin Scher and

continued, next page
Amy Cosentino. Both these women are passionate about domestic violence issues and they have great plans for their committee this year and the next. Look for news on the all day CLE seminar they are planning for next year; it is sure to be informative and interesting!

Chair John Foster and his committee are hard at work on a number of issues dealing with equitable distribution. This committee continues to amaze me with their dedication to this topic area.

Under the leadership of Chair Magistrate Norberto Katz, our Ad Hoc Finance Committee awarded four scholarships for the Leadership Retreat, to the four very deserving women mentioned above, all of whom are active Family Law Section members. Magistrate Katz will be receiving applications for three scholarships for the 2013 Marital & Family Law Review Committee. Be sure to check the website for this application and apply soon – the deadline is November 10, 2012!

The Legislation Committee is chaired this year by Thomas Duggar and Heather Apicella. Thomas and Heather will have their hands full this year (as every year); with the help of our lobbyists Nelson Diaz and Edgar Castro, they will do a wonderful job in keeping track of the many bills filed that impact family law!

Sheila Furr, a psychologist and affiliate member of the section, and Erica Foerch, a Florida Registered Paralegal, chair the Litigation Support Committee. Sheila and Erica are working extremely hard to ensure that our affiliate members are properly listed on the website so that the Family Law Section members can reach them and benefit from their knowledge and expertise. They are also planning telephonic seminars which will be absolutely great for paralegals and young family lawyers.

Elisha Roy and the Long Range Planning Committee are tasked with looking to the future of the section and preparing for that future. We look forward to hearing their ideas and plans.

Magistrate Barbara Beilly and Christopher Rumbold chair the Magistrates and Hearing Officers committee. They have a number of ongoing projects, which include the production of a document which will provide information regarding the procedures of all the magistrates and hearing officers throughout the state. They are also planning a “traveling” seminar, which will address the law and issues relating to appearances before magistrates and hearing officers.

Ingrid Keller, Patricia Alexander, Belinda Lazzara, and Laura Davis Smith have put together a splendid program for the 2013 Marital & Family Law Review Course, scheduled for January 25-26, 2013 at Loews Royal Pacific Resort in Universal Studios. Don’t miss this instructive and informative (and fun) time! Great speakers and great materials! Remember, if you want to get the written materials, you must register by December 18th!

Fort Lauderdale attorney and mediator Steve Berzner chairs the Membership Committee. Along with Mentoring Chair Robin Scher, Steve will be heading to Miami for the 9th Minority Mentoring picnic. This is the ultimate networking event for minority law school students from all over Florida and is held at Amelia Earhart Park in Hialeah on Saturday, November 10, 2012. There are games and food and fun at the picnic; come by and say hi to Steve and Robin and others at the Family Law Section table.

The very capable Lori Caldwell Carr agreed to chair the important Rules & Forms committee without knowing that she would be called upon to submit Comments to the Florida Supreme Court on the IWO (Income Withholding Order) within days of her appointment! Lori did a great job and we all wait for the court’s instructions on the use of the IWO and IDO and how we are to utilize them in the many cases involving support.

Doug Greenbaum kindly consented to head the Sponsorship committee and, with his committee, has already come up with a new annual sponsorship form and obtained a number of sponsors! The annual form is on the website; we invite all to suggest sponsorship to those who might be interested in networking with family lawyers at our events and meetings.

The Support Issues committee is another of the extremely hardworking Family Law Section committees. In their second year chairing this committee, Magistrate Barbara Goiran and David Hirschberg are already going strong and delving into a number of important support issues.

We have a number of active Ad Hoc committees this year, including one to investigate the issue of alimony and changes to Ch. 61.08 and 61.14, chaired by Thomas Duggar; one to investigate probate/family related issues headed by Kimberly Rommel-Enright; and another to research and provide guidance on “parentage” issues, chaired by Caryn Green, Abigail Beebe, and John Foster.

A new “Sections Liaisons” Committee, led by Terry Fogel, will look into and implement ways to network and connect with other sections. So many of our family law cases include non-family law issues – property, tax, criminal, elder, health care, social security, bankruptcy, and estate issues – to name a few – and we (and our clients) can benefit from relationships we make with lawyers who practice in these fields.

I cannot forget Kim Nutter and the diligent Ad Hoc Guardians and Attorneys Ad Litem committee. This committee took on the enormous task of preparing a training manual for Guardians ad Litem. Well, they completed that as well as a video designed to assist in the training process. The committee is now moving forward to market this excellent and much needed product; expect more information on this soon!
Read Publications chair Sarah Sullivan’s editor’s message and be amazed at the variety of related topics she has put together for this issue of the Commentator. Who knew administrative issues could be so interesting! Thanks are also due to Amy Hamlin and Ron Kauffman, the wonderful chairs of the Commentator. And chairs of the Florida Bar Journal, Sarah Kay and Monica Pigna, have a number of great family law related articles lined up for that publication—don’t miss Ron Kauffman’s fascinating article on grandparent rights in the September/October issue of the Journal.

And thank goodness for Luis Insignares! Luis handles an area that is still foreign to me – technology and all related issues, including the production of our e-newspaper, FAMESEG. I don’t have a clue how Luis does what he does but he does a great job in getting our news out the fast way! And keeping our website up to date and full of information about our events, seminars, and activities!

I am also thankful to have the assistance and input of the other Executive Committee members – Chair elect Elisha Roy, Treasurer Norberto Katz, Secretary Maria Gonzalez, and Immediate Past Chair David Manz. Their support is invaluable!

Our section administrator is Vicki Simmons. Vicki has just completed her first whirlwind year with the Family Law Section. Vicki is a charming, gentle, lovely Southern woman and I hope she will be with the section for years to come; it is a pleasure to work with her.

Congratulations to Thomas Duggar of Tallahassee and Lawrence Datz of Jacksonville, who were recently admitted to the Florida Chapter of the American Academy of Matrimonial Lawyers, and to Nicole Goetz of Naples, who was appointed to the Big Bar Family Rules Committee by President Gwynne Young.

I believe I may have gone over my word limit so I will end by thanking you for your confidence in me to lead the Section this year, and invite you to join us in our events and committee work. Enjoy the wonderful articles in this Commentator!

Best regards,
Carin Porras
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Regarding the drafting of QDROs, The Florida Bar Standing Committee on UPL has stated:
“A nonlawyer may work under the direction and supervision of a member of The Florida Bar and may... also give advice to the attorney.” Thus a nonlawyer expert may give advice on QDRO matters and draft QDROs when retained by the The Florida Bar Member, as we do when you come to us for our expertise and knowledge in this specialized area.

Unfounded scare tactics that misrepresent The Bar’s position regarding UPL or overly parse the definitions of direction and supervision cannot compensate for just 4 years’ experience practicing law and 6 months with a QDRO firm. Whether the QDRO drafter is a nonlawyer or lawyer, be sure that your QDRO drafter has the knowledge, experience and expertise to advise effective and protective language for settlement agreements and to properly draft secure QDROs. When you need expert case support, you need a proven resource. To serve your clients in an optimal manner, rely on a time-proven, court-tested professional expert who is recognized for his or her commitment to bringing specialized excellence to the legal profession and The Florida Bar Members.

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Meet the Chair – Carin M. Porras

“Example is leadership” – Albert Schweitzer

By G.M. Diane M. Kirigin

Last year, in The Commentator, we created the tradition of introducing the new Section Chair via an article in the first edition for that Chair’s year. It is therefore my privilege to introduce you via this article to your new chair, Carin M. Porras.

Those of us who have participated in leadership of the Section are often called upon to discuss the advantages of Section membership. Undoubtedly the primary advantages we ascribe to Section membership are the opportunity to network with other attorneys, judicial officers and affiliate members statewide and to forge friendships. This is not mere “puff” but these opportunities are truly beneficial. In fact, it was through our work on various Section committees over many years that Carin and I got to know one another and become friends. I’d like to share with you what I know (and through the preparation of this article have researched and/or learned) about your new Chair.

Carin grew up in Foxboro, Massachusetts (she is still a Patriots’ fan) but left Massachusetts to attend Earlham College in Richmond, Indiana where she double majored in French and Spanish. (She is fluent in both languages.) During her sophomore year at Earlham College she lived in France. In her senior year she lived in Colombia, South America where she met her former husband. After they married, they lived in Colombia for 2 years. During that time Carin taught English. Upon returning to the United States they lived in New York where Carin worked for a division of Pfizer. In 1983 her first son, Benjamin, was born. Later, he was joined by two other siblings, David and Kenneth. Carin and her family moved to Florida in 1987. In 1991 when her Sons were 8, 7 and 4 years of age respectively, Carin took the first step toward a legal career by applying for admission at the University of Miami Law School. She was admitted there and during law school shevariously worked at the State Attorney’s Office as a Victim Advocate and as a law clerk at Wicker Smith, an insurance defense firm. In 1994, Carin graduated from the University of Miami with honors. She subsequently was admitted to and is a member of the New Jersey and Florida Bars, as well as having been admitted to practice before the U.S. Supreme Court.

In 1995 Carin went to work part-time as an associate for Gordon C. Brydger, Esquire. After only two months, she began working full-time, ultimately becoming a partner in the law firm which is now titled Brydger & Porras, L.L.P. Carin told me that she was attracted to a family law practice because she enjoyed the work which she described as “never boring” since many family law cases interface with other legal areas such as real estate, trust and estates, criminal law, taxation, immigration, etc. In 2003, Carin became Board Certified in marital and family law by The Florida Bar. Carin is AV-rated by Martindale Hubbell and has been recognized by “Super Lawyers” for her excellence in the field of family law annually from 2007 to 2012.

When I asked Carin to describe her path toward Chairmanship of the Section, she explained that although she became a member of the Section quickly after gaining admission to The Florida Bar, that she first became very active in voluntary bar work through her local Broward County Bar, as a result of the encouragement of Gordon C. Brydger, her boss. She progressed through the local Broward County Bar leadership ranks in a 4-year progression from 1998 – 2002. Thereafter, Gordon encouraged her involvement in Section committee work. Section leaders, Jorge Cestero and Thomas J. Sasser, suggested she aspire toward a future role in leadership.

Carin’s initial interests reflected her prior career as a teacher per her membership on the Section’s Publications and Continuing Legal Education committees. She also joined the Support Issues committee and has served for many years on the Section’s Legislation committee. Ultimately, Carin went on to chair the Section’s Publications (2005-2007) and Continuing Legal Education (2007-2009) Committees. She has for several years chaired the annual Certification Review Course and has successfully guided that event through two different event venue changes during her tenure in that position.

Carin’s theme for her year as Section chair is “Educating and mentoring through better communication.” This year, the Section’s publications and the retreat CLE seminars will reflect that theme. Carin supports and places great value on the mentoring of new family law attorneys. She has found over her years in the practice that many young attorneys start out their career with no experience or guidance whatsoever. She reports that “sadly few firms provide a formal mentoring program despite the need to provide new family attorneys with a supportive environ...
ment to feel safe to ask questions.” When I asked what advice she would give to someone desiring to pursue a career in family law, she responded that she would first and foremost encourage that new attorneys sit in on hearings (running the gamut from Uniform Motion Calendar hearings to trials) before various family law judges, general magistrates and child support hearing officers to observe, first-hand, various attorneys and judicial officers in hearings and trials. Observing both procedure and substance, in action, is essential by learning both from the best and worst of those they observe. Second, she encourages new attorneys to: study the rules of procedure and rules of evidence; sign up for various CLE programs, especially Basic Family CLE, attend Family Law Section events; purchase and study the CLE survey materials from the annual Certification Review course. Third, she would encourage new attorneys to seek out and establish a network of mentors who can provide practical, procedural and substantive information and guidance on issues unique to the new attorney during his or her first few years of practice.

Carin is excited that during this coming year, the Section will extend and expand its scholarship program to facilitate participation by Section members in leadership, trial advocacy and the annual Certification Review courses, to provide greater diversity and accessibility to leadership and education to our constituents within the Section. She sees this as part and parcel of the Section’s ability to “give back” to improve the legal profession, and in turn, to make things better for the families that we serve within this State.

The Chair also believes that the Family Law Section members can learn from their peers in other Sections and Divisions within the Bar. Toward that end, she has established an Ad Hoc Section Liaison committee to proactively reach out to other Sections and Divisions, such as the General Practice, Solo and Small Firm Division.

I could not end this article without talking about Carin’s children, of whom she is extremely proud. Carin’s eldest son, Benjamin, graduated from the University of Florida and has completed a one-year dental residency at Temple University Dental School. Recently he was admitted to a graduate dental specialty program at Nova University and is engaged to be married. Her middle son, David, is a graduate of the University of Florida. He worked for 3 years as a trial clerk traveling with judges for the U.S. Tax Court conducting tax trials. David is presently a “2L” at the Columbus School of Law which is affiliated with the Catholic University in Washington, D.C. This past summer he worked at an immigration clinic. Carin’s youngest son, Kenneth, is a graduate of Florida State University with an accounting degree. He is employed as an auditor at the Florida Auditor General’s office in Tallahassee, Florida. Carin also has 2 beautiful and well-behaved “daughters” of the four-legged variety, specifically, two Maltese dogs named Leia and Toby.

If I were asked to describe Carin in just 10 words or less, the adjectives: intelligent, dedicated, hard-working, modest, thoughtful, kind, precise, honest, steadfast and dependable come to mind. She can always be counted on to perform the tasks that she undertakes and to focus on the best interests of the Section. Albert Schweitzer once said, “Example is leadership.” All members of the Section are blessed this year to have a Chair who has in the past led by example and who will continue to lead us by example during the 2012-2013 bar cycle.

Therefore, I encourage each and every one of you to participate in the Section and assist Carin, and the rest of the Executive Committee, on their journey for this bar cycle starting today. Remember - if your actions inspire others to dream more, learn more, do more and become more, you too are a leader. I predict if you undertake this journey that it will enrich you and benefit Florida’s families.
Greetings family law practitioners and welcome to your new “year” with the Family Law Section. This issue of the Commentator is a potpourri of topics relating to administrative law. “What?” you say, “I thought this was the Family Law Commentator!” Yes, yes it is. However, in our practice, we collide with several administrative agencies, and in some cases, our clients have frequent interaction with these agencies. Although we may never defend against a IV-D child support enforcement case, or represent an individual who is receiving supplemental security income from the social security administration, our practices and our clients benefit from our institutional knowledge. This issue is dedicated to examining those administrative agencies and systems that affect our clients and our practice.

