



The Florida Bar Family Law Section  
**COMMENTATOR**



*Focus on Children's Issues*

Volume XXIV, No. 4

Laura Davis Smith, Esq., Editor

Fall 2010

[www.familylawfla.org](http://www.familylawfla.org)



# Section calendar

Look for brochures in the mail and information on the Family Law Section's website: [www.familylawfla.org](http://www.familylawfla.org).

## 2010 – 2011

### December 8, 2010

Telephonic Seminar – **FAMILY LAW ETHICS—A VIEW FROM THE BENCH (1148R)**  
12:00 p.m. – 2:00 p.m.

### January 27, 2011

Section Midyear Meeting  
**Location: Disney's Yacht & Beach Club — Orlando, FL**

### January 28 - 29, 2011

Marital & Family Law Certification Review Course  
**Location: Disney's Yacht & Beach Club — Orlando, FL**  
Visit [www.familylawfla.org](http://www.familylawfla.org) for full brochure and registration information

### February 24, 2011

Telephonic Seminar – **COLLABORATIVE LAW**  
12:00 p.m. – 2:00 p.m.

### April 6 - 11, 2011

Section Spring Retreat  
**Location : Villagio Inn & Spa NAPA Valley, California**  
Reservations: 800-351-1133. Hotel Room Block Deadline 3/16/11. Reference The Florida Bar when calling to make room reservation. *Please note -- A 50% deposit will be required and charged to your credit card.*



The cover art was adapted from a "Google" image by Lynn Brady

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

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

**Articles to be considered for publication may be submitted to Laura Davis Smith, Editor, at [lds@greenesmithlaw.com](mailto:lds@greenesmithlaw.com). MS Word format is preferred.**



# Only the Best

Dear Section Members,

I debated long and hard about the message that I wanted to communicate to all of you as Section Chair in the first edition of the *Commentator* for the 2010 – 2011 bar cycle. I wanted it to be profound yet personal, memorable, but also funny. As a result, I made a number of incomplete starts and stops over the past several weeks, all without success. Fortunately, a question recently posed to me during my participation as a panel member, along with a news clip forwarded by a Section member, served to crystallize my thought process and as you will learn upon reading further, both of these are the genesis for this message. Although it may not be funny it carries an important, personal and heartfelt message.

Several weeks ago three local family attorneys and I participated in a mentoring panel at a local Florida Association of Women Lawyers meeting. There was a general discussion about the practice of family law and the four distinct routes that each of the panelists had pursued to fulfill our career goals, including the sacrifices and choices that we made along the way, which resulted in us being where we are now professionally. After this discussion we fielded questions. One of the questions put to us was from an older woman (I can say this because she assured me she was even older than me). She commented that way back when she was in law school and choices were being made by her classmates about their prospective practice areas, that family law was not by any means a preferred career path, in fact, it was a least preferred practice path for “serious” attorneys. She asked if this were still true.

Then, on November 6<sup>th</sup>, 2010, the *New York Times* published an article titled “*Taking on a Second Mortgage to Pay the Foreclosure Lawyer*” which discussed the evolving practice of some burgeoning South Florida mortgage foreclosure defense firms to require clients to grant them second mortgages to pay their legal fees. One of these practitioners, a Mr. Roy

Oppenheim, Esquire of Weston, Florida, was quoted in that article. When asked about his professional practice area Mr. Oppenheim stated that “Until recently, foreclosure defense would have been considered the lowest of the low – *below the divorce guys*, below ambulance chasers.” [Bold emphasis added].

While we probably all realize that the public does not have the highest opinion of attorneys in general, these

al experience in private practice, as a board certified attorney in marital and family law, as an active Family Law Section member and as a General Magistrate, I resoundingly and whole heartedly reject the old stereotypes as being unfounded.

Were some of us at the top, middle or bottom of our classes? Yes, but then, that is true for all of the various practice areas including civil and criminal.

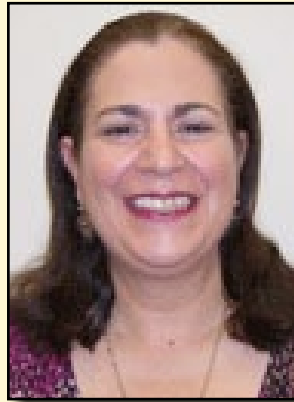
However, does any area of the law require an attorney to have as diverse a spectrum of legal knowledge as family law? Possibly, but I suspect there are darn few. The skilled family law practitioner is required to master multiple chapters of the Florida Statutes dealing with our practice areas, have at least a working knowledge of the Federal law that affects family law, as well as to be knowledgeable about a myriad of substantive areas including but not limited to contract law, real property, probate, insurance, pensions and deferred compensation plans, taxation and bankruptcy. We must understand people, child development, domestic violence, and a whole host of mental health issues including substance abuse and other addictions. We are obliged to counsel and advise clients who are experiencing the most stressful events of their lifetime. We apply the rules of evidence and our trial skills to gain advantage for our clients. But in cases involving children, we focus on the singularly most important aspect of any such case – the children’s best interests.

I have been actively involved in Section work for over ten years. During that time I have had an opportunity to meet hundreds of Section members and by and large we fit the following stereotypes which vary considerably from those discussed above.

We have specifically chosen to become involved in family law - not by default but because we truly care about people, about bringing common sense and structure to lives that have become chaotic and require interven-

*continued, next page*

## Message from the Chair



G.M. Diane Kirigin  
Section Chair, 2010 - 2011

two separate incidents shocked and saddened me. The longer I thought about it though I became offended, inasmuch as it appears that in addition the public, our brothers and sisters in the Bar seem to hold us in low regard. Sadly, family law practitioners are variously stereotyped as coming from the bottom rungs of their law school classes, as not being “trial lawyers”, and perhaps even worse as money grubbers who care little about their clients or their clients’ children. WHY? These jibes at our chosen profession are hurtful, unfair, and grossly unwarranted.

Based upon my collective anecdot-



**Chair's Message**  
from preceding page

tion. We want to help. We care deeply about children and their need to have parents even when their family unit is no longer intact.

In fact, we care so much that as family law practitioners, we have been on the cutting edge of the development of "therapeutic jurisprudence," and "unified family court." We have championed the use of mediation, collaborative law, cooperative law, and parenting coordinators, as alternate dispute resolution mechanisms to avoid the further fracturing of family relationships and finances incident to a dissolution of marriage or other family law litigation.

Section members have been in the vanguard of sweeping changes in the areas of adoption, parenting, support and property division (equitable distribution) as a result of legislation created, developed, and lobbied by the Section; and through the filing of amicus briefs; as well as the creation and implementation of rules and forms to facilitate those legislative changes. Tens of thousands of hours are expended by Section members yearly who do the heavy lifting and toting to pursue the Section's motto of "Serving Florida's Families" and not

just giving lip service to that motto. Aside from Section work, many of us devote hours to providing pro bono legal services and other time to community service and volunteerism in non-legal organizations.

During this current bar year, the Section's theme is "Building Better Relationships." Clearly as family law practitioners, one way of fulfilling this theme is for all of us to do a better job of educating both the public and our sisters and brothers in the Bar as to what exactly it is that we do and what it takes to do it. In a small way, we are trying to accomplish this through the Section's new "Making A Difference" award which is discussed in detail in this *Commentator* as well as on the Section's website at [www.familylawfla.com](http://www.familylawfla.com). I encourage you to nominate Section members (attorneys, judicial officers and affiliates) and help us recognize the best among us.

Over the past few weeks I was reminded about a soliloquy given by Amy Brenneman while in character as Judge Amy Gray-Cassidy, a juvenile court judge, in an episode of her series *Judging Amy*. After an extremely trying day professionally and personally, Amy, also an adjunct law professor at Yale, is called upon to defend the practice area of family law to her class. Her comments and

challenge to her class best exemplify the choice made by many of us who were called to practice family law. It is as follows:

The law is a living thing. It evolves every day, every minute. It changes so quickly that most of the rulings you've memorized will be obsolete before you pass the bar. But here is one thing that doesn't change – family; and while our definition of family is changing all the time the family remains the cornerstone of civilization.

It always has been.

So, who among you is going to follow me into family law?

Not many, **ONLY THE BEST.**

I am so proud to serve as your Chair for the 2010-2011 bar year and look forward to meeting more of you and to working with you during the next year.

I have been and still consider myself at heart as one of "those divorce guys" and I am damn proud of that and of the approximate 3,500 plus members of this Section. Hold your heads high – you are THE BEST.

Happy holidays to you, your families and staff,

— Diane M. Kirigin

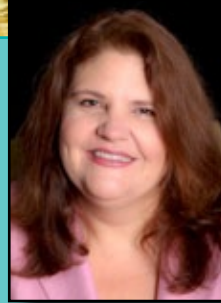
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## Editor's Corner

Laura D. Smith, Esq., Miami, FL

I am happy to introduce to you the inaugural issue of the *Commentator* for the 2010/2011 Bar Year! We are sailing along smoothly into this year under the wonderful guidance of our current Chair, The Honorable General Magistrate Diane Kirigin, and are delighted to share with you the topic addressed herein: **Children's Issues**. Keeping at the forefront the message that Chair Kirigin wishes to resound during her Bar year – building better relationships – this issue of the *Commentator* features some fabulous articles for both your reading pleasure and your professional development.

