Section calendar

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

2014-2015

SAVE THE DATE!
April 8-12, 2015
Out of State Retreat
San Juan, Puerto Rico

August 6-9, 2015
2015 Trial Advocacy Seminar & Workshop
Ritz Key Biscayne

Details and registration at www.familylawfla.org

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MS Word format is preferred for documents, and jpg images for photos.
Welcome to the Winter edition of “The Commentator.” I know you will find this issue informative and of good use in your practice. Many thanks go to the Guest Editors, Sonja Jean and Loreal Arscott, and to our Publication Co-Chairs, Amy Hamlin and Sarah Sullivan, for all their hard work and commitment in putting out this great edition.

This has been a very busy time of the year for the Family Law Section beginning with a great Leadership Retreat at Innisbrook this past September, chaired by “planner extraordinaire” Doug Greenbaum. Not only was this a relaxing and enjoyable Retreat, it also consisted of an informative program organized by Past Chairs, GM Diane Kirigin and Carin Porras, providing information as to the inner workings of the Section, including our ever busy Legislation Committee, as well as to educating current and future members of the Section on leadership development and opportunities. I also want to recognize the lobbyists for the Section, Nelson Diaz and Edgar Castro, of the firm Southern Strategy, for their presentation and insight on the legislative process in our State.

We just concluded our In State Retreat at the Ritz Carlton in Amelia Island, Florida, a beautiful location in which to spend quality time with family, friends, and colleagues. In keeping with our theme this year of “Getting Back to Basics,” the CLE at this Retreat was an insightful presentation by Glenn Gutek of Atticus on growing your practice and enhancing client services in a changing economy. The participants also enjoyed the experience of attending the Salt cooking school, learning to cook an entrée, side dishes and dessert in the kitchens of the Ritz Carlton and actually assisting in the preparation of the lunch served to the attendees after the cooking school. Suffice it to say not only do we have talented lawyers in Florida, we also have great chefs in the making! Many thanks go to the Chair of this Retreat, Thomas Duggar, for planning a wonderful professional and family event leading to the holiday season.

Our Out of State Retreat is scheduled from April 8 to 12 at the La Concha Resort in San Juan, Puerto Rico, la “Isla del Encanto” (the Island of Enchantment). Our Retreat Co-Chairs, Jorge Cestero and Dr. Deborah Day have been hard at work planning the CLE and our activities for what promises to be very enjoyable and rewarding getaway for all who attend. Registration is now available on the Section website. If you are considering coming, I urge you register and make your hotel and flight reservations as soon as possible as we have a limited room block, and I believe this Retreat will be very well attended.

I am very much looking forward to our 2015 Marital and Family Law Certification Course on January 30 and 31, 2015 at the Hilton Bonnet Creek at Walt Disney World. To date, more than 1,040 registrations have been received with many more coming in every day. This is the premier CLE presented by the Section and this year’s course promises to be one of the best yet. Not only is this course an opportunity to learn much needed information for your practice, but it is also an opportunity to network and develop new relationships as well as catch up on some old ones. In addition, the Family Law Section holds its mid year Committee meetings and Executive Council meeting in conjunction with this course. I invite you to attend these meetings to see for yourself the hard work being done by the committee and Executive Council members. Please check our website for the committee and Executive Council meetings schedule.

The Family Law Section continues to be hard at work formulating proposed language for an alimony bill this coming legislative session. Thomas Sasser, the Chair of the Alimony Subcommittee and his subcommittee, in consultation with the Legislative Chairs, Abigail Beebe and Christopher Rumbold, have been working diligently on this important project on behalf of the Section. In fact, in order to move forward with this process, the Executive Council held a special meeting in West Palm Beach on October 24, 2014, to discuss and vote on proposed language. This meeting was also attended by Representative Rick Workman, a sponsor of past alimony bills, who heard many of our concerns as well as shared his. We continue to work cooperatively with Representative Workman in hopes of presenting him a bill that is fair and equitable for all the citizens of our great state.

As I close my remarks I want to thank you for your membership in the Family Law Section and for your continued support of all the work we do on behalf of Florida’s families. I hope you have had a joyful holiday season and I wish you peace and prosperity in the coming year.
 Comments from the Co-Chairs of Publication Committee

One of our favorite things about chairing this committee is introduction, by way of fabulous articles, to our many attorneys in the Family Law Section. This edition of The Commentator is no exception and is chock full of great information, analysis, tidbits, hot tips, and great ways to approach the practice of family law. The topics are varied, but are undoubtedly the basic building blocks of successful cases. This edition, very sadly, includes a tribute to Alberto Romero, as remembered by one of his many friends and colleagues. I’m sure the touching words speak for the entire Section. If you have a topic that you want to explore and discuss in an article, but don’t know where to start, feel free to contact me, Sarah Sullivan, ssullivan@fcsl.edu or Amy Hamlin, amy@aikinlaw.com. Comments, suggestions and feedback are also greatly appreciated.
Happy New Year! We hope that 2015 is off to an incredible start for all of you in both your personal and professional lives and wish you health, prosperity and happiness for the upcoming year. We are thrilled to be bringing you this Winter Edition of the Commentator and hope that you enjoy reading it as much as we have enjoyed working on it. This was a difficult edition for an incredible reason: we had so many wonderful articles that we simply could not include them all. We believe that is a shining example of how far the Family Law Section has come when writers are beating down the doors to be included for publication in the Commentator. In light of that, we want to personally thank all of the contributing writers for their hard work, and further, we would like to thank every writer who submitted articles to us during this period. We appreciate your enthusiasm and dedication to the Section. We also want to thank our editors and advisors, and particularly Ronald Kauffman, and our Publications Committee Co-Chairs Amy Hamlin and Sarah Sullivan, who work tirelessly to ensure that every edition of the Commentator is the best possible product.

This edition contains what we believe to be a compilation of informative, well-written pieces that still keep with Section Chair Norberto Katz’s “getting back to basics” theme. So far, 2015 has been off to an exciting start for Florida, beginning with marriage equality. Be sure to take a look at the insert by Christopher Rumbold, including all of the wonderful photos depicting such a monumental event. Maybe your year started off with a potential client who came in for an interview and happily informed you that if hired, you were going to be his fifth attorney. Red flag? Laura Davis Smith would say “#don’ttakethisclient.” Check out her article “Just say “NO!!!”” Maybe you started your year with a highly contentious timesharing case with five children who have parents who refuse to speak to each other, and you are relying heavily on the Guardian ad Litem to do everything for you. Before doing that, read Anastasia Garcia’s article which will quickly remind you of precisely what the Guardian’s role is in your case.

Perhaps you have a child support case and are questioning the reasonableness of what appears to be extraordinary expenses for the children. Allow John Foster and Avery Dawkins to clarify any questions you might have with their article on good fortune children. Are you working on your first – and last – appeal and struggling with how to present your side of the case in your Statement of the Case and Facts? Lissette Gonzalez has wonderful advice for you in that regard. Pay close attention to her article addressing the art behind legal storytelling.

Have you ever had to deal with a paternity or dissolution case that also involves domestic violence and the Department of Children and Families? You might find yourself in Unified Family Court. Administrative Judge of the Family Division of the Eleventh Circuit, Scott Bernstein and Lauren Lazarus have provided you with possibly everything you need to know in their article. It is always wonderful to have a judicial perspective on these cases.

Every article in this edition is incredibly informative and important. Read and enjoy practical articles that anyone – from the board certified expert to the non-lawyer with a family problem – can pick up and benefit from immediately. We are getting back to basics. We hope this edition of the Commentator continues to fulfill our mission.
Back to Basics: Knowing When to Say “NO!”

by Laura Davis Smith, Esq., Coral Gables

The legal profession is a helping one. We, as lawyers, provide our services to those who need them. But, there are times when the services we can provide, no matter how much time we spend, the passion we devote, or the superb quality of our work, will never be enough. Learn to identify a client you will never please, and just say “NO!” Below are but a few examples of who are, in my opinion, potential clients to avoid.

The Victim: “My last five lawyers were so bad!”

This potential client is one you should run from, screaming. If a person has been through five attorneys before coming to you, unless the client was born on Friday the 13th during a hurricane that occurred at the same time as a total eclipse of the sun, the problem is not with the attorneys. Clients with unreasonable expectations will never be happy, no matter what you, as their sixth attorney, could ever achieve. Just say “NO!” A client’s credibility with the Court diminishes rapidly if they have a revolving door of lawyers.

The Warrior: The client who wants to “hurt” his or her spouse.

If vengeance is the potential client’s goal, then you can never succeed, nor does your oath of attorney allow you to. The Family Courts are courts of equity; fairness is what should prevail. The potential client may very well be angry, and justifiably, at his or her spouse but that does not allow anyone to harm another purposefully. Direct him or her to a few good therapists and provide a lengthy list of other attorneys he or she should consult. Just say “No!”

The Misunderstood: “They got it all wrong.”

If a prospective client comes to see you with reports rendered by professionals involved in the case, all of which find that he or she is the problem, just say “No!” While there are certainly occasions where a party is misunderstood, or has not had the best representation, if a number of professionals point the proverbial finger at one party – after spending significant time interviewing him or her, speaking to others, and/or perhaps performing psychological testing – it is unlikely that you will be able to turn the tide. Yes, you are an amazing attorney, but you are not a Superhero.

The Cash Poor: “I can’t pay you, but surely you can get the fees from my spouse.”

We have all heard the term “skin in the game.” Parties need to be invested in their cases, both emotionally and financially. A party who feels entitled to your services at no obligation to him or herself is likely not going to be a choice client. Yes, it is true that you can seek fees from the other side, and if there is a showing and proof of need and ability to pay, you will likely succeed in obtaining at least some contribution toward the fees. However, you should not be willing, except in the most extreme cases, to work without payment of some kind up front. If you want to do pro bono work (of which I am a big advocate!), then select a truly needy party to represent. Just say “No!” to that person who wants you to – but does not need you to – work for free.

The Alienator: “But he is a terrible father!”

Unfortunately, people still do not realize that you need to love your children more than you hate your spouse. Children are not pawns to be used by parties to control each other. A person who comes to you and gives you a list of reasons why her husband or his wife is a terrible parent (returns the child in old clothes that don’t fit, doesn’t bathe them, doesn’t do the homework with them, etc., etc.) is one of those clients you may want to just say “NO!” to. Unless you want to devote most of your attorney client time to psychological counseling (which law schools don’t teach, that is why a list of good therapists is an essential tool of our practice!) rather than serving as your client’s advocate, take a pass on this one. Certainly, in some circumstances parents are deficient in their roles, but it is only on the rare occasion that a parent will be deemed unfit and denied access to children. Parental alienation is an allegation you do not want to have lodged against a client you have chosen to represent.

The Wannabe Lawyer: “I know exactly what you need to do in my case.”

Remember always that you are the lawyer. The prospective client is not. Even if the party is a lawyer by profession, he or she is not acting in the
capacity of attorney in this case and needs to respect that you are. While the client is expected and entitled to assist in his or her case, he or she is paying for the advice of you as attorney and should follow the advice given. If the person has other ideas that go against the learned opinion you offer, just say “NO!” The head banging you will suffer is just not worth it.

The Social Butterfly: “But my friend went through a divorce and got....”