Recently, family law practitioners and the Courts have been faced with inconsistencies between federal and state income withholding orders. Cynthia Holdren explains the interaction of the federal child support withholding guidelines and Florida’s income withholding practices by the Department of Revenue child support enforcement in her article, “Income Withholding for Child Support: Important Changes in 2012.” Important supplements to this article included in this issue are the federal income withholding instructions and forms as well as a state addendum order making the federal IWO applicable in the state of Florida.

As our family structure gets more complicated, so does the family court practitioner’s response to the establishment of paternity. John Foster and Kelli Murray, in “Paternity in the Modern Family,” examine the complexity of the concept of “quasi-marital children.” The article explores the evolution of the public policy surrounding the definition of “family” and how it collides with the best interest standard. Additionally, William D. Slicker provides us with many legal issues facing Gay, Lesbian Bi-Sexual and Transgendered parents in the context of family in his article, “Florida Family Law for Gay, Lesbian, Bi-Sexual and Transgendered Persons.”

In the midst of the drawdown of troops in Iraq and Afghanistan, our nation is focused on our military service-members and their needs. Florida benefits from an influx of active duty service-members, retirees and their families. Many veterans seek the help of family lawyers for a variety of purposes. Mark Altschuler (“Dividing Military Pensions in Divorce: Part I”) and Angie Aguilar (“Service of Process—Active Duty Service-member”) provide us with the armor we need to properly represent military families in family law actions.

Many family law practitioners may not think of utilizing Florida’s administrative code to evaluate a forensic psychologist used in family law litigation. However, Chris Bruce in his article, “What Every Divorce Lawyer Needs to Know About the Florida Administrative Code When Evaluating a Forensic Psychologist’s Report,” breaks down the cumbersome administrative code and gives us some great tools for ensuring that our experts in the court system comply with best practices.

With a competitive job market for all law school graduates, legal experience while in law school is essential to setting oneself apart from other job seekers. From a student perspective, Joel Feigenbaum lauds the benefits of “practicing” while a student in a clinical program in his article, “Out of the Ivory Tower and Into the Trenches, A Student’s Perspective on the Role of Clinical Education in Training a Litigator.”

Finally, Brian Karpf gives us some hot tips on uses of civil contempt and enforcement in family law proceedings in his article, “Enforcement: The Civil Contempt Conundrum.” Knowing the limits of what the court can do in a family court order enforcement action assists practitioners in advising their clients of the best way to proceed. Mr. Karpf also compares Florida contempt and enforcement proceedings with proceedings in other jurisdictions.

Enjoy!
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Income Withholding for Child Support: Important Changes in 2012

By Cynthia W. Holdren, MPA

Enforcement of child support orders is not a simple process, but standardization helps hold down costs, hasten payments to families, and improve compliance among employers and income withholders. One such standardized process is the use of the Income Withholding for Support (IWO) form.

Background

Nationally, approximately 22 million—or more than one in four children—lived in households with one parent present in 2009. The overwhelming majority of custodial parents (82.2%) were female, and the poverty rate for custodial mothers was 30.4% while that for custodial fathers was 18.8%. As might be expected, the 2009 poverty rate of all custodial parents rose to 28.3% or about twice that of the total population (14.3%). Child support payments were 62.6% of the average income for custodial parents below the poverty level receiving full support and 20.8% for all custodial parents. Children bear a greater burden of poverty, in that they comprise 36% of the people living in poverty but only 25% of the general population. These facts illustrate how critical the receipt of reliable child support payments is to the financial security of families with children.

Employers and income withholders are the largest source of child support payments, withholding and remitting 67% of payments collected from all sources, according to OCSE’s 2010 preliminary statistical data. A total of $21.3 billion was collected from employers in 2010. Employers are a major partner in improving the financial security of families with children.

Income Withholding

The use of wage garnishment began early in the history of the child support program, expanding from collection of delinquent payments to include collection of currently due payments. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 expanded its use further by allowing withholding of different types of income and assets in addition to wages and requiring states to have administrative authority to initiate income withholding.

If arrearages occur, child support orders entered after January 1, 1994 must include a provision authorizing income withholding without the need for a judicial or administrative hearing. However, there are two exceptions to immediate income withholding: “good cause” and a “written agreement” between parties. The “good cause” exception occurs in cases where there was a threat of domestic violence or pending legal action for adoption. The “written agreement” exception allows the custodial and noncustodial parent to enter into an agreement for an alternative payment arrangement (usually direct payment from the noncustodial to the custodial parent) that must be approved by the court or administrative authority.

State Disbursement Units (SDUs)

Responding to the need for one entity to receive payments in each state, PRWORA established centralized collection and disbursement units or State Disbursement Units (SDUs). Under the Social Security Act, all payments withheld by employers were to be sent to the SDUs within seven business days of the payroll date. In addition, SDUs were mandated to furnish accounts of payments to parents and to the courts, a valuable service essential to the courts’ review of payments and arrearages.

Standard Income Withholding Form

To achieve uniformity among all issuers of income withholding orders or notices, the Social Security Act requires that all entities use the Office of Management and Budget (OMB)-approved Income Withholding for Support (IWO) form, including private individuals, attorneys and courts. OCSE published Action Transmittal 11-05, Revised Income Withholding for Support (IWO) Form, that contained the revised form, instructions for its use, relevant facts about federal and state legislation regarding income withholding and SDUs, and the approach selected to address issues identified with the previous version of the form. Key changes include:

- Requirement of underlying order. The note on page one was reworded to clarify that if the employer or income withholder receives this document from someone other than a state or tribal child support agency or a court, a copy of the underlying order containing a provision authorizing income withholding must be attached.

- Remittance identifier. To prominently display the remittance identifier, it was moved to page one above the case and order identifier. This payment identification number is required by the State Disbursement Unit (SDU) to process a payment.

- Payee name. Federal law requires employers and other income withholders to remit all child support continued, next page
Income Withholding
from preceding page

payments to the SDU.

- **Checkbox for employer returns.** A checkbox on page two of the form allows the employer to indicate that the IWO is being returned because it does not direct payments to the SDU, or the IWO is not regular on its face.
- **Signature block.** Expansion of the title clarifies that judges may sign the order.
- **Employment termination section.** Expansion of this section allows use by income withholders in addition to employers.
- **Instructions to reject and return invalid IWOs.** Guidance is provided in the instructions to the form to indicate circumstances under which an IWO must be rejected and returned to the sender.

The ability of employers to return income withholding orders that do not direct payments to the SDU and to return income withholding orders that are not on the OMB-approved form will ensure widespread knowledge of and adherence to these requirements.

Approach for Improving the Income Withholding Process

As a part of the IWO form reauthorization, OCSE conducted several webinars from April through September, 2010, inviting employers, state court administrators, and state and federal child support representatives to discuss ways to improve the income withholding process and to develop an approach for implementing the improvements. Comments received during this process were carefully considered in developing the following approach to improve the income withholding process.

**IWOs issued on or after 05/31/11 (i.e., new IWOs).**

If the IWO is not directed to the SDU as required by federal law then the employer should reject the IWO and return it to the sender, effective immediately.

If the employer receives a document to withhold income that is not issued on the OMB-approved IWO form as required by federal law then the employer must reject the document and return it to the sender, effective May 31, 2012.

**IWOs issued before 5/31/11 (i.e., IWOs already processed by employer).**

If the IWO is not directed to the SDU as required by federal law, the employer should contact the state child

Section makes $75,000 contribution to Bar Foundation

The Family Law Section presented a $75,000 gift to the Florida Bar Foundation at the Bar’s Convention in June. Pictured with a “check,” are (L-R): G.M. Diane Kirigin; 2012-13 Section chair, Carin Poras; immediate past chair, David Manz, and Michael Faehner, Foundation board member.
support enforcement agency in the state that issued the underlying support order on a case-by-case basis to request a revised IWO directing payment to the SDU. The state may use procedures under 42 U.S.C. § 666 (c) (1) (E), upon providing notice to the obligor and obligee, to direct the obligor or other payor to change the payment destination to the SDU. The employer should continue to send payments to the non-SDU address until the state child support agency or sender issues a revised IWO directing payment to the SDU.

If income withholding is not issued on the OMB-approved IWO form as required by federal law and the order presents a problem for the employer (i.e., insufficient information to process the IWO) or the order has been modified, then the employer should contact the sender to request an OMB-approved IWO form. The employer should continue withholding income until a new OMB-approved IWO form is received.

*Please note: If the underlying support order meets any of the following criteria, then there is no requirement for states to process income withholding payments through the SDU:

1. support order initially issued in the state before Jan. 1, 1994 and has never been modified; or
2. support order initially issued in the state before Jan. 1, 1994 and has no arrearages; or
3. support order initially issued in the state before Jan. 1, 1994 and is not associated with a Title IV-D case.

Summary

A standard form and payment direction is the best method for improving the timeliness of child support payments to families while reducing the impact of withholding on employers. Standardization eliminates confusion and reduces errors when employers are able to find relevant information quickly and easily in one format. Personal information that is not relevant for withholding income is not disseminated. Thus, the IWO form is a practical tool that gives employers all of the information they must have to withhold correctly and one that may be integrated into their normal business practices without the need to process exceptions.

Cynthia Holdren, Senior Associate with the Center for the Support of Families, has thirty+ years of experience in social service, child support, and employment security programs. Ms. Holdren holds a Bachelor of Arts degree from Mary Washington College in Fredericksburg, VA and a Master of Public Administration degree from Old Dominion University in Norfolk, VA. She is placed with the Employer Services Team at the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services. Publications include Improving Income Withholding for Families with Children published in Juvenile & Family Justice TODAY, Fall 2011.

Endnotes:
4 (42 U.S.C. § 666 (b) (8)) (2011)
6 (42 U.S.C. § 666 (b) (5) and (b) (6) (2011)
7 (42 U.S.C. § 666 (b) (6)) (2011)
9 (42 U.S.C. § 666 (b) (6) (A) (i)) (2011)
10 (42 U.S.C. § 654b) (2011)
11 (42 U.S.C. §§ 666 (a) (8) and 666 (b) (6) (A) (ii)) (2011)

OCSE Resources


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Newly Adopted Income Withholding for Support (IWO)

The new federal requirements for income withholding for support went into effect on June 1, 2012. The 9th Circuit has locally adopted the below IWO from the Sixth Circuit until the Supreme Court officially adopts a form. Various circuits have adopted the federal form with a Florida addendum, with the hope and intent that no one will have to come back later to get a new order if someone changes jobs from state to federal.

**INSTRUCTIONS FOR SIXTH JUDICIAL CIRCUIT COURT LOCAL FORM MAY 2012**

**"INCOME WITHHOLDING FOR SUPPORT ORDER AND FLORIDA ADDENDUM"**

The Sixth Judicial Circuit adopted this locally approved form to address federal requirements to use form order OMB 0870-0154, “Income Withholding for Support” (IWO), and to address additional Florida statutory requirements in income withholding orders for support.¹

The first three pages of the local "INCOME WITHHOLDING FOR SUPPORT ORDER AND FLORIDA ADDENDUM" reproduces in its entirety the federal IWO form order (OMB 0870-0154). The pages following include an addendum to address Florida statutory requirements.

This locally approved form should be used for all income withholding orders for support, both Title IV-D cases and non-Title IV-D cases. This includes use by counsel and the Department of Revenue. Do not use Florida Family Law Form 12.996(a).

Pages two through seven of these instructions are the federal instructions for the federal IWO, the first three pages of the local form. The Florida Addendum, pages four and five of the local form are self-explanatory.

When signed by the judge, a copy of the “INCOME WITHHOLDING FOR SUPPORT ORDER AND FLORIDA ADDENDUM” should be sent to the obligor’s payor by certified mail, return receipt requested. The return receipt should be sent to the person who prepared this form, so that it can be filed with the court with Florida Family Law Rules of Procedure Form 12.996(c), Notice of Filing Return Receipt.

¹ See, In re: Amendments to the Florida Family Law Rules of Procedure – Petition (SC12-618), which is an emergency petition to adopt an addendum to the federal IWO. On May 16, 2011, the United States Department of Health and Human Services, Office of Child Support Enforcement issued Action Transmittal AT-11-05. The majority of the Action Transmittal deals with modifications of the “Income Withholding for Support” OMB 0970-0154 (IWO) form. Beginning May 31, 2012, the transmittal requires employers who receive a document to withhold income that is not issued on the OMB-approved IWO form to reject the document and return it to the sender. The Family Law Rules Committee of The Florida Bar has determined that numerous provisions that are mandatory for income deduction orders under sections 61.13 and 61.1301, Florida Statutes, are not included within the IWO form. The Sixth Judicial Circuit has adopted this local form to address the Florida statutory deficiencies in the IWO form.
INCOME WITHHOLDING FOR SUPPORT Instructions

The Income Withholding for Support (IWO) is the OMB-approved form used for income withholding in Tribal, intrastate, and interstate cases as well as all child support orders which are initially issued in the State on or after January 1, 1994, and all child support orders which are initially issued (or modified) in the State before January 1, 1994 if arrearages occur. This form is the standard format prescribed by the Secretary in accordance with USC 42 §666(b)(6)(A)(i). Except as noted, the following information must be included.

Please note:
• For the purpose of this IWO form and these instructions, “State” is defined as a State or Territory.

COMPLETED BY SENDER:

1a. Original Income Withholding Order/Notice for Support (IWO). Check the box if this is an original IWO.
1b. Amended IWO. Check the box to indicate that this form amends a previous IWO. Any changes to an IWO must be done through an amended IWO.
1c. One-Time Order/Notice For Lump Sum Payment. Check the box when this IWO is to attach a one-time collection of a lump sum payment. When this box is checked, enter the amount in field 14, Lump Sum Payment, in the Amounts to Withhold section. Additional IWOs must be issued to collect subsequent lump sum payments.
1d. Termination of IWO. Check the box to stop income withholding on an IWO. Complete all applicable identifying information to aid the employer/income withholder in terminating the correct IWO.
1e. Date. Date this form is completed and/or signed.
1f. Child Support Enforcement (CSE) Agency, Court, Attorney, Private Individual/Entity (Check One). Check the appropriate box to indicate which entity is sending the IWO. If this IWO is not completed by a State or Tribal CSE agency, the sender should contact the CSE agency (see http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm) to determine if the CSE agency needs a copy of this form to facilitate payment processing.

