As we approach Spring, I find myself in a whirlwind of what this position as Chair of this Section truly entails. On a daily basis I become more and more grateful to our incredible Section members who donate countless hours of their precious time to make this Section what it is today.

The topic on most minds throughout this State is the status of the “alimony bill” (SB 1792/HB 1395). The Family Law Section was (and remains) strongly opposed to the changes affecting critical portions of Chapter 61, specifically due to the serious impact which the Bill has on our most vulnerable citizens. The Family Law Section, along with the Florida Chapter of the American Academy of Matrimonial Lawyers, jointly endeavored to work toward a global resolution for all involved – compromises that addressed the concerns posed by the proponents of the Bill while also protecting the sanctity of strong public policy which protects Florida’s families. Unfortunately, our efforts were halted when it became apparent that the negotiations were failing and not met with the same good-faith intentions that the Family Law Section and AAML were putting forth. The Family Law Section’s Mission is to promote professionalism and legal advocacy along with the most efficient resolution of conflict surrounding some of the most sensitive of topics. The Family Law Section’s Mission and reputation of professionalism and integrity were carried out to the highest possible degree. To that end, General Magistrate Philip Wartenberg (current Chair-Elect) and Andrea Reid worked tirelessly on behalf of this Section, along with Elisha Roy (President of the Florida Chapter of the AAML), David Manz, and Shannon Novey over the course of the last seven months to bridge all differences of opinions in order to arrive at a Bill that could be supported by the Section and AAML. The immense amount of time these five individuals spent away from their own families, friends, and practices will truly never be forgotten and something for which I will never be able thank them enough. In addition, the co-chairs of the Legislation Committee, Sheena Benjamin-Wise and Beth Luna, regularly dropped everything they were doing (personally or professionally) in order to attend to urgent requests for immediate work/meetings, also something that I will never be able to thank them enough for. The members of Executive Council and our amazing Trustees graciously navigated their own personal and work schedules in order to attend to various emergency meetings, many of which were called with very little notice – and for this I will be forever thankful.

I am extremely happy to report that our Mid-Year Meetings in Orlando were extraordinarily well attended! The annual Marital & Family Law Review Course was a huge success! The planning for next year’s Review Course is already underway and will be held at the Gaylord Palms Resort and Convention Center on January 27-28, 2023 (registration for this Course will go live around Labor Day, 2023).

Our Annual Meeting is on the horizon, where I will pass the gavel to General Magistrate Philip Wartenberg to take over as your Chair! The Annual Meeting will take place in conjunction with the Florida Bar’s Annual Convention at the Hilton Bonnet Creek Resort and Spa with our Committee Meetings on June 22, 2022 (which will include the annual rewards and installation luncheon), followed by the Executive Council meeting on June 23, 2022. I strongly encourage you to attend the Annual Meeting and please be sure to purchase your ticket to the luncheon in advance as it is guaranteed to sell out!

I will leave you with this – “If you are always trying to be normal you will never know how amazing you can be.” Maya Angelou
LAWYERS DON’T NEED TO TRACK EVERY MINUTE OF EVERY DAY, THANKS TO ME.

Watch all of the videos at www.smokeball.com/Florida
It is beginning to feel as though we are adjusting, to a certain extent, to pre-pandemic levels of normalcy. It was wonderful to see so many friends and colleagues in person at the January Certification Review Course in Orlando and to meet so many new professionals to our field. Thank you to the hard-working Certification Review Course committee for putting on such a safe and well-attended event. It was also great to attend committee meetings in person prior to the certification review course. If you have ever thought about getting involved in the Family Law Section, attending committee meetings, joining a committee, and taking on a task is a great way to get involved, meet fellow family law practitioners, and stay up-to-date on the latest in family law. In particular, the publications committee, which produces The Commentator, would love to have you!

We gladly welcome submissions relating to the practice of family law. If you find yourself with a unique set of facts, a complex problem, or an issue you think needs to be addressed by our judiciary or legislature, please write and submit your article to the Commentator. For more information, please email us at publications@familylawfla.org.
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Message from the Co-Chairs of the Publications Committee

By Anya Cintron Stern and Sarah Sullivan

Spring renewal brings warmer weather, school breaks for children, and a revitalization. Many of us find ourselves with burgeoning caseloads, trials held at the courthouse and live in-person continuing legal education seminars available for the first time in a long time. We are also emerging from the pandemic with employee shortages, rising costs of...well, everything, and affordable housing out of reach for so many of the families we serve. The Family Law Section and its members continue to rise to meet these challenges facing our communities and our profession. The Publications committee continues to experience high interest in writing for our Section publications, and for that, we thank our Section members. You continue to amaze us with your knowledge, wisdom, and practitioner tips. Please continue to submit your ideas and articles as it only improves the content. We can provide to family law practitioners in Florida. This issue of the Commentator is as high quality and varied as we have seen and we are exceptionally proud of the time and effort put in by Amanda Tackenberg, Vice-Chair of Publications over Commentator and Chelsea Miller, guest editor for Issue 3.
It has been an honor to be given the opportunity to serve as the guest editor of Issue 3 of the Commentator. I want to thank the Chair of the Commentator, Amanda Tackenberg, along with the Publications Co-Chairs, Sarah Sullivan, and Anya Cintron Stern for providing me with this opportunity.

It was not until I became actively involved with the Family Law Section, through attending the Section Committee meetings and ultimately serving on the Executive Council, when I realized how much work goes on in the background of the Section and how much change we each can make through volunteering and investing our time and effort in matters that we believe in. The Section offers a plethora of opportunities for members to get involved – whether it is writing or editing an article for one of the many publications that the Section offers, reviewing proposed legislation, or organizing and presenting a CLE. The opportunities are endless. I would strongly encourage those that are interested to become involved with the Section in whatever capacity you are comfortable with. It is never too late to get involved.

We have a diverse group of authors in this issue of the Commentator. We have an article on marketing tips from Sara Singer, also known on TikTok as – FloridaDivorceLawyer. We have Part I of a three-part series regarding the navigation of appeals in family law matters written by Shannon McLin and Erin Newell that has been submitted to the Commentator on behalf of the Appellate Committee of the Family Law Section.

Further, we have some outstanding articles regarding children’s issues in this issue of the Commentator. Martin Kofsky has written an educational article on grandparent rights that provides our readers with an alternative perspective on the issue. Aaron Irving and Troy Farquhar have written an article on the difference between utilizing Guardian Ad Litems and Social Investigators in matters involving children’s issues, which may assist our readers in analyzing which professional may be better suited for their cases. Meaghan Marro has written an article about the ability of one parent to obtain a passport for a child under the age of 16 when the other parent does not agree; Temi Zeitenberg has written an insightful article on Department of Revenue Administrative Child Support Orders; and, Dr. Wade Silverman wrote an article on Reunification Therapy for cases where one parent has been rejected and/or alienated from the child(ren) at issue.

Thank you again, to all our authors for making this issue of the Commentator possible; and thank you to the Publication Committee for all that you do for Florida’s family law attorneys.
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“My Ex put me on child support”. How many times have we heard this phrase from potential clients? Or you are in court and a litigant complains to the Judge that they were put on child support? But what does that really mean? Can your potential client be put on child support? The answer of course is: Kind of.

In Florida, there are two ways for child support to be established. First, is through Florida Department of Revenue’s administrative establishment of child support. Second, is through filing the appropriate petition in the circuit court. This article will focus on the administrative establishment of child support through Florida Department of Revenue’s administrative process. It is important to note that the administrative establishment of child support pursuant to Fl. Stat. § 409.2563 does not include or involve the establishment of paternity (as an administrative establishment of paternity would be pursuant to Fl. Stat. § 409.256) and for males, presumes the prior establishment of paternity.

The Florida Department of Revenue (“DOR”) is authorized to administratively establish child support obligations in a quasi-judicial process. It does not supplant or replace the traditional judicial process but provides an alternative procedure when there is not a circuit court child support order already in effect. Chapter 12E-1 of the Florida Administrative Code Rules sets forth the rules by which DOR must govern itself. Specifically, Chapter 12E-1.030 governs the administrative establishment of child support obligations when paternity has been established.

**SCENARIO ONE:** Potential client (father) walks into your office and says: “My Ex put me on child support, but I give her money and always take care of my kid.” The potential client goes on to say that the mother of his child is “on welfare”. The salient issue in this scenario is the mother is receiving public assistance on behalf of the child. The mother in these facts would be an “assistance client” under informal DOR terminology. Any parent who receives public assistance from the state, such as food stamps, monthly cash assistance, or Medicaid for the child subrogates their rights to collecting child support to DOR by operation of law. The “Petitioner” or “Petitioning Parent” is defined as the parent or caregiver with whom the child resides. The Petitioner applying for public assistance must report that the other parent is not financially supporting the child and not living in the same household. Once the Petitioner receives certain state public assistance benefits on behalf of the child, DOR then begins to initiate an administrative action to collect money from the non-recipient parent. “Respondent” means the parent from whom the Department is seeking support.

So, to answer your potential client’s question: Yes, a father can be put on child support in this scenario. But it is not exactly your ex doing it, rather a government agency (DOR) is establishing a child support obligation for the potential client because the mother of the child is getting some form of public assistance from another government agency (Department of Children and Families “DCF”).

**SCENARIO TWO:** Potential client (father) walks into your office and says: “My Ex threw me out of the house and now she put me on child support. She doesn’t deserve a dime.” In this scenario, the mother is not receiving any public assistance. The mother in
these facts would be a "non-assistance client" under informal DOR terminology. A parent can apply with DOR to collect child support from the other parent, irrespective of their financial circumstances. There is no requirement that the Petitioner be indigent or low income to start a child support case. Per statute, support services provided by DOR shall be made available on behalf of all dependent children. This scenario most commonly occurs when parents were living together in one household and split up. The parent who has the child all, or a majority of the time, seeks DOR’s assistance in establishing and collecting child support from the parent who left the home.