If you find yourself listening to an initial consultation saying “my friend so and so got permanent alimony of a million dollars a month after a three year marriage with no children, and that is what I expect you to get for me,” just say “NO!” As you know, each case is unique: unique parties, unique counsel, unique judges, unique living situations, and unique finances. Just like snowflakes and fingerprints, no two divorces are alike. If your party has a house under water, three minor children in private school about to be kicked out because tuition is late, and maxed out credit cards, obtaining alimony like the friend received is never going to happen. It just isn’t. Unless you can make clear to the potential client that their case is unique and will bring different results from that of the friend, this is a no-win situation for you.

These may be potential client types you, too, find problematic. You may have your own list that differs from this one. In any case, it is important that you “click” at some level with the clients you represent. You are entitled to enjoy the work you do and to enjoy the clients you call your own. Please, don’t ever forget that you can choose both who you take on as clients and those to whom you just say “NO!”

Ms. Smith is a partner in the law firm of Greene Smith & Associates, P.A. in Coral Gables, where she focuses her practice on Marital and Family Law. She is Board Certified in Marital & Family Law and is a Florida Supreme Court Certified Family Mediator. Ms. Smith is AV rated by Martindale Hubbell, has been named a Super Lawyer, and is regularly named a South Florida “Legal Leader” or “Top Attorney” by Florida Trend Magazine and South Florida Legal Guide. She has published numerous articles in the area of Family Law and frequently speaks on Family Law issues. She is also the proud mama to Connor & Brady.

Family Law Section
Save These Dates!
2015-2016

April 8-12, 2015
Out of State Retreat
La Concha Renaissance Resort
San Juan, Puerto Rico

June 24-25, 2015
Committee Meetings & Executive Council Meeting-Annual Convention
Boca Raton Resort & Club
Boca Raton, Florida

August 6-9, 2015
2015 Family Law Section Trial Advocacy Seminar & Workshop
Ritz Key Biscayne
Key Biscayne, Florida

Oct. 31-November 4, 2015
Out of State Retreat
Hyatt Regency Washington Capitol Hill
Washington D.C.

January 28, 2016
Midyear Committee Meetings (Thursday)
Hilton Bonnet Creek
Orlando, Florida

January 29-30, 2016
2016 Marital & Family Law Review Course
Hilton Bonnet Creek
Orlando, Florida

January 30, 2016
Executive Council Meeting (Saturday)
Hilton Bonnet Creek
Orlando, Florida
Ethics is a branch of philosophy that involves systematizing, defending and recommending concepts of right and wrong conduct, often addressing disputes of moral diversity. The term comes from the Greek word "ethos" which means "custom" or "habit." For Florida marital attorneys, there are two canons that must be considered. First there is our Rules of Professional Conduct, which prescribe mandatory policies for all members of the Florida Bar.

Then in 2004, the Family Law Section published their version of the “Bounds of Advocacy” as an aspirational set of ethical guidelines for family law attorneys. As litigators, we are groomed to be zealous advocates and are infused with the thought we have a duty to win at any expense so long as we comply with the Rules of Professional Conduct. Approaching family court as a “zealous advocate” is not consistent with the best interests of children, nor is it likely to help resolve the problems of an emotionally charged couple overwhelmed with a series of difficult issues that must be resolved.

Because the mandatory rules do not provide adequate guidance to the family lawyer, the Section endorsed the Bounds which provide clear parameters for marital attorneys to approach dispute resolution in a more positive manner. By avoiding a scorched earth approach, we can improve the chances a divorced family is more functional. What follows are some of the rules contained in the Bounds of Advocacy and a brief discussion.

**1.1 An attorney should strive to lower the emotional level of family disputes by treating counsel and the parties with respect.**

Clients look to their attorney as an example of how they should behave. If the attorney is bullish, the client mimics the behavior. If the attorney is calm and reasonable, an environment conducive to resolution is created. Technology has sped up legal communications. With mandatory e-filing, we are now primarily transmitted our correspondence through email. We no longer have the process of having a letter typed and reviewed. I have noticed that the removal of this “buffer” has caused attorneys to send really inappropriate emails. I once received an email from an attorney accusing me of being “the most unethical attorney he has ever met”. Because this email was copied to his client, it created a hostile environment and made it much more difficult to resolve the case. Before you hit send, consider how a disciplinary committee would think of your content. Be professional.

**1.3 An attorney should not deceive or intentionally mislead other counsel.**

If an attorney thinks that trickery is going to gain an advantage in litigation, there is probably another tactic that should be taken. I still see people clogging up the system with false DCF reports or domestic violence filings to try to gain an advantage. If another attorney “tricks” me I never rely on them again. If you are a “trickster” word gets out pretty quickly. Your credibility is everything. Litigate on the merits.

**1.8 An attorney should cooperate in the exchange of information and documents. An attorney should not use the discovery process for delay or harassment or engage in obstructionist tactics.**

If you are in the game, then get to it. In most instances, there is no reason why you could not respond to discovery without requesting multiple extensions. Judges often punish both sides for litigating discovery disputes. Pick up the phone and discuss the issues before racing into court. On the other side, if counsel requests a reasonable extension that does not cause prejudice, give it. The thought that you need your client’s permission is misguided as an attorney is responsible for procedural decisions and this is expected conduct.

**1.10 An attorney should clear times with other counsel and cooperate in scheduling hearings and depositions.**

What we do is hard work. Let’s not make it harder with unilateral scheduling. I respect the fact that we are attorneys, but we are also human beings with families. It is only common courtesy to coordinate these matters. It takes a lot less effort to coordinate a hearing then the stress of dealing with a scheduling conflict.

**1.12 An attorney should promptly submit proposed orders to other counsel before submitting them to the court. When received, other counsel should promptly communicate approval or objections.**

Once a judge rules, that ruling must be reduced to writing immediately. Usually the Court directs one of the attorneys to draft the order. This is a ministerial act that does not need client approval and should be handled promptly.

**2.3 An attorney should refuse to participate in vindictive conduct and should strive to lower the emotional level of a family dispute by treating all other participants with respect.**

It’s hard to imagine that we even needed this reduced to writing, but vindictive acts are real and common. Vindictive conduct is not in your client’s best interest especially when children are involved. If employed it empowers the client to sabotage any hopes of a functional post divorce re-
relationship with the other parent and invites retaliation.

3.2 An attorney must provide sufficient information to permit the client to make informed decisions.

The fundamental purpose of a family attorney is to counsel; to provide advice on the issues to be decided. This often means you must educate the client so they can appreciate the decision and then provide the pros and cons so the client can make a meaningful decision.

3.5 When the client’s decision-making ability appears to be impaired, the attorney should try to protect the client from the harmful effects of the impairment.

Family law actions are among the most stressful events that will ever happen to a person. If you have a client who is high stress under the best of circumstances, you could end up with a client with impaired decision making. Add the financial and emotional stress attendant to the process often leads to clouded vision. When this happens, you have a duty to protect your client from the “harmful effects” of their impairment. This usually occurs when a client is close to major event – depositions, temporary relief, trial, signing an agreement. If your client is truly impaired and unable to participate in a meaningful manner, stop everything and get your client to the appropriate mental health professional, suggest therapy or even just a weekend “off” from the proceedings.

3.7 An attorney should not allow personal, moral, or religious beliefs to diminish loyalty to the client or usurp the client’s right to make decisions concerning the objectives of representation.

If your beliefs interfere, don’t take the case. If you take an emotionally charged case make sure that you do not allow your own personal beliefs to guide your legal representation.

3.8 An attorney should discourage the client from interfering in the other party’s effort to obtain counsel of choice.

This is not the Sopranos.

7.1 An attorney representing a parent should consider the welfare of the minor children and seek to minimize the adverse impact of the family law litigation on them.

Include in your guidance a consideration of the best interest of the kids in giving your advice. If your client is not equipped for 50/50 timesharing, don’t go for it just to reduce a child support obligation.

The above is just a sampling of all the “Bounds.” I encourage you to download the entire text, including commentary, of the Bounds of Advocacy: http://www.familylawfla.org/pdfs/boundsRevised.pdf

Eddie Stephens is a partner in Ward Damon located in West Palm Beach, FL. Mr. Stephens was admitted to the Florida Bar in 1997 and is Board Certified in Family and Marital Law. After starting his career as an attorney for the Palm Beach County Property Appraiser’s Office, Stephens has developed a successful family law practice focused on highly disputed divorces. Through hundreds of hearings and dozens of trials, Stephens has honed his practice by making straightforward arguments that bring opposing sides closer together in order to find a successful resolution. Most importantly to Stephens, he litigates in a manner that minimizes the impact of divorce on children.
Children With Attention Deficit Disorder – The Impact On Parenting Plans

by Lori Drucker Wasserman PhD., ABPdN, Boca Raton; Theordore Wasserman PhD., ABPdN, ABPP, Boca Raton; Sheila Cohen Furr PhD., ABN, Boca Raton

Attention Deficit Hyperactivity Disorder (ADHD) is one of the most commonly diagnosed mental disorders in the United States. It is widely known to the public as the condition for which the most children are placed on prescription medication. For practicing family law attorneys this statistic is important because lawyers will inevitably have a case where the care and treatment of a child with ADHD arises and becomes a source of conflict. Most people do not know that this diagnosis is increasingly controversial.

From its beginnings in the Diagnostic and Statistical Manual (DSM) where the cluster of problems was defined as Minimal Brain Dysfunction, the definition of what is now known as Attention Deficit Hyperactivity Disorder has morphed several times and has recently been altered yet again. The changes in definition have come about as a result of recent revisions to the Diagnostic and Statistical Manual produced by the American Psychiatric Association (Diagnostic and Statistical Manual of Mental Disorders (5th ed.), 2013). Reflecting a greater awareness of the neurophysiological basis of many disorders, ADHD is now included in the section on Neurodevelopmental Disorders rather than grouped with Behavior Disorders as it was in DSM IV. However, the diagnosis remains based upon behavioral manifestations. The DSM V retains the 9 inattentive and 9 hyperactive-impulsive symptoms from which a number of criteria must present. This definition leads to the situation wherein the nine can be broken in a number of different ways resulting in a number of symptom clusters being defined with the same label. That is, children may present with very different issues, yet still be labelled with the same diagnosis. The criteria will not be reviewed here but can be found in its entirety in the DSM V. However, there are some additional changes of note. The current criteria also include examples of developmental references for the behaviors. The age criterion has been revised upwards. In DSM IV, the onset criteria had to present before age 7. This criteria has been revised upwards to age 12. Lastly, there is also no longer the DSM IV requirement for symptoms to cause impairment. Rather, the current version requires that “several inattentive or hyperactive-impulsive symptoms were present prior to 12 years.” Clearly, the current definition creates a more lenient criterion reference base for the diagnosis to be made.