NOTE TO EMPLOYER/INCOME WITHHOLDER:

This IWO must be regular on its face. Under the following circumstances, the IWO must be rejected and returned to sender:
• IWO instructs the employer/income withholder to send a payment to an entity other than a State Disbursement Unit (e.g., payable to the custodial party, court, or attorney). Each State is required to operate a State Disbursement Unit (SDU), which is a centralized facility for collection and disbursement of child support payments. Exception: If this IWO is issued by a Court, Attorney, or Private Individual/Entity and the initial child support order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, the employer/income withholder must follow the payment instructions on the form.
• Form does not contain all information necessary for the employer to comply with the withholding.
• Form is altered or contains invalid information.
• Amount to withhold is not a dollar amount.
• Sender has not used the OMB-approved form for the IWO (effective May 31, 2012).
• A copy of the underlying order is required and not included.

If you receive this document from an Attorney or Private Individual/Entity, a copy of the underlying order containing a provision authorizing income withholding must be attached.

COMPLETED BY SENDER:

1g. State/Tribe/Territory. Name of State or Tribe sending this form. This must be a governmental entity of the State or a Tribal organization authorized by a Tribal government to operate a CSE program. If you are a Tribe submitting this form on behalf of another Tribe, complete line 1i.
1h. **Remittance Identifier (include w/payment).** Identifier that employers must include when sending payments for this IWO. The remittance identifier is entered as the case identifier on the Electronic Funds Transfer/Electronic Data Interchange (EFT/EDI) record.

**NOTE TO EMPLOYER/INCOME WITHHOLDER:**

The employer/income withholding must use the Remittance Identifier when remitting payments so the SDU or Tribe can identify and apply the payment correctly. The remittance identifier is entered as the case identifier on the EFT/EDI record.

**COMPLETED BY SENDER:**

1i. **City/County/Dist/Tribe.** Name of the city, county or district sending this form. This must be a governmental entity of the State or the name of the Tribe authorized by a Tribal government to operate a CSE program for which this form is being sent. (A Tribe should leave this field blank unless submitting this form on behalf of another Tribe.)

1j. **Order Identifier.** Unique identifier that is associated with a specific child support obligation. It could be a court case number, docket number, or other identifier designated by the sender.

1k. **Private Individual/Entity.** Name of the private individual/entity or non-IV-D Tribal CSE organization sending this form.

1l. **CSE Agency Case Identifier.** Unique identifier assigned to a State or Tribal CSE case. In a State CSE case, this is the identifier that is reported to the Federal Case Registry (FCR). For Tribes this would be either the FCR Identifier or other applicable identifier.

Fields 2 and 3 refer to the employee/obligor's employer/income withholding and specific case information.

2a. **Employer/Income Withholder's Name.** Name of employer or income withholding.

2b. **Employer/Income Withholder's Address.** Employer/income withholder's mailing address including street/PO box, city, state and zip code. (This may differ from the employee/obligor's work site.) If the employer/income withholding is a federal government agency, the IWO should be sent to the address listed under Federal Agencies – Addresses for Income Withholding Purposes at [http://www.acf.hhs.gov/programs/cse/newhire/contacts/sw_fedcontacts.htm](http://www.acf.hhs.gov/programs/cse/newhire/contacts/sw_fedcontacts.htm).

2c. **Employer/Income Withholder's FEIN.** Employer/income withholding's nine-digit Federal Employer Identification Number (FEIN) (if available).

3a. **Employee/Obligor's Name.** Employee/obligor's last name, first name, middle name.

3b. **Employee/Obligor's Social Security Number.** Employee/obligor's Social Security number or other taxpayer identification number.

3c. **Custodial Party/Obligee's Name.** Custodial party/obligee's last name, first name, middle name.

3d. **Child(ren)'s Name(s).** Child(ren)'s last name(s), first name(s), middle name(s). (Note: If there are more than six children for this IWO, list additional children’s names and birth dates in field 33 - Additional Information).

3e. **Child(ren)'s Birth Date(s).** Date of birth for each child named.

3f. **Blank box.** Space for court stamps, bar codes, or other information.

**ORDER INFORMATION -** Fields 5 through 12 identify the dollar amount to withhold for a specific kind of support (taken directly from the support order) for a specific time period.

**NOTE TO EMPLOYER/INCOME WITHHOLDER:**

Payments are forwarded to the SDU within each State, unless the order was issued by a Tribal CSE agency. If the order was issued by a Tribal CSE agency, the employer/income withholding must follow the remittance instructions on the form.

**COMPLETED BY SENDER:**

4. **State/Tribe.** Name of the State or Tribe that issued the order.
5a-b. **Current Child Support.** Dollar amount to be withheld per the time period (e.g., week, month) specified in the underlying order.

6a-b. **Past-due Child Support.** Dollar amount to be withheld per the time period (e.g., week, month) specified in the underlying order.

6c. **Arrears Greater Than 12 Weeks?** The appropriate box (Yes/No) must be checked indicating whether arrears are greater than 12 weeks so the employer/income withholder can determine the withholding limit.

7a-b. **Current Cash Medical Support.** Dollar amount to be withheld per the time period (e.g., week, month) specified in the underlying order.

8a-b. **Past-due Cash Medical Support.** Dollar amount to be withheld per the time period (e.g., week, month) specified in the underlying order.

9a-b. **Current Spousal Support.** (Alimony) dollar amount to be withheld per the time period (e.g., week, month) specified in the underlying order.

10a-b. **Past-due Spousal Support.** (Alimony) dollar amount to be withheld per the time period (e.g., week, month) specified in the underlying order.

11a-c. **Other.** Miscellaneous obligations dollar amount to be withheld per the time period (e.g., week, month) specified in the underlying order. Must specify. Description of the obligation.

12a-b. **Total Amount to Withhold.** The total amount of the deductions per the corresponding time period. Fields 5a, 6a, 7a, 8a, 9a, 10a, and 11a should total the amount in 12a.

**AMOUNTS TO WITHHOLD** - Fields 13a through 13d specify the dollar amount to be withheld for this IWO if the employer/income withholder’s pay cycle does not correspond with field 12b.

13a. **Per Weekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid weekly.

13b. **Per Semimonthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid twice a month.

13c. **Per Biweekly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid every two weeks.

13d. **Per Monthly Pay Period.** Total amount an employer/income withholder should withhold if the employee/obligor is paid once a month.

14. **Lump Sum Payment.** Dollar amount to be withheld when the IWO is used to attach a lump sum payment. This field should be used when field 1 is checked.

**REMITTANCE INFORMATION:**

15. **State/Tribe.** Name of the State or Tribe sending this document.

16. **Days.** Number of days after the effective date noted in field 17 in which withholding must begin according to the State or Tribal laws/procedures for the employee/obligor’s principal place of employment.

17. **Date.** Effective date of this IWO.

18. **Working Days.** Number of working days within which an employer/income withholder must remit amounts withheld pursuant to the State or Tribal laws/procedures of the principal place of employment.

19. **% of Disposable Income.** The percentage of disposable income that may be withheld from the employee/obligor’s paycheck.

**NOTE TO EMPLOYER/INCOME WITHHOLDER:**

For State orders, the employer/income withholder may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. § 1673(b)); or 2) the amounts allowed by the State of the employee/obligor’s principal place of employment.

For Tribal orders, the employer/income withholder may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employer/income withholders who receive a State order, the employer/income withholder may not withhold more than the limit set by the law of the jurisdiction in which
the employer/income withholder is located or the maximum amount permitted under section 303(d) of the Federal Consumer Credit Protection Act (15 U.S.C. §1673 (b)).

A federal government agency may withhold from a variety of incomes and forms of payment, including voluntary separation incentive payments (buy-out payments), incentive pay, and cash awards. For a more complete list, see 5 Code of Federal Regulations (CFR) 681.103.

COMPLETED BY SENDER:

20. State/Tribe. Name of the State or Tribe sending this document.
21. Document Tracking Identifier. Optional unique identifier for this form assigned by the sender.
23. SDU/Tribal Order Payee. Name of SDU (or payee specified in the underlying Tribal support order) to which payments are required to be sent. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.
24. SDU/Tribal Payee Address. Address of the SDU (or payee specified in the underlying Tribal support order) to which payments are required to be sent. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.

COMPLETED BY EMPLOYER/INCOME WITHHOLDER:

25. Return to Sender Checkbox. The employer/income withholder should check this box and return the IWO to the sender if this IWO is not payable to an SDU or Tribal Payee or this IWO is not regular on its face. Federal law requires payments made by IWO to be sent to the SDU except for payments in which the initial child support order was entered before January 1, 1994 or payments in Tribal CSE orders.

COMPLETED BY SENDER:

26. Signature of Judge/Issuing Official. Signature (if required by State or Tribal law) of the official authorizing this IWO.
27. Print Name of Judge/Issuing Official. Name of the official authorizing this IWO.
28. Title of Judge/Issuing Official. Title of the official authorizing this IWO.
29. Date of Signature. Optional date the judge/issuing official signs this IWO.
30. Copy of IWO checkbox. If checked, the employer/income withholder is required to provide a copy of the IWO to the employee/obligor.

ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS
The following fields refer to Federal, State, or Tribal laws that apply to issuing an IWO to an employer/income withholder. State- or Tribal-specific information may be included only in the fields below.

COMPLETED BY SENDER:

31. Liability. Additional information on the penalty and/or citation of the penalty for the employer/income withholder who fails to comply with the IWO. The State or Tribal law/procedures of the employee/obligor’s principal place of employment govern the penalty.
32. Anti-discrimination. Additional information on the penalty and/or citation of the penalty for an employer/income withholder who discharges, refuses to employ, or disciplines an employee/obligor as a result of the IWO. The State or Tribal law/procedures of the employee/obligor’s principal place of employment govern the penalty.
33. Additional Information. Any additional information, e.g., fees the employer/income withholder may charge the obligor for income withholding or children’s names and DOBs if there are more than six children on this IWO. Additional information must be consistent with the requirements of the form and the instructions.
COMPLETED BY EMPLOYER/INCOME WITHHOLDER:

NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS

The employer must complete this section when the employee/obligor's employment is terminated, Income withholding ceases, or if the employee/obligor has never worked for the employer.

Please Note: Employer’s Name, FEIN, Employee/Obligor’s Name, CSE Agency Case Identifier, and Order Identifier must appear in the header on the page with the Notification of Employment Termination or Income Status.

34a-b. Employment/Income Status Checkbox. Check the employment/income status of the employee/obligor.
35. Termination Date. If applicable, date employee/obligor was terminated.
36. Last Known Phone Number. Last known (home/cell/other) phone number of the employee/obligor.
37. Last Known Address. Last known home/mailing address of the employee/obligor.
38. Final Payment Date. Date employer sent final payment to SDU/Tribal payee.
39. Final Payment Amount. Amount of final payment sent to SDU/Tribal payee.
40. New Employer’s Name. Name of employee’s/obligor’s new employer (if known).
41. New Employer’s Address. Address of employee’s/obligor’s new employer (if known).

COMPLETED BY SENDER:

CONTACT INFORMATION
42. Issuer Name (Employer/Income Withholder Contact). Name of the contact person that the employer/income withholder can call for information regarding this IWO.
43. Issuer Phone Number. Phone number of the contact person.
44. Issuer Fax Number. Fax number of the contact person.
45. Issuer Email/Website. Email or website of the contact person.
46. Termination/Income Status and Correspondence Address. Address to which the employer should return the Employment Termination or Income Status notice. It is also the address that the employer should use to correspond with the issuing entity.
47. Issuer Name (Employee/Obligor Contact). Name of the contact person that the employee/obligor can call for information.
48. Issuer Phone Number. Phone number of the contact person.
49. Issuer Fax Number. Fax number of the contact person.
50. Issuer Email/Website. Email or website of the contact person.

The Paperwork Reduction Act of 1995
This information collection and associated responses are conducted in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. This form is designed to provide uniformity and standardization. Public reporting for this collection of information is estimated to average two to five minutes per response. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.
IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO / PINELLA COUNTY, FLORIDA

__________________________
Petitioner,

and

__________________________
Respondent.

INCOME WITHHOLDING FOR SUPPORT ORDER AND FLORIDA ADDENDUM

☐ ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
☐ AMENDED IWO
☐ ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT
☐ TERMINATION of IWO

Date:

☐ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the
sender (see IWO instructions http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154_instructions.pdf). If you
receive this document from someone other than a State or Tribal CSE agency or a Court, a copy of the underlying order
must be attached.

State/Tribal/Teritory FLORIDA
City/County/Dist./Tribe PASCO / PINELLA
Private Individual/Entity

Remittance Identifier (include w/payment)__________________________
Order Identifier ____________________________
CSE Agency Case Identifier ____________________________

RE:

Employer/Income Withholder’s Name

Employer/Income Withholder’s Address

Employer/Income Withholder’s FEIN

Child(ren)’s Name(s) (Last, First, Middle) Child(ren)’s Birth Date(s)

ORDER INFORMATION: This document is based on the support or withholding order from FLORIDA (State/Tribal).
You are required by law to deduct these amounts from the employee/obligor’s income until further notice.

$ __________ Per current child support
$ __________ Per past-due child support - Arrears greater than 12 weeks? ☐ Yes ☐ No
$ __________ Per past-due cash medical support
$ __________ Per current spousal support
$ __________ Per past-due spousal support
$ __________ Per other (must specify) ____________________________

for a Total Amount to Withhold of $ __________ per ____________________________.
AMOUNTS TO withheld: You do not have to vary your pay cycle to be in compliance with the Order Information. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

$________ per weekly pay period
$________ per biweekly pay period (every two weeks)
$________ per monthly pay period
$________ Lump Sum Payment: Do not stop any existing IWO unless you receive a termination order.