So, to answer your potential client’s question: Yes, a father can be put on child support in this scenario. The potential client can have a child support obligation established if the mother applies with DOR to establish, enforce, collect and/or disburse child support.

START OF THE ADMINISTRATIVE PROCESS

How did your potential client know there was a child support case in the works? DOR starts an administrative support proceeding by issuing a Notice of Proceeding to Establish Administrative Support Order (“Initial Notice”). DOR serves the Initial Notice by regular mail, certified mail, restricted delivery, return receipt requested, or by any other means of service that meet the requirements for service of process in a civil action. Service by certified mail is completed when the mail is received or refused by the addressee or by an authorized agent. However, if a person other than the Respondent signs the return receipt, DOR must attempt to reach the Respondent via telephone to confirm if the Initial Notice was received and shall document the telephonic communications. If the signature on the certified mail receipt is illegible, DOR can confirm it is the Respondent’s signature by comparing it to another source such as Department of Highway Safety and Motor Vehicles DAVID database, or DOR confirms with the Respondent by telephone or in-person that the Respondent received the Initial Notice. Lastly, if DOR does not receive confirmation of receipt, but the Respondent returns the financial affidavit or other information in response to the Initial Notice, then DOR considers that service is complete because the Respondent submitted something in writing.

HOW TO AVOID THE ADMINISTRATIVE PROCESS

Potential client goes on to show you the Notice of Proceeding to Establish Administrative Support Order he received a week ago. Potential client says “Help, I do not want to deal with DOR. Can you stop this?” The answer is, yes, but the potential client must move quickly. The potential client can stop the administrative proceeding and opt out if they comply with specific timely requirements outlined herein.

Opt Out Option One: Within the 20-day time frame from receipt of the Initial Notice, the Respondent files a support action in circuit court and provides DOR with a copy of the petition. The administrative process is then terminated when DOR receives from the Respondent a petition filed in circuit court.

Opt Out Option Two: The Respondent can ask DOR to proceed in circuit court. While this seems like it should be simple, it is quite complicated, and requires multiple actions. Within the 20-day time frame from receipt of the Initial Notice, the Respondent must request in writing that DOR proceed in circuit court or request in writing the Respondent’s intent to address issues concerning time-sharing or parental responsibility in circuit court. Oral requests are not accepted. The written request must be sent to DOR and not the Clerk of Court.

If timely received, DOR will proceed with opening a new case in the circuit court. DOR will send to the Respondent by certified mail, with return receipt, a docketed copy of its Petition for Support and Waiver of Service of Process form. Within ten (10) days from receipt of the Petition for Support and Waiver of Service of Process, the Respondent must sign and return the Waiver of Service of Process form to DOR. If the Respondent timely completes and returns the Waiver of Service of Process form within

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Department of Revenue
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... days, DOR will then end the administrative proceeding and proceed in circuit court.

However, if the Respondent does timely opt out by requesting circuit court action, or the Respondent does not timely return the Waiver of Service of Process form, the opt out is voided, and the administrative support action will continue. The Department will file a voluntary dismissal of the circuit court case with the clerk of court and mail a copy of the voluntary dismissal to the Respondent.

**Practice tip:** Once the 20 day opt out window has expired, there are only two ways to terminate the administrative proceedings: (1) prior to the entry of the Administrative Support Order, obtain a circuit court order awarding some form of child support, whether temporary or permanent; or (2) convince DOR to terminate the process and dismiss the administrative support proceeding. Only DOR is authorized to end the administrative child support proceeding and close the case or proceed judicially at any time before the entry of a Final Administrative Support Order.

**HOW AN ADMINISTRATIVE ORDER IS RENDERED**

After explaining to the potential client his options, he leaves your office to try and scrounge up money for a retainer. In the meantime, the potential client does nothing in response to the Initial Notice.

If the Respondent does not comply timely with the opt out options, DOR will calculate the child support obligation pursuant to child support guidelines in accordance with Fl. Stat. § 61.30. DOR will prepare a Proposed Administrative Support Order which establishes the terms of the support obligation. The Proposed Administrative Support Order is then mailed to the Respondent by regular mail, along with a notice of rights informing the Respondent of: (1) the right to an informal discussion with the DOR; (2) the right to a formal administrative hearing; and (3) the right to consent to the entry of an Administrative Support Order. Copies of the child support guidelines worksheet prepared by DOR and the financial affidavit submitted by the other parent are mailed with the Proposed Administrative Support Order.

If the Respondent does not timely request a formal administrative hearing, the Respondent will be deemed to have waived the right to request a hearing.

If the Respondent waives the right to a hearing or consents in writing to the entry of an order without a hearing, DOR may render a Final Administrative Support Order.

Potential client returns to your office with the retainer payment a month later. This time, the potential client hands you a Proposed Administrative Support Order he received twelve (12) days ago. "Now what can I do?" he asks. "I am not paying her $1,200 a month! She makes more than minimum wage." While it may seem tempting to run to the courthouse and file a petition in the circuit court to end the administrative process, just filing an action in circuit court will not terminate the administrative support case. That ship sailed a long time ago.

The last option at this point is to challenge the Proposed Administrative Support Order at an administrative hearing before the Division of Administrative Hearings ("DOAH"). An Administrative Law Judge ("ALJ") employed with DOAH presides over an administrative hearing. To request an administrative hearing, the Respondent must submit a written request to DOR's Deputy Agency Clerk at the address provided in the Proposed Administrative Support Order within 20 days of the mailing date. If the request is timely made and received by the Deputy Agency Clerk, DOR will send the Respondent an Acknowledgement of Hearing Request Administrative Proceeding. The ALJ will send the Respondent a notice of the date, time, and location of when and where the administrative hearing will occur.

If an administrative hearing is held, following the hearing the ALJ must issue either (1) a Final Administrative Support Order; or (2) a Final Order
Denying An Administrative Support Order. A Final Administrative Support Order has the same force and effect as a court order and may be enforced by any circuit court in the same manner as a support order issued by the court, except for contempt. DOAH then transmits the order to DOR for filing and rendition. In addition to the Final Administrative Support Order, DOR enters an Income Deduction Order. The Respondent is responsible for making the ordered payments to the State Disbursement Unit until the income deduction begins.

In conclusion, navigating the waters of the DOR administrative process is no easy feat. There is an interplay of regulations, statutes, administrative codes, and rules of court. If a potential client seeks your representation in an administrative support case, it is important to determine what stage of the process the potential client is in, what options remain for the client to avoid the administrative process, and to move quickly, as time is of the essence.

Temi Zeitenberg, Esq is the founder and owner of DivorceSmartEsq, PLLC, located in Palm Beach County providing full-time Mediation services. In addition, Ms. Zeitenberg accepts appointments as a Special Magistrate and Guardian Ad Litem. Prior to becoming a full-time Mediator, Ms. Zeitenberg was appointed as a General Magistrate with the Fifteenth Judicial Circuit in Palm Beach County assigned to the family and mental health divisions. Ms. Zeitenberg is serving her second term as Treasurer of the Susan Greenberg Family Law American Inn of Court of the Palm Beaches, is a member of the Family Law Section of the Florida Bar, DOR/Administrative Support Issues Sub-Committee, Palm Beach County Bar Association, South Palm Beach County Bar Association, and an allied professional of the South Palm Beach County Collaborative Law Group.

Endnotes

1 Many times, folks will refer to child support cases as “Title IV-D” matters. Briefly, Title IV-D is a section of federal law entitled, “Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services. Title IV-D is part of the Social Security Act and mandates, among other things, that every state have a system to collect and enforce child support. 42 USC §§ 651, et. Seq.

2 Where paternity has already been established by affidavit, a birth certificate, or a prior judicial proceeding, the father is not a “putative father” and DOR, the mother, or the child do not bear the burden of proving paternity in seeking to administratively establish a child support obligation. Fernandez v. Department of Revenue, Child Support, 971 So. 2d 875, 878 (Fla. 3d DCA 2007).

3 Fla. Stat. § 409.2563


5 F.A.C 12E-1.030(2)(i)

6 See F.A.C 12E-1.039(3)(b), a public assistance recipient receiving temporary cash assistance or food assistance does not need to apply for services. A case is created automatically upon receipt of a referral from the Florida Department of Children and Families. F.A.C. 12E-1.039(3)(c), a public assistance recipient receiving only Medicaid benefits must apply for services. A case is not automatically created.

7 F.A.C 12E-1.030(2)(i)

8 F.A.C 12E-1.039(4)(a), to apply for services, an individual who does not receive temporary cash assistance or food assistance must submit a signed and complete electronic or paper application.


10 F.A.C. 12E-1.030(6)(a)


12 F.A.C. 12E-1.030(6)(b1).

13 F.A.C. 12E-1.030(6)(b2).

14 F.A.C. 12E-1.030(6)(b3).

15 F.A.C. 12E-1.030(7)(a)

16 Johnson v. State, 200 So. 3d 802 (Fla. 1st DCA 2016). Fla. Stat. § 409.2563(4)(c) and Fla. R. Gen. Prac. & Jud. Admin. 2.516(b)(1)(c) and that the same is complete upon mailing per Fla. R. Gen. Prac. & Jud. Admin. 2.516(b)(2). Formal service of process upon DOR is not required.

17 F.A.C. 12E-1.030(7)(b).

18 F.A.C. 12E-1.030(7)(c).

19 State, Dept. of Revenue v. Manasala, 982 So. 2d 1257 (Fla. 1st DCA 2008).

20 F.A.C. 12E-1.030(7)(c).

21 F.A.C. 12E-1.030(8).


23 F.A.C. 12E-1.030(8).


26 Fla. Stat. § 409.2563(7)(c), which may also include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to and signed by both parents.

27 See Fla. Stat. § 409.2563(a). Had the Legislature intended to terminate DOAH’s jurisdiction upon the filing of a circuit court action relating to child support, it could have said so. Dept of Rev. v. Graczyk, 206 So. 3d 157, 161 (Fla. 1st DCA 2016).