While the new emphasis on the neurodevelopmental aspects of the disorder is laudable, significant problems remain. One major problem is that there is increasing scientific research leading to speculation that ADHD is not a unitary disorder but in fact represents a cluster of neurodevelopmental issues which are grouped together by behavioral phenotype. Indeed, the current authors have argued (Wasserman & Wasserman, In Press) that the DSM diagnosis of ADHD does not represent one neurophysiologically identifiable disorder and that many children with a diagnosis of Attention Deficit Disorder do not in fact have disordered attention. Essentially, therefore, ADHD is a behavioral phenotype representing a number of neurophysiologic issues. Before we proceed, a bit of history and neuropsychology is in order:

Historically, models of brain dysfunction in children relied on the use of information gathered from adult brains that had suffered damage. The historical focus was on the cortex (grey matter). Firstly, a child’s brain is not just a smaller version of an adult brain because it is still developing. Secondly, brain-behavior function relies on a network that consists of cortical and subcortical structures that are recruited to specific tasks and linked by white matter, nerves which transmit signals from structure to structure. The current authors, (Wasserman & Wasserman, In Press) as do many others in the field, (Koziel & Budding, 2008) understand that the current state of neuroimaging requires us to reconceptualize our understanding of the brain and function. That in fact, the brain functions as one well integrated system, which coordinates our intention, reward history, arousal or motivation, emotional regulation, learning, and, yes, attention.

So what does this mean? It means that not all children who are diagnosed with ADHD look the same because there are different groupings of symptom clusters under the same general label. These children may present with what could potentially be diagnosed as separate disorders of conduct, behavior or emotional regulation at times but, which probably all represent a deficiency in the regulation network in general. In developing children the neural networks are not ‘broken’ as in an adult brain injury victim, but rather inefficient. Think of a computer on which you are putting newer software. The computer may be able to load it and open it and even run it but will not
be able to handle the new program efficiently. You may lose the ability to run certain features, and if you try to engage too many features at once, your system will crash. In a child, many experts refer to this regulatory system as the executive system which incorporates the ability to self-monitor, achieve interest in subjects, maintain focus, shift their thinking as necessary and emotionally self-regulate.

So how does this relate to divorce and Parenting Plans? Arguably, most of the contentiousness in a divorce involving a child with ADHD is about which parent is the better care provider for the child and this argument usually involves questions regarding both behavioral treatment and psychopharmacology. So what do we know in regard to these two issues? The National Institute of Mental Health (Multimodal Treatment of Attention Deficit Hyperactivity Disorder, 2009) has been studying this issue for many years and, to date, their data indicate that the most effective treatment for the cluster of problems known as ADHD consists of cognitive behavior therapy and stimulant medication. That's it. While there are many other treatments, and the popular literature is full of theories and miraculous cure all's, the research supports cognitive behavior therapy and stimulant medication.

However, one must be cognizant that as a result of the complexity of the etiology of neural networks, and the current DSM basis of the diagnosis, there is not “a one size fits all” prototypical child, nor is there a “one size fits all” answer. It also means that there might legitimately be multiple perspectives as to what is happening with the child and what treatment options, even within the scientifically supported ones, are advisable. Kuehnle and Drozd (Kuehnle, 2012) note that “It is not always the case that parents or caregivers are in full agreement with regard to parenting strategies and demands, and this can have a significant impact on the course and effectiveness of treatment.” For example, one parent might be opposed to stimulant medication while another might object to therapy. A potential question when crafting a Parenting Plan may include whether both parents are willing to administer the medication because this question may affect an ultimate decision making request. If only one parent agrees that the medication is necessary and the treating physician has recommended such medication, the lawyer may have to build the Parenting Plan around the child receiving the medication regularly on school days.

When developing a Parenting Plan around a child with ADHD, it is im-

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**ANNOUNCEMENTS**

**New Fellows in the American Academy of Matrimonial Lawyers**

Shannon Novey – Tallahassee  
Karen Weintraub – Ft. Lauderdale  
Ralph (RT) White – West Palm Beach  
Yueh-Mei (Kim) Nutter – Boca Raton  
Alex Caballero – Tampa  
Caryn Green – Orlando

**Congratulations to all!**

After 38 years of outstanding service to the legal community, the Honorable Alan A. Dickey retired from the Eighteenth Judicial Circuit. More than 300 people attended his retirement dinner at the Westin Hotel in Lake Mary on Thursday, January 15, 2015. It was a fun and touching tribute to his long career as a judge.

Together for seventeen years, Executive Council Member, Chris Rumbold, married Dan Lawman shortly after midnight on January 6, 2015 at the Broward County Courthouse. Congratulations to you both!
Attention Deficit Disorder
from preceding page

perative that we consider the child outside the framework of the ability to “pay attention.” Often these children are perceived by one parent as “lazy” or “only caring about themselves.” This belief may result in conflicts between parents about parenting/discipline styles. One parent may believe that all the child needs is increased structure or punishment for bad behavior while the other disagrees. This example maybe the case when one parent is more rigid than the other, holds different cultural or religious values and beliefs, or is contrary to how that parent was disciplined as a child. It is not uncommon for some parents to be suspicious of the diagnosis of ADHD, preferring instead to consider the behavior as the result of ineffective discipline. When constructing a Parenting Plan, how well a given parent understands the child’s strengths and weaknesses will determine how that Plan is developed.

In addition to the big picture items mentioned above, there are a number of other issues that can arise and will potentially affect the Parenting Plan. For example, is the child poor at organizing his materials? If so, the attorney may have to advocate that each parent provide the child with a set of school books so that he does not become punished twice for forgetting the books – once by an admonishing parent and then by the teacher the next day. Organizational needs in general lead to another often encountered issue regarding how much support a child needs in school. Although outside the scope of this article, much of a child’s difficulties are highlighted in the school setting. As mentioned above, the difficulty may reflect differently in any given child. Nonetheless, the academics suffer. The parent is often first alerted to the problem when grades tumble. Tutoring services may be recommended, desired, and needed in order to assist with academic achievement. In addition, advocacy within the school system may be required. How much support is provided and who is best equipped to either provide or arrange for that support will need to be negotiated during the Parenting Plan. In cases where parents disagree about schooling and support services, a judge may need to designate one parent responsible for educational planning. This kind of decision is necessary when the disputes between the parents derail effective schooling and the child suffers as a result.

Does the child have difficulty shifting? This child may not do well with spontaneous schedule changes. If, for example, one parent has a job with many shift changes or travels, the child may not be resilient and able to adapt with the constantly changing schedules. This scenario may necessitate an attorney to assist a parent to understand that a child’s schedule may require steady blocks of time during the week in order to minimize distress when forced to adjust to something other than the expected plan. A family with this kind of schedule may have to consider the number of transitions from home to home by agreeing to longer blocks of time for the child at each home.

Some children with ADHD are notoriously rigid and compulsive. This child may not do well with simple changes such as meals; “Mommy/Daddy doesn’t make it this way.” Or one parent may insist on the child eating what the parent puts out while the other parent may make separate, more “kid friendly” meals. Children from a developmental standpoint are creatures of habit. Children with the cluster of issues described in this article tend to be even more rigid. These children often are more sensitive to smells and tastes. Therefore, the Parenting Plan may need to address meal planning across households by keeping the recipes and meal plans as similar as possible.

Is the child prone to emotional dysregulation when distressed? This area is often complicated. Parenting calmly is difficult when your child is being blatantly disrespectful. Effective management relies on a parent able to understand that the “back talk” and behavioral outbursts are not personal. If one parent is better coping with this situation than the other, the child may instinctively gravitate to that parent, causing the other parent to feel alienated and undermined, which in turn increases their frustration and anger. The attorney should remember to suggest parenting resources when developing a Parenting Plan.

In summary, the definition of Attention Deficit Disorder has evolved and continues to evolve. The authors suggest that it will continue to evolve as we come to better understand that the disorder is a cortical-subcortical white matter integration issue affecting the regulation of attention and not just attention itself. Rather, it is a reflection of poor efficiency in a unitary regulation system which includes motivation, reward recognition, the ability to emotionally regulate, the ability to self-monitor, inhibit and shift as necessary. The parent who understands ADHD as a systems issue rather than a deficit in attention will likely establish an easier relationship with the child and be more flexible in developing disciple/parenting strategies. The Parenting Plan will then need to consider each child’s manifestations of issues, the parents’ understanding of those issues and how to best assist that child to function in all of his/her environments.

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Dr. Furr is certified by the Supreme Court of Florida as a Family Mediator, is qualified as a Parenting Coordinator under statutory guidelines, and is trained as a Guardian Ad Litem and as a mental health neutral in collaborative law. She is involved in the Family Law Section of the Florida Bar as Chair of the Litigation Support Committee, a member of the Ad Hoc Committee on Guardian Ad Litem and the Adoption, Paternity, Dependency and Children’s Issues Committee.

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Theodore Wasserman, Ph.D., A.B.P.P., A.B.Pd.N. received a BA in psychology from George Washington University. He went on to receive his master's degree and his Doctoral degree in school/clinical psychology from Hofstra University. He received specialty training in pediatric neuropsychology at North Shore University Hospital in New York. Dr. Wasserman is Board Certified in Pediatric Neuropsychology by the American Board of Pediatric Neuropsychology and Board Certified in Clinical Psychology by the American Board of Professional Psychology. Dr. Wasserman has written numerous articles and book chapters on clinical issues related to family law, education, learning, autism, attention deficit disorder and learning disorders. Dr. Wasserman has given invited lectures, and provided consultation regarding pediatric neuropsychology, learning methodology and reading throughout the United States and internationally. Dr. Wasserman is a member of the American Academy of Clinical Psychology and the American Academy of Pediatric Neuropsychology. Dr. Wasserman is a Licensed Psychologist in the State of Florida is in private practice in Boca Raton Florida.
One Family, One Judge: A One-Stop Shop for Florida’s Families

by The Honorable Scott M. Bernstein, Esq., Miami & Lauren Lazarus, Esq., Miami

The Florida Supreme Court recently adopted amendments to the Florida Rules of Judicial Administration and Florida Family Law Rules of Procedure originally proposed by the Florida Supreme Court’s Steering Committee on Families and Children in the Courts. The Steering Committee proposals sought to help implement the Unified Family Court ("UFC") Model and address certain existing impediments to its implementation. These significant amendments stem from years of groundbreaking work addressing the needs and best interests of children and families. The Florida Supreme Court is now firmly committed to the One Family, One Judge model.

Since 1991, a series of Florida Supreme Court opinions have been instrumental in establishing UFC throughout the state: "Family Courts I – IV". Starting when the Legislature created the Commission on Family Courts ("Commission"), the state embarked on a mission for a more efficient system to resolve multiple family law cases within the judicial system for children and families, whereby guidelines would be developed for the creation of family law divisions that would operate with consistency and provide a more comprehensive approach to case management and resolution. In its 1991 report, the Commission recommended that each circuit establish procedures for assignment of designated judges to these new family law courts and that the availability of various court-connected support services for the families be an integral component.

In Family Courts I, the Florida Supreme Court adopted the Commission’s recommendations and directed each circuit to develop a strategy to implement a family law division, along with a local rule or administrative order. In an opinion three years later, the Court in Family Courts II provisionally approved both the local rules and administrative orders submitted by the circuits and ordered that any deviations or amendments be submitted for approval. Moreover, the Court further refined the guiding principles implementing family court divisions and created the Family Court Steering Committee ("Steering Committee"), which was charged with developing more detailed recommendations on the characteristics of a holistic model family court, including organization, policy, procedures, staffing, resources, and linkages to community services. In response, late that same year in Family Courts III, the Court held that the implementation of family law divisions and the assignment of all family law matters, including domestic violence, were to be controlled by local rules or administrative orders expressly approved by the Florida Supreme Court.