REMITTANCE INFORMATION: If the employee/obligor’s principal place of employment is___FLORIDA___(State/Tribal), you must begin withholding no later than the first pay period that occurs ___14__ days after the date of service of this IWO. Send payment within ___2__ working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to ___65%___ of disposable income for all orders. If the employee/obligor’s principal place of employment is not___FLORIDA___(State/Tribal), obtain withholding limitations, time requirements, and any allowable employer fees at http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm for the employee/obligor’s principal place of employment.

For electronic payment requirements and centralized payment collection and disbursement facility information (State Disbursement Unit [SDU]), see http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm.

Include the Remittance Identifier with the payment and if necessary this FIPS code: ____________________

Remit payment to ___STATE OF FLORIDA DISBURSEMENT UNIT___(SDU/Tribal Order Payee) at P.O. BOX 8500, TALLAHASSEE, FL 32314-8500 (SDU/Tribal Payee Address)

☐ Return to Sender [Completed by Employer/Income Withholder]. Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you must check this box and return the IWO to the sender.

Signature of Judge/Issuing Official (if required by State or Tribal law): ____________
Print Name of Judge/Issuing Official: ____________________ SEE BELOW ____________
Title of Judge/Issuing Official: ____________________
Date of Signature: ____________

If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.

☐ If checked, the employer/income withholding must provide a copy of this form to the employee/obligor.

ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at: http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm

Priority: Withholding for support has priority over any other legal process under State law against the same income (42 USC §666(b)(7)). If a Federal tax levy is in effect, please notify the sender.

Combining Payments: When remitting payments to an SDU or Tribal CSE agency, you may combine withheld amounts from more than one employee/obligor’s income in a single payment. You must, however, separately identify each employee/obligor’s portion of the payment.

Payments To SDU: You must send child support payments payable by income withholding to the appropriate SDU or to a Tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a Court, Attorney, or Private Individual/Entity and the initial order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, you must follow the “Remit payment to” instructions on this form.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor’s wages. You must comply with the laws of the State (or Tribal law if applicable) of the employee/obligor’s principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

Multiple IWOs: If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to Federal, State, or Tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the State or Tribal law/procedure of the employee/obligor’s principal place of employment to determine the appropriate allocation method.

Lump Sum Payments: You may be required to notify a State or Tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

OMB Expiration Date – 05/31/2014. The OMB Expiration Date has no bearing on the termination date of the IWO; it identifies the version of the form currently in use.

OMB 0870-0154 and Florida Addendum, Sixth Circuit Approved Family Law Form, Income Withholding for Support Order and Florida Addendum, 06/2012
Liability: If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor’s income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by State or Tribal law/procedure.

Anti-discrimination: You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO.

Employer’s Name: ___________________________ Employer FEIN: ___________________________
Employee/Obligor’s Name: ___________________________ Order Identifier: ___________________________

Withholding Limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor’s principal place of employment (see REMITTANCE INFORMATION). Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% - to 65% and 65% - if the arrears are greater than 12 weeks. If permitted by the State or Tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers/income withholders who receive a State IWO, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673(b)).

Depending upon applicable State or Tribal law, you may need to also consider the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

Arrears greater than 12 weeks? If the Order Information does not indicate that the arrears are greater than 12 weeks, then the Employer should calculate the CCPA limit using the lower percentage.

Additional Information: ____________________________________________________________

NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS: If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, an employer must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the Contact Information below:

☐ This person has never worked for this employer nor received periodic income.
☐ This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: ___________________________ Last known phone number: ___________________________
Last known address: ____________________________________________________________

Final payment date to SDU/ Tribal Payee: ___________________________ Final payment amount: ___________________________
New employer’s name: ____________________________________________________________
New employer’s address: _________________________________________________________

CONTACT INFORMATION:
To Employer/Income Withholder: If you have any questions, contact ___________________________ (Issuer name) by phone at _________, by fax at _________, by email or website at: ___________________________.
Send termination/income status notice and other correspondence to: ___________________________ (Issuer address).

To Employee/Obligor: If the employee/obligor has questions, contact ___________________________ (Issuer name) by phone at _________, by fax at _________, by email or website at: ___________________________.

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

OMB 0970-0154 and Florida Addendum, Sixth Circuit Approved Family Law Form, Income Withholding for Support Order and Florida Addendum, 05/12
FLORIDA ADDENDUM

THE PAYOR, {name}__________________________________________, IS HEREBY NOTIFIED that, under sections 61.13 and 61.1301, Florida Statutes, you have the responsibilities and rights set forth below with regard to the Income Withholding Order/Notice for Support:

1. The Income Withholding Order/Notice for Support is enforceable against employers specifically listed upon the form as well as all subsequent employers/payors of Obligor, {name}__________________________________________, {address}__________________________________________. You are required to deduct from the obligor’s income the amount specified in the income withholding order, and in the case of a delinquency the amount specified in the notice of delinquency, and to pay that amount to the State of Florida Disbursement Unit. The amount actually deducted plus all administrative charges shall not be excess of the amount allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. §1673(b), as amended.

2. You must implement income deduction no later than the first payment date which occurs more than 14 days after the date the income deduction order was served on you, and you shall conform the amount specified in the income withholding order to the obligor’s pay cycle. The court should request at the time of the order that the payment cycle will reflect that of the obligor.

3. You must forward, within 2 days after each date the obligor is entitled to payment from you, to the State of Florida Disbursement Unit, the amount deducted from the obligor’s income, a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income withholding order, and the specific date each deduction is made. If the IV-D agency is enforcing the order, you shall make these notifications to the agency.

4. If you fail to deduct the proper amount from the obligor’s income, you are liable for the amount you should have deducted, plus costs, interest, and reasonable attorneys’ fees.

5. You may collect up to $5 against the obligor’s income to reimburse you for administrative costs for the first income deduction and up to $2 for each deduction thereafter.

6. The Income Withholding Order/Notice for Support is binding on you until further notice by court order or until you no longer provide income to the obligor.

8. When you no longer provide income to the obligor, you shall notify the obligee, {name}__________________________________________, {address}__________________________________________, and provide the obligor’s last known address and the name and address of the obligor’s new payor, if known utilizing the form contained within the Income Withholding Order/Notice for Support. If you violate this provision, you are subject to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation. If the IV-D agency is enforcing the order, you shall make these notifications to the agency instead of the obligee. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order.

9. You shall not discharge, refuse to employ, or take disciplinary action against an obligor because of the requirement for income deduction. A violation of this provision subjects you to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction, if any alimony or child support obligation is owing. If no alimony or child support obligation is owing, the penalty shall be paid to the obligor.

10. The obligor may bring a civil action in the courts of this state against a payor who refuses to employ, discharges, or otherwise disciplines an obligor because of income deduction. The obligor is entitled to reinstatement of all wages and benefits lost, plus reasonable attorneys’ fees and costs incurred.

11. In a Title IV-D case, if an obligation to pay current support is reduced or terminated due to the emancipation of a child and the obligor owes an arrearage, retroactive support, delinquency, or costs, income deduction continues at the rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of withholding is modified.

12. All notices to the obligee shall be sent to the address provided in this notice to payor, or anyplace thereafter the obligee requests in writing.

13. An employer who employed 10 or more employees in any quarter during the preceding state fiscal year or who was subject to and paid tax to the Department of Revenue in an amount of $20,000 or more shall remit support payments deducted pursuant to an income deduction order or income deduction notice and provide associated case data to the State Disbursement Unit by electronic means approved by the department. Payors who are required to remit support payments electronically can find more information on how to do so by accessing the State Disbursement Unit’s website at www.floridasdu.com and clicking on “Payments.” Payment options include Expert Pay, Automated Clearing
House (ACH) credit through your financial institution, www.myfloridasdu.com, or Western Union. Payors may contact the SDU Customer Service Employer telephone line at 1-888-883-0743.

14. The amount of arrears owed, if any, is $________. You must withhold an additional twenty percent (20%) or more of the ongoing periodic obligation towards same at the rate of $________ per _________ until full payment is made of any arrearage, attorney's fees and costs – provided that no deduction shall be applied to attorney's fees and costs until the full amount of any arrearage is paid. If a delinquency accrues after the order establishing, modifying, or enforcing support has been entered and there is no existing order for repayment of the delinquency or a pre-existing arrearage, a payor shall deduct $________ per _________ (which represents an additional twenty percent (20%) of the current support obligation, or other amount agreed to by the parties) until the delinquency and any attorneys' fees and costs are paid in full. No deduction may be applied to attorneys' fees and costs until the delinquency is paid in full.

15. Pursuant to sections 61.13 and 61.1301, Florida Statutes, the amounts listed for payment on the Income Withholding Order must be varied by the employer/payor for bonus income, or similar one-time payment.

   You shall deduct [Choose only one] (___) the full amount, (___) _____%, or (___) none of the income which is payable to the obligor in the form of a bonus or other similar one-time payment, up to the amount of arrearage reported in the Income Deduction Order or the remaining balance thereof, and forward the payment to the State of Florida Disbursement Unit. For purposes of this subparagraph, "bonus" means a payment in addition to an obligor's usual compensation and which is in addition to any amounts contracted for or otherwise legally due and shall not include any commission payments due an obligor.

16. Child Support Reduction/Termination Schedule. Child support amount listed on this IWO shall be automatically reduced or terminated as set forth in the following schedule:

<table>
<thead>
<tr>
<th>Please list children by initials from eldest to youngest</th>
<th>Insert in this column the day, month, and year the child support obligation terminates for each designated child (see instructions)</th>
<th>Insert in this column the amount of child support for all minor children remaining (including designated child)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Child 1 (Eldest)</strong> Initials &amp; year of birth:</td>
<td>From the effective date of this Income Deduction Order until the following date:</td>
<td>child support for Child 1 and all other younger child(ren) should be paid in the following monthly amount:</td>
</tr>
<tr>
<td><strong>Child 2 Initials &amp; year of birth:</strong></td>
<td>After the date set forth in the row above until the following date:</td>
<td>child support for Child 2 and all other younger child(ren) should be paid in the following monthly amount:</td>
</tr>
<tr>
<td><strong>Child 3 Initials &amp; year of birth:</strong></td>
<td>After the date set forth in the row above until the following date:</td>
<td>child support for Child 3 and all other younger child(ren) should be paid in the following monthly amount:</td>
</tr>
<tr>
<td><strong>Child 4 Initials &amp; year of birth:</strong></td>
<td>After the date set forth in the row above until the following date:</td>
<td>child support for Child 4 and all other younger child(ren) should be paid in the following monthly amount:</td>
</tr>
</tbody>
</table>

(Continue on additional pages for additional children)

NOTE: This change only relates to the amount of the ongoing child support obligation portion of the payments listed in the first page of this Income Withholding Order. If there is a child support arrearage in a Title IV-D case, the amount will not be reduced due to the child no longer being eligible for ongoing support pursuant to par. 11 above.

17. Additional information regarding the implementation of income deduction may be found at www.florida.sdu.com.

DONE AND ORDERED in Chambers at __________, PASCO / PINELLAS County, Florida, this _____ day of __________________ 20___.

CIRCUIT JUDGE

PRINT NAME OF JUDGE
Paternity in the Modern Family
By John W. Foster, Sr. and Kelli A. Murray of Baker & Hostetler, LLP

We've all heard the classic playground tune:

"First comes love... then comes marriage... then comes the baby in the baby carriage."

It's amazing how, once upon a time, this simple nursery rhyme formed society's view of the natural progression of relationships. However, modern life may not be so simple. In this twenty-first century world of the modern family, the order of romance first, marriage second, and finally childbearing is oft disregarded and only one axiom rings true today: no two families are alike.

Children are born into different types of families, for example: (a) families where the biological father and mother are married to each other, (b) families where the biological father and mother are not married with no intention to do so, (c) families where the biological father and mother are not married and intend to marry at some later date, (d) families with only one parent, (e) families with two mothers or two fathers, and (f) families where the biological father is not the biological mother's husband. Children born into the latter category have been more recently described as "quasi-marital children." See, e.g., Fernandez v. McKenney, 776 So. 2d 1118, 1119-20 (Fla. 5th DCA 2001) (Sharp, J., concurring) (hereinafter referred to as Fernandez I). In that scientific and genetic testing can now accurately, rapidly, and inexpensively determine paternity, this category of children known as "quasi-marital children" presents distinct and complex legal issues. Moreover, as has been expressly noted by the First District Court of Appeal: "[c]ases involving children are never easy, and cases involving "quasi-marital children" are particularly complicated because they "present major public policy issues that are difficult, if not impossible, to address within the case law method." Nevitt v. Bonomo, 53 So. 3d 1078, 1084 (Fla. 1st DCA 2010) (citations omitted).

In her concurring opinion, Judge Sharp observed that the "law" in this area is far from clear. Fernandez I, 776 So. 2d at 1119. Judge Chris W. Altenbernd analyzes the state of the law in his 1999 article entitled Quasi-Marital Children: The Common Law’s Failure in Privette and Daniel Calls for Statutory Reform. 26 Fla. St. U.L.Rev. (1999). For centuries, the common law divided children into only two categories – marital and nonmarital. At common law, the biological mother's husband was presumed to be the "father" of the child born during the marriage. However, the advents of scientific and genetic testing make such bright lined rules implausible. "The advent of genetically accurate testing for paternity has partially 'broken the back' of the common law presumption of legitimacy for children born while a mother and her husband are married." Fernandez I, 776 So. 2d at 1119; 26 Fla. St. U.L.Rev. at 233.

Current case law establishes certain principles, to wit:

(1). In that a quasi-marital child was born while her mother was married, the husband is the presumptive legal father. Fernandez I, 776 So. 2d at 1119;

(2). The presumption that the mother's husband is the child's legal father is rebuttable. Nevitt, 53 So. 3d at 1081; Fernandez v. Fernandez, 857 So. 2d 997, 999 (Fla. 5th DCA 2003) (hereinafter referred to as “Fernandez II”); Fernandez I, 776 So. 2d at 1119; J.T.J. v. N.H., 2012 Fla. App. LEXIS 5186 (Fla. 4th DCA Apr. 4, 2012).