28 Fla. Stat. § 409.2563(5)(c)(1) and Fla. Stat. § 409.2563(5)(c)(2) and Fla. Stat. § 409.2563(6) and F.A.C. 12E-1.030(9).

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Feeling Your Way Through a Family Law Appeal

Part I. Appealability and Standards of Appellate Review

By Shannon McLin and Erin Newell submitted on behalf of the Appellate Committee of the Family Law Section

We’ve all felt it as attorneys—that burst of, “Now what!?”, following a trial judge’s decision. Whether the ruling goes directly against your client or is merely unfavorable to, or less than, the client’s expectations, reconciling that decision with your client’s goals and expectations can be daunting, especially in a family law case where the impact reaches years into the future. In this three-part series, we will identify and discuss the issues we have encountered handling family law appeals and offer guidance and best practices to “feeling” your way through the appellate process.

Before we begin, it is important to note that many orders rendered by the trial court can and should be managed in the lower tribunal, for example, orders concerning routine scheduling matters, amendments to the pleadings, and certain discovery matters, such as whether a request for production seeks irrelevant information. But there will also be decisions rendered that necessitate review by the appellate court. The nuances of appealing or seeking review are multifaceted and cannot be fully covered in this series. Part I covers two concerns that should always be addressed at the beginning of the appellate process: (1) the appealability of the trial court’s decision and (2) the applicable standards of appellate review.

(1) Appealability of the Trial Court’s Decision

Understanding the procedural pathway by which the trial court’s decision may travel to the appellate court is vital to moving forward. And, at its core, the appealability of a decision depends on in its finality.

The finality of an order for appellate purposes is marked by whether the decision ends all substantive judicial labors required of the trial court in that matter. “The traditional test for finality is whether the decree disposes of the cause on its merits leaving no questions open for judicial determination except for execution and enforcement of the decree if necessary.” Where a judgment or order expressly reserves ruling on some matter concerning the merits of the action, the ruling is likely not a final order for appellate purposes. Additionally, to commence an appeal, the trial court must have issued a written order reflecting its decision and it must be filed with the lower court clerk.

When the decision is final for appellate purposes, Florida’s District Courts of Appeal have jurisdiction as detailed by rules 9.030(b) and 9.110 of the Florida Rules of Appellate Procedure. Be sure to identify the date of rendition of the order, as that triggers the jurisdictional deadline to commence
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the appeal under rule 9.110(b). Florida Rule of Appellate Procedure 9.020(h) identifies certain motions that will toll of the rendition of a final order, if authorized and timely filed.

If the decision is not final for appellate purposes, you may need to wait until a final judgment or order is rendered to challenge the decision as part of a final appeal. This promotes what has been coined “judicial economy,” by allowing all objections to the trial court’s rulings to be heard at one convenient time.

Only certain specified nonfinal orders are appealable under rule 9.130 of the Florida Rules of Appellate Procedure. Specific to family law matters, nonfinal orders that are appealable under rule 9.130, include orders that determine: the right to immediate monetary relief; the rights or obligations of a party regarding child custody or time-sharing under a parenting plan; or that a marital agreement is invalid in its entirety.

Other appealable nonfinal orders include orders that: concern venue; grant, continue, modify, deny, or dissolve injunctions (or refuse to); determine jurisdiction of person; determine the right to immediate possession of property; determine the issue of forum non conveniens; determine whether a settlement agreement is enforceable as a matter of law; grant or deny a motion to disqualify counsel; determine that a permanent guardianship shall be established for a dependent child pursuant to section 39.6221, Florida Statutes; and orders entered on an authorized and timely motion for relief from judgment.

If the decision is a nonfinal order listed in rule 9.130, you may begin the appeal right away or wait until rendition of a final order. Be mindful not to confuse the procedural pathway for appellate review with the “finality” of the order for purposes of rehearing or relief from judgment below. While a nonfinal order may be appealable or otherwise reviewable under the appellate rules, that does not authorize the trial court to grant relief from such decisions under rules 12.530 or 12.540 of the Florida Family Law Rules of Procedure.

If the decision is a nonfinal order that is not listed in Florida Rule of Appellate Procedure 9.130, you may be able to seek certiorari review by filing a petition for writ of certiorari, but review is granted only where a departure from the essential requirements of law, causing material harm that cannot be remedied on appeal, is established. A petition for writ of certiorari differs from a nonfinal appeal in many ways, which are beyond the scope of this article.

Additionally, Florida’s appellate courts have original jurisdiction to issue other extraordinary writs. For example, you may file a petition for writ of prohibition to prevent a trial judge from continuing to preside in a matter if a legally sufficient motion to disqualify the judge has been denied.

But, again, a petition for writ of prohibition differs in certain respects from one for a writ of certiorari, which are beyond the scope of this article. An experienced appellate attorney will identify the available options and nuances of these procedural pathways to appellate review depending on the circumstances of the trial court’s decision and the client’s goals.

(2) Applicable Standards of Appellate Review

In addition to bringing the trial court’s decision properly before the appellate court, anticipating the standard of review that the appellate court will employ is crucial. The standard of review is the level of deference the reviewing court gives the lower court’s ruling. The greater the deference, the more difficult a burden one has in convincing the reviewing court that the trial court committed reversible error.

In family law cases, the trial judge has broad discretionary authority to do equity between the parties and has various interrelated remedies available to accomplish that purpose. The
appellate court has authority to review the trial court’s decisions in such cases on three grounds: (1) to determine whether the trial court abused its discretion in rendering an order or judgment; (2) to determine whether the trial court’s factual determinations are supported by competent substantial evidence; and (3) to determine whether the trial court made an error of law in its conduct of the proceedings or in its application of law to the facts.

The highest level of deference is given to the trial court’s discretionary rulings, which are made pursuant to the court’s power to determine questions to which no strict rule of law applies but which, according to their nature and the circumstances of the case, are controlled by the personal judgment of the court. In such cases, the appellate court fully recognizes “the superior vantage point of the trial judge” and applies the “reasonableness test” to determine whether the trial judge abused his discretion: “If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion.”

Where the trial court is the finder of fact and makes determinations based on the evidence presented, its findings and conclusions are shielded from attack and are clothed with the presumption of validity, so the appellate court will affirm the trial court’s factual determinations if they are supported by the evidence and overturn them if they are not. In other words, the appellate court decides whether competent, substantial evidence supports the trial court’s determination.

Errors of law are errors that concern a trial court’s conduct of the proceedings or its application of the law to the facts of a case in rendering a judgment. These are reviewed de novo. De novo review indicates that while the trial court is presumed to be correct on factual issues, the appellate court is free to decide the legal issue differently without giving deference to the trial court’s interpretation or application of the law. For example, procedural due process issues, the characterization of an asset as marital or nonmarital, and the interpretation of marital settlement agreements are reviewed de novo review because the appellate court in as good a position as the trial court to construe the challenged provisions.

Finally, there are certain issues in family law cases that present mixed questions of law and fact, and those call for a mixed standard of review. For example, appellate review of a trial court’s decision regarding a reduction or termination of an award of alimony under section 61.14(1)(b), Florida Statutes, may be a mixed question of law and fact. The appellate court will review the trial court’s fact-findings to determine whether they are supported by competent, substantial evidence, but will review the trial court’s interpretation of the statute and its legal conclusions concerning whether a supportive relationship exists de novo. If the trial court decided that a supportive relationship existed, the appellate court’s review of the circuit court’s decision to reduce or terminate alimony will be for abuse of discretion.

Given the complexities of these types of issues, an experienced appellate attorney will

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distinguish and utilize the sometimes overlapping standards of appellate review depending on the circumstances of the trial court’s decision and nature of the relief sought.

CONCLUSION

No matter how skilled or prepared we are as family law attorneys, we have all been bombarded by the “Now what!?” following one decision or another by the trial court. Identifying the appealability of the trial court’s decision and understanding the applicable standards of appellate review from the outset are essential first steps to feeling your way through a family law appeal. We invite you to join us in the next issue of The Commentator for part II of our series, in which we will discuss our best practices for composing a persuasive appellate brief and presenting oral argument.

Erin Pogue Newell began her legal career as an associate appellate attorney at a boutique appellate firm, where she handled civil and criminal appeals at the state and federal levels, covering a variety of issues ranging from negligence, to wrongful death, products liability, and other tort issues, to contract and coverage disputes, to attorneys’ fees awards, to family law issues. Ms. Newell has presented oral argument in all of Florida’s District Courts of Appeal and the United States Court of Appeals for the Eleventh Judicial Circuit. Ms. Newell graduated Magna Cum Laude from Manhattan College (Riverdale, NY) in 2006 with a Bachelor of Arts in English and Secondary Education. After teaching high school English for several years, she attended St. Thomas University School of Law (Miami, FL) where she earned CALI Book Awards in Legal Research and Writing, Torts and Constitutional Law, and graduated Cum Laude in the top 10% of her class in 2012.

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A significant part of Shannon’s work takes place in trial courts, where she often serves as additional counsel of record for trial support purposes. When engaged to join a trial team, Shannon assists lead counsel with strategy, analysis, legal research and briefing significant issues with a focus on preserving error for appeal. She also testifies as an expert on appellate issues and attorney’s fees.

Shannon is Board Certified by The Florida Bar in appellate practice and is AV rated by Martindale Hubbell. She has consistently been named by Florida Trend as a Florida Legal Elite and as a Florida Super Lawyer in appellate practice. She is a Charter Member of the Appellate Practice Section where she served on the Executive Council and as the section delegate to the Council of Sections. She also served on The Florida Bar’s Appellate Court Rules Committee and the Appellate Court Certification Committee where she held the positions of Vice-Chair and Chair respectively.