Over the next six years, the Steering Committee met and studied nationwide trends in court reform and developed a set of ten comprehensive recommendations for a model family court, consistent with goals of therapeutic jurisprudence. In an extensive opinion issued in 2001 (Family Courts IV), the Court strongly endorsed the guiding principles and characteristics of the model family court proposal of the Steering Committee as a compilation of the best practices for the operation of a family court in Florida and reaffirmed the commitment to the principles espoused in Family Courts I and II, stating that their ultimate goal remained the creation of a fully integrated, comprehensive approach to all cases involving children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.

The Court also directed each circuit to submit a revised local rule or administrative order consistent with the Steering Committee’s recommendations adopted in the opinion.

The most recent Supreme Court opinion, which became effective in April, 2014, expounds upon the landmark 2001 opinion by adopting procedural amendments which provide: (1) all parties, attorneys, and judges in a family case receive proper notice of other related open and pending family cases through the filing of a Notice of Related Cases in each related case, (2) all related family cases involving the same family and/or children be handled before one judge, unless impractical, (3) a more formal manner of coordination of related cases and hearings, and (4) for the access and review of related family files by the judiciary and parties.

The following is a quick reference guide summarizing the new rule amendments:

Rule of Judicial Administration 2.545(d) (Case Management) is amended to require that the Notice of Related Cases shall be filed in each open and pending related case, as well as supplemental notices as applicable, along with an accompanying filing of a Notice of Confidential Information Within Court Filing for any confidential related cases exempt from public access. A “stalking” injunction is also added to the definition of a family case in conformity with Florida Statute §784.0485.
2.545(d)(1) provides that a case is related when:
(A) it involves any of the same parties, children, or issues and it is pending at the time the party files a family case; or
(B) it affects the court’s jurisdiction to proceed; or
(C) an order in the related case may conflict with an order on the same issues in the new case; or
(D) an order in the new case may conflict with an order in the earlier litigation.

2.545(d)(2) defines “Family cases” as including dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, UIFSA, custodial care of and access to children, proceedings for temporary or concurrent custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, stalking, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor, CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.

Family Hearings

Related Family Files by Parties

Related Family Cases

Family Cases and Hearings

of Procedure:

5 New Florida Family Law Rules

of Procedure:

12.003 Coordination of Related Family Cases and Hearings

12.004 Judicial Access and Review of Related Family Files

12.006 Filing Copies of Orders in Related Family Cases

12.007 Access and Review of Related Family Files by Parties

12.271 Confidentiality of Related Family Hearings

The filing of a thorough and complete Notice of Related Cases form is key to the court identifying all cases in the system involving the same family and assigning them to a single judge in accordance with this latest mandate by the Florida Supreme Court. Family law practitioners need to become versed in the expanded scope of these new rules.

Unified Family Courts further the Court’s goal of ensuring that cases involving families and children are handled in an efficient manner that serves the best interests of the parties by coordinating pending litigation to maximize judicial economy, prevent inconsistent court orders, reduce duplication of resources, and avoid multiple court appearances by parties on the same issues. Now that all the necessary tools to carry out this vision in every judicial circuit are in place, the One Family, One Judge Model is embraced by the Florida Supreme Court's Unified Family Courts as the single judge model that reduces multiple court appearances by parties, unifies access to files and records, and should be the model for the future.
One Family, One Judge from preceding page

model is here to resolve the difficult issues facing families and children who come before the courts.

**Scott M. Bernstein,** Vanderbilt University, B.A., 1981; University of Florida J.D. (with honors), 1983. Circuit Court Judge, 11th Judicial Circuit, 1999-current. Currently, he is the Administrative Judge of the Family Division. Previously served in the Juvenile Delinquency, Juvenile Dependency, Criminal (felony) and General Jurisdiction (civil) Divisions. Chair, Supreme Court Standing Committee on Fairness and Diversity. Chair-elect, Florida Conference of Circuit Judges. Serves on the Supreme Court Standing Committee on Families and Children in the Courts. Adjunct Professor, Family Law, Florida International University College of Law.

**Lauren Lazarus, Esq.**, is the Director of the 11th Judicial Circuit's Unified Family Court Division, and has also managed the circuit's Domestic Violence Court, as well as other specialty court programs, such as Drug Court and the Criminal Mental Health Project. She is the founder of Miami-Dade's Domestic Violence Fatality and Child Abuse Death Review Team, which is geared towards looking at intimate partner fatalities and child deaths due to abuse and neglect through a lens of preventive accountability, and has served as a national model for replication. Lauren has also been honored as “A True Humanitarian” for her work initiating Project Safe Families, Safe Pets, a collaboration of intervention strategies addressing the concurrence of family violence and animal cruelty in Miami-Dade County. She frequently writes and speaks on issues relating to family violence and high conflict cases involving families and children at risk.

**Endnotes**

1 In re Amends. to Fla. R. Jud. Admin. and Fla. Fam. L. R. P., 132 So.2d 1114 (Fla. 2014).
2 Id.
4 Chapter 90-273, Laws of Florida.
5 See Family Courts I, 588 So.2d at 587.
6 Id.
7 See Family Courts II, 633 So.2d at 18.
8 Id at 14, 19.
9 See Family Courts III, 646 So.2d at 181-82.
10 The concept of Therapeutic Jurisprudence (“TJ”) was developed in 1987 by Professor Bruce J. Winick, University of Miami School of Law, and Professor Emeritus David B. Wexler, University of Arizona Rogers College of Law and University of Puerto Rico School of Law, as a study of the law’s healing potential. It is an interdisciplinary approach to legal reform examining how various legal “actors”, primarily judges and lawyers, play their roles and interact with individuals that are before the court, suggesting ways of doing so that would diminish unintended antitherapeutic consequences and increase psychological well-being.

Although it was first applied extensively in the area of mental health law, TJ soon expanded to consider other fields of practice, such as drug treatment, domestic violence, criminal, and family law. While traditional courts limit their attention to the narrow dispute in controversy, these types of specialized problem solving courts, applying TJ, attempt to understand and address the underlying problem that is responsible for the immediate dispute, and help the individuals before the court effectively deal with the problem in ways that will prevent recurring court involvement. In the context of family law, the TJ approach to the legal process seeks to understand and address the trauma from fragmented familial relationships that are responsible for the immediate dispute, and to help the families effectively deal with these issues and leave in better condition than when they entered the system. See generally Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts,* 30 Fordham Urb. L.J. 1055 (2002)

11 Family Courts IV, 794 So.2d at 519-20.
12 Id. at 531.
13 In re Amends. to Fla. R. Jud. Admin. and Fla. Fam. L. R. P., 132 So.2d at 1115.
14 Consistent with the Court’s direction in Family Courts IV, this rule was originally adopted in November 2005, as Rule 2.085(d) (Time Standards for Trial and Appellate Courts), creating a new subdivision (d) (Related Cases) (effective January 1, 2006), as the mechanism to implement the Steering Committee’s recommendation that the Court adopt a rule of judicial administration that would “require judges who are assigned to different cases involving the same family to confer, and to coordinate pending litigation to maximize judicial efforts, avoid inconsistent court orders, and avoid multiple court appearances by the parties on the same issues.” The new subdivision created a procedure for the filing of notice of related cases by a petitioner in a family case if related cases are known or reasonably ascertainable. See In re: Amends. to Fla. R. Jud. Admin (Two-Year Cycle), 915 So.2d 157, 160 (Fla. 2005).
Roadmap to Marital & Family Equality in Florida

by Christopher W. Rumbold, Esq., Boca Raton

On January 6, 2015, at 12:01 a.m., marital rights – as to celebration and recognition – and marital equality were extended to Florida’s same-sex couples. On that date, more than 1,500 marriage licenses were issued to same-sex couples throughout the State of Florida and hundreds married. Mass ceremonies were held in Palm Beach, Broward, Miami-Dade and Monroe Counties. Only ten (10) days later, on January 16, 2015, following a split in the Appellate Circuits with the 4th, 7th, and 10th Circuit Courts of Appeal ruling in favor of marital equality and the 6th Circuit ruling in contraposition thereto, the U.S. Supreme Court granted certiorari to cases comprising the 6th Circuit (Michigan, Tennessee, Ohio and Kentucky). A decision from the High Court is anticipated in June, 2015.

- Federal Defense of Marriage Act (DOMA) signed into law (1996).
- Family Law Section’s (“FLS”) Executive Council approves standing position in favor of marital equality for all Floridians.
- September 16, 2014 – FLS and AAML, FC filed its Brief Amicus Curiae in support of Florida’s recognition of validly entered marriages from foreign jurisdictions by spouses of the same-sex. (Shaw v. Shaw, No.: 2D14-2384 (Fla. 2d DCA 2014)).
- January 5, 2015 at 11:59 p.m. – Expiration of stay in Brenner (Brenner et al. v. Scott, No.: 4:14cv 107-RH/CAS (N.D. Fla. Aug. 21, 2014) after both the Eleventh Circuit Court of Appeals and the U.S. Supreme Court declined the State of Florida’s invitation to extend the stay issued by Judge Hinkle. Followed Judge Hinkle’s ruling that Florida’s Marriage Bans violate the Federal Constitution and are to be no longer enforced.
- January 6, 2015 at 12:01 a.m. – Pursuant to Orders entered by Judge Hinkle, Clerks in Florida’s 67 counties begin issuing marriage licenses to same-sex couples.
- January 16, 2015 – The U.S. Supreme Court grants certiorari to 4 marital equality cases from the 6th Circuit Court of Appeals. A ruling is expected mid-June, 2015.
- Presently, 36 states and the District of Columbia have extended some form of marital rights to same-sex couples.

Christopher W. Rumbold practices exclusively marital and family law and is a partner at Gladstone & Weissman, P.A. in Boca Raton. He presently serves the Family Law Section as a member of Executive Council and as Co-Chair of the Legislative Committee. He is a Supreme Court Certified family law mediator and has been named in Super Lawyers 2011-2014.

The Family Law Section supports marriage and family equality will applicable rights and responsibilities, regardless of sex, gender or sexual orientation. Legislative Standing Position approved by the Executive Council of the Family Law Section of the Florida Bar on February 1, 2014.
Amelia Island
December 4 - 7, 2014
Ritz Carlton
Amelia Island
The Kozyak Minority Mentoring Picnic
Saturday, November 1, 2014 • Amelia Earhart Park, Hialeah, FL
The Art of Storytelling: The Importance of an Effective Statement of the Case and Facts

by Lissette Gonzalez, Esq., Coral Gables

Writing is an art, a creative art form, an outlet by which an author can unload his innermost beliefs, ideas, pains, and fantasies onto the world (or second grade classroom, depending on your audience). I have been a writer since as far back as I can remember. In grade school, there was no writing competition I did not partake in, or school publication I was not involved with. Before law school, this is what writing was for me—an art form, my creative outlet. That would all soon change.

My decision to go to law school and become an attorney was a fallback one. I did not dream of becoming a lawyer one day. Rather, I dreamed of being a writer. After a few failed attempts at a career as a writer (and by failed, I mean sitting behind a desk at a fashion magazine covering stories like the newest boutique or what celebrity showed up at the new hot spot on Lincoln Road), I decided I needed to venture into something different, something a touch more intellectually stimulating (much as I loved the complimentary meals at all the cool new local restaurants). And, with that, I took the LSAT, applied to law school, and began my journey, never once suspecting that while I would be able to continue my passion for writing, law school would strip me of my creative juices, and how difficult it would be to recapture that magic thereafter.