(3). The biological father of the quasi-marital child is entitled to pursue an action to establish paternity where, for instance, he manifests a substantial concern for the child's welfare. In other words, biological fathers are entitled to rebut the presumption that the biological mother's husband is the quasi-marital child's "legal father". See Kendrick v. Everheart, 390 So. 2d 53 (biological father is entitled to pursue claim for paternity where he manifests a substantial interest in the welfare of his quasi-marital child); Nevitt, 53 So. 2d at 1082-84 (biological father's complaint sufficiently reflected standing to pursue paternity action); L.J. v. A.S., 25 So. 3d 1284 (Fla. 2d DCA 2010) (biological father allowed a hearing to establish standing and it was error to dismiss the biological father's paternity action); Fernandez II, 857 So. 2d at 999 (biological father was deemed to be the "legal father" based upon his quasi-marital child's best interests); Fernandez I, 776 So. 2d at 1120 (biological father's paternity action was allowed to proceed as to his quasi-marital children where the mother supported the paternity action); Lander v. Smith, 906 So. 2d 1131-35 (Fla. 4th DCA 2005) (dismissal ordered reversed and biological father permitted to pursue his paternity action).

(4). The establishment of the biological father’s paternity will not impugn or otherwise affect a quasi-marital child’s legitimacy. Daniel v. Daniel, 695 So. 2d 1253, 1255 (Fla. 1997); Fernandez II, 857 So. 2d at 999; Dept' of Rev. v. Iglesias, -- So. 3d --, No. 4D09-4790, 2012 WL 126053 at *1, 37 Fla. L. Weekly D160 (Fla. 4th DCA Jan. 18, 2012).

(5). The overarching concern in paternity proceedings is – and continued, page 29
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Paternity from page 25

should be – the best interests of the minor children involved. *Dep’t of Health and Rehab. Serv’s v. Privette*, 617 So. 2d 305, 308-310 (Fla. 1993); *Fernandez II*, 857 So. 2d at 999 (finding that “the trial court properly made its determination based on a finding concerning the children’s best interests, as was required.”); *Lander*, 906 So. 2d at 1134-1135 (the best interests of the child “are the polestar which must guide judicial consideration of this case”); *Iglesias*, 2012 WL 126053 at *1; *J.T.J. v. N.H.*, 2012 Fla. App. LEXIS 5186 at *7.

According to Judge Altenbernd, common law judges in the Blackstone era saw families as desirable for children and, as such, created this legal presumption to ensure that children had, and belonged to, a family. 26 Fla. St. U.L. Rev. at 234. Today, a rigid application of this presumption calls into question whether or not the true purpose of the common law is being fulfilled in today’s modern society, particularly where the marital “family” it once sought to protect no longer exists due to a divorce – or is superseded by the creation of a new biologically intact “family” which includes the biological mother, biological father and the minor child.

Given the evolution of the modern family, the case law will continue to develop and provide more guidance as to the appropriate circumstances for maintenance of the status quo or a shift in legal parenthood. Indeed, as Judge Altenbernd stated more than a decade ago, “[t]he common law never abandoned natural rights concepts for biological fathers of quasi-marital children, even long after the presumption had accomplished that practical effect. As a result, especially in a technological society with a high rate of divorce, it will now be very difficult for the judiciary, relying upon the common law, to return to the substantive law concealed within the historic presumption of legitimacy, a law providing family units for children. The judiciary can no longer consistently select marital fathers as legal fathers, now that the presumption of legitimacy can now be regularly overcome by scientific testing. If we wish to further the real policies promoted by the presumption of legitimacy, in whole or in part, we must create new substantive law either judicially, on a case-by-case basis, or legislatively in a more structured format.” 26 Fla. St. U.L. Rev. at 238.

While the case law evolves, the one thing that remains clear is that the children – and their best interests -- need to remain the central focus of these proceedings. As confirmed by the Florida Supreme Court in Privette: “This policy [of advancing the best interests of the child] is a guiding principle that must inform every action of the courts in this sensitive legal area.” 647 So. 2d at 307.

### John W. Foster

John W. Foster has extensive experience as lead counsel in intral and appeals, as well as state and administrative proceedings. His practice includes emphasis on family and marital law matters and complex construction and commercial litigation. He has substantial experience in the areas of contract claims, tort claims and general civil litigation.

Mr. Foster serves as lead trial counsel in family law or divorce (marital dissolution) proceedings, including proceedings involving the equitable distribution of assets, alimony, child support, child custody or timesharing, paternity actions, the enforceability of prenuptial agreements and other family law and ancillary commercial issues. Mr. Foster has chosen to serve on the Executive Council of the Family Law Section and he is the Chair of the Equitable Distribution Committee and a Co-Chair of the Paternity Subcommittee for the Family Law Section of the Florida Bar Association for the 2011-2012 Bar Year. Mr. Foster has been recognized in Florida Trend’s 2010 and 2011 Florida Legal Elite under adoption, marital and family law, named one of “America’s Leading Lawyers for Business” in Chambers USA and one of Orlando’s top lawyers in Orlando Home and Leisure Magazine. He received a Family Law Section Rising Star Award, 2010-2011.

### Kelli A. Murray

Kelli A. Murray is responsible for handling a variety of matters, including commercial contract, property and other business related disputes in the firm’s commercial litigation practice group. Kelli’s practice also includes an emphasis on family and marital law matters involving dissolution of marriage, alimony, child support, timesharing, constitutional rights of parents and children, paternity, enforcement actions, and pre- and post-nuptial agreements.

Kelli is actively involved in the George C. Young American Inn of Court, the Central Florida Association for Women Lawyers, the Paul C. Perkins Bar Association and serves on several committees of the Family Law Section of the Florida Bar Association.

Visit the section web site: www.familylawfla.org
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- Coverage of 2011 statutory amendments regarding dispositions in juvenile delinquency cases
- Discussion of finding of statute prohibiting adoption by homosexuals unconstitutional
- Discussion of Rule 8.100(b), prohibiting the use of shackles, chains, or handcuffs on children during court appearances
- Discussion of requirement to use Family Court Cover Sheet when filing initial pleading
- Discussion of Rule 8.010(i) requiring the presence of the state attorney or assistant state attorney and public defender or assistant public defender at the detention hearing

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Family Law Blog

Service of Process – Active-Duty Service Member

By Angie Aguilar, Florida Coastal School of Law

In a dissolution of marriage for military service members, specific state and federal rules apply. The Service member Civil Relief Act (SCRA) provides military personnel a great deal of protection from civil proceedings that “may adversely affect the rights of the service member while he/she is in active duty.” 501 App. U.S.C.A. § 501 (2003). Generally speaking, it is easier to serve a defendant with service of process while they are in the United States as opposed to overseas. George H. Fischer, Residence or domicile, for purpose of divorce action, of one in armed forces, 21 A.L.R. 2d 1163 (1952).

State law governs plaintiff seeking to serve a defendant with a petition for divorce in the United States living off post. Id. In Florida, plaintiff seeking to obtain a dissolution of marriage must meet the residency requirement. FLA. STAT. ANN. § 61.021 (WEST 2012). “One of the parties to the marriage must reside six months in the state before the filing of the petition.” Id. There is an exception to the statutory residency requirement for members of the military. Cruickshank v. Cruickshank, 420 So.2d 914, 914 (Fla. Dist. Ct. App. 1982). Service members seeking a divorce in Florida do not have to prove the six month residency requirement prior to filing the petition for dissolution of marriage. Eckel v. Eckel, 522 So. 2d 1018, 1020 (Fla. Dist. Ct. App. 1988). A plaintiff seeking to serve defendant who lives off post can do so via the sheriff of the county where the defendant lives. FLA. STAT. ANN. § 48.021 (WEST 2009). However, if the defendant lives on base, plaintiff can serve defendant via a provost marshal’s office. Fischer, supra, at 1163.

A plaintiff seeking to serve a defendant who is deployed overseas needs the voluntary acceptance of the defendant. If a defendant refuses to give voluntary consent to service of process, plaintiff can request a court to appoint someone to serve papers via the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Concluded 15 Nov. 1965. The central authority can carry out service of process via its internal law or a method request by the applicant. “Each contracting state shall be free to effect service upon persons abroad without application of any compulsion.” Hague Convention, art. 8. A state statute cannot be used to serve a defendant. Id. A defendant overseas cannot be served by publication. Fischer, supra, at 1163. Service of process by publication is only allowed when the address is unknown. Id. Postal service via certified or registered post is not allowed unless the country in which the military officer is located allows service in that manner. Id.

Overall, SCRA provides a military officer legal protection from divorce proceedings. 501 App. U.S.C.A. § 501. For example, under SCRA, a court can delay a legal proceeding while the service member is on active duty. Id. Sixty days following active duty the proceeding can continue. Id. Given the protection afforded to service members, plaintiffs best bet to carrying out service of process is to serve a defendant while they are home from duty.

Angie Aguilar is a third year law student at Florida Coastal School of Law. Prior to law school, Ms. Aguilar worked as a community organizer for a non-for-profit organization. Ms. Aguilar graduated from the University at Albany with a bachelor’s degree in Political Science and Women’s Studies. Ms. Aguilar’s strong interest in immigration law sparked her decision to attend law school. Currently, she is interning at a criminal defense firm in New York and serves as a research assistant for the Civil Rights Litigation Clinic at Touro Law School. Ms. Aguilar enjoys traveling to foreign countries and believes exposure to other cultures is important for understanding the rule of law.
The pension system in the United States began with pensions granted by the new United States government to Revolutionary War veterans. In a period of over two centuries, the Armed Forces Retirement System has grown in size and complexity, and has many features making it distinct from private ERISA pensions and state plans. In 1982, Congress passed the Uniformed Services Former Spouses' Protection Act. This lead to the creation of the Military Court Order, which divides a military pension the same way a QDRO divides a private ERISA pension.

While the features make the System complex, the various features of the System creates the flexibility in drafting Military Court Orders (MCO) needed to fit most cases in the context of Florida case law.

One features of the MCO that makes it flexible is that it can allow a “bright line” QDRO formula that freezes the benefit as of date of filing (as in Boyett), or a coverture formula that uses the benefit as of retirement. However, coverture does not follow Florida case law, since Florida is a bright line state. For further discussion of coverture vs. bright line, please see “Bright Line and Coverture in Divorce Pension Valuations and Distribution,” American Journal of Family Law, Vol. 23, No. 3, Fall 2009.

A major problem with the bright line approach is that inflation will erode the value of a benefit that is frozen as of the date of filing. The argument against coverture is that it allows the former spouse to share in increases occurring after the date of marriage. A hypothetical solution would be a QDRO that allows for benefit increase due to inflation only, but this is impossible in most pension formulas. For example, in private industry, how can one separate salary increase due to promotion from salary increase due to inflation? However, this problem can be solved in an MCO.

In the Armed Forces, the salary for a fixed rank and fixed years of service increases every year, as an inflation guard. Because of the flexibility of the MCO, the Defense Financial and Accounting Service (DFAS) will accept an MCO that freezes the rank and service as of date of filing, but allows for future passive salary increase in the benefit calculation for the former spouse.

In addition to the flexible formula, the other critical features of the MCO are the survivor benefit, and disability. Unlike almost all private ERISA plans, the Armed Forces Retirement System does not allow a separate interest QDRO, payable for the life of the Alternate Payee. Therefore, the survivor benefit has to be addressed in the property settlement agreement.

### Chart 1

**PENSION VALUATION REPORT**

**March 3, 2010**

**PREPARED FOR:** Florida Lawyer, Esq.

<table>
<thead>
<tr>
<th>Name:</th>
<th>Future Retiree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan:</td>
<td>Armed Forces Retirement System</td>
</tr>
<tr>
<td>Employer:</td>
<td>Air Force Reserves</td>
</tr>
<tr>
<td>Birth Date:</td>
<td>6/5/1962</td>
</tr>
<tr>
<td>Entry Date:</td>
<td>11/1/1982</td>
</tr>
<tr>
<td>Marriage Date:</td>
<td>5/13/1981</td>
</tr>
<tr>
<td>Cut-off Date:</td>
<td>8/1/2006</td>
</tr>
<tr>
<td>Valuation Date:</td>
<td>3/3/2010</td>
</tr>
</tbody>
</table>

**Retirement Age:** 60  
**Retirement Date:** 7/1/2022  
**Status:** Active  
**Sex:** Female  
**Age:** 48

1) **Accrued monthly pension at cut-off date** $1,278
2) **Annuity Factor** (present value of $1 per year annuity) 7,11302
3) **Present Value** (12 x Item 1 x Item 2) $109,085
4) **Retirement points while married** 4,489
5) **Retirement points to cut-off date** 4,489
6) **Coverture Fraction** (Item 4 ÷ Item 5) 1.0000
7) **Marital present value** as of 3/3/2010 (Item 3 x Item 6) $109,085

<table>
<thead>
<tr>
<th>Annual Percentage Increase</th>
<th>Actuarial Present Value</th>
</tr>
</thead>
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<tr>
<td>Post-Retirement Cost-of-Living Benefit</td>
<td>Full Pension</td>
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<tr>
<td>0.00 %</td>
<td>$109,085</td>
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<tr>
<td>1.00 %</td>
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<td>4.00 %</td>
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<tr>
<td>5.00 %</td>
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</table>

Pension form: Life Annuity  
IRC interest rate 3.68% for 5 years; 5.02% for 15 years; 5.35% for 25 years  
Mortality table: RP-2000 '10  
Marital portion contingent on jurisdictional cut-off date  
Calculations in accordance with generally accepted actuarial standards 10010098
and the MCO. As in the award formula, the survivor benefit is flexible, and allows for more than one survivor beneficiary. The Former Spouse can be the survivor annuitant on the entire pension, just the marital portion, or just his/her own portion, depending upon how the case is settled.

Disability is a major issue for MCO's, since under the Mansell-3 Supreme Court decision, disability is non divisible. Therefore, in cases where the disability is subtracted from total retired pay, it will reduce the award to a former spouse. This needs to be addressed by way of the property settlement agreement, indemnifying the former spouse for any reduction due to disability. There are also cases where disability is given in addition to retired pay, which can be addressed within the MCO.