In addition to her service to the appellate bar, Shannon is active in the family law arena. She currently serves on the Marital and Family Law Section’s Executive Council and she co-chairs the Section’s Appellate Committee. She has also served as a guest editor of the Commentator.

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Endnotes

2. T.F. v. Dep’t of Child. & Fam. Servs. (In re T.F.), 8 So. 3d 474, 476-77 (Fla. 2d DCA 2009) (citing Fla. R. App. P. 9.020(h) and 9.110(b)).
6. Remington v. Remington, 705 So. 2d 920, 921 (Fla. 4th DCA 1997).
7. Seigler v. Bell, 148 So. 3d 473, 478-479 (Fla. 5th DCA 2014) (explaining that motions for reconsideration apply to nonfinal, interlocutory orders, and are based on a trial court’s “inherent authority” to reconsider and, if deemed appropriate, alter or retract any of its nonfinal rulings prior to entry of the final judgment or order terminating an action). Motions for reconsideration to not toll the time for filing an appeal of a nonfinal order.
11. See, e.g., Valdes-Fauli v. Valdes-Fauli, 903 So. 2d 214 (Fla. 3d DCA 2005).
12. See Canakaris v. Canakaris, 382 So. 2d 1197, 1202 (Fla. 1980).
13. See id. at 1202-03 (discussing the judicial discretion of the trial judge).
14. Id.
15. Id. at 1203.
23. King v. King, 82 So. 3d 1124, 1129 (Fla. 2d DCA 2012).
Attorneys practicing in the realm of domestic relations will probably agree that some of the most emotional and litigated areas of the practice involve disputes surrounding the creation or the modification of a parenting plan. These cases present challenges given that a lawyer is bound to abide by the client’s decisions concerning the objectives of representation. While zealous advocacy requires the attorney to advance their client’s stated interests, in cases involving disputed child issues, the attorney should be equally concerned with how the client’s expressed wishes affect the well-being of their children. The Family Law Section of the Florida Bar suggests in the Bounds of Advocacy, that it is consistent with traditional advocacy and client loyalty principles to consider the best interests of the child due to the fundamental obligation the client has to promoting their children’s wellbeing.

The Florida Supreme Court has recognized the inherent conflict that may arise in disputed custody cases stating, “It is the traditional adversarial process is detrimental to children because it drives parents farther apart at the time their children need them to work together to restructure their system of parenting.” If a client takes an immutable position on children’s issues grounded in bad faith, or advanced solely for leverage or revenge, an ethical and conscientious attorney faces a dilemma. In those circumstances, the Bounds of Advocacy ultimately recommends that the lawyer withdraw from further representation of such a client. Another option, with understanding and consent of the client, may be to request the appointment of a neutral third party to assist in resolving a child related dispute. This avenue is also consistent with our responsibilities to the legal system in promoting amicable settlements of family disputes, preserving familial relationships, and mitigating potential harm to children.

This article will explore the use, functions, and differences between a Guardian ad Litem and a Social Investigator in cases involving contested children’s issues.

Guardian ad Litem

In an action involving the creation, approval, or modification of a parenting plan, the court may appoint a guardian ad litem for a child if it is in the child’s best interest. However, guardian ad litems shall be appointed in actions involving well-founded allegations of child abuse, abandonment, or neglect so long as said allegations are verified. The court has inherent authority to appoint a guardian ad litem. The court also has the inherent authority to tax costs and fees of the guardian ad litem to the parties. The role of the guardian ad litem is to protect the best interests of children as “next friend of the child, investigator or evaluator.”
A guardian ad litem promotes the best interest of the child, not necessarily the stated interests of the child. Contrast this role with that of an attorney ad litem, who is a child’s attorney with the attendant responsibility to represent the child’s stated interest and owes the same duty of loyalty and confidentiality to the child as they would to an adult client. A guardian ad litem, once appointed, is a party in the case to which they are appointed from the date of appointment until the date of discharge. A guardian ad litem may be a person certified by the Statewide Guardian Ad Litem Program, certified by a not-for-profit legal aid organization, or an attorney in good standing with The Florida Bar.

There is understandable confusion about the role that a guardian ad litem plays in a case given that they are party to the case, yet they are not litigants entitled to litigate disputed issues. In *Millen v. Millen*, the trial court erred in allowing a non-attorney guardian ad litem to question a witness. The Third District noted that Fla. Stat. § 61.403(7) (2010) does not grant non-attorney guardians the right to practice law. The case does not answer the question of whether it would nonetheless have been permissible for an attorney guardian ad litem to question the witness. Further, Fla. Stat. § 61.403, titled "Guardians ad litem; powers and authority" repeatedly states the types of actions that a guardian ad litem may undertake in a case “through counsel”. These enumerated actions include: requesting orders for examination of parties or the child; filing such pleadings, motions or petitions for relief as the guardian ad litem deems appropriate; participating in all depositions, hearings and other proceedings in the action; and compelling attendance of witnesses. These actions would constitute the practice of law for all but a pro-se litigant. The Third District’s holding in *Perez v. Perez* addressed whether a guardian ad litem may appear in appellate proceedings. However, in a footnote, the court cites, with approval, a case from the Supreme Court of Nebraska, *Betz* and wrote that although *Betz* dealt with the role of the guardian ad litem at the trial level, the observations as to the proper function of the guardian ad litem were relevant to the issues in *Perez*. The Third District also quoted *Betz* as follows: “[a] guardian ad litem may be an attorney, but an attorney who performs the functions of a guardian ad litem does not act as an attorney and is not to participate in the trial in an adversarial fashion such as calling or examining witnesses or filing pleadings or briefs.” If the guardian ad litem feels they need an attorney (ostensibly to conduct any of the enumerated actions recited in Fla. Stat. § 61403), they should approach the appointing court for permission to retain counsel. This procedure should not be confused with situations when the child is the real party in interest, such as when a minor is bringing suit against another party. In these cases, the guardian ad litem does act as an advocate or alter ego for the child. But, the guardian ad litem does not become a party to the case in those situations. Judge Sorondo, in a special concurring opinion in *Perez*, reaches the same conclusion as the majority through a different analysis. He points out that the original version of Fla. Stat. § 61.403 (1990) stated that a guardian ad litem “shall act as a representative of the child.” When Fla. Stat. §61.403, was amended in 1994, the legislature struck the language "representative of the child" replacing it with “[a] guardian ad litem when appointed shall act as next friend of the child, investigator or evaluator, not as attorney or advocate but shall act in the child’s best interest. (Emphasis added). The legislature also amended Fla. Stat. § 61.401 in 1994, by adding language authorizing the court to appoint legal counsel for the child to act as attorney or advocate (i.e. attorney ad litem). Judge Sorondo says that a guardian ad litem is not a “party” as that term is defined in Black’s Law Dictionary. Thus, since the legislature grants a guardian ad litem party status, it may also properly limit its
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role, forbidding it to act in a certain way, i.e. as an advocate for the child.25

A guardian ad litem is, in essence, an investigator for the court whose “role is to discover, analyze and communicate facts to the judge which will assist the trial court in the performance of its duty to determine the best interest of children.”26 The only powers a guardian ad litem may exercise without separate counsel are the authority to investigate the allegations in the pleadings affecting the child; interview interested parties to the litigation; and, the authority to make written or oral recommendations to the court.27 The guardian ad litem has the duty to file a written report, which may contain the wishes of the child, at least 20 days prior to the day it is presented to the court.28 Through counsel, the guardian ad litem may also petition the court for an order directing a specified person or organization to allow the guardian ad litem to inspect and copy any records and documents relating to the child, the child’s parents, other custodial persons or household members with whom the child resides.29 In practice, it is most common that the order appointing the guardian ad litem would grant the guardian ad litem authorization to obtain records related to the child obviating the need for the guardian ad litem to act through counsel to obtain the child’s records. Through counsel, the guardian ad litem may request the court to order expert examinations of the child, the child’s parents, or other interested parties in the action.30 In practice, the guardian ad litem commonly files a report recommending such examinations that may be followed up by motion of a party’s attorney or, after hearing, *sua sponte* ordered by the court. Through counsel the guardian ad litem may file such pleadings, motions, or petitions for relief as deemed necessary to carry out his or her duties.31 Through counsel, the guardian ad litem is entitled to be present and may participate in all depositions, hearings, and other proceedings in the action, and may compel attendance of witnesses.32 The guardian ad litem must be provided with copies of all pleadings, notices, and other documents filed in the action and is entitled to reasonable notice before any action affecting the child is taken by the parties, their counsel, or the court.33 A guardian ad litem has a fundamental duty to review the court file and any other potentially relevant judicial proceedings.34

Just as the guardian ad litem is not a party in the traditional sense, they are also not subject to the same discovery requirements as a litigant to a case. In *Metcalfe*, the Third District upheld the trial court’s denial of the husband’s discovery requests to the guardian ad litem.35 The guardian ad litem has a strict duty to maintain all information received through a court order directed at third parties as confidential except for information that in the guardian ad litem’s discretion, is disclosed in her or his written report.36 The *Metcalfe* Court noted the guardian ad litem filed and served the parties with a copy of the report which disclosed all of the people he had interviewed. Thus the husband was free to interview or depose any of those people.37 It is a violation of procedural due process and reversible error for a court to not allow a party to cross-examine a guardian ad litem.38 A guardian ad litem report is, by necessity, usually going to contain hearsay. The act of filing the report does not place the report in evidence at a subsequent hearing. Hearsay rules contained in the Florida Evidence Code apply to Fla. Stat. § 61.403. Accordingly, when a guardian ad litem attempts to testify to hearsay statements and a valid hearsay objection is raised, that objection should be sustained.39 A guardian ad litem does not meet the criteria of qualified staff or specified professionals outlined in Fla. Stat. §61.20(2)(2014) applicable to social investigations that would allow the court to consider the report without regard to the technical rules of evidence.40 Trial

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courts have been repeatedly cautioned to not abdicate its authority or delegate decision making authority to the guardian ad litem.41

Social Investigators

Like Guardian ad Litems, Social Investigators investigate and make recommendations concerning the best interest of the child(ren). The practitioner should be aware that the statutory and procedural rules differ between the two.