Many thanks go to Dr. Robert Evans. He has provided us with an article on **Parenting Plans and Timesharing Evaluations**. He explains in detail why they can be so important in our child-related cases. With his more than 30 years of experience in applied psychology and the behavioral sciences, and his certifications as a Parenting Coordinator and Family Mediator, he has certainly knows of what he speaks.

Jan Faust, Ph.D., who, in addition to teaching at Nova Southeastern University, has a private practice in Fort Lauderdale, shares with us guidelines on parent-child reunification in her article, **Parent-Child Reunification Therapy in Family Law Cases: Recommendations and Suggested Guidelines**. Then, **The Importance of Legal Representation of Children in Chapter 39 Proceedings** written by Attorney William Booth makes it clear why we should all be considering taking on a *pro bono* case as an attorney *ad litem* for a child in the dependency courts – these children really need a voice. What better way to use our legal skills to build a better relationship between these children and the court system? These articles are must-reads for anybody with a practice in the dependency courts, and provide priceless eye-openers for those who do not.

The Honorable Thomas Corbin has honored us with his article, **A Parenting Plan Must Include a Parental Responsibility Order and a Time-Sharing Schedule**, and he offers some very practical advice on the necessity of two separate and distinct Orders, and does so while providing a helpful analysis of Section 61.13(2), Florida Statutes.

Child support calculations in a split parenting scenario got you down? Well, thank Susan Savard, Esq., a member of the Executive Council of the Family Law Section and attorney with the firm of Michael Walsh, P.A. in Orlando, for her step-by-step directions and guiding hypothetical in her article entitled **Split Parenting Plan Arrange-**

**ments and the Complicated Child Support Calculations They Now Demand**. She makes it look so easy!

Not so easy, however, is dealing with moody teenagers. Especially when there is a possibility that a teenager may have a real, diagnosable mood disorder, and there is a divorce in the mix. Dr. Mark Banschick provides an enlightening article, **Mood Disorders, Teenagers and Divorce**, that can be of great assistance in helping your clients know when

to seek professional help for their “moody” child. Sheila Furr, Ph.D., *et al*, also addresses needs of special children in the article **The Alienated Child**, and our own Section member Cindy Harari, Esq., from Fort Lauderdale provides us with her ideas on **21st Century Divorce: It's Time to Help the Children**.

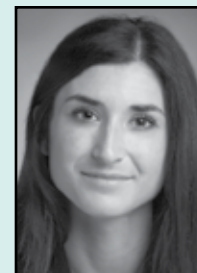
**Representing the Unaccompanied Immigrant Child** is a very timely piece in light of the recent crises in Haiti and Pakistan, and is always relevant in light of the great number of immigrants entering the State of Florida from all over the world. Ericka Curran, and Executive Council member Sarah Sullivan, both professors at Florida Coastal School of Law in Jacksonville, enlighten us with their article.

Also, enjoy the Crossword Puzzle (yes, there is a test at the end of the reading!) and some fun photos from:

- The Section Luncheon and Awards Ceremony held during the Bar's Annual Convention in Boca Ra-

*continued, next page*

Thanks to the *Commentator* Co-Editor,  
Patricia Kuendig, Esq.



PATRICIA KUENDIG,  
MIAMI, FL



### Editor's Corner from preceding page

ton, where Chair Diane Kirigin was sworn in, with her beautiful mother and former Rockette, Helen Bracco Kirigin, looking on;

- The Section's Leadership Retreat at the Hammock Beach Resort in July, 2010, (which has been addressed for your reading pleasure in *Learning to Lead: The Family Law Section Leadership Conference at the Hammock Beach Resort in Palm Coast, Florida* by Section member Christopher Rumbold, Fort Lauderdale); and
- The Key West retreat, *Passport to Paradise*, which was not only a retreat into paradise but was also very informative in terms of the material and information provided by two of our wonderful sponsors on the topics of how to avoid malpractice and how to find the most appropriate malpractice insurance for YOUR practice. Please don't miss the information contained in the advertisements placed in this edition from presenters from the Key West Retreat – Coastal Insurers and Regions Keegan Morgan. Without them, and without our other wonderful sponsors, Berenfeld Spritzer Shecter & Sheer, and Appelrouth Farah & Co., the retreat would not have been as successful as it was.

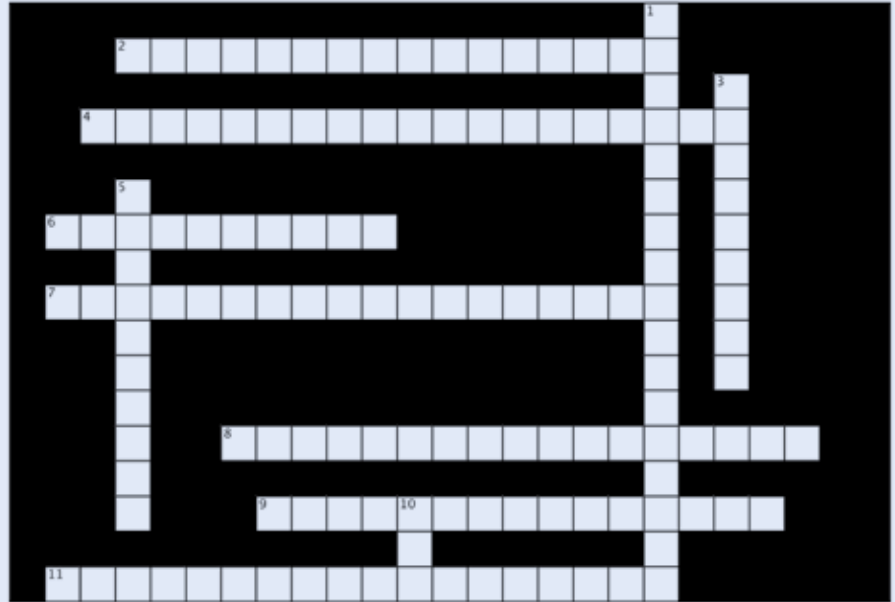
As with each issue of the *Commentator*, special thanks must go to our Section Administrator, Summer Hall, and to our Florida Bar layout expert, Lynn Brady in finalizing this issue of the *Commentator*. And thanks to Patricia Kuendig, Esq., Vice Chair of Publications, for her priceless associate editing of this edition!

We look forward to the next issue of the *Commentator*, as Associate Editors **Douglas Greenbaum**, of Fort Lauderdale, and **Sheena Benjamin-Wise**, of Boca Raton, will provide us with a publication full of "Hot Tips" which we can all use in our practices.

Happy Holidays!

## Commentator Crossword

Best Interests



### ACROSS

- One of the next associate editors of the Commentator
- Inspirational television judge of recent vintage
- How does the process of reunification therapy typically occur?
- Where was the leadership retreat?
- A well-trained children's attorney must understand what?
- Who can you contact for malpractice insurance?
- Former Rockette

### DOWN

- Subject of article by Curran and Sullivan
- A less severe cousin of depression
- Who is our Section Administrator?
- How many types of psychologists does Florida issue licenses to?

Answers appear on page 47.

## Cover Photos Needed!!!

Now that we've updated our look, we need your cover photos! If you would care to submit a (large format) cover photo of family related scenes or Florida landscapes, please send it to our Editor, Laura D. Smith at [lds@greenesmithlaw.org](mailto:lds@greenesmithlaw.org), or Program Administrator, Summer Hall at [shall@flabar.org](mailto:shall@flabar.org).



# Parenting Plans and Timesharing Evaluations

By Robert A. Evans, Ph.D., Palm Harbor, FL



B. EVANS

It is certainly understood that the decision of who conducts a parenting plan and timesharing (formerly referred to as child custody) evaluation is so important. The best interests of the children who are exposed to high conflict divorces are truly at stake. Among the professions who are, by statute, legally permitted to conduct such evaluations in Florida are licensed: under FL Chapter 491, i.e., Mental Health Counselors, Marriage and Family Therapists, Clinical Social Workers; and those licensed under FL Chapter 490, i.e., Psychologists and School Psychologists; other licensees covered under other FL Chapters are permitted as well. Licensees under FL Chapters 490 and 491, however, are the primary professions who typically conduct these evaluations. The following excerpts are taken from the statutes of the State of Florida.