During law school, we are taught that legal writing is a very mechanical and structured exercise. There is an issue, there is a rule that applies to the resolution of that issue, there are facts to which that rule must be applied, and there is a conclusion to be reached based on your analysis. Do that a couple hundred times and see just how much creativity you’ve got left. There is, of course, Law Review, a means by which a writer can continue to exercise that passion, although in a much more scholarly and less creative manner. But, it is writing, nonetheless. As a law student, I dove right in, ultimately being published in my second year and serving as the Executive Editor in my third year.

It was my passion for writing, which showed through in my work product, that led me to develop a friendship with my legal writing professor, who, in turn, led me to where I am today, working alongside a legal legend—Cynthia Greene. Here is where I learned how much my writing had changed (for the worse) and where I learned about the art of storytelling. I also learned how insanely difficult it would be to get back to that place where creative writing was my forte and not IRAC.¹

Appellate practice is a very challenging area of the law. You have to know the law, and be excellent at issue spotting, researching and of course, writing. You want to be sure that you make only the most compelling and strongest arguments for your client. After all, you are the advocate. It is your job to effectively demonstrate to a panel of judges that one of your colleagues was wrong. No easy charge. Working alongside Ms. Greene, however, I have learned the great importance of telling the story. Who are these clients? How have they been wronged? I have learned that part of my role as advocate for my client is to captivate my audience, stand out and get the appellate judges listening.

All appellate attorneys are familiar with the basic guidelines when it comes to putting together the facts in an appellate brief: don’t be argumentative; don’t ignore bad facts; don’t blatantly slant the facts in your favor; do assemble them in a persuasive fashion, to name but a few. However, my emphasis herein is on the importance of writing style and the art form that is storytelling. As lawyers, our focus is on making strong legal arguments, not necessarily on our

¹ Florida Rules of Appellate Procedure, Rule 9.210, states that the Initial Brief shall contain: 

- The Initial Brief shall contain . . . [a] statement of the case and of the facts, which shall include the nature of the case, the course of the proceedings, and the disposition in the lower tribunal. Most of the time, as we have been trained, putting this type of document together is a very mechanical exercise as the rule does set out these requirements in a very structured fashion. While we definitely put a great deal of emphasis on the arguments contained in the brief, in my experience, the statement of the case and facts does not get the same amount of attention, or more specifically, the style with which we deliver the facts to the courts, or lack thereof.
writing style. Still, it has been said many a times that cases are often won or lost on the facts, which makes this portion arguably the most important in the entire brief. A properly presented statement of the case and facts will make the reader believe in your case before even getting to your legal arguments.

Presenting the facts in an appellate brief should thus be an exercise in storytelling, a creative and captivating manner by which the court can get to know your client, your case, and your plea. Because storytelling is an art form—creative writing, if you will—you cannot lay out the parties’ story the same way each time. In some cases, depending on what is at issue and what you want to highlight, telling the story in a chronological form might be the style that works best, where in others, perhaps parsing out each issue and the relevant facts attendant thereto is more effective. There are countless ways to tell a story and it is okay to use your creativity and skills to make the story gripping and captivating. We cannot be afraid to step out of the rudimentary and mechanical writing style to which we have become accustomed as lawyers.

In an article by the Honorable Richard A. Posner on effective appellate brief writing, he explained, from the judges’ standpoint, the importance of humanizing our clients and effectively conveying their story: “‘[W]e judges are for the most part practical people (even the former academics among us). We are conscious that our decisions make a difference in people’s lives. . . . We judges want to reach those cases—and they are surprisingly common—that are not governed by clear statutory text or precedent. A result is sensible and reasonable if it could be explained and justified to a layperson. We therefore are interested not merely in the rule on which you rely, but in the rule’s purpose as well, and not merely in the facts as developed in an evidentiary hearing, but also in nonadjudicative facts that illuminate the background and context of a case—that make the case come alive to a person not immersed in the field of law, or the commercial or personal situation, out of which it arises. Don’t just state a rule and argue a semantic correspondence between it and the facts of the case.”

You see, when you submit a brief to a higher court, you are charged with the task of painting a clear and complete picture of your case for judges who were not there. Their “view from the bench” is vastly different from that of the trial judge. Your job is to tell the story and allow the court to get to know the parties. Of course, I am not suggesting that writing a really juicy brief will ensure you a win, but what I am saying is that if you focus on presenting a story to the court, on humanizing your clients and their plea, you will definitely stand out and captivate the reader. You will make the case come alive and grab the court’s attention much like a great novel captivates its reader and makes itself irresistible and impossible to put down. When you sink your teeth into a good novel, you turn page after page, desperately seeking out what is going to happen next. This reaction and attention is what we should aim to achieve from our finished product. While we are legal writers, we are writers nonetheless, and the creativity involved in writing and the art of storytelling should not be lost with us.

Lissette Gonzalez, Esq. is an associate at Greene Smith & Associates, PA. where she handles complex marital and family law appeals alongside the firm’s founding partner, Cynthia Greene.

Endnotes
1 In an abundance of caution, IRAC is an acronym that stands for issue, rule, application, and conclusion.
New Rules, Forms, and Standards for the Practice of Parenting Coordination in FL: Impact on Practitioners, Families, and the Court

by Debra K. Carter, Ph.D., Bradenton & Hon. Debra Johnes Riva, Sarasota

Since the concept of Parenting Coordination (PC) first emerged in the United States in the early 1990s as a dispute resolution alternative for parents who are unable to resolve parenting disputes, several different “models” of Parenting Coordination (Carter, 2011) have emerged leading to a great deal of confusion about the specific roles and responsibilities of a PC as well as many ethical challenges. In addition, very little social science research has been available to inform best practice standards and speak to efficacy (Carter & Lally, 2014). In the absence of clear rules, the practice of Parenting Coordination has been varied and inconsistent and prompted the development of two sets of national standards: The AFCC Guidelines for Parenting Coordinators [http://www.afccnet.org/Portals/0/AFCCGuidelinesforParentingcoordinationnew.pdf] and APA Guidelines for the Practice of Parenting Coordination. While these documents provide direction about recommended behavior and conduct, they are primarily educational and aspirational in nature and are not themselves enforceable rules in most jurisdictions. As the practice of Parenting Coordination has continued to evolve in Florida (see Carter, D. K., The Evolving Practice of Parenting Coordination, The Commentator, Vol. XXVI, (3)), the need for additional Rules, forms, and standards became clear. This article highlights recent changes to procedural rules in Florida and introduces new standards of practice, ethical guidelines, and mandated training requirements as were originally developed by the Joint PC Subcommittee and later proposed to the Florida Supreme Court by the ADR Rules and Policy Committee.

A Brief History of PC in Florida

Parenting Coordination started in Florida in the 20th Circuit in the late 1990s and quickly took hold as a potential resource for families and courts. In 2009, the Florida Legislature enacted Section 61.125, Florida Statutes, establishing Parenting Coordination as a form of dispute resolution. In 2010, FL FLRP 12.742 was approved along with forms 12.984 (Response by Parenting Coordinator) and 12.999 (Order of Referral to Parenting Coordinator). Before F.S. 61.125, the practice of Parenting Coordination in Florida varied so widely as to often be referred to as the “wild west” because there was no uniformity or standards for practice, to-wit, there were no training standards, standards of conduct, or procedures for discipline.

Rationale for Amendments to FLRP 12.742

The amendments to Rule 12.742 include the establishment of a process for qualifying parenting coordinators and removing the parenting coordinators who become disqualified. The amendment to Family Law Rule of Procedure 12.742 (h) includes important changes regarding substantive recommendations. The amendment prohibits substantive recommendations by a parenting coordinator but contains an exception for emergencies as defined in section 61.125(8), Florida Statutes (2009).

Additional amendments include a method for communicating with the court (emergencies or other matters requiring a status conference) as well as a definition of a parenting coordination “session.”

Amendments to Rule 12.742:

- Qualification Process (each circuit’s responsibility)
- Removal of PC
- Limitation of Authority
- Written Communication with the Court
- PC Session defined
- Changes to Order of Referral

Amended PC Forms

Form 12.984, Response by Parenting Coordinator, and instructions were amended to comply with the amended Rule 12.742, and the new Rule 15, Rules for Qualified and Court-Appointed Parenting Coordinators wherein a PC must file an original response form with the Clerk of Court within 30 days of the date of the Order and mail or hand-deliver a copy to the attorney(s) for the parents or to the pro se litigants. Notice to the court is not required, but some circuits (12th) are requiring the court be notified in order to ensure a timely response from the court.

Form 12.984(a), Order of Referral to Parenting Coordination, has sections explaining the process, the role of the parenting coordinator, safeguards for cases involving domestic violence, and the period of appointment. The amended form adds language in section 4.f. providing...
the PC the ability to request a status conference in the event the PC is unable to adequately perform the duties in accordance with the court’s direction.

New PC Forms

The Joint PC Subcommittee concluded that changes to existing forms and the addition of new forms and procedures was warranted in order to allow a parenting coordinator to communicate with the court in specific circumstances without violating the parenting coordination statute.

The new Form 12.984(d), Parenting Coordinator Request for Status Conference, was necessitated by the addition of FLRP 12.742(l) adding language to allow written communications with the court. The form contains six options which can trigger a request. The first four are to: 1) request direction from the court, 2) request resolution by the court, 3) report noncompliance by a party, and 4) report the case is no longer appropriate for parenting coordination. Two additional options apply when the parenting coordinator is no longer qualified, or the parenting coordinator is unable or unwilling to continue to serve. The Rule contemplates the court setting a timely status hearing upon receipt of the request. The court will need to decide whether the presence of the PC is necessary at the status conference and so advise the PC and the parties prior to the hearing. Some circuits (12th) have amended Form 12.984(d) to indicate to the court if the parenting coordinator believes their presence will be necessary to address the issue at hand.

The new Form 12.984(c), Parenting Coordinator Report of an Emergency, was developed to assist the court in enforcing section 61.125(8), Florida Statutes. The PC is given three options for reporting an emergency to the court. The first option provides for notice to the court and the parties where a party has obtained a final order or injunction for protection against domestic violence or has been arrested for domestic violence. The second option provides for notice to the court, without notifying the parties, based on a reasonable cause to believe that a child will suffer or is suffering abuse, neglect, or abandonment, or a reasonable cause to believe that a vulnerable adult has been or is being abused, neglected or exploited, and/or a wrongful removal of a child from the jurisdiction of the court is expected or underway. The third option gives the PC the opportunity to describe the emergency in sufficient detail for the court to decide whether an expedited hearing is necessary.


The cases referred to Parenting Coordination often involve some of the most complex family dynamics and difficult challenges for resolution and the ADR Rules and Policy Committee believed that PCs should have sufficient training and experience to work with the families, to ensure that the process occurs in a safe manner. Rule 15 establishes a standard of conduct for Parenting Coordination as well as a mechanism for oversight and discipline similar to the process currently in place for mediation and arbitration. It applies to all qualified and/or court-appointed parenting coordinators.

Part I of Rule 15 addresses ethical standards for parenting coordinators and reinforces the concepts of communication, negotiation, and facilitation upon which parenting coordination is based.