Once a parenting plan is at issue, the court is empowered to order, in its discretion, a “social investigation and study concerning all pertinent details” not only relating to the child(ren), but also each parent. Florida Statute § 61.20 governs “social investigations and recommendations” regarding parenting plans.


Fla. Fam. L.R. P. 12.364 clearly provides the grounds upon which a practitioner may apply to the court for an appointment of a social investigator. The rule states that “[w]hen the issue of timesharing, parental responsibility, ultimate decision-making, or a parenting plan for a minor child is in controversy, the court, on motion of any party or the court’s own motion may appoint an investigator under section 61.20, Florida Statutes.”42

The qualifications for appointment of a social investigator arise from FLA. STAT. § 61.20(2). Those individuals that may serve as a social investigator are:

a. A “qualified staff of the court (which may include the Department of Children and Families (“DCF”), provided the moving party is indigent and the court does not have qualified staff to perform the investigation);
b. A child-placing agency licensed under section FLA. STAT. § 409.175;
c. A psychologist licensed pursuant to Chapter 490, Florida Statutes; or
d. A clinical social worker (“LCSW”), marriage and family therapist, or mental health counselor (“LMHC”) licensed pursuant to Chapter 491, Florida Statutes.

Generally, a party will file a motion with the court for the appointment of an investigator. Barring an objection to the motion, often the parties either agree to the appointment of a particular social investigator or, the parties agree that an investigator is necessary but disagree on the particular investigator to be appointed. The latter generally requires court intervention. Upon appointment, an order shall include, among other things, contact information for the investigator as well as the parties, and identify the specific issues which are to be the focus of the investigation.43

Unless a party is found indigent and DCF is appointed under the narrow parameters mentioned above, costs for the appointment of a social investigator are borne to the parties either in such proportion as the court deems appropriate or by agreement between the parties.44

Once the social investigation is complete, the social investigator “shall prepare a written study concerning the issues relative to the best interest of the child along with the evaluator’s recommendations.”45 The investigator must provide a copy of the written study to all parties (including a guardian ad litem if appointed), and shall likewise furnish a copy to the court. Barring an extension by the Court, the study shall be provided 30-days in advance of any hearing at which the Court is to consider the written report.46

The practitioner should note that the rule of procedure states that a “copy” shall be “furnished,” as opposed to “filed and served.” Generally, the social investigator will e-file a “Notice of

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Certification Review Course
Orlando, Florida on January 21 – 22, 2022
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Completion of Social Investigation” and will email the report to the parties directly.47

The “technical rules of evidence do not exclude the study from consideration.”48 Therefore, the practitioner should be aware that any hearsay statements included in the report may be considered by the court. However, the court’s consideration of the report is not automatic once the report is complete. In fact, the report must be provided to the parties in advance of any hearing so they may determine whether any testimony to corroborate or rebut its contents is necessary.49 Simply put, it could be asserted by counsel that the study is admissible at a hearing as an exception to the hearsay rule, provided the study was provided at least 30-days in advance of the hearing. Note how this is different from reports authored by a guardian ad litem as discussed above.50 Of course, the parties may stipulate to both the admissibility of a report by the guardian ad litem or a study by the social investigator.

The parties, after reviewing the report, may require the social investigator to testify in the matter concerning his or her recommendations. The social investigator may even be ordered to produce his or her file to a second investigator for review if the court desires a second opinion.51 Regardless of the contents of the study, its admissibility, or the investigator’s testimony, the Court is not bound to adopt the recommendations of the investigator.52 Ultimately, in determining the best interest of the child(ren), the Court must consider the totality of the evidence when rendering a decision.

The decision to seek the appointment of a guardian ad litem or social investigator is contingent upon the circumstances of the case. The practitioner should discuss the distinctions with his or her client and determine which appointee would best serve the client’s goals and further the best interests of the child(ren). Regardless of the particular individual appointed, guardian ad items and social investigators may assist the court, and the parents, in reaching outcomes that promote the best interests and well-being of children who are the subjects of their parent’s litigation.

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Endnotes
1 R. Regulating Fla. Bar 4-12.
2 Family Law Section of The Florida Bar, Bounds of Advocacy, Goals for family lawyers (May 2018), https://familylawfla.org/resources/.
3 Id.
7 Id.
8 Simms v. Dept. of Health & Rehab. Servs., 641 So. 2d 957, 961 (Fla. 3d DCA 1994).
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9 Metcalfe v. Metcalfe, 655 So. 2d 1251, 1254 (Fla. 3d DCA 1995), overruled on other grounds by Wade v. Hirschman, 903 So. 2d 928 (Fla. 2005).
11 R. Regulating Fla. Bar 4-114.
14 Millen v. Millen, 122 So. 3d 496 (Fla. 3d DCA 2013).
15 Id. at 497.
16 Id.
18 Perez v. Perez, 769 So. 2d 389, 393 (Fla. 3d DCA 1999) rev’d, 763 So. 2d 1044 (Fla. 2000).
20 Perez, 769 So. 2d at 394. n.9.
21 Id.
22 Id.
23 Fla. R. Civ. P. 1.210(b); See also Kingsley v. Kingsley, 623 So. 2d 780, 784 (Fla. 5th DCA 1993).
24 Perez, 769 So. 2d at 395 (Sorondo, J., concurring).
25 Id.
26 Id. at 396.
32 Id.
33 Id.
34 Owens v. Owens, 685 So. 2d 1038, 1040 (Fla. 4th DCA 1997).
35 Metcalfe, 655 So. 2d at 1252.
37 Metcalfe, 655 So. 2d at 1253.
38 Miller v. Miller, 671 So. 2d 849, 850 (Fla. 5th DCA 1996).
39 Scaringe v. Herrick, 711 So. 2d 204, 205 (Fla. 2d DCA 1998).
40 Id. at 205.
41 Roski v. Roski, 730 So. 2d 413, 414 (Fla. 2d DCA 1999); Larocka v. Larocka, 43 So. 3d 911, 912 (Fla. 5th DCA 2010).
42 Fla. Fam. L.R.P. 12.364(b).
43 Fla. Fam. L.R.P. 12.364(d)(1)-(g).
45 Fla. Fam. L.R.P. 12.364(e).
46 Id.
47 Compare Id., with Fla. Stat. § 61.403(5) (2021) (stating the guardian ad litem “shall file a written report and serve on all parties…”).
49 Kern v. Kern, 333 So. 2d 17 (Fla. 1975) (holding that the parties have a “right to present testimony or other evidence or to cross-examine witnesses [including the investigator]”); See also, Leinenbach v. Leinenbach, 634 So. 2d 252, 253 (Fla. 2d DCA 1994) (applying the same standard to guardian ad litem reports).
50 Scaringe, 711 So. 2d at 205.
51 Fla. Fam. L.R.P. 12.364(g).
52 Bailey v. Bailey, 176 So. 3d 344 (Fla. 4th DCA 2015).
One of the most recent therapeutic interventions that has been ordered in family court is reunification therapy. I consider reunification therapy to be a form of family therapy designed to reintegrate both parents into the family, so as to facilitate what is in the best interest of the child(ren) - an active role for both father and mother.

The primary use of reunification therapy is in high-conflict family cases in which the child(ren) may be estranged or alienated from one or both parents. The primary goal of the reunification therapist is to mend the estrangement or alienation between the child and the parent. In most cases, the court order on reunification therapy only requires the active participation of the estranged or alienated parent and the child(ren). However, as Walters and Friedlander point out, successful intervention may require participation of the entire family unit. This is particularly so when the child(ren) is “intractable”, i.e. refuses post separation to cooperate with the reunification process. In this case, reunification therapy may require the participation not only of the parents, but also the lawyers representing each parent, the therapist for the child(ren), and even the judge. Failure to cooperate in the reunification process by any of these parties, results in failure.

During the reunification process, the reunification therapist determines if the child at issue is being alienated by the residential parent. During this period of time, the reunification therapist may consult with the child’s individual therapist to determine if alienation is occurring. If alienation is occurring, the reunification process should cease immediately. The reunification therapist must address any parental alienation concerns with both of the lawyers, and, if required, the Court, before proceeding with the reunification therapy. In extreme cases of alienation, “a nexus between the court and the treatment is critical to success”.

In attempting to reunify the alienated child using the reunification therapy process, it is essential to be aware of the 10 fallacies regarding alienated children:

1. **Children never unreasonably reject the parent with whom they spend the most time.**
   a. This was not true in approximately 16% of the cases where the alienated parent had either primary or joint physical custody.

2. **Children never unreasonably reject mothers.**
   a. In one-third to one-half (1/3 – 1/2) of cases involving children, the mother is alienated and the father is the alienator.

3. **Each parent contributes equally to a child’s alienation.**
   a. Based on a study of one thousand custody
case disputes the researchers found that the favored parent was responsible for programming the alienation of the child.⁹

4. **Alienation is a child’s transient, short-lived response to parental separation.**
   a. In most cases, alienation does not just dissipate. In fact, alienation can cause long term psychological damage to children.

5. **Rejecting a parent is a short term, healthy, coping mechanism.**
   a. Richard A. Warshak indicates that alienation is rare, occurring in only 2%-4% of divorces.¹⁰ It is almost never a healthy response, but rather requires immediate intervention to reduce long term damage to the child.

6. **Young children living with an alienating parent need no intervention.**
   a. This is merely, not true. Children that are living with the alienating parent are at risk for self-identity issues as well as losing the love of a parent.