1. The Florida Family Law Rules of Procedure, Section I. Rule 12.363. Evaluation of Minor Child states a Court may appoint "...a licensed mental health professional or other expert [*licensed mental health professional is defined in Chapter 456, see endnote 4*]... to conduct a social or home study investigation".<sup>1</sup>

2. FL Statute 61.046 states that a "Parenting Plan [*Parenting Plan defined in Endnote 2*] ... made by a ... mental health practitioner [*see Chapter 456 see Endnote 4*] or other professional designated by section 61.20, 61.401 or mental health practitioner Florida Family Law Rule of Procedure 12.363..."<sup>2</sup>

3. FL Statute 61.125 states Parenting Coordinators can create and implement a Parenting Plan and further states a "...mental

health professional [*defined in Chapter 456, endnote 4*] licensed under chapter 490 or chapter 491" is qualified to do so"<sup>3</sup>

4. Chapter 456 of FL Statutes defines A "Health Care Practitioner" is defined as "any person" licensed under Chapter 490 [*Psychologists and School Psychologists are licensed under FL Chapter 490*]"<sup>4</sup>

5. FL Statute 61.20 states "A social investigation ... shall be conducted by those licensed under chapter 491 as well as ... a psychologist licensed pursuant to chapter 490..."<sup>5</sup>

6. FL issues licenses to two types of psychologists: a School Psychologist and Psychologist<sup>6</sup>. When the amalgamation of the American Association of Applied Psychology (AAP) and the American Psychological Association (APA) took place in 1945, School Psychology was among the Charter Divisions cited in the first Bylaws of the new organization. The APA considers School Psychologists, Psychologists!

Sometimes a concern is raised in that it is alleged that that school psychologists cannot diagnose mental disorders. The rationale behind this statement is that the word "diagnose" is not cited in the scope of practice of a licensed school psychologist but is under licensed psychologist in FL Chapter 490. If the absence of a specific job function is criteria to argue that the licensee is not permitted to do something, then all one has to observe is nowhere in Chapter 490 are the words "parenting plan and timesharing evaluation or child custody evaluation." By this omission are we to assume that no one licensed by Chapter 490 can do such evaluations, including psychologists? Of course not, such evaluations are governed by other statutes.

Further, diagnosing has no place in a child custody evaluation. The Court is not interested in diagnoses, only in the parenting skills of the parties.

People with mental health diagnoses can be and are parents. The critical issue is the way a person's disorder affects their parenting ability not the specific diagnostic terminology per se.

In addition, FL Chapter 490 provides an exception to the law and states in 490.014 Exemptions "(b) No provision of this chapter shall be construed to ... prevent qualified members of other professions from doing work of a nature consistent with their training ...".

If a licensed professional has specific continuing education in the use and interpretation of the DSM-IV that is used for diagnosing mental disorders that would constitute relevant training. Licensed private practitioners who are eligible to accept insurance reimbursements have to diagnose disorders frequently in order to be reimbursed. Again, diagnosing is a non-issue in child custody evaluations.

Finally, the Scope of Practice for school psychologists is sometimes interpreted incorrectly to mean a school psychologist only practices within schools or their work is limited only to school related contexts. If one carefully reads the Scope of Practice<sup>7</sup> for licensed school psychologists it is clear that they can offer their services to a relatively broad range of settings and functions. The most relevant area of practice to parenting plan and timesharing evaluations is the Assessment category. This includes "assessment for...individuals or groups (regarding)...adjustment needs."

Divorce has been cited numerous times in the forensic literature as the greatest adjustment need for children and families. This logical thinking clearly establishes school psychologists as a professional member of the team that helps prepare parenting plans and timesharing evaluations.

Lastly, the definition of an expert witness from the **Florida Rules of Civil Procedure 1.390 Depositions**

*continued, next page*



## Commercial Mechanisms from preceding page

**of Expert Witnesses.** (a) Definition. The term “expert witness” as used herein applies exclusively to a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.

It is noteworthy that holding a particular license is not necessary to be an expert witness. This is sup-

ported by case law from the history of forensic psychology<sup>8</sup>.

*Robert A. Evans, Ph.D. is a licensed school psychologist who practices in Palm Harbor and Tampa, FL. He designed an internet-based Parenting Plan and Timesharing Evaluation system called Custody Report Pro which can be seen at [www.custodyreportpro.com](http://www.custodyreportpro.com). He can be reached at 727-669-5707.*

### Endnotes:

1 Florida Family Law Rules of Procedure Section I. Family Law Rules of Procedure Rule 12.363. Evaluation of Minor Child (a) Appointment of Mental Health Professional

or Other Expert.

(1) When the issue of visitation, parental responsibility, or residential placement of a child is in controversy, the court, on motion of any party or the court’s own motion, may appoint a licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation. The parties may agree on the particular expert to be appointed, subject to approval by the court. If the parties have agreed, they shall submit an order including the name, address, telephone number, area of expertise, and professional qualifications of the expert. If the parties have agreed on the need for an expert and cannot agree on the selection, the court shall appoint an expert.

2 Florida Statutes 61.046:

(14) “Parenting plan” means a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child. The issues concerning the minor child may include, but are not limited to, the child’s education, health care, and physical, social, and emotional well-being. In creating the plan, all circumstances between the parents, including their historic relationship, domestic violence, and other factors must be taken into consideration.

(15) “Parenting plan recommendation” means a nonbinding recommendation concerning one or more elements of a parenting plan made by a court-appointed mental health practitioner or other professional designated pursuant to s. 61.20, s. 61.401, or Florida Family Law Rules of Procedure 12.363.

3 Chapter 61.125 (4) QUALIFICATIONS OF A PARENTING COORDINATOR.— A parenting coordinator is an impartial third person whose role is to assist the parents in successfully creating or implementing a parenting plan. Unless there is a written agreement between the parties, the court may appoint only a qualified parenting coordinator.

(a) To be qualified, a parenting coordinator must:

1. Meet one of the following professional requirements:

a. Be licensed as a mental health professional under chapter 490 or chapter 491.

4 Chapter 456 of FL Statutes defines, under paragraph (4) a “Health care practitioner” means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

5 FL Statute 61.20 Social investigation and recommendations regarding a parenting plan.

(2) A social investigation and study, when ordered by the court, shall be conducted by qualified staff of the court; a child-placing agency licensed pursuant to s. 409.175; a

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psychologist licensed pursuant to chapter 490; or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491. If a certification of indigence based on an affidavit filed with the court pursuant to s. 57.081 is provided by an adult party to the proceeding and the court does not have qualified staff to perform the investigation and study, the court may request that the Department of Children and Family Services conduct the investigation and study.

<sup>6</sup> Florida licenses two (2) titles of Psychologists under Chapter 490 of FL Statutes. These are: Psychologist and School Psychologist. A school psychologist is a psychologist.

7 From FL Chapter 490: (5) "Practice of school psychology" means the rendering or offering to render to an individual, a group, an organization, a government agency, or the public any of the following services:

(a) Assessment, which includes psychoeducational, developmental, and vocational assessment; evaluation and interpretation of intelligence, aptitudes, interests, academic achievement, adjustment, and motivations, or any other attributes, in individuals or groups, that relate to learning, educational, or adjustment needs.

(b) Counseling, which includes short-term situation-oriented professional interaction with children, parents, or other adults for amelioration or prevention of learning and adjustment problems. Counseling services relative to the practice of school psychology include verbal interaction, interviewing,

behavior techniques, developmental and vocational intervention, environmental management, and group processes.

(c) Consultation, which includes psychoeducational, developmental, and vocational assistance or direct educational services to schools, agencies, organizations, families, or individuals related to learning problems and adjustments to those problems.

(d) Development of programs, which includes designing, implementing, or evaluating educationally and psychologically sound learning environments; acting as a catalyst for teacher involvement in adaptations and innovations; and facilitating the psychoeducational development of individual families or groups.

<sup>8</sup> In the Handbook of Forensic Psychology, I. B. Weiner & A. K. Hess (Eds.), C. R. Bartol and A. M. Bartol make reference to the first influential decision on this matter in *People v. Hawthorne*, a Michigan case, the Michigan Supreme Court ruled the standard for determining expert status was not the proposed expert's degree but the extent of the witness's knowledge. In another case referred to by the authors, *Hidden v. Mutual Life Insurance* (1954), the 4<sup>th</sup> Circuit Court of Appeals, eliminated licensure as criteria for qualifying as an expert. And in *Jenkins v. United States* (1962), the Court of Appeals for the District of Columbia ruled a judge may not automatically disqualify a witness as an expert because of their degree or lack thereof. Trial judges were warned to look closely at the credentials of the proposed expert before ruling on their expert status (pp. 14 -16).

## MEMBER NEWS



**Tyler Benjamin Hodas** was born to Section member **Benjamin Hodas (left)** and his beautiful wife Kara, on October 23, 2010 at 4:47 a.m., weighing in at 6 pounds, 11 ounces, and measuring at 20.5 inches long. Big and "bestest" sister Linley Suzanne is thrilled to have him!



Section Secretary and new mom, **Elisha D. Roy (left)** ran her first half marathon on October 2, 2010. She ran the Disney Wine & Dine race in 2:47:16. Go Elisha!!!!!!!



