Section calendar

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

2014-2015

December 4-7, 2014
Family Law Section
In State Retreat
Amelia Island

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

January 30-31, 2015
2015 Marital and Family Law Certification Review Course
Hilton Bonnet Creek

Details and registration at www.familylawfla.org

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

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MS Word format is preferred for documents, and jpg images for photos.

COVER PHOTO
Cover photo taken by
Julia Wyda on the Section’s boat excursion to Tarpon Springs during the 2014 Leadership Retreat in Palm Harbor
Greetings and a warm welcome from the Executive Council of the Family Law Section of The Florida Bar. Although somewhat intimidating to be following in the footsteps of so many talented and dedicated past Chairs, I look forward to serving as the Chair of our Section for the coming year. It is a true honor and privilege to be leading one of the premier Sections of the Bar. Joining me as part of the team are the other members of the Executive Committee, accomplished leaders of our profession in their own right; our Chair-Elect Maria Gonzalez, Treasurer Laura Davis-Smith, Secretary Nicole Goetz and our Past Chair, Elisha Roy and the other valuable members of the Section and our Trustees, who continue to offer invaluable guidance and assistance whenever the need arises.

This first message is my opportunity to give you a preview for the coming year. As I announced at our Section luncheon in June, my theme for the year is “Back to Basics.” As we reflect on our past accomplishments, I would like us to be re-energized by coming back to the many things that make the practice of law one of the finest professions in our country. First and foremost is promoting the highest ideals of our profession amongst ourselves and others: professionalism, ethics, and civility. In addition, that we continue to be educated and well versed on changes in the law, both statutory and case law, which develop at an incredible rate of speed. And, finally, that we obtain all the necessary tools to be effective and zealous advocates for our clients.

I invite you to become an active member of the Family Law Section and all we do. Should you choose to do so, you will find your involvement both enjoyable and fulfilling. There are many ways to get involved. You may serve on one of our many committees that are listed on our website, http://www.familylawfla.org/committees. Many of these committees have and continue to have a substantial impact on the practice of family law. In addition, please consider attending our fabulous Retreats; I included the details of both the Fall and Spring Retreats below.

By the date of publication of this issue of The Commentator, we will have had our Leadership Retreat at the Innisbrook Resort, a mix of training to be a future leader of our Section as well as many fun filled activities, including a “Cardboard Boat” race where teams built a cardboard boat and raced across a pool, a “put put” golf competition, and an incredible End-of-Retreat dinner. Many thanks go out to Doug Greenbaum, our fearless Leadership Retreat Chair, and program Chairs, Carin Porras and Diane Kirigin, for all their hard work in making this Retreat a success.

Our next Retreat, chaired by Thomas Duggar, will be from December 4 to December 7 at the Ritz-Carlton in Amelia Island. Not only will this be an opportunity for fellowship with family, colleagues, and friends, it will feature a CLE titled: “How to Grow Your Practice and Enhance Client Services In a Changing Economy” presented by Glenn Gutek of Atticus, as well as a cooking class and a dinner at Salt, a AAA Five Diamond Award winning restaurant. This Retreat is a wonderful opportunity for you and your family to kick off the holiday season. Please visit our website to review the brochure for this Retreat with more information and instructions on booking the Ritz-Carlton.

Our Spring Retreat at the La Concha Hotel in San Juan, Puerto Rico is in the final stages of planning by Chairs, Jorge Cestero and Dr. Deborah O. Day. Jorge and Dr. Day are planning a fabulous Retreat in the “Isla del Encanto” (the Island of Enchantment) with an informative and interesting CLE, several enjoyable activities, and fabulous meals featuring local fare in beautiful surroundings. Please check our website for more updated in the coming weeks to view the brochure.
Chair's Message
from preceding page

Our greatest challenge this year, as in recent past, is the issue of possible changes to the alimony statute. It is the Section’s plan to do our best to work in a cooperative fashion with the Legislature to ensure that our State’s alimony laws are fair and equitable to all its citizens. Towards this goal, our Alimony Subcommittee of our Legislation Committee, chaired by Thomas Sasser, is in the final stages of compiling information and formulating language for a proposed bill by the Section. A meeting of the Legislation Committee and the Executive Council is scheduled for October 24 in West Palm Beach to discuss and vote on the language of a proposed Bill. I will keep the Section updated as to our efforts as things develop.

I look forward to an interesting, productive, and most important, fun filled year for the Section. Please consider joining us by volunteering to serve on a committee, attending our meetings, and coming to our Retreats. I am sure you will find the experience both professionally and personally as rewarding as I have. Thank you.

— Norberto Katz

Comments from the Co-Chairs of Publication Committee

Here we are; a new “year,” a new Chair, and a new theme. This time, we’re “back to basics.” Sarah and I thank everyone who had a hand in creating this edition; everyone has embraced Norberto Katz’s theme and we look forward to buckling down to help all of you help Florida’s families. We have a great line-up of Guest Editors this year and they have all hit the ground running. It’s going to be a great year with issues full of great articles and information to assist you in your practice. Please do not hesitate to email me at Amy@AikinLaw.com or Sarah Sullivan, at ssullivan@fcs1.edu, with any questions, comments, or suggestions!
Every June, during the annual meeting of the Florida Bar, the Family Law Section swears in a new Chair of the Section. This year, we welcome Norberto Katz from Orlando as our new Chair for the year. For those of us who have been involved in the Section for any length of time, we tend to know, or are at least familiar with, the people who make up the Executive Committee. But, for the vast majority of the 4,000 members of the Section, the Chair is just a name and a face. For those of you who don’t know Norberto, this welcome is your introduction to the face of the Section. And, for those of you, like myself, who have known Norberto for years, this article may reveal things you didn’t know.

In preparation to write this piece, I spoke with a few people who know Norberto pretty well. Bruce Blackwell, the Executive Director of the Florida Bar Foundation, introduced Norberto as the new Chair, during the Family Law Section’s June luncheon. For those of you who know Bruce, most of the comments and stories he told me were too colorful to print in this publication. What I can print is his emphasis that most of us have no idea how much Norberto gives back to the community; over the years he has given a significant amount of his time to numerous organizations. He also told me how dedicated Norberto is to his family and proud of his two sons. I also spoke with Angel Bello-Billini, Litigation Director for the Legal Aid Society of the Orange County Bar Association. Angel, like Bruce, had plenty of funny stories about Norberto, which include how he became the first president of the local Hispanic Bar Association (see below for the details). For a different perspective about Norberto, I spoke with Dr. Deborah Day. She, like the others, told me about Norberto’s various interests, community service, and family dedication. I thank all of them for taking the time to speak with me; it was clear they all think highly of Norberto and believe he will be a bright light to lead the Section through whatever obstacles and challenges we may face this year.

I asked Norberto a number of questions, picking up on the themes laid out for me by Bruce, Angel, and Dr. Day. He was thoughtful, insightful, and revealing in his answers.

Q: You were born in Argentina; how did you end up in Orlando?
A: My Dad was a musician in Argentina and as a young man he used to work as a musician on cruises. He visited the United States on several occasions while working on cruises and decided that this country was where he wanted to raise a family for the opportunities provided. When I was 7 we legally emigrated to the United States and first came to New York. Several years later my family moved to Orlando when my Father started a business here.

Q: Tell us about your family; you have two sons, one of whom is a talented musician.
A: My Wife Jodi, whom I met while in law school, and I have been married for 29 years. She has been a Latin teacher in the Orange County Public School system for 25 years. My oldest son, Joshua, graduated with an Industrial Engineering degree from the University of Central Florida and now works in the logistics area with UPS at their hub in Louisville, Kentucky. He won’t tell me anything about his work, something about trade secrets! My younger son, Jonathan is a Junior at the University of Central Florida, majoring in Civil Engineering and minoring in Music. He has been a percussionist since picking up a set of drumsticks at age 5. He was the principal percussionist for the Florida Symphony Youth Orchestra for 4 years and is now a percussionist with the Brass Band of Central Florida. This band tours extensively and has competed both in the United States and Europe.

Q: I’ve been told that you have an extensive Coca Cola collection; how did that get started?
A: When the boys were very young, we were in Spain on vacation and the kids spotted a Coca Cola bottle with an Olympics logo. It just spread from there. Whenever we traveled, we purchased bottles from the areas we visited as mementos of our trips and soon thereafter, family and friends brought us bottles from wherever their travels took them. In time, we have collected over 2,000 bottles that are now displayed in a room with special shelving designed by my wife. We call it the “Coke Room.” I always have to explain “not that type of coke!”

Q: I spoke with Angel Bello-Billini; he told me a funny story about how...continued next page
you became the first president of the local Hispanic Bar Association. Tell us about your involvement in establishing that organization.

A: In 1990 a small group of Hispanic lawyers, including Angel and me and a Hispanic Judge, Jose Rodriguez, got together and decided to form the Hispanic Bar Association. While discussing the by-laws and initial slate of officers for the organization at a local restaurant, I went to the rest room. When I got back to the table, I was advised that I had been elected the first President of the organization.

Q: You’re involved in many organizations; tell us about those interests.

A: I have a credo I live by: “Leave the world a better place than it was when you got there.” I have always had a passion for the welfare of children, and I firmly believe ensuring their safety and success is the key to a better future. As such, I have always focused my energies in that regard as a Guardian Ad Litem for the Legal Aid Society of the Orange County Bar Association and later as President of the organization, as a Board member and President of the Florida Symphony Youth Orchestra and a member of the Community Leadership Council for the Howard Phillips for Children and Families.

Q: What made you decide to go to law school?

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Q: How have you seen the practice of family law change over the years?

A: Unfortunately, we have lost some of the professionalism that was there when I began practicing law. There is too much “guerilla warfare” and not enough “what’s best for our clients.”

Q: What do you hope to accomplish as our Chair this year?

A: First, get a great assistant. Attend CLEs and seminars to enhance your knowledge. Also, become involved in your local bar association family law committee and the Family Law Section to get to know your fellow lawyers and Judges.

Q: What prompted you to want to become Chair of the Section?

A: The Family Law Section currently has about 4,000 members: That shows how prevalent family law is in this State. What do you see as some challenges that family law practitioners have today?

Q: What prompted you to want to become Chair of the Section?

A: First and foremost, what has become the competitive and difficult nature of the practice of law. With so many law schools and resulting graduates, many of whom gravitate to family law by necessity, without proper mentoring and experience, we have many attorneys not acquainted with the applicable statues, rules and case law, which makes practicing with them very hard. In addition, the rapid changes in our society relating to families and children lead to an ever changing legal landscape that family law practitioners must learn to cope with.

Q: What prompted you to want to become Chair of the Section?

A: A desire to continue the good work by leading what I believe is the finest Section of The Florida Bar.

Q: What prompted you to want to become Chair of the Section?

A: First and foremost, to engage all our Executive Council and committees in continuing the good work that has been done in the past. In addition, I want to bring a sense of collegiality and a “team approach” to what we do. In addition, I would like to build future leadership for the Section. And finally, for a fair and equitable alimony bill for all to be proposed to the Legislature.

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The new Family Law Section Chair, Norberto S. Katz, has made ‘getting back to basics’ this year’s theme. Getting back to basics means bringing value to Family Law Section members through informative articles in the Commentator. I’d like to personally thank the contributing writers who made this happen. I also want to acknowledge the never ending work of our editors and advisors, and especially our Publications Committee Co-Chairs, Amy Hamlin and Sarah Sullivan.

What is between the covers of the Fall edition? A trio of expert psychologists, Theodore Wasserman PhD., Lori Wasserman PhD., and Sheila Furr PhD., help answer a very tough question: how to distinguish between true and false allegations of child sexual abuse in Typical and Atypical Sexual Behavior of Young Children. The article will not only help you interpret abuse signs, a quiz at the end will test your skills at spotting abuse.

Fall in Florida is not just colorful leaves, chilly air, and hot cider. Fall also means the school bells are ringing, and children’s blue immunization forms are due. But what happens when one parent refuses to vaccinate their child and the other insists on it? Vaccinating Problems, looks at how two Florida courts decided vaccination cases, but arrived at different conclusions.

If nothing is certain but death and taxes, Chris Tiso offers up a tribute to the great Mel Frumkes in Family Support and Losses That Are Assets. The article would make Mel proud. Chris explains how a hybrid of child and spousal support obligations allow our clients to take advantage of favorable tax provisions, and also reminds us that market losses can be marital assets to be equitably distributed.

Who is a better expert for your case, a psychologist or a psychotherapist? Selecting the right professional for the right role can be confusing because there are so many titles to choose from. It’s enough to drive you crazy. Put your feet up on the couch, and let expert psychologist Dr. Deborah Day explain what all the differences mean in Different Roles Psychologists and Mental Health Professionals Can Assume in Your Case.