The ethical standards embodied in Rule 15 address the PC’s adherence to role, competence, integrity, impartiality, conflicts of interest, and compliance with all legal authority governing parenting coordination. Rule 15 also addresses permissible marketing strategies, adherence to other professional and binding ethical standards, confidentiality, and duties regarding the initial session, fees, records, and responsibilities to the courts.

Standards were established for:

- Competence
- Integrity
- Making Recommendations
- Impartiality
- Conflicts of Interest
- Improper Influence
- Marketing Practices
- Relationship with Other Prof.
- Confidentiality

Rule 15 requires the PC to hold an initial “Orientation” meeting which must include an explanation or description of:

- PC Process, including PC role
- Prohibition against dual roles
- PC’s role to assist parents in creating or implementing a parenting plan
- PC’s scope and limits of authority
- Confidentiality provisions and exceptions
- Fees, costs, methods of payment/collection
- Court’s role in overseeing the PC process, including party’s right to seek court intervention
- Party’s right to seek legal advice
- Extent to which parties are required to participate in PC process

New Standards for Fees & Costs

PCs must provide advance written explanation of fees and costs prior to commencement of the PC process and provide advance written notice of any change in fees during the PC process. The PC must maintain a written

continued, next page
New Rules, Forms and Standards
from preceding page

explanation of fees and costs, including basis for charges, and detailed financial records.

Oversight and Discipline

One of the issues that remained outstanding before the new Rules for Qualified and Court Appointed Parenting Coordinators were implemented was the lack of any type of oversight body to hear concerns or complaints by a party about their parenting coordination. The new Rule 15.210 attempts to remedy that problem in Part II Discipline. Currently, the Rule states:

Any complaint alleging violations of the Rules for Qualified and Court-Appointed Parenting Coordinators, Part I: STANDARDS, shall be filed with the Dispute Resolution Center of the Office of the State Court Administrator which shall be responsible for enforcing these Standards.

Although Part II of the Rule includes language involving oversight, that portion of the Rule is still evolving and specific procedures have not yet been developed for oversight. In an effort to “bridge the gap” and provide some type of procedure for grievances while the Dispute Resolution Center (“DRC”) evolves, each Circuit is encouraged to develop a grievance process or procedure. The Twelfth (12th) Circuit, for example, created a procedure that would encourage the complainants to seek a peaceful and collaborative resolution to the dispute. The Twelfth (12th) Circuit has also created a Family Program Providers Oversight Committee (“FPPOC”) comprised of a family law judge, a family law attorney, a mental health professional, a certified mediator, and the family court manager. The FPPOC is charged with the task of performing a background check on the applicants and, after review, either approving or disapproving parenting coordinator applicants seeking placement on the court appointed list. The FPPOC decides whether the applicant has met all of the necessary qualifications.

Once a parenting coordinator is appointed to a case, the FPPOC will also review any written sworn complaints by a party in a court case involving a parenting coordinator. The complaint must provide a written detailed statement of the violation with a reference to the specific Florida Statute or Rule that has been violated and all supporting evidence demonstrating proof of the alleged violation. The complainant must verify, under oath, that all of the allegations are true and correct. If the complaint is not in compliance with the requirements, the case will be closed with no further action taken. In other words, the complaint will only be forwarded to the FPPOC if all requirements are met. The complainant must also agree that any information provided to the FPPOC is to be kept confidential during the review process. If all of the reporting requirements are met, the complaint will be forwarded to the FPPOC for review and the parenting coordinator will be notified in writing that a complaint has been filed and is currently under review by the FPPOC. The FPPOC will review the complaint and determine whether further action is necessary.

The major difference between the process adopted by the Twelfth (12th) Circuit and the DRC is that the FPPOC is not an investigative committee and no investigative action will be taken by the FPPOC. The role and function of the FPPOC will be to provide information regarding possible timely and cost effective ways for the stakeholders to either resolve the issues themselves or seek other appropriate relief. The FPPOC will inform but will not advise a stakeholder. If the FPPOC finds that the complaint warrants further action, the complainant will be advised of possible remedies including, but not limited to:

1. Addressing or re-addressing the issue with the provider directly;
2. Filing an appropriate motion to be set before the presiding judge assigned to the case in question or;
3. Filing a complaint with the regulatory agency governing the provider’s source profession.

One of the goals of the grievance procedure is for complainants to understand that they must articulate an actual violation by the parenting coordinator in order to proceed with a grievance while also providing some guidance for addressing legitimate complaints including the notion that a peaceful and cooperative resolution to the dispute is always a possibility.

State-wide Uniform PC Application Form

The latest change to the practice of PC came on November 14, 2014, when Chief Justice Jorge Labarga issued Administrative Order No. AOSC14-64 IN RE: PARENTING COORDINATOR APPLICATION FORM AND TRAINING STANDARDS. The PC training standards and application process established in AOSC14-64 included a training grandfather provision for PCs “who have completed a parenting coordination training course and are currently qualified by a court since the 2009 adoption of section 61.125, Florida Statutes, and who re-apply to be qualified on or before December 31, 2014.” (The AO can be found at http://www.floridasupremecourt.org/clerk/adminorders/2014/AOSC14-64.pdf.) Parenting Coordinators around the State who had previously been “qualified” by a court who submitted the new application, along with the required supporting documents, to the Chief Judge (or his/her designee) of each circuit in which they provided PC services and were “re-qualified” by the court by December 31, 2014, are currently considered Qualified to provide Parenting Coordination in the State of Florida. Profes-
sionals who did not meet the qualifications as set forth in Section 61.125, Florida Statutes, by the end of year deadline are considered to be not qualified and must notify the court that signed the Order of Referral immediately of their “not qualified” status. If non-qualified practitioners have active Parenting Coordination cases, they must also notify the parties in each case. Each circuit court will determine if those cases should be re-assigned to other Parenting Coordinators who are qualified.

Florida Dispute Resolution Center Approved PC Training Programs
Practitioners who were not re-qualified by the court by December 31, 2014 who want to become Qualified Parenting Coordinators in the State of Florida will be required to complete a Parenting Coordination training program that has been approved by the Florida Dispute Resolution Center (DRC). Prior to the approval of AOSC14-64, Parenting Coordination training programs did not have to be approved by the DRC, but as of 11-14-14, all Parenting Coordination training courses must be approved by DRC in order to meet the mandatory requirements for qualification. Practitioners who attend Parenting Coordination Training Programs that have not been approved by DRC will not meet the Qualifications requirement as set forth in Section 61.125(4)(a)(2)(c).

The Other ADR Neutrals petition (formerly known as ADR Systems) submitted by the ADR Rules and Policy Committee (SC14-1852) can be found on the Court’s website.

SC14-1852 In Re: Amendments to the Florida Rules of Civil Procedure; Amendments to the Florida Family Law Rules of Procedure; New Florida Rules for Court-Appointed Alternative Dispute Resolution Neutrals - Petition - filed 09/19/14
Index to Appendices - filed 09/19/14
Appendix A - filed 09/19/14
Appendix B - filed 09/19/14
Appendix C - filed 09/19/14
Appendix D - filed 09/19/14
Appendix E - filed 09/19/14
Appendix F - filed 09/19/14
Appendix G - filed 09/19/14
Appendix H - filed 09/19/14
Appendix I - filed 09/19/14
Appendix J - filed 09/19/14

References


Debra K. Carter, Ph.D. is a clinical and forensic psychologist, Florida Supreme Court Certified Family Mediator, and Qualified Parenting Coordinator. She was born in Birmingham, Alabama and braved the cold grueling winters of Michigan while completing her education and training. She eagerly returned to a warmer climate in 1984 where she started her private practice, Carter Psychology Center. Dr. Carter is also the Co-Founder and Clinical Director of the National Cooperative Parenting Center, which offers a wide spectrum of services to the Mental Health and Legal Communities across the United States and around the globe. Dr. Carter is Chair of the FLAFCC Parenting Plan Task Force and Parenting Plan Evaluation Task Force and co-chairs the Parenting Coordination Research Project in conjunction with the University of South Florida, where she is an adjunct faculty member. Dr. Carter is the proud mother of three children, all of whom she raised in Bradenton, Florida. She enjoys distance running and has completed numerous marathons. She also enjoys biking, hiking, traveling, and boating in her free time.

Judge Debra Johnes Riva is currently in the Twelfth Judicial Circuit, Sarasota serving in the Family Division. Prior to joining the Circuit Court, Judge Riva worked for the State Attorney’s Office and the last few years she prosecuted murder cases as the chief homicide prosecutor. She is actively involved in judicial education and serves as the department chair and faculty instructor for the mandatory Handling Capital Cases Course for all judges presiding over capital cases where the State is seeking the death penalty. She was recently appointed the vice-chair of the Education Committee for the Circuit Judicial Conference. Judge Riva has also served as a faculty instructor with the the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC).
A Guardian Ad Litem ("Guardian") serves an important fact-finding role in cases that involve minor children. Generally, a Guardian is appointed to investigate issues so that the court, armed with as much information as possible, can safeguard the best interest of the minor children in the case. A judge once described the role of a Guardian as "having boots on the ground" to assist the Court. Sadly, the family courts frequently become battlefields with minor children as the innocent victims in a tug-of-war fueled by resentment and animus. Especially where timesharing is hotly disputed, or in cases where relocation is sought, a Guardian can be an invaluable foot soldier assisting the court in gaining a more complete and impartial perspective.

However, frequently, the parties do not understand the true role of a Guardian, and more surprisingly, neither do many lawyers. This article addresses the proper function of a Guardian, distinguishes a Guardian from an Attorney Ad Litem, and explores some situations where it may be more appropriate to appoint an Attorney Ad Litem than a Guardian.

Perhaps the best place to start as far as what a Guardian should be is to establish what a Guardian is not. A Guardian is not a case manager. While case management is one of the more tedious and least glamorous tasks in the legal profession, it is an onus that properly falls on others and should not be assigned to the Guardian. A Guardian is also not a vehicle to subvert the hearsay rules, which have the laudable purpose of excluding unreliable testimony not subject to the rigors of cross-examination. Parties often subvert the proper role of a Guardian by attempting to employ him or her as a conduit for the introduction of hearsay evidence through their testimony or written report. A Guardian is also not a parenting coordinator or a mediator of children's issues (unless there is a court-approved agreement so stating), and despite a common misconception to the contrary, a Guardian is not the child's "advocate."

So then, what is a Guardian Ad Litem? In answering this question, the appropriate place to start is Section 61.401 of the Florida Statutes, which governs the appointment of Guardians in family cases and, on its face, dispels the misconception that a Guardian is appointed to act as an advocate for the minor children. That provision sets forth that a Guardian is to be appointed as "next friend of the child, investigator, or evaluator, [but] a [G]uardian shall not act as attorney or advocate but shall act in the child's best interest." As the Third District Court has made clear, a Guardian is "regarded as the agent of the court," a far different role than that of an advocate.