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# Parent-Child Reunification Therapy in Family Law Cases: Recommendations and Suggested Guidelines

By Jan Faust, Ph.D., Fort Lauderdale, FL



J. FAUST

Parent-child reunification was a term, until recently, reserved to denote the reunification of children and their parents through dependency legal action. In fact, the scientific and legal literature contains papers that delineate the legal and social science approach to reunifying foster care children with their biological parents. In more recent years, the legal system as well as professionals have identified family law cases wherein one biological parent holds the primary caretaking role, and the other parent has not had contact with his/her child. While there is a dearth of literature with respect to family law parent child reunification, there has been a need to address the separation between one parent and child(ren) in these matters.

Reunification in family law cases typically involves reestablishing a relationship between child (children) and one parent. The severing of the tie between parent and child evolves via several different mechanisms. Additionally, the absence of the target parent (the one in need of reunification) at critical periods of the child's development and for particular lengths of time will impact the quality of the parent-child relationship. In fact it is apparent that the longer the separation, the more resistant the child often is to reunification.

The mechanisms responsible for the severed relationship include the following. First, the absence of the parent may be "intrapersonally" imposed such that the target parent may have been hospitalized, incarcerated, or unavailable due to substance use/abuse or major mental illness. In addition, the target parent may

have been absent due to domestic violence and/or child maltreatment. Second, the parent's absence may be "environmentally" imposed such as observed in those cases where the target parent has been relocated by military or occupation (job relocation). Third, the severed relationship may develop from "failures in parenting" by the targeted parent, including failure to facilitate a bond/attachment to the child, inappropriate or severe parenting strategies, and the inability to negotiate cultural and value differences.<sup>1</sup> Regardless of the factors which contribute to the estrangement between the targeted parent and child, it is evident that reunification is the goal as dictated by law and psychological science. While judges have had the mechanism to shift custody from the non-targeted/custodial parent to the targeted parent, they are hesitant to do so as there is a lack of data that supports (or invalidates) such a shift.

The process by which reunification therapy typically occurs commences with a Court Order or referral by judge, attorney, guardian ad litem, mental health practitioner, and, occasionally, by the child him/herself. The latter is referred to as "spontaneous reunification" (Darnell & Steinberg, 2008). For reunification to be successful, a number of factors must be in place. First, it is critical that the residential parent support, as much as possible, the reunification so that the child does not struggle with a shift in loyalties. This shift in loyalties forces the child to emotionally choose between the parents thereby risking the child being "caught in the middle" at the very least and experiencing significant feelings of fear, anxiety, guilt, rage, and sadness/depression at the most. Hence if there is suspicion of active interference or sabotage by the residential parent,

prior to commencing reunification treatment, it would be important for a psychologist to conduct an evaluation of psychological functioning and parental sabotage/estrangement. If there is not sufficient evidence to suggest interference by the residential parent, it remains incumbent on the mental health professional to assess the residential parent's psychological orientation to the process of reunification with the other parent. Intervention may be required first or concurrently with the residential parent to enhance collaborative coparenting in this regard. In the cases of residential parent's active interference as verified by the evaluating psychologist and/or other forms of data, the interfering behaviors or estrangement must be addressed, otherwise reunification therapy is rendered ineffective, as these residential parents will typically sabotage the reunification process. Such fruitless endeavors can further damage or destroy the targeted parent's relationship with his/her child and cause greater distress for the child prior to reunification treatment.

While one would expect the treating therapist to work conjointly with the targeted parent and child, the most successful cases of reunification include sessions involving both the parents. Such collaboration can often reduce the residential parent's anxiety about the impending reunification as well as often enhance much needed systematic co-parenting strategies. In addition, the child's awareness that the parents are working collaboratively to realize the same outcome, reunification, can reduce the child's anxiety about split loyalties. As a result, it is important for attorneys and judges to apprise the parents that the therapist may need to work with both parents conjointly and perhaps

*continued, page 11*



Parent-Child Reunification
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individually. In fact, the reunification therapist should meet individually with both child and targeted parent, initially, in order to gather information regarding issues that led to the initial breach in the relationship and variables that have maintained the severance of the relationship.

Attorneys and judges can often facilitate the reunification process in several ways. First any issue of child maltreatment and domestic violence must be addressed prior to the commencement of reunification therapy. After these issues are addressed clinically and legally to the satisfaction of the parties, if there is a protective order, it should be modified in such a way that the parties can be

in close proximity to one another for treatment purposes as the needs of the case dictate; this will obviously depend on the individual attributes of the case. Second, a Court Order is necessary to enhance compliance on the part of the residential parent since the greatest resistance to reunification is often demonstrated by this parent. It is important for the Order to not specify a time limit or number of sessions since the treatment is multifaceted and individually tailored. Treatment can progress quickly, moderately, or slowly. In addition, by imposing a time limit, resistant litigants will operate under the assumption of "biding their time" to demonstrate compliance with the Order and yet not be committed to the work. This does not mean that cases should continue interminably without monitoring; since, the parties, counsel, as well as the judiciary have a great interest in resolving these cases expeditiously. The therapist can enhance movement of the cases via status conferences with the

guardian ad litem and/or both attorneys as well as by direct collaboration with the guardian ad litem, if one is involved. Third, the Order should specify the parties' responsibility for therapy costs and that not one party be 100% responsible for the cost of service. While Statute may dictate the division of costs between parties, if there is a mechanism that can consider the financial contribution of both parents to the process, therapy is often much more successful when both caretakers contribute to the cost of treatment as it enhances ownership and commitment to treatment. There have been cases that have the non time sharing parent pay 100% of the service and the resistant parent who holds physical custody of the child attempts to incur significant debt to the non time sharing parent via over use of services (e.g. emailing, calling, submission of documents to the therapist) and increasing the number of sessions over a long period of time.

Fourth, it is also helpful if the Or-

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der *does not* protect patient-therapist privileged communications. In this regard it should be noted that there are no licensing laws that govern specifically the practice of parent-child reunification therapy other than the licensing law that governs the practice of psychological and mental health services in general. Consequently, those that practice this type of therapy must be licensed mental health professionals, preferably trained in child and family therapies and conflict resolution. Hence patient-therapist privilege is operative and unless waived by BOTH parents or by Court Order, confidentiality must be maintained by law. Although determined on an individual case basis, generally it is important for the therapist to have the ability to disclose information to appropriate parties to facilitate case progress. In addition, the commitment by the residential parent to the reunification process may be lacking if this parent is protected by privilege and hence operates under the assumption that the therapist cannot discuss their

resistance and/or sabotaging efforts to those involved in litigation. Furthermore, attorneys and judges need to be advised that while the reunification therapist may provide testimony related to reunification treatment, he or she cannot make recommendations regarding custody or timesharing. Finally while there is a trend to allow adolescents a moderate amount of freedom to decide whether or not reunification occurs, teens are often resistant to reunification. Consequently, by allowing them this freedom to choose, there is missed opportunity for reunification to occur. Unfortunately, once the separation has occurred, adolescents will often wish to maintain the status quo due to a number of reasons including loyalty to the residential parent, "face-saving

maneuvers," and fear and anger that has not been addressed, as examples. Frequently teens will express their resistance by stating: "I need some space; I need a break, I need more time; I'm not ready yet." The longer the separation, the more difficult for reunification to occur. This is problematic because scientific data indicate that the quality of the relationship the teen has with *both* divorced parents greatly impacts the adolescent's long term development and their own future romantic relationships.

#### Endnote:

- 1 Douglas Darnall & Barbara Steinberg, *Motivational Models for Spontaneous Reunification with the Alienated Child* (pt. 1), 36 *The American Journal of Family Therapy* 107 (2008).

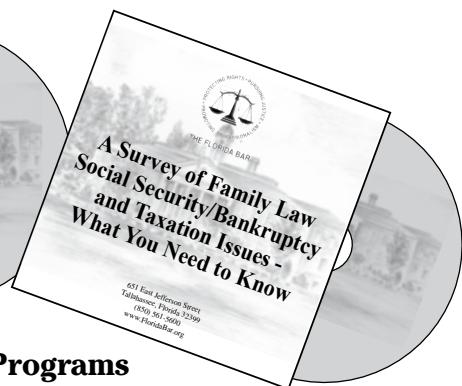
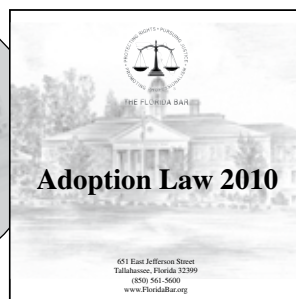
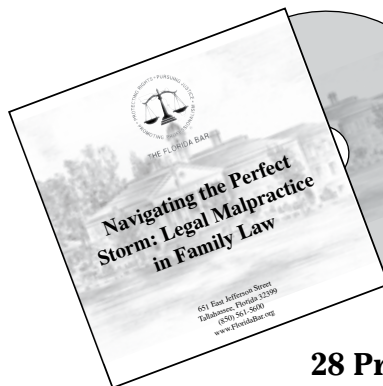
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# Schedule