Mad Max quickly learned Thunderdome’s simple rule: “Two men enter, one man leaves.” But Jerry Rumph explains in Beyond Thunderdome how the pro bono program, Thunderdome Tallahassee, has given new meaning to Bartertown’s gladiatorial arena. Thunderdome has changed from hand-to-hand combat into a hands-on legal training program, providing education and recognition to a new generation of volunteer lawyers serving their communities.

Many of us know that same-sex marriages are not recognized in Florida, even if validly entered into in another state. Same-sex divorces are not recognized either. In the article In Recognition of Marital and Family Equality: The Family Law Section’s Brief Amicus Curiae in Shaw, Christopher W. Rumbold & Lissette Gonzalez, bring us up to date on the Family Law Section’s support of legislation in favor of same-sex marriage, and the Section’s filing of an amicus brief in the pending appeal Shaw v. Shaw.

Did you know roughly one in every 100 American adults is in prison? Doreen Inkeles brings more to those cold numbers than mere statistics in The Kids Are Alright. If you have to argue a timesharing motion involving an incarcerated parent, Doreen is your guide through the razor wire gates of a Florida prison. By the time you argue that motion, you’ll have learned the hard truth of prison visitation time from the inside.

This edition of the Commentator is packed with 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.
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By Juan C. Antúnez
Attorney at Law

Juan C. Antúnez is a partner with Stokes McMillan Antúnez P.A., a boutique trusts and estates law firm located in Miami, Florida. Trusts and estates litigation, probate administration and estate planning is all he does as a lawyer. He is a 1996 graduate of the New York University School of Law (J.D.), and a 2003 graduate of the University of Miami School of Law (L.L.M., in Estate Planning). Prior to law school Mr. Antúnez volunteered for service with the United States Marine Corps Reserve from 1987 to 1993 (4th ANGLICO, West Palm Beach, Florida), including combat duty during the first Gulf War.

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This article is written in memory and honor of my mentor of sixteen years, Melvyn B. Frumkes, who passed away on April 14, 2014. “Mel,” as he was affectionately known, was a pioneer and icon in all facets of family law, but none more than the arena of divorce taxation. He wrote, lectured, and taught divorce taxation throughout the country. There will never be another “Mel,” as anyone who has ever known him would attest. As a tribute to Mel, here are two topical tax tidbits for family law practitioners and judges to think about.

Family Support

“Family support,” the new genre for unallocated or undifferentiated child support and spousal support, can be a useful tax savings vehicle provided the provision for said family support is properly and carefully crafted. Simply stated, family support is an unallocated or combined award of child support and spousal support (alimony/maintenance). The tax advantage is realized by virtue of the payor spouse, who is usually in a higher (sometimes vastly higher) tax bracket than that of the payee, being able to deduct the entirety of the family support payment. Conversely, the payee spouse is required to include the entire family support payment in his or her income, normally at a much lower income tax rate. In other words, the family support payment is effectively treated as alimony which is generally taxable to the recipient and deductible by the payor. Borrowing from California statutes, the First DCA observed:

“[F]amily support“[is] “an agreement between the parents, or an order or judgment, that combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support”. . . . It is a hybrid support obligation which permits the parties to take advantage of favorable tax provisions.¹

Caution is required, however, because clearly some portion of family support is child support. Child support is neither deductible by the payor nor taxable to the payee.² Nevertheless, the Internal Revenue Code (I.R.C.) will “turn a blind eye” to the child support component so long as the contingencies of Section 71(c)(2) of the I.R.C. are “not in play.” If any amount of the family support is to be reduced on the happening of a contingency specified in the instrument that relates to a child, such as attaining a specified age or income level, marrying, dying, leaving school, leaving the household, becoming employed, or a similar contingency or at a time which can be “clearly associated with” such a contingency, then the amount equal to the sum of such reduction shall be treated as child support.³ Stated otherwise, the amount of the reduction shall not be included in the payee’s income nor deductible by the payor notwithstanding the “family support” designation.⁴ Unfortunately, the I.R.C. does not define the phrase “clearly associated with.” Fortunately, the Temporary Regulations provide two rebuttable presumptions and some useful guidance.⁵

One presumption exists when the payments reduce within six months of a child turning 18, 21 or the local age of majority. Accordingly, when crafting a family support obligation and provision, simply make sure the payments reduce outside of the applicable six month window of an event related to a child.⁶ The second rebuttable presumption is where the payments are to be reduced on two or more occasions which occur not more than one year before or after a different child of the payor attains a certain age between the ages of 18 and 21, inclusive (with the “certain age” being the same for each child), but need not be a whole number of years. It is confusing and the example provided by 26 C.F.R. 1.71-1T is itself not a model of clarity, to wit:

A and B are divorced on July 1, 1985, when their children, C (born July 15, 1970) and D (born September 23, 1972), are 14 and 12, respectively. Under the divorce decree, A is to make alimony payments to B of $2,000 per month. Such payments are to be reduced to $1,500 per month on January 1, 1991 and to $1000 per month on January 1, 1995. On January 1, 1991, the date of the first reduction in payments, C will be 20 years and 5 months old. On January 1, 1995, the date of the second reduction in payments, D will be 22 years 3 months and 9 days old. Each of the reductions in payments is to occur not more than one year before or after a different child of A attains the age of 21 years 4 months. (Actually, the reductions are to occur not more than one year before or after C and D attain any of the ages 21 years 3 months and 9 days through 21 years 5 months.)

continued next page
“Family Support and Losses”
from preceding page

months and 17 days.) Accordingly, the reductions will be presumed to clearly be associated with the happening of a contingency relating to C and D. Unless this presumption is rebutted, payments under the divorce decree equal to the sum of reduction ($1,000 per month) will be treated as fixed for the support of the children of A and therefore will not qualify as alimony or separate maintenance payments.

Fortunately, on October 31, 2013, the I.R.S. issued Publication 504 somewhat clarifying the second rebuttable presumption. The Publication provides the presumption applies where:

The payments are to be reduced on two or more occasions that occur not more than 1 year before or after a different one of [the] children reaches a certain age from 18 to 24. This certain age must be the same for each child, but need not be a whole number of years.

It must be kept in mind that the foregoing presumptions are rebuttable. The presumptions are overcome if the facts indicate that at the time the reduction in payments are to be made the changes are to be determined independently of any contingencies relating to a child of the payor, such as the time selected was merely a “coincidence” that it falls near a child’s birthday.7

Here again, Publication 504 provides some assistance in two respects. It states that if a party can show the period of alimony payments is customary in the local jurisdiction, such as a period equal to one-half the duration of the marriage, the presumption may be overcome. It also articulates that except for the aforementioned contingencies, “[i]n all other situations, reductions in payments are not treated as clearly associated with the happening of a contingency relating to [a] child.”

Provided all of the conditions required by the I.R.C. are met, and further presuming the law of the applicable state permits family support, the I.R.S. should allow the full deduction by the payor and require the full amount be included in the payee’s income. In Florida, there is no statutory provision for “family support” per se.8 However, that does not mean it is not or should not be recognized. Indeed, settlement agreements including family support have been approved and incorporated into final judgments.9 Absent an agreement, some courts believe that a separate child support guideline amount is mandated by §61.30, Fla. Stat., and necessary for the appellate court to determine whether the child support guidelines were properly applied. They have thus reversed undifferentiated or unallocated awards – thereby effectively disallowing any tax savings for the family.10 Other courts, however, have permitted and/or recognized undifferentiated or unallocated awards.11

The apparent nonuniformity in the case law notwithstanding, it is clear that under §61.30 (11) (a) 11, Fla. Stat., a court may deviate from and adjust the child support guidelines amount as “needed to achieve an equitable result . . . . “ Certain, a needed and equitable result is achieved by paying less in income taxes to Uncle Sam and preserving funds for the family. Such deviation was arguably intimated in Nilsen v. Nilsen, 63 So.3d 850 (Fla. 1st DCA 2011), which reversed and remanded the unallocated alimony and child support award because the trial court “failed to give sufficient consideration to the guidelines” or calculate the husband’s income but appropriately observed “the trial court may ultimately determine that the guideline amount is unjust or inappropriate.”12

If “family support” is ordered and the I.R.C. conditions satisfied, the payee spouse cannot fail to include the full amount on his or her income tax return arguing that a portion is “really” child support. This is so because I.R.C. Section 71(c)(1) expressly requires that the amount of child support must be specifically fixed by the “terms of the divorce or separation agreement,” and not outside of the instrument (such as the amount the state’s child support guidelines would otherwise require). Thus, when tax time comes, the payee spouse must report the full family support income on his or her income tax return.13

For example, in Simpson v. Commissioner, 78 T.C.M. 191 (U.T.C., 1999), the order directed the husband to pay $718 as unallocated support for his spouse and children. The wife excluded the support payments on her 1994 and 1995 income tax returns claiming that despite the unallocated award “the entire $718 per month should be attributed to child support because under Pennsylvania Support Guidelines . . . Mr. Simpson was required to pay $789 each month for the support of his two children”. Therefore, she postulated “the entire $718 payment should be considered child support under Section 71(c) for federal tax purposes.” The Tax Court disagreed, concluding:

To determine whether any portion of the payment is child support, we look solely to the language contained in the court order itself. See sec. 71(c)(1). The language of section 71(c)(1) is clear that for payments to be child support, the written divorce instrument by its terms must fix a sum which is payable as child support. It is inappropriate, in light of this clear statutory language, to look beyond the written instrument to examine what effects, if any, are made by operation of State law. If Congress had intended for us to look beyond the written instrument, it would have amended section 71(c)(1) to so reflect.14

Another interesting illustration is found in Smith v. Commissioner, T.C. Summary Opinion 2010-15, where the order directed the father to pay $1,287 per month as “support for [his spouse] and one child.” The order
further stated that it “was based on guideline [sic] per consent of parties.” The spouse (mother) did not report the support payments on her income tax return claiming the payments were child support because of the order’s reference to “guideline.” She lost, with the Tax Court observing:

Assuming, arguendo, that a simple reference to the [child support guidelines] grid would produce an accurate figure for what portion of the amounts received was for child support, [the mother] has not satisfied the requirements of section 71(c)(1). The amount of child support must be fixed by the terms of the instrument. (Italic’s added.)¹⁵

**Net Operating Losses and Capital Loss Carry Forwards**

Particularly these days, on the heels of reeling and poor economic times during which many have lost thousands of dollars in the market, be it marketable securities, business interests, real estate or otherwise, the family law practitioner must not overlook those losses. Such losses are actually “assets” for equitable distribution purposes.

Net operating losses (NOL’s) are usually generated from losses actually sustained in the running or operating of a business enterprise as opposed to merely being a passive investor in a business. In simple terms, if a husband or wife operates a business that loses money, that loss will usually generate a net operating loss or NOL. Capital loss carryforwards (CLCF’s) are often incurred by losses on stock or similar sales. If the spouses or a spouse incurs a NOL or CLCF during the marriage based on the operation or sale of marital property, the NOL or CLCF is considered marital and subject to equitable distribution.¹⁶ Conversely, where the NOL or CLCF results from a loss related to nonmarital property, the loss would not be subject to equitable distribution.¹⁷

Title to the underlying asset to which the NOL or CLCF pertains is significant. If joint, the amount of the NOL or CLCF can be assigned and simply equally divided and distributed between the divorcing spouses. The parties can each then use the NOL or CLCF’s in succeeding years as they deem fit and as permitted by the I.R.C. CLCF’s for individuals from sales or exchanges of capital assets or exchanges of capital assets are permitted only up to the extent of gains from such sales or exchanges plus up to $3,000 of ordinary income (or $1,500 if married filing separate).¹⁸ Essentially, a person is limited to $3,000 per year but CLCF’s can be carried forward for an unlimited period of time until exhausted.¹⁹ NOL’s, on the other hand, generally can be carried back two years or carried forward for twenty years and NOL’s are not subject to any per year “cap.”²⁰ NOL’s can be used to offset ordinary income such as salaries, dividends, and interest without any limitation, up to the amount of the NOL’s.

Complications ensue when the NOL or CLCF’s are marital but titled in one spouse’s name alone. In such event, they are not assignable²¹ and thus not divisible or distributable “in-kind” to the non-owning spouse.²² Alternative methods to equitably share (distribute) the NOL’s or CLCF’s must be utilized lest the non-owning spouse will be shortchanged.

One option is to attempt to value the NOL’s or CLCF’s which one court has cautioned “can be complicated” as they “are indefinite, prospective, and may require analysis of present value.”²³ To be sure, attempting to present value the NOL’s and CLCF’s involves hypothesis and speculation including, but not necessarily limited to, approximating future income, estimating tax rates, deductions, credits and exemptions, determining an appropriate discount rate, and potentially utilizing life expectancies. This speculation concern could be even greater now given the 2013 amendment to Section 90.702, Fla. Stat., adopting the much stricter expert testimony test for opinion evidence provided in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Further, the present value method could ultimately result in a windfall for one of the parties, at the expense of the other, such as if one spouse “prematurely” dies.