7. **Alienated adolescents’ stated preferences should dominate custody decisions.**
   a. Adolescents can be highly suggestible to other’s influence; they can make immature judgments and can be impulsive and irrational in their behavior.¹¹

8. **Children who irrationally reject a parent but thrive in other respects, need no intervention.**
   a. Richard Warshak, in his publication, indicates that this is a problem in its own right and is related to other indices of psychological impairment.¹² Not only may judgment of good adjustment be superficial, but alienation from a loving parent sets up significant loss for the child.¹³

9. **Severely alienated children are best treated with traditional therapy techniques while living with their favored parent.**

   a. No evidence supports the position that psychotherapy can overcome severe alienation without regular contact with the rejected parent.

10. **Separating children from an alienating parent is traumatic.**
    a. Richard Warshak indicated in his article that to date, there are no peer reviewed studies that have documented harm to severely alienated children from the reversal of custody (i.e. separation from the severely alienating parent).¹⁴

**A Reunification Treatment Model:**

Irrespective of the causes of estrangement or alienation, protecting the child’s physical and emotional wellbeing is of paramount consideration. The estranged child needs to feel safe and protected. I recommend the following steps designed to successfully complete the process of reunification and to safeguard the child(ren):

1. The therapist needs to interview each of the parents separately to assess the probable cause of estrangement or alienation: and, to assess the parenting style of each parent.
2. The child must be interviewed to determine their reasons for not adhering to the assigned parenting plan. Is the child angry or scared? If so, what is the reason for those feelings?
3. The reunification therapist should then decide if it is better to proceed by working with the parent and child in the same room or, to begin with virtual sessions.
4. The reunification therapist may choose to initiate an intermediate step of an in-person session in which the child’s individual therapist is invited to attend the live or virtual session.
5. If the reunification therapist determines that there is probable cause for suspecting
alienation, the reunification therapist may have to work with the alienating parent. If the child is intractable, the reunification therapist consults with the lawyers for both parents to formulate a strategy for forward movements.

The reunification therapist should also exchange ideas with the child’s individual therapist to facilitate the process.

Terminate the reunification process with both parents so as to facilitate a healthy co-parenting relationship.

In summation, reunification therapy is a process most similar to family therapy where both parents and child(ren) work to establish a positive and healthy relationship between the child(ren) and the estranged parent. The reunification process will require flexibility in the treatment plan. Typically, in the case of high conflict parents and retractable children, the reunification therapist may need the assistance of the individual therapist, the lawyers for both parents and even the court. In all, children require the healthy participation of both parents in their daily lives.

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Grandparents Rights – An Alternate Perspective

By Martin Kofsky

Grandparent visitation rights have been in decline in Florida for nearly 30 years. This decline culminated in 1996 with the Florida Supreme Court case of Beagle v. Beagle. The Supreme Court of Florida in Beagle considered the constitutionality of Fla. Stat. § 752.01 (1993) which set forth the mechanism and circumstances under which a grandparent might ask a court to grant grandparent’s access to a minor child over the objections of a parent.

Beagle offers a detailed description of the historical development of the grandparental visitation statute before declaring that that the best interests of the minor child alone was insufficient to sustain an intrusion upon a parent’s right of privacy under Article I, Section 23 of the Florida Constitution. Beagle struck down the grandparent visitation statute that authorized an award of grandparental visitation rights in situations where the child lives with an intact family.

The Beagle court was not unsympathetic to grandparents but, found the right of privacy enshrined in Fla. Const. art. I, § 23 to be too robust to permit a cavalier intrusion on the rights of parents to restrict or forbid contacts between a minor child and their grandparents. The benefit that such interactions may have for the child was simply not enough.

The Florida Supreme Court held, “[w]e find that the challenged paragraph infringes upon the rights of parents to raise their children free from government intervention. The paragraph’s major flaw is its failure to require a showing of harm to the child prior to any award of any grandparental visitation rights. The absence of such harm requirement results in the State being unable to satisfy the compelling interest standard announced by our decisions construing Fla. Const. art. I § 23.

Grandparental Visitation Statute

A grandparent seeking visitation must satisfy a three-part test to unlock the door to grandparental visitation. First, the court must find by clear and convincing evidence that: (i) a parent is unfit or that there is significant harm to the child; (ii) that visitation is in the best interest of the child; and (iii) that the visitation will not materially harm the parent-child relationship. The best interest of the child element is then determined by an analysis of thirteen (13) factors contained in Fla. Stat. § 752.011(4) that include but are not limited to: (i) factors concerning the quality, duration and frequency, of the grandparent’s relationship with the minor child; (ii) the present mental, physical and emotional health of the minor child and the grandparent; (iii) recommendations of a guardian ad litem (if appointed); (iv) results of any psychological examination of the child; (v) the reasonable preference of the child; (vi) any written testamentary statement by the deceased parent regarding visitation by a grandparent; and (vii) the existence or threat to the minor child of mental injury as defined in Fla. Stat. § 39.01.

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In contrast to Fla. Stat. § 752.011, a military service member is able to designate a family member (other than the other parent) to exercise that parent’s time-sharing while the service member is under temporary assignment orders to relocate away from the child.

In Overstreet v. Overstreet the First District considered whether a military service member who was deployed to Guam for a period of three years was allowed to designate his parents as his timesharing surrogate in his absence. The trial court in Overstreet permitted the timesharing assignment but, the First District Court reversed and held that the technical meaning of permanent and temporary, as assigned by the United States Navy, drove the issue. It is important to note that Fla. Stat. § 61.13002, the predecessor to the Uniform Deployed Parents Custody and Visitation Act (hereinafter “UDPCVA”), did not define what “temporarily assigned” meant. The First District in Overstreet did not reach the constitutional question as the issue was resolved on other grounds.

Under Florida law, a deploying parent has the ability to delegate caretaking authority, custodial responsibility and decision-making authority to a grandparent or other non-parent in certain defined circumstances and not for a period greater than 18 months. In the absence of an agreement between the service member and the non-deploying parent, the deploying parent can initiate proceedings for a temporary custody order under Fla. Stat. § 61.733.

A parent may, in the absence of a risk of harm to a child, delegate to a grandparent or other non-parent, caretaking authority, custodial responsibility and decision-making authority without the need to demonstrate harm. Any temporary agreement granting custodial responsibility to a non-parent terminates automatically 30 days after the deploying parent gives notice of return to from deployment. Permanent deployment and changes of station that are more than 50 miles from the service member’s current address are governed by Fla. Stat. § 61.13001. The UDPCVA further provides for changes to child support, and, from time to time, the modification of the rights granted to third parties.

Nevertheless, a question arises as to whether a parent should be permitted to designate a surrogate to exercise their caretaking authority, custodial responsibility and decision-making authority in a testamentary instrument or other document when they are unable to participate in the life of a minor child through illness, injury, incarceration or other circumstances. If a parent can “force” the other parent of a child to co-parent with his or her designee, is the privacy protection afforded to a parent under Fla. Const. art I, § 23 truly as robust as the Florida Supreme Court in Beagle initially suggested?

Suggesting that a grandparent has an independent right to visit a grandchild over the objection of the grandparent’s child likely remains a bridge too far under Florida law. It is unlikely that such a grant, in the absence of temporal limit, will survive a constitutional challenge.

If the UDPCVA is energized by public policy alone, what is the basis to prohibit grandparent visitation under a written authorization from a parent in the absence of a demonstration of harm. Nevertheless, the presence of the UDPCVA suggests that Fla. Const. art I, § 23, is not the barrier to grandparental visitation that it was thought to be. Are the spouses or partners of deploying service members somehow afforded less deference under Fla. Const. art I, § 23 than the partners and spouses of non-service members? Stated otherwise, is a deploying service member, as opposed to a person who, by choice or circumstances, is unavailable to a child, treated more favorably under the laws of the State of Florida?
This author is mindful of the obvious public policy reasons for preserving connections between deployed members of our Armed Forces. However, that acknowledgment does little to remedy the apparent equal protection argument that arises in a situation where a parent who is unavailable for reasons unrelated to military deployment, would not be permitted to make a similar designation. Nevertheless, the ability to delegate aspects of parenting to a non-parent, suggests that Florida’s right of privacy may not be quite as robust and first thought.

**The Rights of the Child.**

Florida and its sister States operate under the premise that, "[w]hen a statute impinges on a fundamental liberty interest, such as parenting [a] child, we must analyze the constitutionality of the statute under a strict scrutiny standard." To withstand strict scrutiny, "the statute must serve a compelling state interest through the least intrusive means possible." Many of our sister States have configured grandparental visitation statutes that pass federal muster.

Florida permits intrusions into the otherwise protected space of parenting when harm to the child will be mitigated or ended. When considering the issue of grandparental visitation (including the rights of other family members), the Florida constitution should not, and cannot, be read to ignore the interests of the child when considering this question. The Florida Supreme Court in *Beagle* does not limit the requirement for harm to only those situations where current harm from the parents is abated. Instead, the holding of *Beagle* can be read, and should be read, to permit non-parents to petition for visitation when the deprivation of such visitation represents a departure from the well-established patterns of contact, the deprivation will cause psychological or emotional harm to the child, and the grandparent, or other person, has not acted to subvert the authority of the biological parent.

Grandparents and other family members that are denied access to a child should be afforded an opportunity to seek a relationship over the objection of a biological parent if the denial of access is arbitrary or capricious and without good cause. Further, a grandparent who has not had a relationship with a child should not be able to petition the court for contact simply because they want it. The only proper consideration that should stand in the light of Fla. Const. art. I, § 23 is the restoration or continuation of a preexisting relationship where the absence of the relationship is likely to cause psychological or emotional harm to the child.

A longstanding and fundamental liberty interest of parents exists in their ability to determine the care and upbringing of their children free from the heavy hand of government paternalism. The United States Supreme Court has concluded that “freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.” However, “[a] child, merely on account of his minority, is not beyond the protection of the Constitution.” The United States Supreme Court has held that “whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.” This observation, of course, is but the beginning of the analysis. The United States Supreme Court has long has recognized that the status of minors under the law is unique in many respects. Further, the United States Supreme Court requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. (Emphasis added).