Due to the complexity of these issues, this article will be presented in 2 sections. The first will deal with Armed Forces Retirement System pension valuations and setting the award in the MCO. The concepts are closely related, because the pension valuation can be used to determine the percentage awarded to the former spouse, and also because the MCO formula is based on how the benefit is calculated. The second section will cover disability and the survivor benefit.

**Pension Valuation**

Usually, the first step in the pension part of a divorce case is a valuation, if there are other assets to allow an offset. Charts 1 and 2 show examples of valuations for active military members and reservists. Active military personnel may retire immediately upon reaching 20 years of active duty service, while reservists must reach age 60 for retirement, upon completing 20 calendar years of reserve service. The reservist may reach 20 years of reserve service (typically 60 days a year) in his or her 40’s, and retire from service, but cannot collect the pension until age 60. Note that the active duty pension has a much higher present value, since it has both a higher benefit and is payable at a much earlier age. Both valuations include results under a range of cost of living increases, since the Armed Forces Retirement System includes cost of living adjustment that is very close to Social Security cost of living increases.

![Chart 2](continued,next page)
of service for purpose of benefit calculation is equal to calendar years of service. For reservists, years of service for purpose of benefit calculation is determined by total points at retirement, divided by 360. Calendar years of service determines eligibility for retirement (20 years), and also basic pay, for a given rank, for both active duty and reserve personnel. Reservists must meet the additional criterion of age 60, for retirement eligibility, as discussed above. Since reservists are on part time duty, the accrued points for retired pay are based on how many days in a year they serve.

In the first (reservist) valuation (Chart 1), the benefit accrued as of date of filing is determined by 3 year average of highest pay as of 8/1/2006 ($4,099 per month in this case) \( \times \) 3 x 4489/360, where 4489 is equal to reserve points for retirement pay as of date of filing. In the second (active duty) valuation (Chart 2), the benefit accrued as of date of filing is 3 year average of highest pay as of 10/1/2005 \( \times \) 0.025 x 13.4182 years of service.

The reason a range of cost of living increases is illustrated is because we do not know the future. Since a present value covers a period extending to many years in the future, it is not reasonable to use the current military cost of living increases for a benefit that will be paid, on the average, for another 36 years (the life expectancy of a 48 year old female being 84 years).

Looking back over the last 30 years, the geometric mean of cost of living increase is over 4 percent, and the fluctuation has been from zero to over 14 percent. This is why using current cost of living increase is not a logical assumption, and the valuation above shows a range. If a single value is needed for settlement purpose, assuming 3 percent cola is a reasonable, conservative, estimate. Assuming the case involves the reservist, the marital present value is then $150,575, under 3 percent cola. If only the pensions are being offset, and the husband’s 401(k) is valued at $50,000, the offset scheme is shown below (Chart 3).

There is no reason to award 50%, just because there are insufficient assets for an immediate offset, if the percentage method above is used. Under Boyett, the husband will receive 33.40 percent of the benefit accrued as of August 1, 2006, the date of filing.

### Military Pensions

from preceding page

Below are examples of sample MCO language that freeze the benefit as of date of filing, and freeze rank and service as of filing date, but allow the former spouse to share in passive salary increase. The first example completely freezes the benefit as of date of filing, since the pay as of filing date is used in the calculation. The second example freezes the rank and service as of filing date, but allows base pay as of retirement to be used in the calculation, protecting the former spouse from inflation eroding a fixed benefit.

1) The Former Spouse is awarded 33.40% of the disposable military retired pay the Member would have received had the Member become eligible to receive military retired pay with retired base pay of $4,099 and with 4489 reserve retirement points, on August 1, 2006.

2) The Former Spouse is awarded 33.40% of the disposable military retired pay the Member would have received had the Member...
become eligible to receive military retired pay on the date she attained age 60, with 4489 reserve retirement points, with 25 years of service for basic pay purposes, and with rank E8.

In the second formula, both the number of points and calendar years of service are specified. This is because while the benefit computation is based on number of points divided by 360, salary is based on both rank and calendar years of service. In this case, the reservist accumulated 4489 points over a period of 25 years. Note that the second formula does not specify pay, since the pay is not fixed as of date of filing. The number of points (4489), years of calendar service (25), and rank, all as of date of filing, are fixed, but pay is computed at retirement. This allows the former spouse to share in the pre-retirement cost of living pay increases. DFAS also allows coverture language based on the entire benefit at retirement, but this does not follow the Boyett decision. However, if the parties agree to a coverture formula, DFAS will approve such an order.

In addition the flexibility of benefit computation, the Survivor Benefit Plan under the Armed Forces Retirement System is also flexible, and allows several options in an MCO, although only one survivor annuitant is allowed. These topics will be covered in the following article, along with property settlement agreement language under Padot and Blaine, as well as pitfalls and solutions regarding disability.

Mark K. Altschuler, M.S., is Actuary and President of Pension Analysis Consultants, Inc., (PAC), Coral Gables. Mr. Altschuler, a Family Law Section Affiliate of The Florida Bar, has performed over twenty-five thousand pension valuations and QDROs and is recognized nationwide for his actuarial knowledge and his ability to clearly explain pension division concepts. His affiliations include the American Society of Pension Professionals & Actuaries (ASPPA) and the American Academy of Economic and Financial Experts. Mr. Altschuler writes a nationally distributed newsletter on pension & QDRO topics in divorce, DIVTIPS®, is contributing author to Valuing Specific Assets in Divorce and Valuation Strategies in Divorce (Wolters Kluwer/Aspen Publishers: NY) and is the new author of the benchmark textbook, Value of Pensions in Divorce (Wolters Kluwer). In addition to writing numerous substantive articles for legal publications including American Journal of Family Law, he is a noted Continuing Legal Education speaker on various QDRO issues including the Federal and Military Retirement Systems. He can be reached at (305) 777-0468, (800) 288-3675 or pacfl@pensionanalysis.com.

Endnotes:
1 USFSPA, Public Law 97-252, Title 10 USC
2 Boyett 703 So. 2nd 451 (Fla. 1997)
4 Padot v. Padot, 891 So. 2d 1079 (Fla. 2nd DCA 2004)
5 Blaine v. Blaine, 872 So. 2d 383 (Fla. 4th DCA 2004)
Out of the Ivory Tower and Into the Trenches: 
A Student’s Perspective on the Role of Clinical Education in Training a Litigator

By Joel H. Feigenbaum, Coral Gables, FL

All of my romantic ideas about trial advocacy have officially disappeared. I recently won my first case in federal court. Appearing before a federal Administrative Law Judge in the Social Security Administration, I convinced the trier of fact that my client, an indigent Haitian man, was permanently disabled and entitled to benefits for the remainder of his life. As a legal intern for the University of Miami School of Law’s Health and Elder Law Clinic, I was provided the rare opportunity to shed my first layer of greenness with clients who knew of my inexperience and accepted it. From client interviewing, fact investigation, theory development, brief writing, and pretrial practice, I have engaged in the full-range of tasks associated with litigation as well as the full-range of emotions that complement each.

As the ultimate training ground for an aspiring litigator, the Clinic afforded me the extraordinary and atypical chance to argue a real case as a 2L. A trial by fire of sorts, the experiential, practical learning I have participated in has allowed me to provide direct representation to clients under the supervision of full-time faculty. While I found the actual courtroom proceedings unquestionably the most rewarding and exhilarating aspect of the litigation process, perhaps the most valuable experience I gained was in the weeks leading up to trial.

Prior to my hearing I was immersed and engaged in not only a subject matter I was utterly unfamiliar with, but also a forum court with which I was untired. In much the same way personal injury or medical malpractice practitioners prepare for trial, to effectively advocate on behalf of my client I had to become well-versed in the debilitating ailments with which he was suffering. I poured over hundreds of pages worth of medical records and evaluations chalk full of unfamiliar jargon and shorthand, comparing them to the Social Security Administrations, Blue Book Listings, which promulgate precisely which maladies and frailties qualify as a disability under the law.

I discerned exactly what I needed to prove and assembled the most favorable evidence available to zealously advocate for my client. I prepared a trial brief outlining my client’s medical and vocational history, which highlighted the findings of his physicals, and argued that he suffers from multiple severe and medically determinable conditions. My client and I participated in a mock hearing in which I presented my case before my professors who were playing the roles of judge and expert witness. Both my client and I found this simulated trial invaluable. Receiving worthwhile feedback from my professors and colleagues gave me the confidence and poise necessary to secure a judgment that makes my client financially independent for the first time in nearly a decade.

Until recently, my legal education has consisted of law school, not lawyering school. I firmly believe my experiences in the Clinic thus far have effectively bridged the gap between the study and practice of law.

Joel Feigenbaum is a Juris Doctor Candidate at the University of Miami School of Law and obtained his Bachelor of Arts in History at the University of Richmond. He is the Executive Managing Editor of the University of Miami National Security and Armed Conflict Law Review. After serving as a legal intern in the University of Miami Health and Elder Law Clinic during the 2011-2012 academic year, he will return next year under a fellowship. Joel is a member of the Florida Bar’s Student Division.
What Every Divorce Lawyer Needs to Know About the Florida Administrative Code When Evaluating a Forensic Psychologist’s Report

By Christopher R. Bruce, North Palm Beach, FL

Nearly all family law practitioners will eventually be confronted with a case where the parties do not agree on parental responsibility and time-sharing and it becomes necessary to critique an evaluation made by a forensic psychologist. When performing a review of a psychologist’s report it is not enough for the family law practitioner to be familiar with the Family Law Rules of Procedure and Chapter 61. To conduct an effective cross examination, the practitioner must also have a thorough understanding of Florida Administrative Code § 64B19-18.007. This code section cannot be ignored as it governs the scope and methodology a psychologist is required to follow when conducting a court ordered parenting plan evaluation.

Authorization for an Evaluation

In any action where the parenting plan is at issue because the parents are unable to agree, F.S. 61.20(1) authorizes the court to order a social investigation and study concerning all pertinent details relating to the child and each parent. The court may consider the information contained in the study in making a decision on the parenting plan, and the technical rules of evidence do not exclude the study from consideration. In addition to F.S. 61.20, practitioners must also be aware of the rules regarding the evaluation of a minor child set forth in Fla. Fam. L. R. P. 12.363.

Professionals Authorized to Conduct a Parenting Plan Evaluation

F.S. 61.20(2) provides a broad body of professionals can conduct a social investigation. A social investigation and study, when ordered by the court, shall be conducted by qualified staff of the court; a child-placing agency licensed pursuant to s. 409.175; a psychologist licensed pursuant to chapter 490; or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491. Although the remainder of this article focuses on the standards applicable to psychologists, arguably said standards should be followed by anyone authorized to conduct a social evaluation.

Florida Administrative Code

When a licensed psychologist conducts an evaluation in a custody proceeding it is paramount to understand an additional set of rules found in the Florida Administrative Code governs the methodology and scope of the psychologist’s evaluation and report. These rules are found in Fla. Admin. § 64B19-18.007, which is entitled “Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes”. Said code section also incorporates the “APA Guidelines for Child Custody Evaluations in Divorce Proceedings” and “APA Specialty Guidelines for Forensic Psychologists”.

The remainder of this article is dedicated to explaining the minimum standards in the Florida Administrative Code that a psychologist is required to follow when conducting a court ordered parenting plan evaluation.

Requirements of Psychologist’s Report

The psychologist’s report shall include all of the following elements: (1) evaluations of both parents, or legal guardian including observations, test results, and impressions; (2) evaluations of the children identified in the court order including observations and where appropriate, test results and impressions; (3) description of interactions between each parent or legal guardian and each child identified in the court order; (4) collateral sources of information as needed; and (5) requests for medical records as needed. The psychologist should document any failure to include the above referenced elements.

Conflicts of Interest

The psychologist who has accepted an appointment as an evaluator shall not serve as guardian ad litem, mediator, therapist or parenting coordinator regarding the children in the case. Likewise, it is a conflict of interest for a psychologist who has treated a minor or any of the adults involved in a custody or visitation action to perform a forensic evaluation for the purpose of recommending with which adult the minor should reside, which adult should have custody, or the degree of timesharing allowed. That said, and so long as confidentiality is not violated, a treating psychologist may provide a court, or a mental health professional performing a forensic evaluation, with factual information about the minor derived from treatment, but shall not state an opinion about custody, residence or visitation disputes.

APA Guidelines

Fla. Admin. § 64B19-18.007(2) incorporates the 1994 American Psycho
Described here are several of the more notable APA Guidelines:

Guideline #1: The primary purpose of the evaluation is to assess the best psychological interests of the child.

This factor is similar to the best interest of the child standard described in F.S. § 61.13. Psychologists should weigh and incorporate overlapping factors including family dynamics and interactions; cultural and environmental variables; relevant challenges and aptitudes for all examined parties; and the child's educational, physical, and psychological needs.

Guideline #3: The focus of the evaluation is upon parenting capacity, the psychological and developmental needs of the child, and the resulting fit.

The most useful and influential evaluations focus on skills, deficits, values, and tendencies relevant to parenting attributes and a child's psychological needs. By contrast, only minimal weight should be given to parenting plan evaluations that offer only general personality assessments without attempting to place results in the appropriate context.

Guideline #4: The role of the psychologist is that of a professional expert who strives to maintain an objective, impartial stance.

Psychologists should monitor their own values, perceptions, and reactions actively and seek peer consultation in the face of potential loss of impartiality. In conducting evaluations psychologists should maintain vigilant maintenance of professional boundaries and adhere to standard assessment procedures throughout the evaluation process to be in the best position to identify variations that may signal impaired neutrality.

Guideline #5: The psychologist gains specialized competence.

In parenting plan evaluations, general competence in the clinical assessment of children, adults, and families is necessary but insufficient in and of itself. An evolving and up-to-date understanding of child and family development, child and family psychopathology, the impact of relationship dissolution on children, and the specialized child custody literature is critical for sustaining competent practice. Furthermore, psychologists should become and remain familiar with applicable legal standards including Florida's laws governing adjudication of parent-child disputes and timesharing disputes.

Guideline #6: The psychologist is aware of personal and societal biases and engages in nondiscriminatory practices.