Another possible option, if the circumstances permit, is to have the owning spouse liquidate and distribute income tax laden assets, such as funds in an IRA or other retirement account, to the other spouse. In doing so, the owning spouse will take the tax “hit” upon the liquidation and distribution, but by applying the NOL or CLCF, they will avoid any actual or realized taxation thereon to either spouse. For example, assume the husband who is over age 59½ owns an IRA which is the only marital asset and is worth $200,000. Assume further the husband also owns, in his sole name, NOL’s in the amount of $300,000. Ordinarily, to equalize the IRA distribution, he would have to transfer (roll-over) the wife’s $100,000 one-half share of the $200,000 into an IRA or other retirement account in the wife’s name to avoid taxation on the transfer. The wife would ultimately bear a tax when she withdraws those funds from her retirement account. However, if the husband were to liquidate and distribute the $100,000 from his IRA and pay the sum to the wife or transfer the money into a savings or similar non-retirement account in the name of the wife, she would receive the $100,000 tax free and although the husband would have to report the $100,000 on his income tax return, he will be no worse off (i.e. he would not have to pay any income taxes) by applying $100,000 of the wife’s “marital” NOL’s to the taxes he “incurred” by the liquidation.

Of course, if the husband in the foregoing example were under age 59½, he would incur a ten percent penalty for early withdrawal which cannot be offset by the NOL’s. In such event, this option may be less appealing.
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“Family Support and Losses” from page 11

ing to the parties but still could be viable if the non-owning spouse desires his or her share now and “tax free” and is willing to pay the 10% penalty out of his or her share or agreeable to the owning spouse being compensated in some fashion for taking the 10% penalty “hit.”

A third option would require the spouse owning the NOL's and/or CLCF's to pay to the non-owning spouse one-half of the tax savings each year that is generated by the use of the NOL or CLCF within “x” number of days from the filing of the income tax return until the NOL's or CLCF's are exhausted. Although this method requires retention of jurisdiction to enforce and could conceivably continue for many years, it does fairly compensate the non-owning spouse for the owning spouse’s use of the other’s one-half share of the NOL's or CLCF's on an if, as, and when received basis. It involves actual tax savings and not speculation that inures with the present value method.

Conclusion

Family support can be a great way to save income taxes and provide the parties and their child(ren) with additional funds for their support and to pay expenses. It should at least be considered in every settlement negotiation. Although there are always exceptions, even the most embattled divorcing spouses should be amenable to spend as little as possible on taxes. Courts are certainly empowered to consider income tax implications in their support awards, provided appropriate evidence is presented with regard to same. It would seem that so long as child support guidelines are prepared and considered, the conditions of §71(c)(2), I.R.C., are covered, and presuming the court finds it equitable to deviate and makes the necessary findings, the court should be permitted to award family support and “save” the parties income taxes.

As for NOL's and CLCF's, if either or both are involved, those are “losses” that can in actuality be significant marital assets to be equitably distributed in some form or fashion, the specific method of distribution of which being dependent upon title thereto and other marital assets of the parties.

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Endnotes

1 Wagner v. Wagner, 885 So.2d 488, 492 (Fla. 1st DCA 2005). See also, Kuper v. Kuper, 632 N.W.2d 123, n.2 (Wis. Ct. App. 2001) [“Family support” is a substitute for child support and maintenance orders, and the designation of payments as “family support” is designed to place the tax burden on the recipient, similar to alimony or maintenance.]; Miller v. Commissioner, T.C. Memo 1999-273, Keen v. Commissioner, 407 F.3d 186 (3d Cir. 2005).

2 Section 71(c)(1), I.R.C.; Abern v. Abern, 572 So.2d 927 (Fla. 3d DCA 1990).

3 Section 71(c)(A) and (B), I.R.C.; I.R.S. Publication 504 (October 31, 2013).

4 This was not always the case. Sections 22(k) and 29(a) of the I.R.C. of 1939 (as amended by the Revenue Act of 1942) and the I.R.C. of 1954 generally defined taxable alimony as periodic payments received in discharge of a legal obligation which because of the marital or family relationship is imposed on the payor spouse under a written instrument of separation. Such “rule of inclusion” excluded any portion of the periodic payment which expressly fixed an amount as a sum payable for the support of minor children. Sections 22(k), I.R.C. of 1939 and 71(b), I.R.C. of 1954. In Commissioner v. Lester, 366 U.S. 299 (1961), the divorce agreement provided the periodic payments be reduced by one-sixth after each minor child married, emancipated or died. The Commissioner disallowed the full deduction by the payor claiming one-half was child support. The U.S. Supreme Court disagreed holding the agreement must expressly fix a sum certain or percentage as child support to be excluded from taxpayee’s income. If no amount is so specified “the entire amount goes in to the income of the wife.” Congress modified that rule to its present state by the Deficit Reduction Act of 1984 and Tax Reform Act of 1986.


6 Do not do that which was done in Kuper v. Kuper, 632 N.W.2d 123 (Wis. Ct. App. 2001) [Court observed “The 1995 stipulation and order called for Craig’s payments to Leslie to end on May 31, 1997, a date within four months of the day the parties youngest child would obtain the age of majority. Thus, the payments were presumed to be child support under §71(c) of the Code, and the regulations thereunder, and presumed to be non-deductible on Craig’s tax returns.”]. See also, Johnson v. Commissioner, T.C. Memo 2014-67 [Although decree stated former husband's “spousal maintenance” payments were deductible by him, he was not entitled to the deduction because the payments terminated on the former wife’s death, her remarriage, or the graduation from high school of the youngest child.]; Handy v. Commissioner, 2011 Tax Court Summary Opinion 61 [Former husband’s alimony deduction denied for his “family support” monthly payments of $1,100 because they terminated upon events related to children]; Schilling v. Commissioner, T.C. Memo 2012-256 [Where former wife received what was effectively family support which reduced from $2,125/mo. to $1,925/mo. when the eldest child left for college in August 2006, and was to terminate in March 2019, for her 2006 income tax return she was required to treat $3,100 ($1,925 x 8 months) as non-taxable child support].

7 See Shepherd v. Commissioner, T.C. Memo 2000-174 ["The time is selected independently of any contingencies relating to the children if it is merely a coincidence that the date payments are reduced falls near a child's birthday."]

8 See, e.g., Wis. Stat. Sec. 767.531 ["The court may make a financial order designated ‘family support’ as a substitute for child support orders...and maintenance payment orders...”]; Cal. Fam. Code Sec. 92 [“Family support” means an agreement between the parents, or an order or judgment, that combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support.]; Mont. Code Sec. 40-4-121(1) ["In a proceeding for dissolution of marriage...either party may move for temporary maintenance, temporary support of a child of the marriage entitled to support, or a temporary family support order” but if a party is receiving public assistance “the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any.”]; 231 Pa. Code Rule 1910.16-4(f)(1) ["An order awarding both spousal and child support may be unallocated or state the amount of support allocable to the spouse and the amount allocable to each child. Each order shall clearly state whether it is allocated or unallocated even if the amounts calculated for child and spousal support are delineated on the order.”]

9 See, e.g., Caryi v. Caryi, 119 So.3d 508 (Fla. 5th DCA 2013); Swain v. Swain, 932 So.2d 1214 (Fla. 1st DCA 2006).

10 See, e.g., Greenhouse v. Greenhouse, 913 So.2d 1201 (Fla. 4th DCA 2005); Fleischfresser v. Accursio, 833 So.2d 803 (Fla. 3d DCA 2002); Blum v. Blum, 769 So.2d 803 (Fla. 4th DCA 2000); Greenman v. Greenman, 834 So.2d 1303 (Fla. 4th DCA 1998).

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The Kids Are Alright
By Doreen Inkeles, Esquire, Boca Raton

As of 2010, about 2.7 million children under the age of 18 had a parent in jail or prison.1 In 2007, it was 1.7 million children. According to the 2007 survey, approximately one half of those children were under age 10.2 More than a third of minor children will reach age 18 while their parent is incarcerated.3 Seventy-five percent of women and 65% of men who are incarcerated have children.4 14,000 children of imprisoned parents annually enter foster care, while an undetermined number enter the juvenile system or adult prisons.5 Incarcerated parents lose their parental rights at a disproportionate rate due to the Adoption and Safe Families Act (ASFA) which set time limits of 15 of the last 22 months for initiating TPR actions.6

There are short-term and long-term effects of a parent’s incarceration on children. One in five children is present at the time of an arrest and witnesses a mother being taken away by authorities.7 At least one study has shown that these children suffer nightmares and flashbacks to the arrest incident.8 Providing information to children about the arrest has met with pro and con arguments. Some say they should be protected from the information to minimize the trauma associated with the separation.9 Others argue that the failure to disclose by family, friends, and caregivers exacerbates the emotional distress—this is known as the “conspiracy of silence.”10 Mothers are more apt to disclose than fathers, even when it comes to their own incarceration.11 The literature shows that children who are uninformed of their parent’s incarceration are more anxious and fearful,12 that children need to have honest, factual information and have their experience validated, and that providing them with reliable, dependable information allows them to make sense of their situation and begin the process of grieving the loss of their parent and coping with their new life circumstances.13 “Children of prisoners are more likely to have negative reactions to the experience when they cannot talk about it.”14

The long-term effects of a parent’s incarceration are numerous. Literature suggests that these can include feelings of shame, grief, guilt, abandonment and anger, as well as social stigma, disconnection from the parent, poor school performance, impaired ability to cope with future stress and trauma, potential addiction and negative perceptions of police and authority figures.15 School-age children exhibit school-related and peer-related problems—poor grades, unwillingness to go back to school, aggression, although many of these problems are temporary.16 Children are often teased or ostracized because of their parent’s incarceration; for older children, suspension and dropout rates are higher as a result.17

The most important determinants of child adjustment during the period of incarceration are 1) the nature and quality of the alternate caregiving arrangements and 2) the opportunities to maintain contact with the imprisoned parent.18 Contact can take many forms—letters, phone calls, and in-person visits if distance permits. In Florida, Securus Correctional Billing Services is the service to facilitate the phone calls. You can set up an account with a credit card, a pre-paid credit card or by check. Programs to aid incarcerated parents and their children are numerous and varied. In Florida, many of them can be found at http://floridafamilynetwork.org/resourcedirectory.html. Distance, of course, can be a barrier to in-person visitation. The family may reside in South Florida and the inmate, in Central or Northern Florida. Other barriers are psychological. Parents, caregivers, and social workers may have resistant attitudes toward child-inmate visitation, believing that the children may react negatively or very simply, that the imprisoned parent simply doesn’t deserve such privileges.19 The literature, however, shows that visiting can calm children’s fears about their parent’s welfare as well as their concerns about the parent’s feelings for them.20

It’s 8 a.m. Saturday morning. Taking the kids to see my ex at Martin Correctional. He’s been in jail since 2009, prison since 2011. DUI Manslaughter. Prison is better than jail for visits because in jail, visits are truly behind a glass window with only phones to hear. And only two visitors at a time, so the kids had to alternate. Sometimes the phones didn’t work and we had to bounce around to empty cubicles looking for one that did. You couldn’t bring your purse in, so no hand sanitizer to wipe down the receivers. I tried not to think about how many people coughed into those phones before us, but I never noticed a correlation between jail visits and colds.

The kids pile into the car with their iPhones and headphones. They’re 17 and 20 now, not interested in the Pink Floyd or Earth, Wind & Fire downloaded on my phone. This is year five of institutional visits for them. Although I can’t hear what I believe is Teddi’s country music from the passenger seat, the pounding heavy bass of Gideon’s Rap tunes won’t be contained by headphones. “TURN IT DOWN, PLEASE,” I say, with the commensurate thumb gesture. After all, it’s not like he can hear me.

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Teddi’s birth certificate in my wallet. Even though she has a perfectly valid driver’s license for I.D., you still need the birth certificate for minors. You can’t argue with the guards about how silly that rule is when the kid has a valid government-issued I.D. and how far you’ve driven to make this visit. They will turn you away. They always win. In my pocket is $30 in small bills (max allowable is $50 per person), my own driver’s license and key fob. Everything else has to stay in the car, including your full key ring. Hollywood really took some license in *Flight* when Denzel’s kid visited him at the end with the tape recorder to interview his dad on the topic “The Most Important Person I Never Met.”

I would’ve cried during that scene had I not been so caught up in the mechanics of knowing that the bad boy of a tape recorder would’ve been snatched up after hitting the metal detector.