## WEDNESDAY, JANUARY 26, 2011

4:00 p.m. - 6:00 p.m. Cert Tips & Nibbles – Limited to Registered Test Takers

## THURSDAY, JANUARY 27, 2011

3:00 p.m. - 8:30 p.m. EARLY CONFERENCE CHECK-IN FOR THE SEMINAR

8:00 a.m. - 5:30 p.m. Family Law Section Committee Meetings

6:30 p.m. - 8:30 p.m. WELCOME RECEPTION

## FRIDAY, JANUARY 28, 2011

7:00 a.m. - 6:00 p.m. Registration

8:00 a.m. - 8:10 a.m. Welcome

8:10 a.m. - 8:40 a.m. Ethics – *Evan Marks, Esq*

8:40 a.m. – 9:35 a.m. Process and Procedure – *Judge Renee Goldenberg*

9:35 a.m. - 10:15 a.m. Evidence – *Judge Richard Weis, Richard West, Esq., Gordon Brydger, Esq.*

10:15 a.m. - 10:45 a.m. Domestic Violence – *Judge Sally Kest*

10:45 a.m. - 11:15 a.m. Attorneys' Fees – *Jorge Cestero, Esq.*

11:15 a.m.- 12:00 p.m. Agreements – *Melinda Gamot, Esq.*

12:00 p.m. - 1:00 p.m. LUNCH

1:00 p.m. - 1:30 p.m. Children's Issues Update – *Susan Greenberg, Esq.*

1:30 p.m. - 2:00 p.m. International Children's Issues – *Judge Judith Kreeger*

2:00 p.m. - 2:40 p.m. Child Support Beyond the Basics – *Laura Davis Smith, Esq.*

2:40 p.m. - 3:20 p.m. Paternity – *Judge Peter Blanc*

3:20 p.m. - 3:50 p.m. Bankruptcy – *Chip Herron, Esq., Peter Hill, Esq.*

3:50 p.m. - 4:25 p.m. Military Issues – *Peter Cushing, Esq.*

4:25 p.m. - 4:55 p.m. Alimony – *Philip Wartenberg, Esq.*

4:55 - 5:30 p.m. Modification of Child Support and Alimony – *Mark Sessums, Esq.*

5:45 p.m. - 7:45 p.m. CATCH THE WAVE RECEPTION

## SATURDAY, JANUARY 29, 2011

7:30 a.m. - 9:30 a.m. Registration

8:00 a.m. - 8:15 a.m. Announcements

8:15 a.m. - 9:00 a.m. Equitable Distribution – *Ky Koch, Esq.*

9:00 a.m. - 9:45 a.m. Business Valuations – *Karen Amlong, Esq.*

9:45 a.m. - 10:45 a.m. Tax Issues in Equitable Distribution and Alimony – *Judge John Lenderman*

10:45 a.m. - 11:15 a.m. Appellate Procedure in Family Cases – *Shannon Carlyle, Esq.*

11:15 a.m. - 12:30 p.m. Case Law Update – *Cynthia Greene, Esq.*

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General: 15.0 hours  
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# A Parenting Plan Must Include a Parental Responsibility Order and a Time-Sharing Schedule

By The Honorable R. Thomas Corbin, Fort Myers, FL

Section 61.13(2), Florida Statutes (2009), is a tightly packed statute. It controls the parenting orders that a trial judge can enter after the parents separate, prejudgment and post judgment. This statute is sometimes not understood by trial counsel in a Chapter 61 case. This is unfortunate because this statute limits the orders that can be entered, and it creates a presumption that shared parenting must be ordered in every case; a presumption that the trial judge is powerless to overcome if counsel has not pleaded the case correctly. If neither party pleads for sole parenting, this presumption will trump the best interest of the child, because due process requires the court to order shared parenting even if that is not in the child's best interest if neither party has asked for sole parenting. *See, e.g., Furman v. Furman*, 707 So. 2d 1183 (Fla. 2d DCA 1998).

To unpack this statute, this discussion begins with a bit of emphasis:

**IF YOU READ NOTHING ELSE HERE, PLEASE READ THIS:**

***The “parental responsibility” order and the “time-sharing schedule” order are TWO SEPARATE AND DISTINCT ORDERS THAT MUST BE IN A PARENTING PLAN UNDER Fla. Stat. §61.13(2).***

**So, a “shared parenting” order has nothing to do with the “time-sharing schedule” and a “sole parenting” order has nothing to do with the time-sharing schedule.**

**The facts of each case determine what is an appropriate parental responsibility order and what is an appropriate time-sharing order.**

Fla. Stat. §61.046(14) (2009) defines

“Parenting plan” as “a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and the child.”

Fla. Stat. §61.046(14)(a) requires the parenting plan to be “1. Developed and agreed to by the parents and approved by a court; or 2. Established by the court ... if the parents cannot agree to a plan or the parents agreed to a plan that is not approved by the court.”

Fla. Stat. §61.13(2)(b) says a “parenting plan approved by the court must, at a minimum, describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child; the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent; a designation of who will be responsible for any and all forms of health care, school-related matters including the address to be used to school-boundary determination and registration, and other activities; and the methods and technologies that the parents will use to communicate with the child.”

**So, it appears that an order for “parental responsibility” must be included in the “parenting plan,” and the parental responsibility order has nothing to do with the time-sharing schedule, which is a separate concept and a separate order.**

**“Parental responsibility” is not defined anywhere. However, “shared parental responsibility” is defined in Fla. Stat. §61.046(17) app. 3 (2009):**

**“Shared parental responsibility” means a court ordered relationship in which both parents**

**retain full parental rights and responsibilities with respect to their child and in which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.”**

*(Emphasis supplied.)* This concept is nothing new. It first entered Florida law in 1982.

**So, “parental responsibility” means the responsibility to make parenting decisions for the child after the parents separate and the “parental responsibility” order must spell out how the parents will make parenting decisions now that they are separated.**

**Since 1982 there are only three options for the “parental responsibility” order allowed by Fla. Stat. §61.13(2)(c)2:**

- (1) ***sole parental responsibility*** to one parent over some or all aspects of the child's life;
- (2) ***shared parental responsibility***, in which the parents confer, consult and agree on all parenting decisions; or
- (3) ***shared parental responsibility with ultimate responsibility*** to one parent or the other over certain named aspects of the child's life or over all aspects, such as education, extra-curricular activities, medical treatment, etc., if the parents do not agree on decisions in those aspects of the child's life.

**Fla. Stat. §61.13(2)(c)2, requires the court to order “shared parental responsibility” in every case “unless the court finds that shared parental responsibility would be detrimental to the child.”** So, this statute assumes that nearly all separated parents are go-

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## Time Sharing Schedule

from preceding page

ing to behave, cooperate, communicate, and be nice to each other when it comes to raising their children, because this law requires the court to order shared parental responsibility in every case, unless a party pleads and proves shared parenting would be detrimental to the child. It is, of course, nonsense to assume nearly all separated parents can do this. Although this is nonsense, most lawyers and parties indulge in this nonsense by routinely pleading only for “shared parenting” in their petitions. Nearly all petitions ask only for a “shared parenting” order and very few ask for “sole parenting” or allege a detriment to the child if “shared parenting” is ordered, even though in most litigated cases the parties have never demonstrated a capacity to share any parenting decisions.

**Shared parenting should not be agreed upon where the parents cannot in fact share parenting decisions.** Most mediators and almost all settlement agreements also indulge in the statute’s nonsensical assumption by routinely providing in settlement agreements that the parties will “share parenting” even when there is considerable evidence that the parents are incapable of sharing a single parenting decision. Cases with these agreements often return to court post judgment because the parties cannot confer together and make joint parenting decisions.

**Parental responsibility after parents separate. It is not what you think.** In cases in which a settlement agreement or a judgment said the parents will “share parenting” family judges are frequently asked in post judgment motions to decide if a child should take medication for ADHD, depression, a bipolar condition, etc., or to decide which school the child will attend, or which church the child will attend, etc., because the parents cannot “confer with each other” and “share” these parenting decisions and neither one has any au-

thority to make the decision alone because the order in their case requires them to “share parenting decisions.”

In my experience, however, medical providers - doctors, hospitals, etc. - are not bothered by a “shared parenting” order, if they ever learn of it at all. They will generally take the consent of one parent if medical treatment is needed. It seems that most of them assume the parent presenting the child for treatment is the “custodial parent” or “primary residential parent”, maybe because the child lives most of the days of the year with the presenting parent. *However, these terms do not exist in Florida law and they have no meaning under Florida law.* It seems that medical providers and many parents assume the “custodial parent” has “the right” to make all medical decisions for the child, but this is a false assumption.

Since 1982, Florida law, that is, Fla. Stat. §61.13(2), has required separated parents to “share parenting” decisions unless a court has ordered that would be detrimental to the child, in which case the court can order “sole parenting” to one parent or the other over some aspect of the child’s life, say, medical care or education, or over all aspects of the child’s life.

Occasionally, medical providers find themselves in a bind, when both parents appear and do not agree on a treatment, and then the parties must come to the court to argue their positions about the merits or disadvantages of a proposed treatment. Medication for a diagnosis of ADHD or a bipolar condition is a very common post judgment dispute between parents.