Section 61.401 further distinguishes between a Guardian and an advocate for the child by providing that a court "in its discretion may also appoint legal counsel for a child to act as attorney or advocate" and prohibiting the same person from assuming both roles. It is critically important that lawyers understand and explain this distinction to their clients. Often times, parents call the Guardian and request that a pleading or motion be filed asking for relief they believe will benefit their child. Other times, they ask a Guardian to assist them in resolving an issue. While there are instances where a lawyer or a party may reach out to a Guardian, inquire as to the Guardian's investigation on a given issue, and use that information in an effort to reach a resolution, it is impermissible for a Guardian to become involved in championing a particular party's cause. When the Guardian attempts to explain that such matters are beyond the scope of their appointment, the clients sometimes become frustrated or irate. If the Guardian's proper role is explained to them from the onset, it would temper their expectations to a realistic level and help avoid such negative interactions between Guardians and parties.

Thus, it is advisable that during the initial meeting with each parent, a Guardian inquire as to what the parents believe his or her role to be. A majority of the time, they believe the Guardian's role is that of the child's attorney. Assisting the parents in understanding the Guardian's role will assist them in explaining the role correctly to their children.

The role of a Guardian has been the subject of much analysis. For example, in Perez v. Perez, the Third District Court of Appeals indicated that a basic function of a Guardian is to "protect the best interests of children".
Back to Basics Corner

By Julia Wyda

There are no shortcuts to success. Put in the time and effort necessary to be proud of the end product.

As many of us know, our current Chair, Magistrate Norberto Katz, selected a back-to-basics theme for his year. In sticking with this theme, I asked a few members of the Section to get back to the basics and provide us with a quote or piece of advice they received when they were younger that has stayed with them and possibly helped them succeed.

Melinda Gamot

There are no shortcuts to success. Put in the time and effort necessary to be proud of the end product.

Cynthia Greene

My Dad and I were walking one night after dinner and he was whistling the song, “Oh What a Beautiful Morning” from Oklahoma. He said to me, “Think about this: ‘the corn is as high as an elephant’s eye.’ Can you see it?” And I said, “Oh, yes, I can see it.” and he replied, “That, Cynthia, is writing.”

Carin Porras

My mother’s piece of advice, which I have tried (not always successfully) to follow: “If you don’t have anything nice to say, don’t say anything.”

Richard West

“Do you want to be right, or do you want the cheese?”

Laura Davis Smith

“Don’t be afraid to lose. If you win every case, you aren’t trying hard enough.” From Monroe L. Inker, Esq., for whom I worked while in law school and for two years after, in Boston.

Magistrate Diane Kirigin

My mother always used to tell me, “Remember people judge you by the friends you keep so pick your friends wisely.”

Maria Gonzalez

My parents instilled in me a strong work ethic as a result of what I witnessed as a child in their own lives. They also stressed the importance of a good education. As a result, I have an older brother who is a university professor who I consider to be “off the charts” brilliant.
in custody disputes. The Court recognized “society’s interest in protecting children from the traumas of divorce and custody disputes.” The Court also indicated that a Guardian’s role is to function as a “representative” of the child. There is, however, a clear distinction between serving as a representative of a child and advocating on behalf of a child. Although the Court recognized that the authority of a Guardian may include requesting evaluations or discovery as part of the Guardian’s investigation, it was careful to point out that “the duties and responsibilities of a Guardian Ad Litem are not coextensive with those of an attorney.” Moreover, the Court in Perez also made clear that the Guardian is to act in the best interests of a child, even if the Guardian’s actions are against the child’s wishes.

Another commonly held belief is that a Guardian is a “party” in the proceedings. While Section 61.401 does state that a Guardian appointed to a case is a “party” thereto until discharged, a Guardian is clearly not a “party” in the traditional sense of the term. According to the Perez case, as children are not “parties” in their parents’ divorce, the Guardian acting to represent the child’s best interests is not a party either. While a Court will often order that a Guardian be present at hearings, at depositions, and be served with pleadings as if they were a party, this is done solely for the purpose of ensuring the Guardian has the necessary tools for the investigation. It does not make the Guardian a “party” to the litigation in the traditional sense. Therefore, while lawyers and pro se litigants often reach out to the Guardian to try and make sure they attend every hearing and participate in all case proceedings, such universal participation is typically unnecessary and beyond the scope of the Guardian’s appointment.

While many non-attorneys are routinely appointed as Guardians in family cases, the confusion regarding the Guardian’s proper role is highest where the person appointed is a lawyer. As the Court stated in Perez, “the lines separating the functions of an attorney as [G]uardian and an attorney as advocate, can become easily blurred.” The American Bar Association has promulgated standards for lawyers representing children in family cases (the “ABA Standards”).

In the commentary to the ABA Standards, it is suggested that when a court appoints a lawyer as Guardian in the typical investigatory capacity, it should “make clear that the person is not serving as a lawyer, and is not a party”.

The ABA Standards go on to distinguish between a “Child’s Attorney,” which is routinely referred to as an Attorney Ad Litem, and a “Bests Interests Attorney,” which is analogous to a Guardian Ad Litem. The Bests Interests Attorney as contemplated by the ABA Standards provides the services for the child’s best interests, but is not “bound by the child’s directives or objectives.”

Generally, an Attorney Ad Litem should be appointed to protect the minor child in cases where the child’s rights or interests are directly conflicting with the interests of the parents. Although it could be argued that in all timesharing matters that are litigated, parents are unable to elevate their children’s interests above their own, for the most part, parents litigate in a manner consistent with what they believe is best for their children. Accordingly, the appointment of an Attorney Ad Litem is not typically appropriate in the run-of-the-mill divorce case. Instead, an Attorney Ad Litem is generally appointed in “dependency, abuse and neglect proceedings, termination of parental rights proceedings, and juvenile delinquency proceedings.” Such matters are beyond the scope of this article.

However, situations do arise in divorce proceedings where the appointment of an Attorney Ad Litem is warranted. For example, a child has a right to confidentiality as to the child’s relationship with a psychologist or psychiatrist. If the child’s parents desire to pierce that confidentiality in order to obtain information to use in the proceedings, but the child wishes to preserve confidentiality, then an Attorney Ad Litem should be appointed as an advocate for the child, not to ensure the child’s best interests per se, but rather to protect the child’s wishes.

Where a lawyer is functioning as a Guardian Ad Litem rather than an Attorney Ad Litem, it is important to explain to the child precisely what the Guardian’s role is so as not to create unreasonable expectations on the part of the child. The Guardian should explain to a child that he or she is there to aid the Court in its efforts to resolve the parents’ issues. A Guardian has to be mindful of not making the child feel overly empowered, which could very well worsen an already difficult situation.

In promulgating the ABA Standards, the ABA decided to eschew the concept of a Guardian Ad Litem entirely, opining that “[t]he role of ‘guardian ad litem’ has become too muddled through different usages in different states, with varying connotations … [and] has often been stretched beyond recognition to serve fundamentally new functions, such as parenting coordinator, referee, facilitator, arbitrator, evaluator, mediator and advocate.”

In order to preserve the Guardian’s efficacy in its invaluable role as an impartial fact-finder for the courts, it is absolutely imperative that everyone involved understand the precise nature of the Guardian’s function, including Judges, practitioners, litigants and their children. It is equally imperative that the Guardian’s critical fact-finding role not be diluted and undermined through the imposition and assignment of new and additional extraneous functions, tasks and obligations. As cogently stated by the American Bar Association, “[a]sking
one Guardian Ad Litem to perform several roles at once, to be all things to all people, is a messy, ineffective expedient.”

Anastasia M. Garcia was admitted to the Florida Bar in 1992 and practices in Coral Gables Florida, concentrating her practice on Family Law, Guardian Ad Litem work as well as Family Mediation. She obtained her JD from The George Washington University. She is a past recipient of the Ray H. Pearson Guardian Ad Litem Award. She is a Supreme Court Certified Family Mediator as well as a Florida Supreme Court Certified Arbitrator. She presently serves on the Alumni Board of Florida International University and she serves on the Board of KidSide, where she is an immediate past President.

Endnotes
1 Millen v Millen, 122 So.3d 495, 497 (Fla. 3rd DCA 2013).
2 Franklin & Criscuolo/Lienor v. Etter, 924 So.2d 947, 949 (Fla. 3d DCA 2006).
3 769 So.2d 389, 393 (Fla. 3rd DCA 1999).
4 Id.
5 Id.
6 Id.
7 Id. at 394.
8 Id.
9 Id. at 395.
11 Id. at 2.
12 Id.
13 Id.
16 Id.

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What’s not to love about “a full time nanny, housekeepers, international travel, residence in a mansion with high attendant expenses, and transportation in expensive automobiles”? Some parents can afford such expenses for their children. While courts need not “ensure that the child of a wealthy parent will own a Rolls Royce”... or “be driven to school every day in a chauffeured limousine,” courts should be provided sufficient information to make informed decisions “as to the extent of the parent’s good fortune and the corresponding extent of the child’s right to share in that good fortune.”

Cases involving such decisions are commonly referred to as “good fortune” cases. These so-called “good fortune” cases may surface in a divorce or paternity action involving an initial determination of child support or in a supplemental proceeding involving an upward modification of child support based upon a substantial increase in a parent's income. Fortunately, the Florida Supreme Court has provided our courts and family law practitioners with guidance in both settings; however, there remain a couple of unanswered questions.

In 1993, the Florida Supreme Court decided Miller v. Schou, a good fortune case within the context of a supplemental proceeding in which the former wife was seeking a modification of the former husband’s child support obligations. This case involved a former husband who had earned a modest income as a medical resident during the original action and who, seven years later, was earning a substantial income as a practicing anesthesiologist. The former husband acknowledged that he had the ability to increase his child support obligation from the $500 per month amount that had been awarded to any amount needed to pay for the child’s needs. In view of his admission, the former husband argued that his financial condition was not pertinent and sought protection from any financial disclosure and discovery.

The trial court denied the former husband’s motion and ordered him to provide a financial affidavit. The former husband filed a petition for certiorari with the Third District Court of Appeal, which granted certiorari and quashed the order compelling former husband to provide a financial affidavit.

Essentially, the 3rd DCA found that because the former husband stipulated to his ability to satisfy his child’s needs, the ordering of a financial affidavit was a departure from the essential requirements of the law.

On further appeal, the Florida Supreme Court quashed the 3rd DCA’s decision and remanded the case so that the financial disclosures and potential discovery could move forward. In doing so, the Court made two pertinent rulings.

First, the Court expressly held “that an increase in ability to pay is in itself sufficient to warrant an increase in child support. . . .” Second, the Court made it clear that, in good fortune cases, the child is entitled to share in the parent’s good fortune. As to what this may mean, the Florida Supreme Court stated:

The child is only entitled to share in the good fortune of its parent consistent with an appropriate lifestyle. We believe that Florida’s trial courts are fully capable of making the determination of an appropriate amount of support in these cases and will not . . . create a class of children who are unduly pampered in the name of sharing in the non-custodial parent’s good fortune.

Five years later, the Florida Supreme Court in Finley v. Scott laid out the steps to follow for determining the “appropriate lifestyle” and discussed a process to follow for managing the child’s share of his or her parent’s good fortune.

Finley was a paternity action in which strict application of the child support guidelines would have required the father, a professional basketball player, to pay $10,011 per month in child support. The trial court deviated downward from the child support guidelines by awarding child support that was $2,000 per month to be paid directly to the mother to meet the child’s immediate financial needs and an additional $3,000 per month was to be held in trust by a guardian of the child’s property.