The drive is 77 miles, about an hour and 15 minutes. Half a tank of gas back and forth no matter how you measure it. It’s almost a straight shot, open road with no traffic. The facility is pretty far west, out in the boonies, with lots of fields and an occasional cow. We pull up to the low brown buildings surrounded by chain fences and rows and rows, top to bottom, of rusted coiled barbed wire. There is plenty of parking. We sign in, who we are, who we are visiting, and his inmate number, 6-digits, easy to memorize. There are some picnic tables under a covered area opposite the main building and we sit down to wait. It’s 9:20. Several other families are already there, a mix of Blacks, Whites, Hispanics. Some of them have young children with them, ranging from infants to what look to be 8 or 10-year-olds mostly. Everyone is appropriately dressed, meaning loose clothing, no sleeveless or tank tops, no camouflage, no white tee-shirts, nothing tight or short. Occasionally, people get nailed for too tight or too short, and then you have to go to the Walmart a few miles down the road for a wardrobe change. Sandals are okay, jewelry is okay. The younger children are generally pretty quiet, but they seem to engage with the others. They always get compliments on the good shoes they have on. Some folks have clear plastic pouches with their money and key in it, maybe no pockets. For infants, you can bring in a small bag with the necessaries, diapers, bottles, wipes, even a car seat, although it will be searched of course.

The wait to first get inside can be as short as 20 minutes or as long as an hour and a half. And then, once you get all the way inside and give the brown-uniformed guard your slip of paper, you can wait another 30 minutes or so until they bring him down. The waiting is probably the hardest part of it. Early on, during the first few visits, I had such contempt for the waiting process. *Don’t you know who I am? What am I doing in this place, we don’t belong here!* The kids didn’t seem to mind though; I didn’t see contempt or anger in their eyes. Just expectancy and maybe some boredom. The other families, including the young children, patiently accepted the wait. Their inmates were loved ones, and they wanted to see their dads, my kids too. *Leave your pride, ego, and narcissism somewhere else.*

Reactions from those parts of you will reinforce your children’s most primitive fears. We’ve waited longer to go in and see the doctor. I’ve had longer waits at motion calendar. I learned to cut the petulant crap.

Once we get inside, my daughter and I go into one room and my son into another for a pat-down search. We have a female guard of course. “Shake out your bra.” We shake. “No, not like that—pull it out from the bottom and shake it out.” We shake correctly. Arms out, legs shoulder-width apart. Rubber-gloved hands run from our fingertips down along our bodies. When they get to the leg there is a hand on the inside and outside of the thigh. *Darlin,’ that’s a little close, doncha think?* Teddi just smirks and rolls her eyes. She’s had ‘friendlier’ searches from TSA people. Shoes off, pick up the bottom of your feet, shake out the shoe, ok, you’re good. Then we go quickly through the metal detector—no need to stand in the middle of it with your hands over your head sucking in your stomach like at the airport. We go to the glass window where the guard double checks our information in the computer. The metal door slides open with a bang and roar. If the plane sounded like that there would be three less travelers that day. We’re inside.

It’s the commissary, a cafeteria. Long rows of brown tables and chairs. Signs taped to the ends of the tables designating which side is for inmates, which side is for visitors. White cinder block walls. Two soda machines against the far wall, one Coke, one Pepsi. And two vending machines with snacks. There’s one concession stand manned by an inmate filling orders and making change. No point of sale machine (f/k/a cash register) but he seems to do okay with the change. It’s too early to hit the stand. We give another guard our paper with Dad’s information on it and go outside to the yard to commandeer an empty picnic table before they fill up. The kids prefer to be outside if it’s not too hot. The cafeteria is clean enough and the smell of various and sundry foods being microwaved isn’t offensive. It’s just dim and a bit claustrophobic in there. Outside under the open sky feels more normal.

Our heads are resting on the picnic table when one of the kids sees him crutching through the campus. “There he is!” They call to him. He raises a crutch and waves to them. The energy picks up. The guards have to strip search him inside before they send him out so it’s still another few minutes.

As they see him come through the door to the outside, they stride over to him and greet him with big hugs. They’re a lot faster getting to him than him to them on the crutches.
I just stay seated. He put on probably 100 pounds in the first couple of years just in jail, but they’re used to the seeing the extra weight. When the weight gain was obvious in the beginning, Teddi laughed and said he looked like a Fat Santa. He laughed back. If you have canteen money, Snickers bars are tastier than bologna sandwiches. He lost most of his front crowns in the first year of prison. No cosmetic dentistry there. They don’t seem to notice the missing teeth anymore either. He looks whiter and pastier than last time against the pale blue prison uniform. Death warmed over, but I don’t share that thought. They help him prop his crutches as he lowers himself onto the bench, Teddi next to him and Gid opposite him next to me. The small talk starts, “how ya doin’? how are you? How’s everything…” Sixteen ways to ask the same question, but there’s time for the update on their lives to unfold, visiting hours are until 3. It’s 10:40 a.m.

He and Gid start talking about his college classes. It’s time for me to take the order and get on the concession line. Inmates aren’t allowed to handle money. “What do you want today?” Visiting days are the only times when the inmates get to eat anything with flavor. I have everyone’s order and go inside to get on the never-ending line. They don’t need me there. Inside, I see the young children in their good shoes. The signs on the edge of the tables about who stays on what side don’t mean anything to them and the guards aren’t strict with the placement when it comes to the little ones. There are board games like Chutes n Ladders and Sorry!, some families are engaged in them. Plastic blocks are on the table for the real little ones. I try not to think about hand sanitizer. One little girl giggles hysterically just because her dad keeps placing a bag of potato chips on her head and snatching it off with an “Ooops!!” Ten times, twenty times, it was her game. Cards were more popular with adult visitors. Sometimes my kids played cards with their dad. Crazy-Eights or Spades. Once we found a chess board. It was Dad and Teddi versus me and Gid. I never knew that Gid was a bit of a Chess Master. Neither did his dad. We both thought all non-academic knowledge was limited to football. “It’s plays and strategy, geez.”

I finally make it back to the table with the concession haul. A spicy chicken sandwich and a burger for him, popcorn and chocolate pudding for the kids, miscellaneous soft drinks. They didn’t have the chip-around (chipwich) he asked for so I thought I made a brilliant selection of a frosted honey bun instead. He looked at it, disappointed. “What’s the matter?” “I have a whole foot-locker full of honey buns.” Apparently, honey buns are pretty good for trading. Not as good as cigarettes though, which are the second most important commodity in prison. Toilet paper is up there too, you only get one roll every 10 days. Like the hand sanitizer, I didn’t think about what you did if you traded your toilet paper. I took the bun, the size of a lineman’s cleat, glistening through the package with creamy gooiness. There was nutritional information printed on the back. “I’ll eat half of it.” The kids didn’t want any. I ate it all, exceeding my caloric allotment for the day by 11:05 a.m.

Gid takes the burger and sandwich to the microwave ovens inside. That’s become the division of labor. I buy it; he nukes it. The ovens don’t heat very quickly and sometimes there’s a short line for them. While he is gone I make sure to thank their dad for the birthday money he had sent to them. Once when he was in with someone artistic, he commissioned a soccer birthday card for Teddi etched in pencil, a true professional job. I think the guy charged him a dollar. No agents there. She still has it. Gid comes back after a few minutes with the hot food on paper plates and slides it in front of his dad. “Here, made it myself.”

At 11:30 is Count. All of the inmates, inside the cafeteria and outside, have to go the center of our yard to be counted. For this area, it takes about 10 minutes. They do Count every day, several times a day. For the whole prison it actually takes an hour to an hour and a half for Count to clear because they’re counting everyone in the whole place. One time we arrived late, so by the time we got inside, Count had just started. We had to wait for the entire prison Count to clear before he came down, about 3 hours all told. We always made sure to leave much earlier after that experience.

When their dad comes back from Count, he and Gid get involved in a LeBron James discussion and then it shifts to the World Cup. “Did you know that scoring seven goals in a soccer game is like scoring 300 points in a basketball game?” Who knew? Teddi doesn’t have the spectator sport base for conversation and when there’s a break in the conversation
I ask her if she told her dad what she got on her A.P. English exam, or the activities she was doing senior year, or the upcoming college visits. She’s not as effusive as Gid, but occasionally she will put her head on his shoulder while he pats her hair and she laughs at his stories about his more off-beat roommates, like the one who ate pencils so he could be sent to the infirmary. She has no problem sharing food with him and her eyes always well up when it’s time to leave. His hands have been flapping and tapping the whole time, something that could not have gone unnoticed. “What’s wrong with your hands?” “Anxiety.” “Oh. Do they give you something for it?” “Yeah.” Doesn’t seem to be working very well, I think.

My job is not prison reform. I ask the two men if they know how much money LeBron makes.

It’s 1:15. There are more lulls in the conversation. I say its time to go. He asks if we could make it 1:30. I say ok. By the end of the visit he has more color and life in his face, not so white and pasty. The soul is healed by being with children. He walks us back into the commissary so we can get to the exit. The kids hug him goodbye. “When are you coming back?” I know it’s going to be awhile because Gid is going back to school soon for football camp, and Teddi does better when her big brother is with her. They had a nice visit. A little deception would not be uncalled for. “Soon.”

The kids sleep in the car the whole ride home. When they get home, they go back to their phone apps and their friends, just another day. I know they are better for having made the visit. 

Doreen Inkeles is a Board Certified Specialist in Marital & Family Law. She has been practicing family law for over 20 years. Doreen received her law degree at St. Thomas University School of Law and her undergraduate degree from Emory University. Doreen resides in Coconut Creek, Florida. She has two teenagers, a senior in high school and a junior in college.

Endnotes
1 Michael Lee Owens, Comment, Civil Liber-
4 See Note ii.
5 See Note i.
6 See Note i.
8 Id. (Parke and Stewart).
9 Id. (citing Becker & Margolin, 1997)
10 Ross and Parke.
11 Id.
12 Id (citing Johnson, 1995)
13 Id. (citing Nolen-Hoeksema and Larson (1999.
14 Id. (citing Johnson, 1975).
15 See Note 1.
16 Park and Ross (citing Sack et al 1987).
17 Park and Ross (citing Trice, 1997).
18 Park and Ross
19 Park and Ross (citing Hairston, 1991).
20 Park and Ross (citing Sack, 1977).
21 Henry Cloud
22 Michel de Montaigne, The Complete Essays.
23 Fyodor Dostoyevsky.”
24 Margery Williams, The Velveteen Rabbit

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Beyond Thunderdome

By Jerry Rumph, Esquire, Tallahassee

The Tallahassee Bar Association (TBA) is a unified voluntary bar organization. In 1969, the predecessor to The Legal Aid Foundation of the Tallahassee Bar Association, Inc. was formed and the Tallahassee Bar Association has been dedicated to pro bono service ever since. For much of its history, the Tallahassee Bar Association has required its members who have been admitted to the Florida Bar for less than twenty years to perform pro bono services, mainly through Legal Aid Foundation.

However, the Tallahassee Bar Association had been struggling with drastically declining membership numbers in the late 2000s and in 2012, the organization voted to remove its mandatory pro bono requirement.

Since then, membership has begun to increase. Unfortunately, the number of Legal Aid Foundation pro bono cases has skyrocketed as well. Like many communities, most of the clients coming to Legal Aid Foundation seeking pro bono representation are struggling with family law matters, such as divorce, post-divorce, parenting, and child support issues.

But many TBA members have expressed fear of accepting a family law pro bono case for several reasons: members do not practice family law, some don’t know the ins and outs of family law procedures and family law cases are too emotionally charged. For many members, accepting a family law pro bono case is overwhelming.

Despite removing its mandatory pro bono requirement for membership, the TBA has remained committed to the mission of its Legal Aid Foundation and has charged a pro bono committee with the task of increasing legal representation for indigent persons in need of representation. Most significantly, under the leadership of Anne Munson, Legal Aid Foundation’s executive director, and with the assistance and financial sponsorship of the Young Lawyers’ Section of the Tallahassee Bar Association, the Legal Aid Foundation has launched its inaugural class of Thunderdome Tallahassee, a hands-on legal group training program to provide education, camaraderie, networking, mentoring, leadership and recognition to a new generation of lawyers serving the community.

Thunderdome Tallahassee is modeled after Thunderdome programs in Chicago and Connecticut. However, those programs were more limited and were intended for simplified dissolution of marriage. Thunderdome Tallahassee is taking the project to the next level by addressing nearly all family law matters. In addition, Thunderdome Tallahassee is trying to model aspects of Leadership Tallahassee, a leadership development and community service program of the Greater Tallahassee Chamber of Commerce.

To start Thunderdome Tallahassee, Anne Munson and the Young Lawyers’ Section of TBA submitted applications for grants and sought sponsors to fund the program. Once sufficient funding was secured, Ms. Munson formed a Thunderdome committee, which included herself, local attorneys, FSU law professors, Second Judicial Circuit Judge George S. Reynolds, III, and community leaders. Committee members established a curriculum, developed program forms, and sought mentors from the local family law bar and attorney-participants from other local law firms. Fifteen to twenty participants were sought; twenty-one applications were received. Due to their great diversity and qualifications, including one non-family law attorney with thirty years of legal experience, all twenty-one applicants were selected to participate in the inaugural class.