Psychologists must recognize their own biases and if they cannot be overcome, the psychologist must withdraw from an evaluation. When an examinee possesses a cultural, racial, or other background with which the psychologist is unfamiliar, the psychologist should prepare for and conduct the evaluation with the appropriate degree of informed peer consultation and focal literature review.

Guideline #8: The scope of the evaluation is determined by the evaluator, based on the nature of the referral question.

Once the referral question is established by the court, the psychologist is to determine the scope of the evaluation. Although comprehensive child custody evaluations generally require an evaluation of all parents and children, as well as observations of interactions between them, the scope of the assessment in a particular case may be limited to evaluating the parental capacity of one parent without attempting to compare the parents or to make recommendations.

Guideline #11: The psychologist uses multiple methods of data gathering.

Psychologists should employ optimally diverse and accurate methods for addressing questions raised in a specific child custody evaluation. Direct methods of data gathering include psychological testing, clinical interview, and behavioral evaluation. Psychologists should attempt to gain access to documentation from a variety of sources (e.g., schools, health care providers, child care providers) and frequently make contact with members of the extended family, friends and acquaintances, and other collateral sources when the resulting information is likely to be relevant.

Guideline #13: The psychologist does not give any opinion regarding the psychological functioning of any individual who has not been personally evaluated.

Psychologists cannot give opinions on what they have not observed. This guideline, however, does not preclude a psychologist from reporting what an evaluated individual has stated or from addressing theoretical issues or hypothetical questions so long as the limited basis of the information is noted.
Guideline #14: Recommendations, if any, are based on what is in the best psychological interests of the child.

Recommendations should be based on sound psychological data and address the psychological best interest of the child. Any recommendations should be based on articulated assumptions, interpretations and inferences that are consistent with established professional and scientific standards.

Christopher R. Bruce is a partner with the law firm of Nugent Zborowski & Bruce in North Palm Beach, Florida. The firm’s practice is limited to divorce and family law.

Endnotes:
1 The “social investigation and study” referred to in F.S. 61.20 is often referred to as a “parenting plan evaluation.” Although less common than a full blown social investigation, the court may also order the examination of only a child, and not the entire family.
3 Fla. Stat. §61.20(2).
5 Id.
8 Id.
9 Fla. Admin. Code § 64B19-18.007 (2)(b) incorporates the 1994 version of the guidelines, which were later slightly updated and supplemented with commentary in 2009. The plain language of Fla. Admin. Code § 64B19-18.007 requires Florida psychologists adhere to the 1994 APA Guidelines, but the 2009 supplement would certainly seem to be instructive.
Enforcement: The Civil Contempt Conundrum

By Brian Karpf, Miami, FL

The Court’s contempt power is a potent tool. It is typically an enforcement mechanism of last resort, but one used to both maintain family law principals and coerce compliance with rulings. When an individual attempts to avoid an obligation of support — whether it be alimony or child support, or even an award of attorney’s fees — its contempt power is often times the Court’s only means to compel deficient obligors to fulfill their obligations. Notably absent from this power, though, is the Court’s ability to coerce compliance with its equitable distribution awards. This discrepancy serves as an arguable “flaw in the system,” one which creates a double standard and all but promotes a party unsatisfied with their obligations pursuant to an equitable distribution award to simply ignore it, while essentially forcing the recipient of that award to incur further legal fees and endure more litigation at a time when the litigation was intended to cease. It kicks a critical element of family law cases out of the realm of Family Law Court, relegating the obligee to be the “cat” and the obligor “mouse” in a chase for equity.

What Is Contempt?

In general, criminal contempt is used to punish an individual for an intentional violation of a court order and to vindicate the court’s authority. Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985). As such, one’s ability to comply with the underlying order is irrelevant. Criminal contempt proceedings are appropriate when it can be established that the party in default has continually and willfully neglected his support obligations, or has affirmatively acted to divest himself of assets and property. Direct criminal contempt occurs where the underlying conduct was actually seen or heard by the Court, in the presence of the Court - versus indirect criminal contempt — where the underlying conduct occurred outside of the Court. Even in family law cases, criminal contempt proceedings are governed by Florida Rules of Criminal Procedure (Rule 3.830 for Direct Criminal Contempt and Rule 3.840 for Indirect Criminal Contempt). Since the proceeding is punitive in nature, potential criminal contemnors are entitled to the same constitutional due process safeguards as defendants in typical criminal proceedings. 471 So. 2d at 1277.

Conversely, the purpose of civil contempt proceedings is to obtain compliance by, rather than punish, the contemnor. The sanction of incarceration is still available in civil contempt proceedings, but may be used only when the contemnor has the ability to comply with the underlying order to be purged of contempt (this ability to comply being the contemnor’s “key to his cell”). Id. Civil Contempt in Support Matters is actually codified in Rule 12.615, Florida Family Law Rules of Procedure, and is the focus of this article.

How Contempt for Enforcement Purposes Works

Family law support matters are often enforced through contempt. The underlying order requiring a party to pay support is premised on a finding that they have an ability to pay it. In subsequent cases, this creates a presumption that the party still has an ability to pay the ordered amount. Accordingly, the party moving for civil contempt initially need only establish that (A) a prior order directs the opposing party to pay the support amount, and (B) that the obligor has failed to make the required payment. The burden of proof then shifts to the obligor who must dispense with the presumption of ability to pay by showing that, since the previous order or judgment, they no longer have the ability to meet their support obligations, due to circumstances beyond their control. If the obligor is found to be in civil contempt, the Court must determine which tool(s) it will utilize to coerce compliance. If incarceration is contemplated, when determining the contemnor’s ability to purge themselves of contempt, the court can look at all assets from which the purge amount could be satisfied. Get creative. Look for less obvious sources than just income or bank accounts: Sick leave or vacation time that has a value which can be tapped, IRA accounts, Federal Income Tax refunds, security deposits, storage units, tools, automobiles, jewelry, and electronics. Is the obligor a business owner? If so, consider their inventory, equipment, and furnishings. If incarceration is impossible, other coercive alternatives are available. Typically, the end result is the contemnor’s satisfaction of their support obligations, due to the overt pressure which the Court can employ to ensure that its support orders are enforced. This is why the Court’s contempt power is so crucial in family law cases.

Where Contempt Falls Far Short

In the majority of circumstances, property settlement awards are not enforceable by civil contempt. This is most troubling in the case of an
equitable distribution award requiring the payment of money, e.g., an equalizing payment, the payment of a marital debt, or the payment of funds from a bank account. The basis for this stems from the Florida Constitution’s prohibition against imprisonment for non-payment of a debt. Equitable distribution awards are typically deemed just that—payment of a debt—rather than in the nature of support.

Of course, awards of child support and alimony are enforceable by civil contempt. Even an award of attorney’s fees from one former spouse to another is considered in the nature of support and thus is enforceable by civil contempt. See, e.g., Fishman v. Fishman, 656 So. 2d 1250 (Fla. 1995). This holds true even where the fees incurred have nothing to do with a support award, such as those incurred while enforcing of a timesharing order. In fact, the court may use contempt to enforce orders awarding attorney’s fees even in cases with no children or alimony awards. Wertkin v. Wertkin, 763 So. 2d 465 (Fla. 4th DCA 2000). Conversely, most equitable distribution awards are considered judgments solely for the payment of money and thus are left to be enforced by obtaining and enforcing a money judgment, removing the former spouses from the family law arena on this one discrete issue—despite it arising from the Family Court—and instead placing them in the precarious positions of debtor and creditor.

While the basis for this dichotomy is good in theory, its application to family law cases is defunct. Generally speaking (and quite ironic to the Court’s inability to coerce compliance therewith), equitable distribution awards are not dischargeable in bankruptcy. They are the crux of divorce proceedings. No doubt, one spouse’s receipt of capital assets from the other is often times the primary (if not sole) award to that spouse. It is axiomatic that a monetary equitable distribution award is inextricably intertwined with support. The recipient of the award relies on such monies as a “nest egg”—whether it be for extraordinary expenditures, a down payment on a home, etc. Moreover, the Court necessarily took that award into consideration in determining an alimony or child support obligation (e.g., the interest income which would be earned on each spouse’s respective share of the monies). Yet, the party who fails to deliver such funds to the other, in defiance of the Court’s equitable distribution award, is essentially given a windfall, and the other, short changed. Take, for instance, the situation where an alimony recipient is in sole possession of the parties’ marital funds, and is ordered—refuses—to pay the alimony payer their share thereof. The Family Court cannot coerce the payee’s compliance with civil contempt. Yet, the payer remains obligated to fulfill their alimony payment, and is stuck incurring even more legal fees as a “creditor” to obtain the funds to which he or she is entitled (which may not even exist anymore). What’s more, the calculation of that alimony obligation took into consideration each party’s anticipated share of such monies.

Moreover, the Family Court judge—familiar with the case, parties, and the circumstances leading to its order—is stripped of the ability to effectuate compliance with its ruling. After issuing a money judgment, the Court’s role is essentially complete in the process. Then the chase begins. Of course, pursuing a former spouse as such (from the position of debtor/creditor) is difficult, costly, time consuming, and often fruitless. A “paper judgment” can be obtained, which is just the start of the chase. While the enforcing party can seek fees against the other for their efforts, actually collecting is likely just as difficult as obtaining the underlying awards itself. The debtor is also left with ample time to spend or conceal the other’s share of the award. While the intentional divesture of assets—and hence the ability to satisfy the Court’s award—is punishable by incarceration through an indirect criminal contempt proceeding, this is not much conciliation to the party left short changed.

There is an exception to this flaw: where the equitable distribution award is akin to an act—rather than simply the payment of money—civil contempt is available. In Roth v. Roth, 973 So2d 580 (Fla 2d DCA 2008), the Court distinguished the general proposition that property division awards may not be enforced by contempt from those acts which do not necessarily involve the payment of money (in which case a trial court may enforce property division award through contempt). Such examples include failure to execute and deliver various documents necessary to release a former spouse’s interest in a note and mortgage, failure to name a former spouse as beneficiary of a certain life insurance policy as required by the Court, and a former spouse’s refusal to sign a sales contract when the sale of certain marital real estate at a specific price was ordered in the Final Judgment. Id. Each of these examples are, in part, based upon Rule 1.570(c)(2), Florida Rules of Civil Procedure, which permits the Court to enforce an order requiring the performance of an act through contempt. With regard to an equitable distribution award calling for the payment of money, an analogy can be made—and an Order can be worded—to require the physical act of a transfer or, even better, that a party execute certain paperwork effectuate a transfer. This at least provides an argument that the obligor’s failure to comply is a failure to perform an act, and thus can be enforced through civil contempt. See, e.g., Burke v. Burke, 336 So.2d 1237(Fla. 4th DCA 1976)(although general rule is that contempt cannot be used to enforce payments under property settlement agreement, it may be employed where a party fails to execute documents as part of divorce) and Firestone v. Ferguson, 372 So.2d 490 (Fla. 3d DCA 1979)(same). Compare Fisher v. Fisher, 787 So.2d 926, 930 (Fla. 2d DCA2001) (Civil contempt not available).
able where the husband failed to pay the wife for share professional football tickets) and Filan v. Filan, 549 So.2d 1105 (Fla. 4th DCA 1989)(Former Husband could not be held in contempt for his failure to pay off mortgage on marital home).

A number of other states avoid this issue by logically utilizing contempt to effectuate all orders contained in a dissolution decree. See, e.g., Ohio: Harris v. Harris, 390 N.E. 2d 789 (Ohio 1979) (“For purposes of enforcing a decree entered in a domestic relations proceeding, provisions relating to the division of property as contained within a separation agreement do not constitute a “debt” within the meaning of that term as used in constitutional inhibition against imprisonment for a debt.”) This is because “the requirements of a property division are not in the nature of ordinary money judgments or business debt.”); Missouri: Ellington v. Pinkston, 859 S.W. 2d 798 (Mo. Ct. App.) (“An order to pay money as a part of the division of marital property, like an order to pay maintenance or child support, creates an obligation arising from the existence of marital status and is not a debt in the sense used in the constitution.”); and South Dakota: Hanks v. Hanks, 334 N.W. 2d 856 (South Dakota 1983) (The Court may enforce its equitable division of property awards through contempt, including those requiring the payment of money from one party to the other.)

A complete fix to Florida’s problem is simple and necessary: Keep family law issues in Family Law Courts, and allow family law judges to enforce all of their orders. An equitable distribution award is far different – and has far greater implications – than a typical creditor seeking repayment of a debt. These are families, not businessmen.

Brian Karpf, Esq. is an associate at the law firm of Young, Berman, Karpf, & Gonzalez, P.A., with offices in Miami and Weston, Florida. His practice is limited primarily to family law. Mr. Karpf is active in the American Bar Association, and presently the Liaison between the Family Law Section and Young Lawyers Division. He was recently re-appointed to a second two-year term on the Family Law Section’s Executive Council. Mr. Karpf has also served as chairman and vice-chairman of multiple ABA Family Law Section committees, as vice-chairman of the Family Law Committee of the ABA YLD, and is an assistant editor of the American Bar Association’s YLD Affiliate Newsletter. He has served as a State Delegate on behalf of The Florida Bar to the ABA Young Lawyers Division Assembly. Mr. Karpf has lectured, moderated, and produced programs on a range of topics on behalf of the ABA Family Law Section, including Social Networking for the Family Lawyer: Evidence, Research, Marketing, Ethics & More; Identifying and Solving Tax Issues in Family Law Cases; and Evidence for Family Lawyers.
Florida Family Law for Gay, Lesbian, Bi-Sexual and Transgendered Persons

By William D. Slicker, St. Petersburg, FL

In Florida, the biological parents of a child have primary rights to parental responsibility (custody) and time-sharing rights (visitation). For a same-sex oriented person, this means that their rights to time with a child that they have parented may depend on whether they entered into a traditional marriage and then “came out” later in life or whether they bypassed a traditional marriage and entered into a same-sex relationship earlier in life.

Later-in-Life Decision

The general rule in Florida is that a parent’s sexual orientation alone is not grounds to deny that parent parental responsibility (custody) or time-sharing rights (visitation). There must be a showing that the parent’s sexual conduct has a direct adverse impact on the child. See Dinkel v. Dinkel, 322 So. 2d 22 (Fla. 1975) dealing with a parent involved in an adulterous relationship.