However, there is no authority that a judge in a Chapter 61 case has the power to make such a parenting decision. A Chapter 61 judge has no authority to become a “super parent”. On the contrary, the statute, §61.13(2), Fla. Stat., allows the judge only to “pick a parent” by making a “sole parenting” order over an aspect of the child’s life, such as medical care, if the parents do not agree about parenting decisions in that aspect.

A Chapter 61 case is a case between separated parents. On the other hand, a Chapter 39 case is a

case in which one or both parents are alleged to have abused, abandoned or neglected the child so that the child is dependent until the parents are rehabilitated or the parents’ parental rights should be terminated. In a Chapter 39 case the judge is authorized to make parenting decisions concerning the child, for medical treatment or otherwise, if the child does not have a functioning parent. *See, e.g., Fla. Stat. §39.407(2) (a) (2009).* So, a Chapter 39 judge has the power to be the child’s “super parent”.

There is no similar provision in Chapter 61 because in a Chapter 61 case the child has two functioning parents. Therefore, one or both of the parents must make all parenting decisions after the parents separate. If the parents have a “shared parenting” order, in a settlement agreement or a judgment, and they do not agree on a parenting decision, then they cannot “share” a decision and they cannot make a “joint” parenting decision.

In this event one of them must return to court and file a supplemental petition that asks for a “sole parenting” order. The supplemental petition must allege the disagreement on a parenting decision, that the disagreement is detrimental to the child, and that the petitioner asks for “sole parental responsibility” over an aspect or all aspects of the child’s life. After a trial on such a supplemental petition, the judge in a Chapter 61 case has the authority to “pick a parent” to make the parenting decision. The Chapter 61 judge can only order either “shared parenting” or “sole parenting” and then only after “due process of law” has been complied with.

**“Due process of law” trumps the “best interest of the child”** Procedural law, that is, “due process of law”, requires that a party must plead in a petition that shared parental responsibility would be detrimental to the child and plead facts demonstrating the detriment before the court has authority to order anything other than “shared parental responsibility,” because the statute says the court must order shared pa-

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rental responsibility in every case unless detriment to the child is proven if that is ordered. Further, a petition can be decided only after a trial on the merits of the petition.

“Due process” requires “notice and an opportunity to be heard,” so if a party does not ask for a particular relief allowed by law in a complaint or petition, *the court has no authority to grant the relief even if it is obvious that the best interests of the child require shared parenting not be ordered, say because the parents bicker and fight and cannot talk to each other or behave civilly or politely around each other.*

**Case law says that a finding that the parents are unable to confer together and share parenting decisions is a detriment to the child sufficient for a sole parental responsibility order to one parent.** *See, e.g., Roski v. Roski*, 730 So. 2d 413 (Fla. 2d DCA 1999). This is also common sense, for which no appellate decision is needed. If parents were ordered in a case to “share parenting” and in fact the parents do not share parenting decisions, the child might suffer because neither one of them has unilateral authority to make sole parenting decisions. The child might also suffer because, having been ordered to make joint parenting decisions, dysfunctional parents bicker and fight about parenting decisions. Any argument between the parents is detrimental to the child. No citations are necessary for that proposition. *See, e.g., Carla Garrity & Mitchell Baris, Caught in the Middle: Protecting the Children of High-Conflict Divorce* (Lexington Books 1994).

**So, a parent seeking sole parental responsibility must plead for sole parental responsibility.** A trial court has no authority to order sole parenting if there is no pleading asking for sole parenting and an allegation of a detriment to the child if shared parenting is ordered. *See, e.g., Furman*

*v. Furman*, 707 So. 2d 1183 (Fla. 2d DCA 1998); *McDonald v. McDonald*, 732 So. 2d 505 (Fla. 4<sup>th</sup> DCA 1999); *McKeever v. McKeever*, 792 So. 2d 1234 (Fla. 4<sup>th</sup> DCA 2001).

**So, in every case that is litigated, the parties should both plead in the alternative for all three options for parental responsibility allowed by the law, that is, (1) sole parental responsibility over some or all parenting decisions to one parent or the other; (2) unlimited shared parental responsibility over all parenting decisions; or (3) shared parental responsibility with ultimate responsibility over some or all parenting decisions to one parent or the other.** Fla. Stat. §61.13(2)(c)2.

Case law allows the third alternative and explains what it means. *See Watt v Watt*, 966 So. 2d 455 (Fla. 4<sup>th</sup> DCA 2007); *Hancock v Hancock*, 915 So. 2d 1277 (Fla. 4<sup>th</sup> DCA 2005); *Schneider v. Schneider*, 864 So. 2d 1193 (Fla. 4<sup>th</sup> DCA 2004). These cases say the court can give one parent “ultimate authority” over some or all aspects of the child’s life as part of a “shared parenting” order, because this is literally what the statute says the court can do. An “ultimate responsibility shared parenting order” allows the parent given

“ultimate authority” over an aspect of the child’s life the authority to make a decision when the parents do not agree. The other parent can make a motion to have that parenting decision reviewed by the court.

Note: This third alternative may not be in the child’s best interest because it gives the parties a means to continue the lawsuit ad infinitum.

**A question not answered by the case law is whether a request for “shared parenting” in a petition is sufficient notice to the other side for an order for either (2) unlimited shared parental responsibility over all parenting decisions, or (3) shared parental responsibility with “ultimate responsibility” to one parent over some or all parenting decisions.** The better practice for lawyers and parties, of course, is to plead in the alternative for all three options so there is no question that the other side was put on notice and then the court has the authority to order one of the three alternatives allowed by Fla. Stat. §61.13(2).

**So, to summarize Fla. Stat. §61.13(2):** The concept of “shared parenting” has nothing to do with the “time-sharing schedule”. “Shared parenting” does not mean “joint  
*continued, next page*

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## Time Sharing Schedule

from preceding page

custody.” “Joint custody” is NOT a concept under Florida law. “Shared parenting” does not mean “the child must live half the time with each parent.”

“Shared parental responsibility” or “shared parenting” and “sole parental responsibility” or “sole parenting” are concerned with parenting decision making and how parenting decisions will be made now that the parents are separated. If the parents cannot demonstrate a capacity to share parenting decisions, for whatever reason, then the court should not order “shared parenting”. Rather, the court should order either “sole parenting” or “shared parenting with ultimate responsibility” to one parent. The goal of every lawsuit is to end the dispute with a decision. Ordering dysfunctional parents to “share parenting” will not end the dispute.

On the contrary, it will continue the disputes and the lawsuit. This is not in the child’s best interest. *See, e.g., Roski v. Roski*, 730 So. 2d 413 (Fla. 2d DCA 1999).

An inability of the parents to communicate and cooperate and share parenting decisions is a sufficient detriment to support a sole parenting order. *Id.* Of course, a family judge inherits many cases in which the parties agreed in a settlement agreement to “share parenting,” even though they cannot actually do that. These cases often return to court for post judgment disputes, such as asking the judge to approve a course of medical treatment, pick a school, approve an extracurricular activity, etc. When these cases come back to court, the court’s authority post judgment is the same as it was prejudgment. The court can only “pick a parent” to make a sole parenting decision that the parties cannot agree on, and the court can order “sole parenting” only after a trial on a supplemental petition in

which a party asks for “sole parenting” and alleges a detriment to the child if “shared parenting” is ordered, e.g., an inability of the parents to agree on a parenting decision.

**The time-sharing schedule should be very detailed.** A parenting plan must also include a time-sharing schedule that spells out the child’s contact with both parents throughout the year. My time-sharing schedules are typically three or four pages long, single spaced. If appropriate, the time-sharing schedule may order supervised contact or no contact at all with a parent.

Fla. Stat. §61.13(3) (2009) lists 20 factors that the court must consider in establishing a parenting plan and a time-sharing schedule.

The psychotherapist doing a “parenting evaluation” or a “social investigation” in which a parenting plan or time-sharing schedule are recommended must also consider these factors in the report.

## Scenes from the Annual Section Luncheon



(L-R); 2009 - 2010 Chair, Peter Gladstone at the podium; Peter presents the gavel to G.M. Diane Kirigin, 2010 - 2011 Chair; Peter presents an appreciation gift to Program Administrator, Summer Hall. (Photos taken at the Family Law Section Annual Luncheon during the Florida Bar Convention, June 23, 2010 in Boca Raton.)

**More Convention photos on pages 24 & 25.**

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# “Making a Difference” Award Recipients October 2010

By Susan W. Savard, Esq., Orlando, FL

The Family Law Section of the Florida Bar publicly acknowledges, through the monthly “MAKING A DIFFERENCE” award, those individuals who have made a difference in the lives of the underserved or disadvantaged within our State. The individuals who receive this award either provide outstanding pro bono services or engage in other types of outstanding volunteer community activities and pursuits that improve the lives of Florida’s children and families. The recipients for the award for October, 2010 are Jacqueline M. Valdespino, Esq. and Deborah O. Day, Psy.D. A brief description of the pro bono services and volunteer work of each individual appears below. Congratulations to each recipient, and thank you for your past and continued efforts on behalf of the children and families of Florida.