In Thunderdome Tallahassee, participant attorneys are assigned a pro bono family law case, which they handle over the course of the program. Cases are screened for program suitability by committee members.

The program will last for nine months, beginning in September 2014. During classes, participants receive instruction on a variety of topics, including client interaction, diversity, and all substantive family law topics, such as child support and equitable distribution. Some classes will include panels composed of the local judiciary. The Thunderdome Tallahassee classes are also approved for CLE credits, including marital and family law certification credits, by the Florida Bar.

In addition to classroom training, participants are assigned to a family law mentor. Mentors will assist participants in handling their cases and are encouraged to attend classes with participants. The mentors have access to a mentor panel. The mentor panel will make decisions about case reassignment, withdrawals, and provide other support as necessary. If a participant works through his or her case quickly, another pro bono case will be screened and assigned to that participant. Participants and mentors have committed to remaining with their cases until case completion.
2014 Leadership Retreat - Palm Harbor, FL
tion, even if case completion occurs after the first Thunderdome Tallahassee class finishes the program.

Through education, experience, mentorship, and interaction with the local judiciary, the Thunderdome Tallahassee curriculum directly addresses a non-family law attorney’s fear of accepting a pro bono family law case. As a direct result, Tallahassee’s indigent population will receive greater access to courts through committed, competent representation.

For more information on Thunderdome Tallahassee, please visit legalaidtallahassee.org. You can also participate in LAF’s Like-a-thon for their Facebook page at www.facebook.com/LegalAidFoundationTallahassee.

Jerry L. Rumph, Jr., is an attorney at the Law Office of Linda A. Bailey, P.A., where he practices exclusively marital and family law. Jerry practices marital and family law because he is able to make a meaningful difference in the lives of persons experiencing difficult situations. Previously, Jerry was a shareholder at Grant & Rumph, P.A., where in addition to marital and family law, Jerry practiced in the areas of business law, commercial litigation, and real property law. Jerry was admitted to the Florida Bar in 2010 after graduating from Florida State University with a Juris Doctor and a Master of Business Administration. Jerry received a Bachelor of Arts from the University of South Florida.

Endnotes
Vaccinating Problems

By Ronald H. Kauffman, Esquire, Miami

When Jacob Holmes turned one, his pediatrician administered the MMR II vaccine in conformity with the recommendations set by the Centers for Disease Control and Prevention. Within nine days, he was having seizures. Six months later Jacob was dead.1

After the whooping cough vaccine was invented in the 1940s, many thought the highly contagious disease had been conquered. Yet in 2010, a whooping cough outbreak in California killed ten infants and hospitalized hundreds.2 Studies would later prove that unvaccinated children fueled the California tragedy.3

With each new school year, some parents argue whether to immunize their children4 and the majority do.5 However, a minority of parents object to vaccinations.6 A few objectors assert their individual liberties.7 Others are risk averse to the potential impact of vaccinations.8 Celebrity anti-vaccination campaigns, a new form of McCarthyism, confuse many.9 Primarilythough, objecting parents hold sincere religious beliefs against immunization.10

There are two vaccination opinions in Florida, and the facts in each are strikingly similar. In both cases, the parents shared parental responsibility. Both involved chiropractors as parents who were involved in their children’s health care. Moreover, in both cases the health care professional parent opposed vaccinations.11 Ironically, the outcomes in the two cases were very different.

This article briefly examines the parental responsibility statute, the two Florida cases in which the decision to vaccinate a child was an issue brought to trial, and traces the development of religion as a factor in parental responsibility cases.

Getting to the Point: Ultimate Responsibility

Generally, shared parental responsibility is a relationship ordered by a court in which both parents retain their full parental rights and responsibilities. Under shared parental responsibility, parents are required to confer with each other and jointly make major decisions affecting the welfare of their child.12

In Florida, shared parental responsibility is the preferred relationship between parents when a marriage or a relationship ends. In fact, courts are instructed to order parents to share parental responsibility of a child unless it would be detrimental to the child.13

Issues relating to a child’s physical health and medical treatment, including vaccinations, are major decisions affecting the welfare of a child. When parents cannot agree, the dispute is resolved in court.14 At the trial, the test applied is the best interests of the child.15

Determining the best interests of a child is no longer entirely subjective. Instead, the decision is based on an evaluation of 20 statutory factors, and one equitable catch-all factor, affecting the welfare and interests of the child and the circumstances of the child’s family.16

The legislature has given a booster to the statute by authorizing one parent to have ultimate responsibility for certain decisions.17 For example, health care is an area of ultimate responsibility a court can award. When a decision on vaccination goes to trial, the court does not make the decision to vaccinate a child. Instead, the court grants one parent ultimate responsibility to make that decision.

Double Dose: McGrath and Winters

McGrath v. Mountain was a paternity action.18 The parents entered into a partial agreement but could not agree on whether the child should be immunized. The parents went to court on the immunization issue alone.19

The Father’s case-in-chief focused on the health benefits of immunization. The Mother, a chiropractor who used holistic medicine and homeopathy in treating her son, opposed immunization. The Mother’s case consisted of evidence to support her position on both medical and religious grounds.

The trial court ruled that it would be in the child’s best interest to allow the mother to make the ultimate decision regarding the child’s immunization. The court did not offer any further findings on the religious or public safety controversy over vaccinations.

The Fifth District affirmed. Applying a competent, substantial evidence standard, the McGrath court ruled that the trial judge had sufficient evidence before it to support the decision and declined to substitute its judgment for that of the trial judge’s.

It is important to remember that in McGrath, the Mother introduced evidence to support her position on medical grounds, not just religious grounds. Unfortunately, the McGrath panel did not address the impact of the Mother’s religious views, or the risk of harm to the child that vaccinations may or may not cause.

In Winters v. Brown the Mother was also a chiropractor and proponent of holistic medicine.20 A tenet of the Mother’s beliefs was that God created the human body with an innate immune system that enabled the body continued, next page
Vaccinating Problems
from preceding page

to heal itself. Anything introduced into the body to prevent disease or treat illness is against the will of God. The Mother fervently opposed vaccinations on religious grounds.

The Mother was not only a health-care professional, she was also very involved in her child’s health care. The Mother never vaccinated the child, but instead obtained Florida’s lawful exemption from immunization. Evidence introduced at trial confirmed that the child was healthy without vaccinations, and that the child had suffered no harm to date from not being immunized.

Conversely, the Father wanted the child to receive traditional medical care, including vaccinations, and the issue was brought to trial. The trial court held three hearings to determine responsibility for the minor child’s health care. Both parties introduced experts to testify about the life safety and effectiveness of vaccinations.

The Father’s expert testified that vaccinations are safe and effective and that children who are not vaccinated are at increased risk for problems with infections. Moreover, children who are not vaccinated put other children at risk of harm in their schools and where they play.

The Mother’s expert testified that one in five children in this country suffer from some form of neurodevelopmental disorder, so we have to question the role vaccines play in introducing toxic materials into the brain, and impairing the protection that children have with the blood-brain barrier. The Mother’s expert concluded that “it’s less harmful for a child not to be vaccinated than it is for a child to be vaccinated.”

The trial court found the issue was not “simply exposing the minor child to the mother’s religious beliefs and practices,” but an issue “that could cause physical and serious harm to the minor child.” Based on the finding of harm, the judge determined that it was in the best interests of the child to award the Father ultimate responsibility regarding vaccinations.

The Fourth District affirmed based solely on a substantial competent evidence review. The opinion did note that court ordered restrictions on religious practices have generally been overturned, but concluded that religious practices can be restricted when there is a clear, affirmative showing that they “will be harmful to the child.” As will be discussed below, Winters is not the first time that religion needed its way into a marital dispute.

Injecting Religion into Parental Responsibility Decisions

Religion, religious beliefs, and religious practices are not specific statutory factors in determining parental responsibility. Nor are they areas in which a parent may be granted ultimate responsibility. Instead, the weight religion plays in custody disputes incubated over time in various cases.

The earliest Florida case in which religion was a factor in deciding parental responsibility was the First District case of Rogers v. Rogers. In Rogers, the appellate court considered a final judgment restricting one parent from exposing the children to that parent’s religion.

The Mother was a member of The Way International, and the Father introduced evidence that The Way made the Mother an unfit parent. He alleged The Way psychologically brainwashed her, that she had become obsessed, and was neglecting the children.

The trial judge awarded custody to the Mother provided that she sever all connections, meetings, tapes, visits, communications, or financial support with The Way, and not subject the children to any of its dogmas.

The Mother appealed the restrictions as a violation of her free exercise of religion.

The First District reversed, and held the trial judge’s restrictions were unconstitutionally overbroad and expressly restricted the Mother’s free exercise of her religious beliefs and practices. However, the Rogers court approved consideration of the Mother’s religious beliefs as “one of several factors aiding in its child custody determination.” The panel concluded that the trial judge could not condition custody on her curtailment of a religious activity or belief.

Mesa v. Mesa, was a case of first impression in Florida. In Mesa, the court considered a trial order which chose between two parents’ religious beliefs and practices. The parents were members of different churches. The Mother’s church was found to be more “charismatic,” but there was never evidence the Mother’s church was harmful to the children.

After a trial, the judge awarded primary residence to the Father, prohibited the children from attending the mother’s religious services and prohibited the Mother from educating the children in her religious practices.

The Fourth District overturned the trial court’s prohibition. The Mesa panel noted that courts around the country had been consistently overturning restrictions on religion unless there was a clear, affirmative showing that these religious activities will be harmful to the child.

The rationale for the Mesa holding is that allowing a court to choose between two parents’ churches, religious beliefs and practices — in the absence of a clear showing of harm to the child — violates the First Amendment as established in Rogers.

In Abbo v. Briskin, the same court that decided Mesa, held that a trial judge cannot order a parent to raise a child in a particular faith — even if there was an agreement between the two parents to raise the child in a particular religion.

When the parents met, the Mother
was Catholic and the Father was Jewish. Prior to marrying, the Mother verbally agreed to convert to Judaism. Shortly after the birth of their daughter, the mother converted back to Catholicism and filed for divorce. The principal dispute at trial was the child’s religion.

While the trial judge designated the Mother as the primary custodial parent, he ordered her to raise the child Jewish based on her prior verbal agreement to convert to Judaism. After rehearing, the judge also ordered her not to interfere in the child’s Jewish upbringing or to influence the child’s religious training in any direction other than Judaism. The Mother appealed.

Abbo is unique because the ruling was based on the parents’ agreement, not the ‘best interests of the child.’ The Abbo panel held that the court could not compel raising a child in a certain religion based on the parents’ agreement that one of the parents convert – especially after the parent has had a good faith change of religious conscience. Contrary to the Rogers line of cases, the Abbo court found “[t]here is absolutely nothing in the statutory listing that expressly makes the religious training of the child a factor that the court should consider.”

### Parting Shots

**Vaccinations** are safe but carry risks parents want to avoid. The increasing outbreaks of vaccine preventable illnesses, such as the 2010 California whooping cough epidemic show it can be more lethal not to inject. Given the high risk of harm from being unvaccinated, finding the refusal to vaccinate is not in a child’s best interest seems like a sure shot.

However, cases are never so sterile. For instance, not every parent objecting to vaccinations is going to be a cigarette company spokesperson who lectures people about public health in her free time. More likely, the objecting parent will have deep religious beliefs about vaccinations.

In considering the religious practices and beliefs of a parent, courts have to avoid religious discrimination, yet protect children from harmful religious practices. Vaccination disputes are interesting and high-stakes cases to watch for as the new school year approaches.