That is not to say that the constitutional rights of children can be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing all weigh the balance in favor of the
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parent. “States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” However, these rules cannot be read to mute the interests of the child in favor of his or her parent.

Balancing the Interests of the Child and the Grandparent.

Where does the balance between the right of the parent and the right of the child lie when considering grandparental visitation rights? The question suggests that any analysis should consider the reasonable preference of the child to interact with a grandparent or other family member with whom the child shared a substantial relationship for a significant period of time when the child is able to. The proper balance, however, requires a multifactorial analysis that looks at harm from the perspective of whether a child will suffer psychological or emotional harm if the child’s relationship with a grandparent or other family member is denied.

What have Other States Done?

A. Georgia.

Georgia, for example, considers whether the child would be harmed if a member of the child’s family were denied visitation and the best interest of the child were served by such a decision. Georgia does not allow a grandparent who was denied an opportunity to form a relationship with a grandchild to pursue an action. Georgia permits consideration of cases where the minor child resided with the family member for six months or more, the family member provided financial support for the basic needs of the child for at least one year, there was an established pattern of regular visitation or child care by the family member with the minor child, or any other circumstances exist indicating that emotional or physical harm would be reasonably likely to result if such visitation is not granted.

B. Mississippi.

Similarly, Mississippi limits the individuals that may petition for visitation, in part, to keep the grandparent’s statutory right to visitation from impermissibly encroaching on the parents’ rights to rear their children as they see fit. “Any court of this state which is competent to decide child custody matters shall have jurisdiction to grant visitation rights with a minor child or children to the grandparents of such minor child or children as provided in this chapter.” Mississippi does not require a showing of harm to the child if visitation by a grandparent is not permitted; instead, grandparent visitation rights are afforded only to a grandparent when custody of the child is awarded only to a single parent. A viable relationship must be present for a grandparent to have standing to seek grandparent visitation rights.

In Mississippi, natural grandparents have no common-law “right” of visitation with their grandchildren. Such right must come from a legislative enactment. The Supreme Court of Mississippi has held that although the Mississippi Legislature created [grandparent visitation rights] by enacting Miss. CODE ANN. §93-16-3, it is clear that natural grandparents do not have a right to visit their grandchildren that is as comprehensive to the rights of a parent. Moreover, Mississippi is clear that its statutory framework permits qualifying grandparents to seek visitation but it does not entitle them to receive visitation. Mississippi also requires the consideration of ten “Martin Factors” that includes but is not limited to the disruption caused by extensive visitation, the suitability of the grandparent’s home, the age of

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the child, the age and physical and mental health of the grandparents, emotional ties between the grandparent and the child, whether the grandparents undermine the parent’s general discipline of the child, grandparent’s willingness to refrain from interfering with the parent’s manner of child rearing.

The Mississippi grandparent visitation statute would not pass muster under Florida’s Constitution as it does not require or consider whether the deprivation of the minor child’s relationship with his or her grandparent would likely be harmful to the child.

C. Tennessee.

Tennessee presents a statutory formulation much more likely to survive a challenge in Florida, if such a statute were to be enacted here. In Tennessee, if grandparent visitation is opposed by the minor child’s custodian, parent or parents, or if grandparent visitation has been severely reduced and (1) the father or mother of an unmarried minor child is deceased; (2) the child’s father or mother are divorced, legally separated, or were never married to each other; (3) the child’s father or mother has been missing for not less than six (6) months; (4) the court of another state has ordered grandparent visitation; (5) the child resided in the home of the grandparent for a period of 12 months or more and was subsequently removed from the home by the parent, parents, or custodian (this grandparent-grandchild relationship establishes a rebuttable presumption that denial of visitation may result in irreparable harm to the child); or (6) the child and the grandparent maintained a significant existing relationship for a period of 12 months or more immediately preceding severance or severe reduction of the relationship, this relationship was severed or severely reduced by the parent, parents, or custodian for reasons other than abuse or presence of a danger of substantial harm to the child, and severance or severe reduction of this relationship is likely to occasion substantial emotional harm to the child.

As a threshold matter, the court must first, “. . . determine the presence of a danger of substantial harm to the child. Such finding of substantial harm may be based upon cessation or severe reduction of the relationship between an unmarried minor child and the child’s grandparent” Danger of substantial harm is then determined by considering whether: (A) the child had such a significant existing relationship with the grandparent that loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child; (B) the grandparent functioned as a primary caregiver such that cessation or severe reduction of the relationship could interrupt provision of the daily needs of the child and thus occasion physical or emotional harm; or; (C) the child had a significant existing relationship with the grandparent and loss or severe reduction of the relationship presents the danger of other direct and substantial harm to the child.

Tennessee further establishes a rebuttable presumption of substantial harm if the petitioner is the parent of a minor child’s deceased parent.

Conclusion.

The Florida Constitution provides a narrow corridor through which a grandparent might seek visitation with a minor child. Consideration of the best interests of the child, without more, is insufficient. Two issues must be addressed at the outset of any statutory process whereby a grandparent might seek visitation with a minor child. First, there must be a demonstration of harm if such visitation is denied and the presence of a prior substantial relationship between the grandparent and the minor child. Factors such as the Martin factors recognized by Supreme Court of Mississippi provide a useful analytical framework for further consideration of the best interests of the child once harm and a preexisting substantial relationship are established.

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Additional factors that might be included in the analysis are the specific frequency and duration of prior contacts; if contact was denied or curtailed, whether such denial or curtailment was arbitrary, capricious or otherwise unrelated to the actual interests of the minor child; whether there is a history of the grandparent subverting the authority of the minor child’s parent or otherwise being unwilling to abide by parenting decisions made by the minor child’s parent(s); the need for a prior relationship.

This writer is well aware that intrusions upon parental authority is extraordinarily limited. However, by introducing the element of harm along with considerations of our sister States, grandparent visitation appears to be viable under the very limited circumstances described herein.

Mr. Kofsky has been practicing law since 1992 and concentrates his practice in the area of family and marital law. He earned his J.D. in 1992 from St. Thomas University School of Law where he was valedictorian of his law school class, and his M.H.A., with honors, from Florida International University in 1985.
He can be reached in his office in Stuart Florida at martin@dkclegal or 772-212-4457.

Endnotes
1 Beagle v. Beagle, 678 So. 2d 1271 (Fla. 1996).
2 Every natural person has the right to be let alone and free from government intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provided by law. FLA. CONST. art. I, § 23.
4 We emphasize that our determination today is not a comment on the desirability of interaction between grandparents and their grandchildren. We focus exclusively on whether it is proper for the government, in the absence of a demonstrated harm to the child, to force such interaction against the express wishes of at least one parent in an intact family. Beagle v. Beagle, 678 So. 2d 1271, 1272 (Fla. 1996).
5 Id.
6 The use of the present tense “is” makes it clear that the prospect of harm will not be enough. There must be a demonstration of actual and current harm to the child. FLA. STAT. § 752.011(3).
7 FLA. STAT. § 752.011(3).
8 FLA. STAT. § 752.011(4)(a) – (ct: e).
9 FLA. STAT. § 752.011(4)(f) – (g).
10 FLA. STAT. § 752.011(4)(l) – (l).
“Mental injury” means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior. FLA. STAT. § 39.0148.
12 Overstreet v. Overstreet, 244 So. 3d 1182 (Fla. 1st DCA 2018).
13 Overstreet v. Overstreet, 244 So. 3d 1182 (Fla. 1st DCA 2018).
14 “Caretaking authority” means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, time-sharing, and visitation. FLA. STAT. § 61.703(2).
15 Custodial responsibility includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parental responsibility, parenting time, right to access, time-sharing, visitation, and authority to grant limited contact with a child. FLA. STAT. § 61.703(6).
16 “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority. FLA. STAT. § 61.703(7).
17 FLA. STAT. § 61.703(g).
18 FLA. STAT. § 61.703(7).
19 (3) If, due to the operational constraints of the deployment, or a portion thereof, the deploying parent is unable to exercise decision-making authority and if it is in the best interest of the child, a court may grant part of that authority to a nonparent who is an adult family member of the child or an adult who is not a family member with whom the child has a close and substantial relationship. FLA. STAT. §61.739 (3).
20 Upon the motion of a deploying parent and in accordance with general law, if it is in the best interest of the child, a court may grant temporary caretaking authority to a nonparent who is an adult family member of the child or an adult who is not a family member with whom the child has a close and substantial relationship. In the case of an adult who is not a family member with whom the child has a close and substantial relationship, the best interest of the child must be established by clear and convincing
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awarding custody of a minor child to one (1) of the parents of the child or terminating the parental rights of one (1) of the parents of a minor child, or whenever one (1) of the parents of a minor child dies, either parent of the child’s parents may petition the court in which the decree or order was rendered or, in the case of the death of a parent, petition the chancery court in the county in which the child resides, and seek visitation rights with the child. MISS. CODE ANN. § 93-16-3(3) (2019). 38 For purposes of subsection (2) of this section, the term ‘viable relationship’ means a relationship in which the grandparents or either of them have voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six (6) months before filing any petition for visitation rights with the child, the grandparents have had frequent visitation including occasional overnight visitation with said child for a period of not less than one (1) year, or the child has been cared for by the grandparents or either of them over a significant period of time during the time the parent has been in jail or on military duty that necessitates the absence of the parent from the home. MISS. CODE ANN. § 93-16-3(3) (2019).

39 Smith v. Martin, 222 So. 3d 255, 263 (Miss. 2017); 40 Smith, 222 So. 3d at 263 (citing Settle v. Galloway, 682 So. 2d 1032, 1035 (Miss. 1996)). 41 See Martin v. Coop, 693 So. 2d 912, 916 (Miss. 1997); “[N] one of these factors should receive more weight in the chancellor’s analysis than any other. These factors are further not all-inclusive. The chancellor should weigh all circumstances and factors he feels to be appropriate.” Id.