## Jacqueline M. Valdespino, Esq.



Jacqueline has a passion and commitment to professionalism and to protecting the rights of children. Her commitment to Florida’s children began before she became

a lawyer. Jacqueline volunteered as a pro bono Guardian ad Litem in dependency and delinquency proceedings during her undergraduate college years, and also while attending law school. Once she was admitted to the Florida Bar, Jacqueline continued to serve as volunteer Attorney Guardian ad Litem. In her first year of private practice, she received the Put Something Back Pro Bono Service award in recognition of her outstanding commitment and service to the disadvantaged of Miami-Dade

County. She has received this recognition each year since that time. In 1997 she was honored as the Put Something Back Guardian Ad Litem of the year.

Jacqueline was appointed as a pro bono Guardian ad Litem in a particularly contentious family law case. Through her devotion, the child’s voice was heard through numerous post dissolution trials, appeals and remands. The appointment spanned over a period of 7 years and 23 court file volumes, yet Jacqueline continued to accept additional volunteer appointments during this time. Since 1992, she has been appointed through Miami Legal Aid Society or at the request of the Family Division judiciary in forty-eight pro bono Guardian ad Litem cases. In 1999 when the First Family Law American Inn of Court requested volunteers to act as Guardians ad Litem in domestic violence cases, Jacqueline was among the first to volunteer her services. Jacqueline truly practices her profession in the unselfish pursuit of “Justice for All!”

In 2003 the Florida Supreme Court awarded her the Tobias Simon Award for her pro bono services and the ABA awarded her the Ann Liechty Child custody Pro Bono Award for her tireless work for children caught in contested family cases.

In addition to offering legal services to the indigent, Jacqueline has served on the Board of Directors of the Child Abuse Prevention Program. The CAP Program provides education to school children throughout Miami-Dade County in an effort to prevent child abuse.

In 2004, Jacqueline began the Share the Light Project. This project was established to serve the many needs of orphaned Columbian children. For the past six years, Share the Light has purchased clothing and shoes for 180 orphaned children and presented them at a holiday party.

Jacqueline and volunteers from both the United States and Canada have travelled to Bogota, Columbia, where the packages are presented to the children. Jacqueline spearheads not only the fundraising, but also the purchasing, organization and delivery of the gifts. Share the Light was expanded in 2007 and volunteers now also make and distribute not only meals to the homeless on a monthly basis, but also hygiene kits. Many family lawyers and judges join in the FEED THE NEEDY efforts; Marcia Soto, Dori Foster-Morales, Maryanne Kircher, Lucy Pineiro, the Honorable Deborah White-Labora, and the newly elected Samantha Ruiz-Cohen

Jacqueline also works zealously to make sure that indigent clients have competent lawyers. She devotes time to educating volunteer lawyers, not only because she is committed to raising the level of the profession, but also because she recognizes that training of others is crucial to the work required to protect our children. Jacqueline gives of her time freely when called upon to speak or organize continuing education seminars. She has participated in the Florida Bar Family Law Section Pro Bono Mentor Program assisting young lawyers in family law cases. Her commitment to professional development extends beyond our state boundaries. This past summer she produced a Presidential CLE program for the American Bar Association’s National meeting in Washington DC relating to representing children in child custody cases.

Jacqueline is a Fellow of the American Academy of Matrimonial Lawyers. She continues her tireless advocacy for children and to the improvement of the practice of family law. Jacqueline has received the following honors and awards: 2003 G. Kirk Hass Humanitarian Award; 2003 Put Something Back Pro Bono Project, “Special Recognition”; 2003



ABA Ann Liechty Child Custody Pro Bono Award; 2003 Florida Bar President's Pro Bono Service Award; 2003 Tobias Simon Pro Bono Service Award; 2002-2003 The First Family Law American Inns of Court Best Team Leader Award; 2001-2002 The First Family Law American Inns of Court Congeniality Award; 2001 Ray H. Pearson, GAL Award; 1999-2000 The First Family Law American Inns of Court Congeniality Award; 1993 to Present, Put Something Back Pro Bono Service Award.

### Deborah O. Day, Psy.D.



In addition to her clinical and forensic practice in psychology, Dr. Day has contributed enormous amounts of time as a volunteer not only in her profession, but also to the legal profession and to the community. In her professional affiliations, she has served in numerous roles with the Florida Psychological Association, including President of the Central Florida Chapter from 2001-2002, Chair of the Ethics and Domestic Violence Committees, and has volunteered her time to the Florida Chapter of the Association of Family and Conciliation Courts as a

Board member from 2001 - 2008. She also served as the Vice President of Florida Chapter of AFCC in 2006, and the Chair of the 2004 and 2005 AFCC Conference Committees.

Dr. Day has donated her time and professional services to numerous non-profit organizations which include services to the Kids House of Seminole County as a Board member from 2001 - 2006 and as pro bono Clinical Director from 2002 - 2005. She has served as a volunteer consultant to the Children's Home Society from 1991-1993, as an Advisory Board member for Family Focus of Seminole County from 1992 - 1997, the Sexual Abuse Treatment Program from 1992-1997, and to HEAT (Help End Abuse Today), whose main goal is to prevent child abuse through education.

Dr. Day has also been appointed to numerous prestigious positions including her service on the Judicial Nominating Committee for the Supreme Court from 1997 - 2000, as a member of the Mediation Ethics Advisory Committee from 2002-2009, and by appointment by the Florida Supreme Court as a mediator of the Child Welfare Standards and Training Council from July, 1990 to August, 1993.

Dr. Day has selflessly devoted her time to improve the lives of Florida families by serving the legal community in many and varied roles. She has served as Chair of the Com-

munity Service Workshop of the Orange County Domestic Violence Task Force Commission from 2004 to the present, as a committee member of the Orange County Coalition Victim Services Committee and with the Orange County Bar Association as a volunteer with the Family Law Committee and the Child Care Committee. She has also been a contributor and guest speaker for the George C. Young First Central Florida Inn of Court and the Central Florida Family Law American Inn of Court, as well as a frequently invited guest speaker to the annual Judicial College. She has donated her time and expertise as a member of the Florida Bar Bounds of Advocacy Committee.

Perhaps most notably, Dr. Day has been a frequent and long standing volunteer and contributor to the Family Law Section of the Florida Bar. She has served on numerous and varied standing committees, including as Vice Chair of the Litigation Support Committee from 2004 - 2005 and Co-Chair from 2008-2009; as a member and Vice Chair of the Domestic Violence Committee from 2004-2005 and from 2007-2008; as a member of the Legislation Committee, Continuing Legal Education Committee, Parental Responsibility and Timesharing Ad Hoc Committee, and as a special Advisor to the Chair, both in 2009 and 2010 in the areas of children's issues and domestic violence.

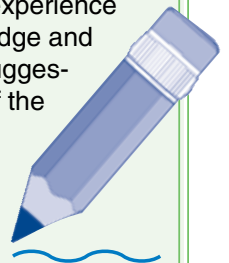
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Enjoying the lovely luncheon



Peter Gladstone and Heather Apicella



Helen Bracco Kirigin, "Queen Mum" of the Section, as it were



Patricia Alexander and Peter Gladstone



Help is on the way! Amy Hamlin, Peter Gladstone and Matthew Capstraw

See more photos on the Section website: [www.familylawfla.org](http://www.familylawfla.org).



# *Learning to Lead:* Family Law Section Leadership Conference Hammock Beach Resort in Palm Coast, Florida

By Christopher W. Rumbold, Esq., Fort Lauderdale, FL

While I have been practicing exclusively in the area of marital and family law for the past five years – first with the law firm of Heller & Chames, P.A., in Miami and presently with the law firm of Gladstone & Weissman, P.A., in Fort Lauderdale – I have only recently become involved in a leadership capacity within the Section. I had previously convinced myself (erroneously) that as an associate attorney, with certain billing requirements, the time associated with my commitment to my practice negated or obviated the time available for me to become involved in leadership within the Section. However, following my appointment to two committees and my voluntary involvement in two additional committees, I was expected to attend the 2010 Family Law Section Leadership Conference at the Hammock Beach Resort in Palm Coast, Florida. This was my first foray into Section leadership and I both thoroughly enjoyed it and, as a neophyte in Section leadership, I learned a great deal from it.