**Ronald H. Kaufman is board certified in marital and family law, and practices in Miami. He currently serves as Chair of the Commentator.**

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**Endnotes**

1. See *Holmes v. Merck & Co., Inc.*, 697 F.3d 1080, 1081 (9th Cir. 2012).
4. There is a difference between vaccinations and immunizations. A vaccination is an injection of a killed or weakened organism that produces immunity against that organism. Immunization is the process by which a person becomes protected from a disease. See Basics, available at http://www.vaccines.gov/basics/.
7. *See Jacobson v. Mass*, 197 U.S. 11 (1905) (Finding Cambridge’s compulsory vaccination for smallpox was a legitimate exercise of police powers.).
8. See 42 U.S.C. §300aa-10(a) (Establishing the National Vaccine Injury Compensation Program, more popularly known as “vaccine court”, in which compensation may be paid for vaccine-related injuries or deaths.).
9. *See e.g. Generation Rescue available at www.generationrescue.org* (listing Jenny McCarthy, as president, and issuing a statement in support of the Andrew Wakefield paper linking vaccinations and autism.) But see Brian Deer, *Wakefield’s “autistic enterocolitis” under the microscope*, British Medical Journal (2010) (Noting Andrew Wakefield’s paper linking autism to the MMR vaccination was retracted after he was found guilty of deliberate fraud.) Available at http://www.bmj.com/content/340/bmj.c127/?view-longmid=20395277.
11. It is no coincidence the objecting parents were both chiropractors. The primary belief of the chiropractic profession is in natural methods of health care. Chiropractors believe the human body has the ability to heal itself without surgery or medication. See Chiropractic Philosophy, American Chiropractic Association, available at http://www.acatoday.org/lev-e13_csm.cfm?t1ID=13&T2ID=61&T3ID=149
16. See Id.
18. 784 So.2d 607 (Fla. 5th DCA 2001).
19. Id. at 608.
20. 51 So.3d 656 (Fla. 4th DCA 2011).
21. Id. at 657.
23. 490 So.2d 1017 (Fla. 1st DCA 1986).
24. 652 So.2d 456 (Fla. 4th DCA 1995).
25. See Id. at 457.
26. 660 So.2d 1157 (Fla. 4th DCA 1995).
27. See also Sotnick v. Sotnick 650 So.2d 157, 160 (Fla. 3d DCA 1995)/Finding “the great weight of legal authority is against enforcement of such [religious training] agreements” and that “the statutory procedure for shared parental responsibility is controlling instead.”
Different Roles Psychologists and Mental Health Professionals Play in Your Case

By Deborah O. Day, Psy.D., Winter Park

Family lawyers and judges have recognized the important roles psychologists and mental health professionals play in their family law cases. This becomes particularly true when there are complex issues within the family system. Selecting the right professional for the right role in the case is often challenging. It is important to plan ahead and appropriately identify the needs in your case along with the needs of the family. This article is a discussion about the multiple roles available to assist in that process.

Let’s begin with a discussion about the credentials for various mental health professionals. Licensed psychologists can either have a Psy.D., Ph.D., or Ed.D. In order for a professional with one of these degrees to be licensed as a psychologist, they must qualify under Florida Chapter 490. School psychologists also qualify under this statute, although they have different qualifications and areas of practice. Florida Statute §490 was designed to distinguish psychological services from other mental health services and to ensure the practice of psychology and school psychology were provided by qualified professionals. The statute establishes the principle that unqualified persons present a danger to the public’s health, safety, and welfare.

Mental health professionals licensed under Chapter 491 include the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling. Florida Statute 491.003(c) states “this definition shall not be construed to permit any licensed, provisionally licensed, registered, or certified pursuant to this Chapter to describe or label any test, report, or procedure as psychological, except to relate specifically to the definition of practice authorized in this subsection.” Individuals qualifying under Chapter 491 for licensing can have a Master’s degree or a Ph.D. If the Ph.D. does not relate specifically to the qualifications under Chapter 490, the professional may use the title “Dr.” but may not identify themselves as a psychologist.

The term “psychotherapist” is a generic title that can be used by all mental health professionals. Custody evaluators and parenting plan assessors are not defined by licensing statute but defined under Florida Statute 61.20 Social Investigation and Recommendations regarding a Parenting Plan. These assessments shall be conducted according to the statute, the social investigation study “shall be conducted by qualified staff of the court; a child-placing agency licensed pursuant to Florida Statute 409.175; a psychologist licensed pursuant to Chapter 490; or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to Chapter 491.” It is important to recognize that under §61.122, psychologists are the only identified mental health professional in which the court addresses the presumption of good faith in developing a parenting plan recommendation. Florida Family Rule of Procedure 12.363 also specifically addresses the Evaluation of Minor Child, stating that “the court may appoint a licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation.” Choosing your expert should be based on credentials, training, experience, and reputation.

There are a variety of different roles for mental health professionals. They include psychotherapists, Guardian-ad-Litem (GAL), social investigators, parenting plan evaluators, Parenting Coordinators, trial consultants, work product review experts, and educational experts. This article briefly reviews each of these roles.

Psychotherapists provide essential services to families as they navigate the emotional stages associated with the dissolution of their family. Psychotherapists differ in their skills and knowledge of family law. It is important to select a psychotherapist based on their knowledge and experience in a particular case. There is debate whether there is compatibility between therapeutic and forensic roles. An argument provided in S.A. Greenberg and D. W. Shuman (1997) says that therapists violate ethics when they provide expert forensic testimony citing “irreconcilable conflict between these roles.” In contrast, Heltzel acknowledges that there are clear challenges; however, she concludes that the roles of therapists and expert witnesses are indeed comparable.

The purpose of Parenting Coordination is to provide a child-focused alternative dispute resolution process. The Parenting Coordinator (PC) can assist the parents in creating or implementing a parenting plan, offer
education, make recommendations, and with prior approval of the parents and court, make limited decisions within the scope of the court’s order on referral. Parenting Coordinators shall be licensed under Chapter 490 or 491 or a physician licensed under 458, be certified by the Florida Supreme Court as a Family Law mediator with at least a Master’s degree in a mental health field, or be a member in good standing of the Florida Bar. The statute requires the professional be three years post-licensing and attend a twenty-four hour parenting coordination training. Confidentiality of communication is identified and states that the Parenting Coordinator may not testify or offer evidence about communications made by, between, or among the parties and the Parenting Coordinator during Parenting Coordination sessions (61.125(7) with seven exceptions.

Guardians-ad-Litem (GALs) are often appointed to investigate allegations in the pleading affecting the child, and include interviews of the child, various witnesses, and other persons having information concerning the welfare of the child. The GAL has the ability to request the court order expert examinations of the child, the child’s parents, and other parties in the action. That order can include examination by medical doctors, dentists, psychiatrists, psychologists, and other mental health professionals. According to Chapter 61.404, “the GAL shall maintain as confidential all information and documents received by any source, except at the GAL’s discretion, or by report offered to the court, or as directed by the court.”

As discussed previously, social investigators and parenting plan evaluators are regulated by Florida Statute §61.20, and the Family Rules of Civil Procedure. Additionally, Florida psychologists are regulated by the Florida Administrative Code 64B19-18.007. The Administrative Code identifies the Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence, or Visitation Disputes, Dissolution of Marriage, Support, or Timesharing Action.

The Administrative rule states that “it is a conflict of interest to serve as a Guardian-ad-Litem, mediator, therapist, Parenting Coordinator, or to have treated anyone previously.” The American Psychological Association Guidelines for Child Custody Evaluations in Family Law Proceedings are no longer included in the Florida Administrative Code, however play a vital role in setting the minimum standard for these evaluations. The APA guidelines state, at minimum, the evaluation must include an evaluation of both parents or legal guardians, including observation, test results, and impressions. Evaluation of the children identified in the court order, including observations and when appropriate, test results and impressions, the description of interactions between each parent or legal guardian and each child identified in the court order must be included. Additionally, the psychologist should gather collateral sources of information as needed; and request medical records as needed.

Parents have an important interest at stake in the outcome of forensic mental health evaluations. There are a range of functions for mental health professionals once a parenting plan evaluation has been completed. The attorney can confidentially retain a work product review expert to provide a critical analysis of a colleagues’ child custody evaluation or parenting plan assessment. This review includes a critical reading of the evaluation report, the underlying documents relied on to render the report, and offer advisory feedback to the retaining attorney regarding the methods utilized to reach the conclusions. Ethical standards for work product reviews are set out in the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct and the Specialty Guidelines for Forensic Psychologists.

Attorneys may engage a consultant who provides support to the parent participating in the evaluation, which includes education about the nature and purpose of the assessment. The consultant usually performs this function before the evaluation takes place or while it is being conducted. Please note that education is not coaching, and coaching has been identified as an inappropriate role for psychologists and mental health professionals. The Association of Family and Conciliation Courts (AFCC) Child Custody Consultant Task Force identified rehearsing the litigant’s responses to questions on standardized tests, coaching answers, encouraging a litigant to make temporary or insincere changes in behavior solely for strategic positive impression management reasons, or suggesting that a litigant withhold important information are unacceptable and unethical behaviors for a consultant. The consultant can speak with the attorney about the forensic mental health evaluation, review the quality of the assessment, and aid the attorney by providing direct or cross-examination questions of the evaluator. If the consultant meets with the party, in very rare cases would that consultant provide testimony. Because the consultant assists with the development of trial strategies, the consultant remains confidential and is not available for deposition or trial.

Occasionally, the attorney may seek an educational consultant. This psychologist or mental health professional is hired to provide the court education/limited information, not directly about the person or family being evaluated. An example of hiring an educational consultant might be for the sole purpose of explaining to the court different psychological theories and models utilized by professionals in relocation cases, child sexual abuse cases, or certain psychological conditions, specific psychological tests, or mental illness.

Remember, it is improper for ex-
Experts to express an opinion about credibility of another expert or on the validity of another expert’s opinion. From the cases, experts can be asked how an expert’s conclusion differs from another expert’s conclusion to show that the other expert failed to consider proper factors. Additionally, Florida Rules of Evidence 90.706 says that statements of facts or opinions on a subject may be used in cross-examination of an expert witness.

Most of the above identified issues, with the exception of the GAL and social investigator and parenting plan evaluator, will need the assistance of attorneys to develop their presentation to the court. This assistance includes a review of the expert’s expert credentials, background, achievements, writings, and experience. The attorney should have their expert ready to discuss all the information and materials used to arrive at their opinions and to feel comfortable that their opinions are based on a reasonable degree of psychological probability. Prepare your expert to explain and defend any assumptions made in arriving at the opinion and ensure that your expert understands the difference between advocating and defending their opinions.

Dr. Day received her Doctorate in Clinical Psychology from Florida Institute of Technology and is a Licensed Psychologist, Licensed Mental Health Counselor, and Certified Family Mediator. Dr. Day is in private practice with Psychological Affiliates, Inc., of Winter Park, Florida. Her practice specialties include forensic psychology including divorce/parenting plan evaluations, collaborative law practice, Factitious Disorders (Munchhausen By Proxy), child abuse, and criminal matters. She has testified regarding numerous psychological issues and presents professional workshops and seminars throughout the country.

### A SUMMARY OF DIFFERENT ROLES OF PROFESSIONALS IN FAMILY LAW CASES

<table>
<thead>
<tr>
<th>Role</th>
<th>Function</th>
<th>Appointment by Court or Stipulated</th>
<th>Exception Hearsay</th>
<th>Immunity Board/Bar Malpractice</th>
<th>Payment</th>
<th>Party to Case</th>
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<tr>
<td>GAL</td>
<td>Neutral Agent of the court^</td>
<td>Y</td>
<td>FS61.401</td>
<td>FS61.403^ Can get a waiver/ stipulated order.</td>
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<td>AAL</td>
<td>Advocate as provided by the law 4-1.2^</td>
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<td>Y</td>
<td>61.20/491-N/490-12 61.20</td>
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<td>Neutral Investigator/ Evaluator Rule 12.363^</td>
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<td>Y</td>
<td>Y</td>
<td>Maybe. Process to ask for second opinion. Board will investigate. Fees in 61.122.</td>
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^Note: GAL = Guardian Ad Litem; AAL = Advocate as provided by the law 4-1.2; PC = Parent Coordinator; SOCIAL INVESTIGATOR = Neutral Investigator/ Evaluator; EVALUATION OF MINOR CHILD = Neutral Investigator/ Evaluator.

**Endnotes**

3. Florida Statute 61.125.
5. Chapter 64B19-18.007(e), 1-5.
7. *Caban v. State*, 950 So.2d 50, 53-54 (Florida Fifth DCA, 2009) and *Carver v. Orange County*, 444 So.2D 452-454 (Florida Fourth DCA, 1983).

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**CONFIDENTIALITY**

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<tr>
<th>EVALUATE SUBSTANCE ABUSE</th>
<th>INTERVIEW CHILD</th>
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<th>OFFER RECOMMENDATIONS OTHER ISSUES B.I.</th>
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*All professionals, with the exception of AAL’s, are mandatory reporters of suspected child abuse and neglect.*

**Exception:** (a) Can notify the court of emergency, and/or (b) Order of Protection or arrest for Domestic Violence under Chapter 741.

Deborah O. Day, Psy.D.
Kyle J. Goodwin, Psy.D.

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**CONFIDENTIALITY**

<table>
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<th>ACCESS TO RECORDS</th>
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<th>SPECIALIZED TRAINING</th>
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<th>EVALUATE MENTAL HEALTH</th>
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**AAL**


**SOCIAL INVESTIGATOR**

| By order or release. | By subpoena. | Y | Based on licensing and professional judgment. | Y |

**EVALUATION OF MINOR CHILD**

| By order or release. | By subpoena. | Y | Based on licensing and professional judgment. | Y |

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<td><strong>PC</strong></td>
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**Endnotes**

3. Florida Statute 61.125.
5. Chapter 64B19-18.007(e), 1-5.
7. *Caban v. State*, 950 So.2d 50, 53-54 (Florida Fifth DCA, 2009) and *Carver v. Orange County*, 444 So.2D 452-454 (Florida Fourth DCA, 1983).
Typical and Atypical Sexual Behavior of Young Children

Theodore Wasserman PhD., Boca Raton; Lori Wasserman PhD., Boca Raton; Sheila Furr PhD., Boca Raton

Child sexual abuse allegations arising during custody conflicts are complicated and difficult to resolve. Family law attorneys who practice long enough will eventually be involved in a case where one of the parties alleges sexual misconduct with a child. These cases are fraught with moral and ethical overtones. These cases are exacerbated by the fact that mandatory child abuse reporting laws mean that if a parent mentions suspicions to a health professional, the suspected abuse will have to be reported to the police and/or child protection services (Wakefield & Underwager, 2004).