Many of us have received inquiries from a potential client on how to obtain a passport for their child when the putative father will not cooperate and he is listed on the child’s birth certificate. Often, the conventional advice would be that a passport cannot be obtained unless a paternity case is filed. However, after a closer review of Florida law, it appears that there may be other options available.

When a child under the age of 16 applies for a United States (hereinafter “U.S.”) passport, the parent applying for the passport must complete a Form DS-11. The Form DS-11 requires the following information:

To submit an application for a child under age 16, both parents or the child’s legal guardian(s) must appear and present all of the following:

- Evidence of the child’s U.S. citizenship
- Evidence of the child’s relationship to parents/guardian(s) (Example: a birth certificate or consular report of birth abroad listing the names of the parent(s)/guardian(s) and child)
- Original parental/guardian government-issued identification and a photocopy of the front and back

If only one parent/guardian can appear, you must also submit one of the following:

- The second parent’s notarized written statement or DS-3053 (including the child’s full name and date of birth) consenting to the passport issuance for the child. The notarized statement cannot be more than three months old, must be signed and notarized on the same day, and must come with a photocopy of the front and back side of the second parent’s government-issued photo identification
- The second parent’s death certificate (if parent is deceased)
- Evidence of sole authority to apply (Example: a court order granting sole legal custody or a birth certificate listing only one parent). (Emphasis added)
- A written statement (made under penalty of perjury) or DS-5525 explaining, in detail, why the second parent cannot be reached

Based upon the language of Form DS-11, it appears that when the U.S. Department of State receives an application from a parent containing evidence of that parent’s sole legal authority (i.e. a court order) to apply for the passport, the U.S. Department of State may issue the passport without the putative father’s cooperation.

Florida law is clear that the mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child, unless a court of competent jurisdiction enters an order stating otherwise. Further, if a judgment of paternity contains only a child support award with no parenting plan or timesharing schedule, the obligee parent receives all of the timesharing and sole parental responsibility of the child, without prejudice to the obligor parent. If a paternity judgment contains no such provisions, the mother shall be presumed to have all the timesharing and sole parental responsibility. (Emphasis added). The
argument follows that, if a putative father has not established parental responsibility, timesharing, or a parenting plan with the minor child and the mother’s rights over the child have not been affected or altered by a court order, then the mother is the only natural guardian of the child recognized by Florida.

There is currently no law, statute, or rule in Florida that requires the mother of a child born out of wedlock to initiate a paternity action against the putative father so that she is able to exercise her own legal rights to her child under the natural guardian statute.4 It follows that a similarly suited mother may seek declaratory relief to have the legal ability to exercise her rights as the natural guardian of her child. This would essentially mean that a passport could potentially be obtained for a child under the age of 16 from the U.S. Department of State without providing notice to the putative father and without the putative father’s cooperation. The filing of an action for declaratory relief to establish the mother’s rights does not impose or abolish the putative father’s potential rights or obligations. Therefore, the putative father would not be required to receive notice of the proceedings for declaratory relief.

Florida Statute § 86.011 (2021) defines the jurisdiction of courts in declaratory relief actions as follows:

The circuit and county courts have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed. No action or procedure is open to objection on the ground that a declaratory judgment is demanded. The court’s declaration may be either affirmative or negative in form and effect and such declaration has the force and effect of a final judgment. The court may render declaratory judgments on the existence, or nonexistence:

1. Of any immunity, power, privilege, or right; or
2. Of any fact upon which the existence of nonexistence of such immunity, power, privilege, or right does not or may depend, whether immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action.

Florida recognizes the fundamental rights of parents to make decisions concerning the care, custody, and control of their children.5 For instance, a trial court has jurisdiction to establish maternity under Chapter 86; and, the Florida Supreme Court recognizes a parent’s right to bring a declaratory judgment action to establish parentage where such adjudication is necessary to the determination of existing rights or duties between parties to an actual controversy or dispute.7

Just as a court has jurisdiction over a paternity action filed by a mother against the father, the same court would have jurisdiction to enter a court order pursuant to the authority contained within Chapter 86 of the Florida Statutes. The order may declare the current rights of the mother in a family court proceeding that is filed in the circuit court of the child’s home state, in the county in which the mother and child reside. An order entered providing the mother with sole legal authority would not prevent or prejudice any party with standing to bring forth an action in the future.

Therefore, by following the steps outlined above, when the next potential client calls and asks to obtain a passport for a child under the age of 16, there may be the potential for a flight instead of a fight with an uncooperative putative father.

Meaghan K. Marro is one half of Marro Law, PA. Meaghan’s side of the practice focuses on the areas of marital and family law litigation and appellate work. Meaghan graduated from Florida State
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University with a Bachelors Degree in Psychology, and went on to receive her Master’s Degree from Western Michigan University’s Behavior Analysis Program. Later receiving her Juris Doctorate from Nova Southeastern University. Meaghan is currently a member of the Florida and New York State Bars, and is admitted to practice before U.S. District Court in the Southern and Middle Districts of Florida. Meaghan represents clients from all walks of life and zealously advocates for individual’s rights under Florida law. She also donates her time by providing pro bono legal services, particularly to the Mission United Veterans Project under Legal Aid Service of Broward County. Originally from Iowa, Meaghan has called South Florida home for the past 25 years and intends to remain warm.

When not working, which is rare, Meaghan enjoys spending time with her husband and law partner, John, their 6 year-old son Hunter, and their big “horse” dog Utah.

Endnotes
3 Id.
5 B.B.S. v. Rodriguez-Murguia, 191 So. 3d 528, 529 (Fla. 4th DCA 2016) (citing Troxel v. Granville, 530 U.S. 57, 66 (2000)) (“[W]e have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”); D.M.T. v. T.M.H., 129 So. 3d 320, 338 (Fla. 2013) (“As the United States Supreme Court has pronounced and this Court has stated, therefore, a biological connection gives rise to an inchoate right to be a parent that may develop into a protected fundamental constitutional right based on the actions of the parent.”).
6 B.B.S., 191 So. 3d at 530.
7 Id. (citing Kendrick v. Everheart, 390 So. 2d 53, 57-58 (Fla. 1980)).
TikTok...The Next Big Marketing Platform for Lawyers?

By Sara Singer

Never in my life did I ever see myself writing an article on social media tips. I am a divorce lawyer based in South Florida, I have been practicing law for eight years, and I have over 70,000 followers on TikTok. I spent last year evaluating my business plan and one of my goals for 2021 was to grow my business, and I was open to trying new tactics. I met with my marketing company, who immediately suggested I try TikTok. Like many, I thought TikTok was a place where teenagers did choreographed dances and spent hours watching random videos about nothing. I was wrong. In February 2021, I opened my account. Somehow, I managed to snag a pretty good name - FloridaDivorceLawyer. Initially, I wondered how dancing (poorly) to a group of teenagers would bring me any divorce clients. My marketing team told me that TikTok was free, suggested I try it for 30 days, and to make a decision afterward.

Over the span of three weeks, I posted 17 videos (which I now look back on and cringe at). Then my eighteenth video went “viral”. The viral video was only 15 seconds long, and it said, “In Florida, unmarried biological fathers have no rights until they are established.” Nearly 1 million people watched that video; and, since then, my TikTok account has grown by about 2,000 followers every week.

On average, my TikToks consist of 30-second to 3-minute videos informing my followers about various Florida laws pertaining to family law. I debunk internet rumors like, “in Florida, if you leave a marital residence, you’ve abandoned it and give up your equity” and remind people of the best interest factors contained in Florida Statute §61.13. There is so much misinformation on the Internet. More often than not, people read fraudulent facts and make life choices based on what they read. All I want is to create a source of factual, clear, easy-to-understand information that is available to everyone.

What TikTok has reminded me about social media marketing, and marketing, in general, is people do business with people they like and know. People like consistency and reliability. My TikTok audience knows they can always count on me to post at least one video per day. My followers also feel like they know me - they ask questions about my dog, the shoes I’m wearing, and the water I drink (its Hint water, and it’s delicious). TikTok reminded me that as family law attorneys, we are really always selling ourselves.

The ability to connect directly with potential clients is what sets marketing on TikTok apart from the old-school direct marketing via mail, or even from paid advertisements in magazines. The time commitment to TikTok is much larger than a time commitment needed for a direct mail campaign but it is similar to the time commitment associated with in-person networking like BNI (Business Networking International) or other leads groups. However, the return on investment from TikTok is exponentially larger than a direct mail campaign or in-person networking.
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Since opening my account (just seven months ago), TikTok has become my largest source of business. I regularly get between 2-4 TikTok clients per month. TikTok has allowed me to meet other attorneys from around the world. I have also interacted with clerks from different circuits and even Judicial Assistants! Through TikTok, I have retained some high-net-worth clients, and I have candidly asked them how they felt about hiring a “TikTok” lawyer. One of my clients graciously told me her family thought she was insane for hiring me, but then her family watched my videos and decided they liked me. Her family mentioned they trusted me because I regularly post new content! In fact, she decided to retain my services, even after her neighbor had referred her to another lawyer.

My biggest takeaway from TikTok is to be consistent in whatever marketing strategy you choose and do not be afraid to step out of your comfort zone. Maybe, instead of paying to have your law firm’s generic flyer sent to random mailboxes, you may want to consider engaging in a marketing campaign where people actually get to know you...I might even see you on TikTok! But if we ever find ourselves on opposing sides in a courtroom, you can’t use my TikTok dances against me!

Sara Singer - Biography
Sara was born and raised in Florida and graduated from The University of Central Florida. She received her law degree from the University of Miami. Sara began her legal career as an Assistant Public Defender in Broward County, Florida, where she practiced criminal defense at both the misdemeanor and felony level. After gaining significant trial experience, Sara transitioned into the private sector. Sara began working as an associate attorney at Brydger & Porras and then opened her own practice, The Law Offices of Sara J. Singer, PA, in 2019.
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