On appeal, the Fifth District Court of Appeal reversed and found that the trial court abused its discretion when it awarded child support that was in excess of the child’s actual needs. In essence, the 5th DCA would have required the trial court to enter a judgment, awarding only $2,000 per month for child support.

On further appeal, the Florida Supreme Court disagreed with the 5th DCA, agreed with the trial court and remanded the case with directions to affirm the trial court’s final judgment of paternity. In doing so, the Florida Supreme Court did two (2) significant things.

First, the Florida Supreme Court laid out the steps to be followed for ascertaining the “appropriate lifestyle” that had been discussed in general
terms in Miller v. Schou. More specifically, the Florida Supreme Court stated:

To assist trial courts in making this fact-intensive decision in future cases, we expressly point out that the trial court is to begin its determination of child support by accepting the statutorily mandated guideline as the correct amount. The court is then to evaluate from the record the statutory criteria of the needs of the child, including age, station in life, and standard of living, the financial status and ability of each parent, and any other relevant factors. If the trial court then concludes that the guideline amount would be unjust or inappropriate and also determines that the child support amount should vary plus or minus five percent from the guideline amount, the trial court must explain in writing or announce a specific finding on the record as to the statutory factors supporting the varied amount. Absent an abuse of discretion as to the amount of the variance, the trial court’s determination will not be disturbed on appeal if the calculation begins with the guideline amount and the variation is based upon the statutory factors.5

Second, the Court suggested that there should be some mechanism in place for managing the child’s share of his or her parent’s good fortune. More specifically, the Court intimated that if the trial court awards a sum for paying the expenses needed for the minor child’s immediate custodial maintenance plus an additional sum essentially representing the child’s share of a parent’s good fortune (e.g., a “good fortune” sum for funding future expenses such as post-minority education and the like), then some provision should be made for managing the additional “good fortune” sum not needed for the child’s immediate custodial maintenance.

In Finley, the Court specifically found that because the child’s custodial parent had not used temporary support payments totally for the benefit of the child it was appropriate to file a probate action and appoint a guardianship of the minor child’s property in order to protect the portion of the child support payment not needed for the child’s day-to-day custodial expenses. In this way, according to the Florida Supreme Court, “the probate court will supervise, through the guardian, the use of any money not required for the child’s immediate custodial needs.”6

The question not answered by the Court in Finley is what happens in cases in which one or both of the child’s parents are capable of managing the “good fortune” sum not needed for the child’s day-to-day custodial expenses? And what happens if a probate action is otherwise not appropriate?

While the Court in Finley seemed to limit its decision by emphasizing that the guardianship was the correct procedure for that particular case, there is language in Finley suggesting that in all “good fortune” cases the better procedure is to file a probate action to establish a guardianship of the child’s property so that the probate court may supervise, through the guardian, the use of any money not required for the child’s immediate custodial needs. Specifically, the Court stated:

The trial court is not to order any portion of the child support paid into a trust unless a legal guardian has been appointed, and we disapprove [Boy v. Romanow, 664 So. 2d 995 (Fla. 2d DCA 1995)] to the extent that it authorizes continuing supervision of the child support award by the court that determined the child support amount or the payment into a guardianship trust to be supervised other than through the probate court.7

Notably, the Florida Statutes make it relatively easy to initiate an action for the appointment of a guardian of a minor child. “Upon petition of a parent, brother, sister, next of kin, or other person interested in the welfare of a minor, a guardian for a minor may be appointed by the court without the necessity of adjudication pursuant to [the incapacity subsection of the statute].”8 Furthermore, “[a] guardian appointed for a minor, whether of the person or property, has the authority of a plenary guardian.”9

So, the questions left hanging by the Florida Supreme Court are (i) in all good fortune cases should a separate probate action be filed for the establishment of a guardianship of the child’s “good fortune” sum and, (ii) if so, when should such a probate action be filed (e.g., at the outset of filing a “good fortune” case or supplemental proceeding, in the final judgment when the court determines that there will be a “good fortune” sum awarded that must be managed for the child, or at some interim point during the “good fortune” proceeding)?

John W. Foster, Orlando, Partner, for more than 33 years, John Foster has handled litigation, trials and appeals in state and federal courts. His practice includes emphasis on marital and family law cases, as well as substantial experience in the litigation, trials, and appeals of commercial and construction matters.

John is actively involved in the Family Law Section of the Florida Bar Association. He currently serves on the Family Law Section’s Executive Council and Legislation Committee, he co-chairs the Parentage Committee and he is a former chair of the Equitable Distribution Committee.

John is ranked by Chambers USA, has been named as a Florida Legal Elite for Marital and Family law by Florida Trend, as a Florida “Super Lawyer”, as one of Orlando’s Best Lawyers by Orlando Magazine, and as a top lawyer by the Orlando Home and Leisure Magazine. John also coordinates the Orlando office’s pro bono program.
Avery Dawkins, Associate, has experience in matters involving dissolution of marriage, equitable distribution of marital assets and liabilities, alimony, parenting issues, timesharing, child support, paternity, and other marital issues. To deliver the most effective advice and counsel to her clients, Avery makes it a point to engage with her clients on a personal level, enabling her to empathize with them and develop a fuller understanding of their concerns. Avery is trained in the Collaborative Law model. Avery received her undergraduate degree in Psychology from the University of Florida in May, 2010, and her law degree from the University of Virginia School of Law in May, 2013.

Endnotes
1 Finley v. Scott, 707 So. 2d 1112, 1117 (Fla. 1998).
3 Id. at 438.
4 Id. at 439.
5 Finley, 707 So. 2d at 1117. It would seem that any downward deviation of child support from the child support guidelines that is based upon the needs of the minor child should be limited to cases involving “good fortune” parents. Quite simply, the analysis set forth in Miller and Finley should not apply where the child is “teetering on the poverty level,” Camus v. Prokosch, 882 So. 2d 428, 431 (Fla. 1st DCA 2004), or “where the paying parents make a modest living,” Miller, 616 So. 2d at 438. Indeed, these “good fortune” cases should be limited to situations in which the child support guideline amount greatly exceeds the sum needed for the minor child’s immediate custodial maintenance. See, e.g., Krufal v. Jurgensen, 830 So. 2d 228 (Fla. 4th DCA 2002).
6 Finley, 707 So. 2d at 1118.
7 Finley, 707 So. 2d at 1118.
8 Fla. Stat. § 744.3021(1).
9 Id.
THE FAMILY LAW SECTION

OUT OF STATE RETREAT

APRIL 8 - 12, 2015

La Concha Renaissance Resort
1077 Ashford Avenue
San Juan, Puerto Rico 00907
(877) 524-7778
Wednesday, April 8, 2015

5:30 p.m. - 8:00 p.m.
Registration and Welcome Reception*
Ocean Pool & Terrace

Thursday, April 9, 2015

9:00 a.m. - 10:00 a.m.
Breakfast*
Indigo A

10:00 a.m. - 12:00 p.m.
CLE Presentation*
(CLE Credit information TBD)
Indigo BC

Afternoon on own

4:30 p.m. - 9:30 p.m.
Group Dinner at Hacienda Siesta Alegre, Rio Grande*
Transportation Provided

Friday, April 10, 2015

8:00 a.m. - 9:00 a.m.
Breakfast*
Indigo A

9:00 a.m. -10:00 a.m.
Executive Council Meeting
Indigo BC

11:00 a.m. - 4:00 p.m.
Old San Juan Walking Tour ($85)
(San Cristobal Fort & Lunch Included)

1:00 p.m. - 5:00 p.m.
Zip Lining Adventure-Hacienda Campo Rico ($150)
(Lunch Included)

6:45 p.m. -11:00 p.m.
Bioluminescent Bay Tour-Laguna Grande ($100)
(Please eat dinner prior to departure)

Saturday, April 11, 2015

8:00 am - 4:30 pm
Good-Bye Excursion—Culebra “Get Away”*
Culebra “Get Way”; After a fast power-cat ride of less than an hour, we anchor off the west coast of Culebra at the incredible reef area of “Carlos Rosario” or the Luis Peña underwater nature preserve for about 1 ½ hours of some of the best snorkeling anywhere! We’ll then move on to our beach stop at world famous Flamenco Beach. Depending upon the sea conditions, sometimes we will go to Culebrita, a tiny islet off the east coast of Culebra, with a stunning ½ mile long horseshoe beach. Truly off the beaten path! In either location, it is a short swim into the beach and there are more great snorkeling opportunities. Here you’ll enjoy a sumptuous buffet lunch on board our catamaran, complete with Piña coladas or Rum Punch. You’ll spend the rest of the afternoon snorkeling, beachcombing along this spectacular beach or relaxing on our roof deck. This is the perfect combination for avid snorkelers and beach connoisseurs to enjoy Culebra’s colorful reefs, spectacular white sands, and awesome turquoise blue waters. At around 3:00 pm, we depart Culebra, cruising along the Marine Cordillera (island chain) on the way back to Fajardo. Arrival time back at Marina Puerto Del Rey is 3:45 pm. We provide quality snorkeling gear, and underwater cameras are available on board for sale. Please bring towels, sunscreen and wear light clothing over a swimsuit.

Sunday, April 12, 2015

Depart

HOTEL RESERVATION INFORMATION

La Concha Renaissance Resort Hotel
1077 Ashford Avenue
San Juan, Puerto Rico 00907
Phone: 1-877-524-7778

Room Rate: $209
*Group rate reservation deadline – March 18, 2015*

Reservation Link:
http://cwp.marriott.com/sjubr/familylawsectionhotelrsvp/
Registration Form

**Out of State Retreat**

April 8 - 12, 2015 • La Concha Renaissance Resort Hotel • San Juan, Puerto Rico

TO REGISTER BY MAIL, SEND THIS FORM TO: The Florida Bar, Order Entry Department, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831.

Name _____________________________________________ Florida Bar # _____________________

Address ___________________________________________________________________________

City/State/Zip _______________________________________ Phone # ________________________

E-mail ____________________________________________________________________________

Guest Name: _______________________________________________________________________

DP: Course No. TBD

**REFUND POLICY:** A $25 service fee applies to all requests for refunds. Requests must be in writing and postmarked on or before March 18, 2015.

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TOTAL ENCLOSED $_______

**METHOD OF PAYMENT (CHECK ONE):**

- [ ] Check enclosed made payable to The Florida Bar
- [ ] Credit Card (Fax to 850/561-9413.)
  - [ ] MASTERCARD  [ ] VISA  [ ] DISCOVER  [ ] AMEX  Exp. Date: ___/____ (MO./YR.)

Signature: __________________________________________________________________________

Name on Card: ________________________________________________________________________

Billing Address with Zip Code: __________________________________________________________

Card No. ____________________________________________________________________________

[ ] Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.
Divorce can be highly emotionally-charged, further complicated by legal and financial issues. At Cherry Bekaert, we provide the effective representation that lawyers require with the compassion and sensitivity clients appreciate.

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Melissa Goldberg, MBA
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Mercy de la O
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Effective Litigation Support

CPAs & Advisors with Your Growth in Mind

Lifestyle Analysis
Cash Flow and Disposable Income
Business Valuations
Property Distribution
Prenuptial and Postnuptial Support
Equitable Distribution Charts
Marital vs. Non-Marital Asset Analysis
Asset-Tracing and Identification
Complex Financial Analysis
Income Analysis, Including In-Kind Benefits