Most professionals believe that the highest percentage of false allegations occur in divorce litigation. There is considerable disagreement over just how many of these allegations are false (Wakefield & Underwager, 2004) because a false accusation does not always represent a deliberate lie created for the purpose of obtaining the majority or the entirety of time sharing. Other plausible explanations exist.

Media coverage of sexual abuse, widespread publication and public awareness campaigns of so-called “behavioral indicators,” and expansion of child sexual abuse prevention programs can result in parents becoming hypersensitive to the possibility of abuse. In a difficult and confrontational time sharing conflict, a parent might be primed to reach premature conclusions. Any suspicious circumstances may lead to suggestive questioning and inadvertent reinforcement of a young child confirming these concerns. Statements about abuse may be unknowingly shaped and developed.

We think it is valuable to review some of these behavioral indicators and see if they are valid and reliable markers of abuse. To accomplish this task, we include a quiz, and give you the opportunity to try to determine which of the indicators listed below can be reliably used to make a determination whether you should be concerned that sexual abuse may have occurred. We also provided the answers and some additional information.

All the answers provided are drawn from several population surveys, including a study conducted for the American Academy of Pediatrics (American Academy of Pediatrics, 2009). The more rarely or atypically a behavior manifests itself in the general population, the more likely it is that the behavior is an indicator of trouble. While in a non-abused population there were no behaviors that occurred with a base rate of 0, there were behaviors whose occurrence was so atypical the behavior should be considered a cause for concern.

The following information is useful background to understand the scope of this article. Empirical research has indicated very mixed results which do not validate the use of psychological tests as a determiner of whether or not a child has been abused (Waterman & Lusk, 1993). Stronger differences between sexually abused and non-abused children generally are found on measures completed by parents than on measures administered directly to children.

To make a determination whether abuse has occurred, clinicians (and physicians) must rely on base rate. A base rate is a statistic that indicates how frequently a behavior occurs within a targeted population. In the instance of sexual abuse, the expert clinician relies on base rates of the target behavior’s occurrence in the typically developing population; how often this behavior occurs in the general population of children for whom no abuse has been experienced. To obtain a base rate regarding behavioral markers of child abuse one must first distinguish age-appropriate and normal sexual behaviors from behaviors that are developmentally inappropriate and/or abusive (sexual behavior problems).

These base rate studies have been done and are available for inspection. The studies indicate that sexual behaviors are quite common in children aged 2-5. Overall, more than 50% of children will engage in some type of sexual behavior before their 13th birthday (Kellogg & Committee on Child Abuse and Neglect, 2009). Clearly, given the percentages, not all sexual behavior that occurs is either atypical or one hundred percent indicative of an abuse that has occurred. The frequencies of typically occurring sexual behavior does not vary much between girls and boys. Kellogg et al also report that parents play a crucial role in the incidence or reported sexual behavior. The researchers indicate that level of maternal education is an important variable in the recognition of sexual behavior in children in that “mothers who are more educated and who acknowledge that sexual behaviors in children can be normal tend to report more sexual behaviors in their children when compared with mothers with fewer years of education and less acceptance of these behaviors” (pg.992).

Sexual behavior and interest varies with age for young children. Studies have shown that 2-year-old children have demonstrated (as compared
to 10-12 year olds) to be relatively sexual and children become increasingly sexual up to age 5, when the mean activity of behavior drops for both genders. Another drop occurs after age 9, although 11-year-old girls show a slight rise in sexual behavior, primarily coming from an increased interest in the opposite sex (Friedrich, Fisher, Broughton, Houston, & Shafran, 1998).

The answers to the examples in our quiz correspond to the data on the typical development of sexual behavior in young children summarized in a review article by Friedrich, Fisher, Broughton, Houston, & Shafran, (1998) that was used to form the basis of the American Academy of Pediatrics (2009) study of the development of sexual behavior in young children. It is important to remember the examples are general representations of specific behaviors assessed for frequency in the study.

To take the quiz, consider the description of each behavior. Assign each behavioral description a rank from the following scale choices which reflect your general level of concern, (1-4):

1. Normal common behaviors found with enough base rate in the general population to reduce concern.
2. Less common but never the less typically occurring within a specific age cohort.
3. Uncommon behaviors for young children to engage in.
4. Rarely normal behavior hardly ever seen in the typically developing population.

Here is the first situation; Assume all the situations presented occur as part of a contested divorce. The answers are provided below.

1. Mrs. Jones, a college educated mother reports that her daughter Chloe, aged five, has been self-stimulating, she hesitates, then uses the word masturbates, both in public and private.
   Rating (1-4) ________

2. Mrs. Smith reports that her ten year old and her four year old have been caught role playing sexual behavior both at her house and at her parents’ house when the parents are babysitting.
   Rating (1-4) ________

3. Mr. Reginald picked up his son Bobby, aged four, from the preschool his soon to be ex-spouse has enrolled him in. Mr. Reginald reports that the teacher pulled him aside and reported that Bobby has been exposing himself to the other children in preschool and that this behavior has just started.
   Rating (1-4) ________

4. Mr. Reginald also indicates that since his suspicion has been aroused by the above mentioned report from the preschool, he remembers that ever since mommy got a new boyfriend that stays over, Bobby has been sneaking into the bathroom and peeping at him when he showers.
   Rating (1-4) ________

5. Mrs. Green reports that since she has begun letting Mary Jane sleep over at her estranged husband’s new apartment the preschool has reported that Mary Jane, aged three, has been rubbing up against the other children in class in a sexually suggestive manner.
   Rating (1-4) ________

6. A rather embarrassed Mrs. Blue tells you that her daughter, aged 40 months, has been inserting objects into herself even though she has told her that it was wrong. She is worried that her almost ex-spouse might be doing something during time sharing. Mrs. Blue tells you that her daughter stops as soon as she tells her to and plays with appropriate toys.
   Rating (1-4) ________

7. Later that day (you are having a really bad day), Mrs. Green, your new client tells you that her four year old daughter is also inserting things into herself and will not stop even though Mrs. Green yells at her to do so.
   Rating (1-4) ________

8. Mrs. Smith reports that her 4 year old daughter keeps trying to put her tongue in her mouth when she kisses her goodnight. She is upset and asks you what you think.
   Rating (1-4) ________

Answers.

For questions 1, 3, 4, the correct rating is usually ‘1’. Several studies of children aged 2 to 5 years without a history of abuse (determined by parental screening), indicated that typically occurring sexual activities reported by caregivers include touching their genitals at home and in public, masturbating, showing their genitals to others, standing too close, and trying to look at nude people. The frequency of occurrence does not significantly vary between boys and girls (Friedrich, Fisher, Broughton, Houston, & Shafran, 1998). For example, 25% of male children aged 2-5 who have not been sexually abused touch themselves in public and almost 17% self-stimulate. The base rates for girls are similar: More than 40% of children aged 2-5 touch their genitalia at home.

Children typically show a fascination regarding what adults look like when they are unclothed. More than 20% of typically developing children of either sex will demonstrate an interest in an adult that is undressing. Finally more that 9% of young children under age 5 show their “private parts” to other children either when on “play dates” or at preschool.

Questions 5 and 8 should have been rated with a ‘2’. Data suggests that more than 3% of female children aged 2-5 suggestively rub against other children. The percentages for boys are a bit higher. Similarly, 4% of typically developing children ages 2-5 attempt to put their tongue inside the adult’s mouth when kissing. This same be...
behavior would be considered unusual for a child older than six.

Question 7 should have been answered with a ‘3’. This question is a bit of a trick because if junior were older than five, the correct answer would be a ‘4’. Developmental data indicates that about 3% of typically developing children aged 2-5 demonstrate behavior similar to that in which junior engaged. After age five, the percentages drop off rather dramatically.

Questions 2 and 6 should have received a rating of ‘4’. Placing or inserting objects into one’s vagina or rectum occurs very infrequently in the typically developing population of children aged 0-5. Less than half a percent place objects without any provocation. Similarly, role playing sexually explicit behavior happens very infrequently within the general population, occurring at a base rate of less than 1 percent.

Which behaviors should elicit concern? The following behaviors occur with base rates below 1% for children aged 2-5; Pretending that toys are having sexual intercourse, making sexually explicit sounds placing or inserting objects into the vagina or rectum, the child placing their mouth on the sexual parts of another, asking others for sexually explicit sexual acts or the child physically attempting to have intercourse. A base rate below 1% suggests that these behaviors are almost never seen in typically developing children who have not experienced sexual abuse. Their appearance should be cause for considerable concern.

At the opposite end of the spectrum, commonly occurring sexual behavior in typically developing young children include; Dressing like the opposite sex, touching breasts, hugging or kissing strangers and exploring one’s own sexual parts when at home. The base rates for these behaviors are so high as to preclude a meaningful distinction between an abused child and a typically developing child.

The occurrence of several high base rate behaviors does not increase the probability that sexual abuse has occurred. The statistical possibilities for each behavior are separate and in general, multiple criterion prediction equations do not exist. On the other hand, the significance of the presence of one very low base rate behavior is not diminished if other high base rate behaviors are also in the child’s repertoire.

To conclude, the concerning behaviors should be assessed from two perspectives. The first involves assessing the concerning behavior from the perspective of the base rate of the behavior in a typically developing population. The second involves assessing the behavior utilizing the perspective of frequency, intensity, and duration.

Things become problematic when the occurrence of any one behavior is too frequent, too intense, and lasts too long. One instance of a behavior, especially one that is open to interpretation, is not necessarily indicative of anything problematical, while repeated expression of a behavior might be cause for concern. For example, a light pretend peck on the cheek between dolls with whom the child is playing is not the same as the daily role plays of extended kissing and fondling sessions with the same dolls. The family attorney must also be very aware of the educational, cultural, and religious issues that serve to construct a person’s concern about their child’s sexual behavior.

Family attorneys, as are all attorneys in the State of Florida, are excluded from the mandated reporting requirement under Florida 39.201, which only requires judges to report. The information in this article is designed to inform family law attorneys of the likelihood that any one behavior may or may not be indicative of an abused child and to, therefore, help guide discussions with clients.

References:


Sheila Cohen Furr, Ph.D., A.B.N., has been in clinical practice since 1978 working with children and families. She is a Licensed Psychologist and is Board-Certified in Clinical Neuropsychology by the American Board of Professional Neuropsychology. She has extensive experience in evaluating and counseling families in distress before, during and after the divorce process. 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.

Lori Drucker Wasserman
Ph.D., A.B.Pd.N.
has been in clinical practice since 1982. Dr. Wasserman is a licensed psychologist and is Board Certified in Pediatric Neuropsychology by the American Board of Pediatric Neuropsychology. She is also a certified School Psychologist. She has extensive experience in the assessment, diagnosis and planning for children with special needs, emotional and educational concerns. Dr. Wasserman has also had extensive treatment experience in working with marital couples, families in the process of divorce and families following a divorce.

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, a Licensed Psychologist in the State of Florida is in private practice in Boca Raton Florida.
In Recognition of Marital and Family Equality: The Family Law Section’s Brief Amicus Curiae in Shaw

Christopher W. Rumbold, Esquire, Boca Raton and Lissette Gonzalez, Esquire, Coral Gables

Introduction

Florida, like many states, first enacted statutory same-sex marriage bans in 1997. Florida Statutes Section 741.212, enacted in 1997, provides, in pertinent part, that same-sex marriages are not recognized in Florida even if and when validly entered into in a foreign jurisdiction. Then, in the wake of the Hawaiian Supreme Court decisions in *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993), *Baehr v. Miike*, 910 P.2d 112 (Haw. 1996), and *Baehr v. Miike*, WL 35643448 (December 9, 1999 Haw.), it balloated and then buttressed the statutory bans with a constitutional referendum and amendment in 2008. Article 1, Section 27 of the Florida Constitution, enacted in 2008 and passing with 62.1 percent of the vote, provides, in pertinent part, that marriage is strictly a union between one man and one woman. Unlike Florida, nineteen states and the District of Columbia presently recognize and permit same-sex marriages—eight by court order, eight by the state legislature, and three by popular vote. Nationwide, and with only one exception following the United States Supreme Court’s landmark ruling in *United States v. Windsor*, 133 S.Ct. 2675 (2013), same-sex marriage bans in statutory and constitutional forms challenged in state and federal courts, under federal and state laws, have failed to survive any degree of judicial scrutiny. It is within this context that the matter of *Mariama Monique Changamire Shaw v. Keiba Lynn Shaw* was filed in the Circuit Court of the Thirteenth Judicial Circuit in Hillsborough County under Case Number: 14-DR-0666.