Accordingly, a woman who marries a man, has children, and then leaves the marriage to pursue a lesbian relationship may not be denied parental rights solely because she is lesbian Jacoby v. Jacoby, 763 So. 2d 410 (Fla. 2d DCA 2000).

Likewise, a bisexual woman who has children during a marriage and then gets divorced, may not be denied parental rights solely due to her bisexuality. Maradie v. Maradie, 680 So. 2d 538 (Fla. 1st DCA 1996).

Further, a bisexual woman who marries a man, has children, and then lives in a ménage a trois, may not be denied parental rights in a divorce solely due to her sexual conduct. Packard v. Packard, 697 So. 2d 1292 (Fla. 1st DCA 1997).

Earlier-in-Life Decisions

In Florida, gay, lesbian, bi-sexual, or transgender persons who enter into relationships without a tradition marriage will face an uphill battle for parental rights if they are not the biological parent.

In 1976, Florida passed a statute that prohibited clerks of the courts from issuing marriage licenses unless one party is male and the other is female. Sec. 741.04, Fla. Stat. In 1997, Florida enacted a statute that prohibits recognition of same-sex marriages even if the couple was married in another jurisdiction where such a marriage was legal. Sec. 741.212, Fla. Stat. In 2008, Florida amended its state constitution to define marriage as the legal union between one man and one woman. Art I § 27, Fla. Const.

The statute prohibiting marriage between persons of the same sex has been interpreted by a Florida appellate court as prohibiting marriage between a woman and a transsexual who had been born a woman, but medically altered into a male. The court chose to follow the decisions of other states that had refused to recognize transsexual marriages rather than follow the view of an Australian Court that has recognized a transsexual marriage. The Florida court held that a person’s sex for purposes of marriage is determined by their biological sex at birth. Kantaras v. Kantaras, 884 So. 2d 106 (Fla. 2d DCA 2004).

The statute prohibiting recognition of a same-sex marriage performed in another state has been upheld by a Federal district court. Wilson v. Ake, 354 F. Supp 2d 1298 (M.D. Fla. 2005).

In the absence of a valid marriage, there have been a variety of legal theories that have sought court determination as to who has a right to parental responsibility (custody) and time-sharing rights (visitation) in a same-sex relationship.

In the 1960’s the concept of psychological parent arose. A psychological parent was not a biological or adoptive parent, but was thought of by the child as a parent due to the adult taking on the responsibilities of a parent with the child. However, Florida’s courts did not adopt the psychological parent concept as a basis to claim parental rights by step-parents. Meeks v. Garner, 598 So. 2d 261 (Fla 1st DCA 1992); Taylor v. Kennedy, 649 So. 2d 270 (Fla. 5th DCA 1994). This denial of standing was extended to the non-biological partner in a lesbian relationship so that she could not seek custody or visitation. Music v. Rachford, 654 So. 2d 1234 (Fla. 1st DCA 1995); Kazmierzak v. Query, 736 So. 2d 106 (Fla. 4th DCA 1999).

Even a written agreement between two lesbians, which provided that even though only one of them was the biological parent of a child through artificial insemination, that they would both be treated as recipients and as co-parents, was not recognized by a Florida court as sufficient to give the non-biological partner standing to seek custody or visitation. It was held to be an unenforceable agreement. Wakeman v. Dixon, 921 So. 2d 669 (Fla 1st DCA 2006).

Recently, there has been a case in which an appellate court found (by a two-to-one split) that a lesbian who was the biological mother and her lesbian partner who was the birth mother both had parental rights and responsibilities to the child born out of that relationship. In that case, one woman provided an egg that was artificially fertilized by a reproductive donor and then implanted into the other woman who carried the fetus and delivered the child. T.M.H. vs. continued, next page
D.M.T., ___ So. 3d ____, Case 5D09-3559 (Fla. 5th DCA 2011).

To view a young man raised by two lesbians in Iowa speaking to legislators, go to http://abcnews.go.com/Health/zach-wahls-son-lesbians-speech-anti-gay-legislators/story?id=12832200

Adoption

Florida Statute 63.042(3) prohibited adoption by same sex persons. The statute survived an earlier attempt to have the statute declared unconstitutional Lofton v. Secretary of Dept. of Children & Family Services, 358 F. 3d 804 (11th Cir. 2004), rehearing en banc denied, 377 F.3d 1275 (11th Cir. 2004). However, Florida courts have subsequently found the statute to be unconstitutional. Florida Dept of Children & Families v. Adoption of X. X. G., 45 So. 3d 79 (Fla. 3d DCA 2010);
In re Adoption of Doe, 16 FLW Supp 49 (Fla. 11th Cir, 2008); In re Doe, 16 FLW Supp 75, (Fla. 16th Cir. 2008).

Florida law only permits adoptions by (1) a husband and wife jointly (2) one unmarried adult or (3) a step-parent married to one of the biological parents. Sec. 63.043, Fla. Stat.

There are other states that have allowed the same-sex partner to adopt the child of the biological parent. A Florida appellate court has recognized that type of out-of-state adoption and granted parental rights to the adopting same-sex partner. Em-bry v. Ryan, 11 So. 3d 408 (Fla. 2nd DCA).

Therefore, perhaps the safest way for a non-biological parent to protect his or her parental rights is to adopt the child in a state that allows such an adoption.

Domestic Violence


If you are suffering from domestic violence or know someone who is, please contact your local domestic violence shelter.

Copyrighted by William D. Slicker

William D. Slick-er practices family law, bankruptcy and estate planning and administration in St. Petersburg, Florida. Mr. Slicker has authored over 20 published articles. He has served on the Board of CASA and has been awarded the Lighting the Way Award by the Florida Coalition Against Family Violence. He currently serves on the board for Directions for Living and the Pinellas Guardian Association.

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January 25-26, 2013

Loews Royal Pacific Resort
Orlando, FL

Program Chairs: Ingrid Keller & Patricia Alexander
Program Committee: Belinda Lazzara & Laura Smith

Register online at www.AAMLFlorida.org
FRIDAY, JANUARY 25, 2013

8:00 a.m. – 8:10 a.m. Welcome and Announcements

8:10 a.m. – 8:45 a.m. Evidence in Family Law
steering toward sunrise
Judge Richard Weis, Tampa

8:45 a.m. – 9:15 a.m. Preserve Your Case for Appeal
safeguarding the shore
Natalie Baird, Orlando

9:15 a.m. – 10:25 a.m. Practice and Procedure
navigating by the stars
Jeffrey Weissman, Ft. Lauderdale

10:25 a.m. – 11:15 a.m. Bankruptcy
suffering sun-baked terrain
Andrew Salvage, Ft. Lauderdale

11:15 a.m. – 12:00 p.m. All Sorts of Temporary Relief
shifting landscapes
Eddie Stephens, West Palm Beach

12:00 p.m. – 1:00 p.m. LUNCH

1:00 p.m. – 1:35 p.m. Domestic Violence/Criminal Issues In Family Law Cases
tempering volcanic activity
Mark O’Mara, Orlando

1:35 p.m. – 2:05 p.m. Mediation
lying in protected rainshadows
Judge Raymond McNeal, Ocala

2:05 p.m. – 3:05 p.m. All Things Child-Related
born of sea
Terry L. Fogel, Miami

3:05 p.m. – 3:50 p.m. Ethics
preserving the eternal flame
Jonathan Schiller, Ft. Lauderdale

3:50 p.m. – 4:35 p.m. Tax Considerations
sheltering trinkets
David L. Manz, Marathon

4:35 p.m. – 5:15 p.m. Alimony & Modification
prevailing winds and tides
Thomas L. Duggar, Tallahassee

5:30 p.m. – 7:30 p.m. LUAU RECEPTION

SATURDAY, JANUARY 26, 2013

8:25 a.m. – 8:30 a.m. Announcements

8:30 a.m. – 9:25 a.m. Equitable Distribution
trading
Mark Sessums, Lakeland

9:25 a.m. – 9:55 a.m. Paternity
born of fire
Jorge Cestero, West Palm Beach

9:55 a.m. – 10:50 a.m. Child Support & Modification
setting sail to explore
Susan Savard, Orlando

10:50 a.m. – 11:25 a.m. Agreements
keeping the peace
Luís Insignares, Naples

11:25 a.m. – 12:55 p.m. Case law update
canoeing toward sunset
Cynthia Greene, Miami

Registration opens online at www.AAMLFlorida.org on September 14th.
The Shield and the Sword: Protecting Yourself and Your Client in the Practice of Family Law

COURSE CLASSIFICATION: INTERMEDIATE LEVEL
Recorded Friday, October 12, 2012

Course No. 1474R

8:15 a.m. – 8:35 a.m.
Late Registration

8:35 a.m. – 8:45 a.m.
Opening Remarks
C. Debra Welch, West Palm Beach

8:45 a.m. – 9:45 a.m.
Privacy Issues in the 21st Century:
Facebook, Internet and Social Media
Mark O’Mara, Orlando

9:45 a.m. – 10:45 a.m.
Ethics of Dealing with Difficult People
Ronald Reed, Tampa

10:45 a.m. – 11:00 a.m.
Break

11:00 a.m. – 12:00 p.m.
Can You Keep a Secret? Must you?!
The Lawyer’s Duty to Protect
Confidences/Privilege/Work Product
Evan R. Marks, Miami

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

1:15 p.m. – 2:00 p.m.
Extortion, Coercion, and other Guerilla Tactics
David L. Hirschberg, Fort Lauderdale

2:00 p.m. – 2:45 p.m.
Surviving the Stress of Practicing Family Law
Dr. Deborah O. Day, Winter Park

2:45 p.m. – 3:00 p.m.
Break

3:00 p.m. – 3:45 p.m.
Electronic Data Discovery (E-Discovery)
Mark O’Mara, Orlando

3:45 p.m. – 4:30 p.m.
Avoiding Bar Grievances and Malpractice Complaints
Moderated by David A. Garfinkel,
Jacksonville
Honorable Emily Peacock, Tampa
Barry Rigby, Orlando
Jodi Thompson, Bar Counsel, Tampa

E-mail address is required to receive electronic course material and will only be used for this order.

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VS: Course No. 1474C

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CERTIFICATION PROGRAM
(Max. Credit: 5.0 hour)
Marital & Family Law: 5.0 hours

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(1474M)
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(1474C)
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(includes electronic course material) TOTAL $ ______

☐ DVD
(1474D)
$250 plus tax (section member)
$305 plus tax (non-section member)
(includes electronic course material) TOTAL $ ______
The Florida Bar Family Law Section presents

Mechanics of the Marital and Family Law Certification Exam

Wednesday, November 14, 2012
Telephonic Seminar
12:00 p.m. – 2:00 p.m. Eastern Standard Time

Course No. 1476R

Dial In And Get Informed

This seminar is intended to assist both those who have applied to take the certification exam and those who are thinking about taking the exam in the future. It is developed and conducted without any involvement or endorsement by the BLSE and/or Certification committees. Furthermore, those who have developed the program have had no communication with the certification committee that prepares and grades the examination and they have no information regarding the examination content or format other than the information contained in the exam specifications which are also provided to each examinee. Candidates for certification who take this course should not assume that the course material will cover all topics on the examination or that the examination will cover all topics in the course material. Materials for this telephonic seminar can be downloaded from the Family Law website – www.familylawfla.org. Registrants can email comments and questions before and during the seminar to familylawmechanics@gmail.com.

This seminar is not eligible for CLE credit.

Presenters:
- Ronald H. Kauffman, Co-Chair, Miami
- Susan Savard, Co-Chair, Orlando
- Laura Davis Smith, Co-Chair, Miami
- Karen Weintraub, Co-Chair, Fort Lauderdale

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2013 Marital and Family Law Review Course

January 25 - 26, 2013
Loews Royal Pacific Resort at Universal Studios
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Cert Tips & Nibbles, 4:00 p.m. – 6:00 p.m., January 24, 2013
(Limited to registered test takers only)
How to Handle Family Law Cases Involving the Department of Revenue: Everything You Need to Know From Basic Battle Skills to Advanced Hearing Techniques

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Telephonic Seminar: Wednesday, December 12, 2012
12:00 p.m. – 2:00 p.m. Eastern Standard Time

This seminar will address how to litigate Department of Revenue cases, not only from the perspective of a private attorney who handles child support enforcement issues, but also from the perspective of a Hearing Officer who works in this challenging arena on a daily basis.

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

12:00 p.m. – 12:05 p.m.
Welcome/Introduction of Speakers
Amanda Colón, Esquire, New Port Richey

12:05 p.m. – 1:00 p.m.
Chapter 409 and Related Case Law, Including Child Support Defenses, Concepts and Strategies
Raul A. Perez-Ceballos, Esquire, Coral Gables

1:00 p.m. – 1:50 p.m.
Department of Revenue Cases: A Candid View From the Bench: Do’s and Don’ts/Tips and Traps
Hearing Officer Jennifer R. Kuyrkendall, Third Judicial Circuit of Florida

1:50 p.m. – 2:00 p.m.
Questions and Answers
Brandon Arkin, Esquire, Tampa
Sheryl Moore, Esquire, Fort Lauderdale

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The operator will verify the entry of each call. Only those attorneys registered for this seminar will receive CLE credit. CLE credit will be applied within two weeks after the attendance record has been verified.

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(214) WEDNESDAY, DECEMBER 12, 2012 • 12:00 P.M. – 2:00 P.M. EASTERN STANDARD TIME

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REGISTRATION FEE (CHECK ONE):
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☐ Persons attending under the policy of fee waivers: $0

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☐ Enclosed is my separate check in the amount of $55 to join the Family Law Section. Membership expires June 30, 2013.

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TOTAL $ _______ TOTAL $ _______

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Section Activities at the 2012 Annual Bar Convention

2012-2013 Chair, Carin Porras is sworn in by G.M. Diane Kirigin.

Legislation committee members Nicole Goetz, David Garfinkel, C. Deborah Welch, Julia Wyda

Left: Award recipients Lori-Caldwell Carr, Robert Boyd and Matthew Capstraw

Award Recipients
Left: Robert Merlin, Steven Berzner, and Kathryn Beamer.

Right: Immediate Past Chair, David Manz and Luis Insignares