Factual and Procedural History – Trial Court & Appellate Court

Mariama and Keiba Shaw validly married in 2010 in the Commonwealth of Massachusetts and were legal, economic, and emotional partners in the fullest sense of the terms. The spouses later relocated to Florida and, due to marital difficulties, Mariama filed her 2014 petition (followed by her amended petition) for dissolution of marriage. The parties satisfied Florida’s residency requirement and all other conditions necessary and precedent to dissolve their marriage. Further, the parties resolved all rights, duties, and obligations emanating from their marital relationship by way of a Collaborative Marital Settlement Agreement and, therefore, they sought entry of a final judgment dissolving the bonds of their marriage. In its May 2014 ruling, and citing Florida’s statutory and constitutional same-sex marriage bans, the trial court held, “there is no valid marriage to be dissolved under the laws of Florida, and this action must be dismissed. The court is without jurisdiction to dissolve that which does not exist under the law.” Accordingly, while satisfying Florida’s residency requirements but not the residency requirements of any other state, the spouses faced a Morton’s Fork—remain married (although unrecognised in Florida and, therefore, unsuceptible to dissolution) or move to another state and establish residency for dissolution purposes. Instead, the spouses choose to challenge Florida’s marriage ban in its appellate courts.

On May 16, 2014, A Notice of Appeal was filed by Appellant’s counsel, Brett R. Rahall and Ellen Ware in Case No.: 2D14-2384. On June 17, 2014, Appellant moved the Second District for direct review by the Florida Supreme Court and designation thereby that this was a matter of great public importance. The Second District initially declined the invitation. Thereafter, on August 27, 2014, it noted additional then-pending appeals, reversed itself and ruled *en banc* that the Shaw matter should receive direct Florida Supreme Court review, pursuant to Article V, Section 3(b)(5) of the Florida Constitution, noting that, “the issue was whether Florida’s ban on same-sex marriage and the prohibition of recognizing such marriages unconstitutionally limits various constitutional guarantees including full faith and credit, access to the courts, equal protection, and the right to travel.” On that same date, and under newly assigned case number: SC14-1664, the matter was deemed a “high profile” case by the Florida Supreme Court. However, on September 5, 2014, the Florida Supreme Court declined to accept jurisdiction and remanded the matter for further proceedings in the Second District. On September 24, 2014, Appellant’s counsel requested oral argument before the Second District.

The Family Law Section – Ad Hoc to Amicus

In January 2014, the then-Chair of the Family Law Section, Elisha Roy, created an Ad Hoc Committee of the Legislation Committee, chaired by Christopher W. Rumbold and charged with drafting a legislative standing position regarding same-sex marriage. The result was a legislative standing
position that the Family Law Section supports legislation in favor of marital and family equality regardless of sex, gender, or sexual orientation. In June 2014, the Executive Council of the Family Law Section approved the standing position and, upon motion of the Amicus Curiae Committee, the filing of an amicus brief in the matter of Shaw v. Shaw. Cynthia L. Greene, Lissette Gonzalez (Greene Smith & Associates, P.A., Miami, Florida) and Christopher W. Rumbold (Gladstone & Weissman, P.A., Boca Raton, Florida) were charged with the drafting of said brief on behalf of the Family Law Section and the Florida Chapter of the American Academy of Matrimonial Lawyers. On August 4, 2014, the Motion for Leave to File Brief Amicus Curiae was filed; and, on September 16, 2014, with the review and approval of the Family Law Section’s Chairman, Norberto Katz, and the American Academy of Matrimonial Lawyers, Florida Chapter’s Chairman Jorge Cestero, and with the consent of the Florida Bar Board of Governors, the brief was filed.

The brief addresses in detail three fundamental rights—access to the courts, marriage and marital recognition, and equal protection under the law. The brief also addresses, succinctly, three additional related and implicated fundamental rights—privacy, association, and travel. The brief draws on and includes the tsunami of historic and recent, federal and state opinions that, utilizing differing legal theories and differing levels of judicial scrutiny, strike down, invalidate and deem unconstitutional state laws materially and substantively similar to those of the State of Florida. Central to the brief is recognition that marriage is “the most important relation in life,” Maynard v. Hill, 125 U.S. 190 (1888), and that laws that render couples “legal strangers, stripping them of the choice to marry or remain married in the state they call home” should and do fail to survive any level of judicial scrutiny. Latta v. Otter, No. 1:13-cv-00482 CWD, 2014 WL 1909999 (D. Idaho May 13, 2014).

**Other Pending Florida Appeals**

During the pendency of the Shaw case, additional challenges to Florida’s marriage ban laws have been brought in courts as geographically, politically and socially disparate as Key West and Tallahassee. First, pending in the Third District Court of Appeal, under consolidated cased numbers 3D14-1816 and 3D14-1783, respectively, are trial court rulings declaring Florida’s same-sex marriage bans unconstitutional as applied to couples who were denied marriage licenses in Miami Dade County, Pareto v. Ruvin, 21 Fla. L. Weekly Supp. 899a (Fla. 11th Cir. Ct. July 25, 2014) and in Monroe County, Huntsman v. Heavlin, 21 Fla. L. Weekly Supp. 916a (Fla. 16th Cir. Ct. July 17, 2014). On September 24, 2014, the Florida Chapter of the American Academy of Matrimonial Lawyers, again via Cynthia L. Greene, Lissette Gonzalez and Christopher W. Rumbold, filed its Motion for Leave to File Brief Amicus Curiae in the matter. Second, pending within the purview of the Fourth District Court of Appeal is the matter of In re Marriage of Heather Brassner, 21 Fla. L. Weekly Supp. 920a (Fla. 17th Cir. Ct. August 4, 2014) where the Broward County Circuit Court issued an order holding Florida’s same-sex marriage bans unconstitutional. Finally, pending in the United States District Court for the Northern District of Florida in Tallahassee is the matter of Brenner v. Scott, Case No.:4:14cv107-RH/CAS, 999 F.Supp.2d 1278 (N.D. Fla. Aug. 21, 2014) where the federal court struck down Florida’s laws banning same-sex marriage noting that “few rights are more fundamental” than the right to marry and that by simply enfranchising same-sex couples, a new fundamental right is not created but instead a historic fundamental right is further protected.

**Conclusion**

The Family Law Section of the Florida Bar is charged with protecting and promoting Florida’s families. In furtherance of this laudable directive, the Family Law Section has recognized and concurred with the Florida Supreme Court’s evolving and expanding definition of family as affirmed in D.M.T. v. T.M.H., 129 So.3d 320 (Fla. 2013). In filing its brief in Shaw, and its forthcoming brief in Pareto and Huntsman (pending approval by the Board of Governors of the Florida Bar), the Family Law Section has again evidenced its commitment to all of Florida’s families. While it remains to be seen how the various District Courts of Appeal, the Florida Supreme Court, and ultimately, the United States Supreme Court will resolve the issue of marital recognition and the enfranchisement of same-sex couples with respect to the right to marry, history reminds us, as simply and unequivocally stated in Youngberg v. Romeo, 457 U.S. 305, 315–16 (1982), that “a fundamental right once recognized properly belongs to everyone.”

**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.

**Lissette Gonzalez, Esq.** is an associate at Greene Smith & Associates, P.A. where she handles complex family and marital law appeals alongside the firm’s founding partner, Cynthia Greene.
THE FAMILY LAW SECTION
IN STATE RETREAT
DECEMBER 4-7, 2014

The Ritz-Carlton – Amelia Island
4750 Amelia Island Parkway
Amelia Island, FL 32034
(800) 241-3333

Course No.: 1405996N

Thursday, December 4, 2014
Welcome Reception  5:30 p.m. - 6:30 p.m.  – Sponsored By –

Friday, December 5, 2014
Breakfast & Executive Council Meeting  8:00 a.m. - 9:00 a.m.  – Sponsored By –
Salt Cooking School & Lunch  9:00 a.m. - 1:00 p.m.
Group Dinner at Salt  5:30 p.m.

Saturday, December 6, 2014
Breakfast  8:00 a.m. - 9:00 a.m.  – Sponsored By –
CLE:  9:00 a.m. - 11:00 a.m.

How To Grow Your Practice And Enhance Client Services In A Changing Economy
Presented by Glenn Gutek, Atticus

CLE CREDITS:  General: 2.0 hours
               Ethics 0.5 hours

Good-bye Cocktail Reception
5:30 p.m. - 6:30 p.m.

Sunday, December 7, 2014
Depart
## Registration Form

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 # _____________________

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**DP: Course No. 1405996N**

*REFUND POLICY:* A $25 service fee applies to all requests for refunds. Requests **must be in writing and postmarked** on or before Friday, November 7, 2014.

### REGISTRATION

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<th>ITEM #</th>
<th>QUANTITY</th>
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**METHOD OF PAYMENT (CHECK ONE):**

- **Check enclosed made payable to The Florida Bar**
  
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  - [ ] MASTERCARD  
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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.
The Florida Bar Continuing Legal Education Committee and the Family Law Section present

**Collaborative Practice: Staying Out of the Briar Patch—Identifying and Dealing with Expected and Unexpected Issues in the Collaborative Process**

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

Live Audio Webcast Presentation: Wednesday, December 10, 2014
12:00 p.m. – 2:00 p.m. E.T.

Course No. 1816R

In this program, Attorney Nancy Harris will be dealing with the issues of difficult clients and obstacles that attorneys may confront during a collaborative divorce process. Lana Stern, Ph.D., will provide and demonstrate insight as to how the neutral mental health professional can be used to assist the parties and attorneys in communicating, keeping the parties engaged in the collaborative process when matters get heated, and understanding the psychological dynamics that may assist or detract from reaching settlement in the case. Finally, Adam T. Magill, MBA, CBA, CVA, MAFF will provide insights as to how to best use a neutral financial professional to deal with contradictory financial claims between the parties and in proposing creative options for people whose goals may be rather unrealistic or far apart. Regardless of your experience or training in collaborative law, this course will provide insights and tools that can be used in both collaborative and non-collaborative divorce cases.

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

12:00 p.m. – 12:05 p.m.
**Welcome and Introduction of Speakers**
*Cash Eaton, Esquire, West Palm Beach, Program Co-Chair*

12:05 p.m. – 12:45 p.m.
**The Difficult Client and Other Obstacles Along the Path**
*Nancy Harris, Esquire, Tampa*

12:45 p.m. – 1:15 p.m.
**How to Keep the Collaborators Collaborating: Or How to Keep the Players Engaged in the Process**
*Lana Stern, Ph.D., Miami*

1:15 p.m. – 1:45 p.m.
**Creating Financial Options Out of Uncertainty and Skepticism**
*Adam T. Magill, MBA, CBA, CVA, MAFF, Orlando*

1:45 p.m. – 2:00 p.m.
**Question and Answer Session**
*Charles D. Jamieson, Esquire, West Palm Beach, Program Co-Chair*

**CLE CREDITS**

**CLER PROGRAM**
(Max. Credit: 2.0 hours)
General: 2.0 hours
Ethics: 0.0 hours

**CERTIFICATION PROGRAM**
(Max. Credit: 1.5 hours)
Marital and Family Law: 1.5 hours

**AUDIO WEBCAST**
As an audio webcast attendee, you will listen to the program over the Internet. Registrants will receive audio webcast connection instructions prior to the scheduled course date via email. If you do not receive the email 2 days prior to the event, contact InReach Customer Service at 877-880-1335.

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Cash Eaton, Esquire, West Palm Beach — Program Co-Chair
Charles D. Jamieson, Esquire, West Palm Beach — Program Co-Chair

**TO REGISTER ON-LINE**
http://tinyurl.com/FloridaBarCLE1816R
Register me for the “Collaborative Practice: Staying Out of the Briar Patch—Identifying and Dealing with Expected and Unexpected Issues in the Collaborative Process” Audio Webcast Seminar

AUDIO WEBCAST: (350) WEDNESDAY, DECEMBER 10, 2014 – 12:00 P.M - 2:00 P.M. E.T.

TO REGISTER, FOLLOW THE LINK BELOW OR TO ORDER AUDIO CD OR COURSE BOOK 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.

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AUDIO WEBCAST REGISTRATION FEE:

- Member of the Family Law Section: $125
- Non-section member: $180
- Full-time law college faculty or full-time law student: $90

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Billing Zip Code: __________________________________________________________________________________________
Card No. ________________________________________________________________________________________________

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☐ Enclosed is my separate check in the amount of $55 to join the Family Law Section. Membership expires June 30, 2015. (Applicable to CD orders only)

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Private recording of this program is not permitted. Delivery time is 4 to 6 weeks after 12/10/14. TO ORDER AUDIO CD OR COURSE BOOKS, fill out the order form above, including a street address for delivery. Please add sales tax to the price.

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