On Thursday, July 29, 2010, the retreat began with registration at the Hammock Beach Resort. This was my first visit to the resort, which, after 269 miles of desolate highway, had appeared on the horizon like a giant pink and cream mirage. My room, on the fifth floor, which was complete with a separate sitting room and garden tub, had breathtaking views of the beach and ocean and the resort's amenities including the pool, water slide and lazy river. Following check-in and after I forcibly removed myself from the balcony, the conference began with opening remarks and then the Section's rendition of "family feud." It quickly became clear to me that I needed to polish up on my knowledge of the Section's rules, committees and by-laws. Further, much to my initial dismay and after attempting to blur into obscurity in the back

of the room, Section Chair, Diane M. Kirigan, requisitioned me to sit on the panel and answer the "family feud" questions. With the help of co-panel participants (thank you Patricia Kue ndig and Julia Wyda) and with assistance from the sidelines, we were able to successfully complete the game and have an enjoyable time doing so. Later that evening we embarked on the "Sunset Cruise" which was a real treat. The vessel, which meandered up and down the inter-coastal waterway, was a two story yacht complete with multiple decks, amazing views and a never ending smorgasbord of food and drinks. This backdrop presented the perfect opportunity in which to meet and mix with conference attendees (a wholly captive audience) in a relaxed environment. Additionally, and of particular enjoyment for me, during the cruise we saw deer and a pod of dolphins.

On Friday, July 30, 2010, the morning started with breakfast and the ABC's of section leadership which, for me, was clearly a much needed refresher after the previous day's "family feud." Immediately thereafter, we commenced the communication and teamwork event which was led by Mary Curtis. This event, while intimidating as it required public speaking and acting, regularly bordered on hilarity and was, perhaps, the most entertaining event of the conference. I will not soon forget Summer Hall's or Dionne Myer's impromptu discos, and that was just during introductions! As our final exercise, we were required to create a commercial and sell a product. Whether it was peddling a "perfect pill" or promoting a "mobile spa unit," the exercise brought out the inner-actor in us all. Superficially, we created a commercial and sold a product, but what we truly accomplished was personal deconstruction and group reconstruction. During lunch, we had the benefit of Elisha Roy's and Tom

Sasser's legislative update, during which they cogently and coherently presented the highlighted the critical revisions to Florida Statutes §§61.08 & 61.30 (2010). Later that afternoon we engaged in a "long term planning workshop" and were encouraged to openly voice our concerns, frustrations, and suggestions with, and for, the Section. The day was capped off with a putting competition which interestingly utilized a spade, a baseball, and a plastic lobster instead of the applicable putter. We then enjoyed drinks and hors d'oeuvres at the Ocean Bar before retiring to our rooms or continuing the evening at the hotel bar.

On Saturday, July 31, 2010, we began with breakfast and then we benefitted from the legislation round-table and the insight and experience of numerous conference participants as it related to their personal experiences crafting, lobbying and implementing new legislation. As a first-year member of the legislative committee and as a member of the Domestic Violence Sub-Committee of the Legislation Committee, I found this event particularly useful and beneficial. Thereafter, we engaged in networking and learned the "ins and outs" of becoming a section leader. During lunch, I attended my first Executive Council meeting, and observed first-hand what it truly means to lead within the Section. Prior to the "goodbye reception and dinner" we had approximately six hours of free time, during which I jogged on the beach, visited the pool, and caught up on numerous e-mails. The goodbye reception and dinner, like the rest of the conference, was well orchestrated and thoroughly enjoyable. The food was delicious, the atmosphere was enchanting, and the company (both specifically at my table and at the dinner generally) was sublime.

On Sunday, August 1, 2010, while driving home along the same 269

miles of desolate highway that I had traversed only four days before, I considered the full panoply of my observations and experiences at the conference. Over the past three days I forged and strengthened many new and existing relationships with Sec-

tion members and leaders. I gained valuable insight into myself, and others, and into the inner-workings of the Section. Additionally, I learned that the Section is not a static and amorphous creature, but instead a fluid and tangible creation function-

ing, because of the contributions of its members (many of which were represented at the leadership conference), for the betterment of the practice and the public. I am already looking forward to the 2012 leadership conference and the next Section event.

## *Leadership Conference*

**Hammock Beach Resort, July 29 - Aug. 1, 2010**



See more photos on the Section website: [www.familylawfla.org](http://www.familylawfla.org).



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# The Adoption Amicus Brief: Working Together for Florida's Children

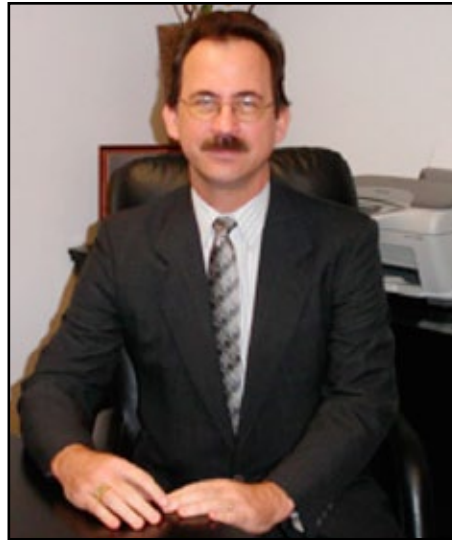
By Scott Rubin, Miami, FL

It was just another day of Bar meetings until I got the text from Laura Davis Smith telling me that the Third District Court of Appeal had affirmed the so-called "gay adoption case." I started beaming ear to ear. My partner, Terry Fogel, was the first person I told. My wife Gladys was the first person I texted. Then, I rushed over to the Section luncheon to share the news. On the way, I ran into President Mayanne Downs and President-Elect Scott Hawkins. I told them the news and thanked them for their support when I appeared in front of the Board of Governors. I also emailed Jesse Diner to thank him for everything that he did to help make this wonderful event happen.

Many times, when good things happen, it is as a result of the efforts of many people working together. Such was the case in this situation. First, Judge Cindy Lederman wrote a magnificent Final Judgment which so clearly spelled out the best interests of the affected children. Next, the Executive Committee of the Family Law Section was the first of what would be three bodies to vote unanimously in favor of the Section taking an amicus position in support of the Final Judgment. I next called a special telephonic meeting of our entire Executive Council where approval was once again unanimous.

With the unanimous vote of the Executive Council in hand, I flew to Tallahassee to appear before the Board of Governors to request permission for the Family Law Section to take an amicus position in the case. Bar staff was exceedingly helpful and accommodating. Bar Counsel Paul Hill explained to me precisely the standard to be used by the Board of Governors in determining whether to permit the amicus filing.

Appearing before the Board of Governors was an awe-inspiring experience. The leaders of The Florida Bar were sitting in judgment of whether there was con-



stitutional authority for the Family Law Section to take an amicus position supporting the best interests of children in Florida. Several governors stood to speak in favor. Jesse Diner, then-President Elect, was a strong supporter of our position, as was then-President Elect Designate Mayanne Downs. Ervin Gonzalez and others also spoke in favor. No one spoke in opposition. The vote to allow the Section to proceed was unanimous.

After receiving approval from the Board of Governors, approval still had to be obtained from the District Court of Appeal. None of the parties objected to the Family Law Section taking an amicus position, and the Third District granted our motion.

The brief initially was drafted by Cynthia Greene and Luis Insignares. After I reviewed it, I made some changes. The three of us appear on the brief as authors.

Attending the oral argument was an amazing experience. The Court was sitting at the Florida International University Law School. Elliot Scherker of GreenbergTraurig argued persuasively on behalf of the children. I had the privilege of sitting next to the adoptive father and talking to him before, during and after the argument. He has truly been the best thing ever to happen to those two little boys.

Then came the waiting. Weeks passed, then months. Finally, the opinion was released. The Family Law Section brief had been quoted twice in the opinion. Those quotes make it apparent to me that the Family Law Section, the Board of Governors and The Florida Bar were able to make a difference for the better in the lives of many children in Florida, but, more specifically, in the lives of two little boys in Miami. What had been just another day of Bar meetings became one of the days that I was proud to be an attorney and even prouder to be a part of the Family Law Section.

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# The Importance of Legal Representation of Children in Chapter 39 Proceedings

By William W. Booth, Palm Beach, FL



W. BOOTH

The abuse, abandonment, or neglect of children and their resultant removal from their parents is addressed in juvenile dependency court and is governed by Chapter 39. These are adversarial legal proceedings where the primary concern of the Court is the interplay between the parents' constitutional rights to raise their children free from interference and the State's compelling interest to protect children. Not only is almost every aspect of a child's relationship with his or her family considered by the court, but the child is also a party to these proceedings, *see* Fla. Stat. § 39.01(51) (2009), and is vested with rights under chapter 39, including the right to a permanent home within 12 months from removal. *See* Fla. Stat. §§ 39.001(1) (h), 39.0136(1) (2009). Children, therefore, have a critical stake in this litigation.

The State, through Children's Legal Services or the Attorney General's Office, is responsible for prosecuting the case against the parents. The parents are appointed legal counsel. *See In the Interest of D.B.*, 385 So. 2d 83 (Fla. 1980). The removed child's best interests are represented by a lay volunteer guardian ad litem who also has counsel. *See* Fla. Stat. § 39.822 (2009). The child is the only party without mandatory attorney representation. Consequently, the child must rely on the guardian ad litem to report the child's wishes on any given issue to the Court. *See* Fla. R. Juv. P. 8.215(c)(1). This is in addition to the guardian ad litem's charge to recommend to the Court what she believes is best for the child on those same issues. Naturally, the promotion of best interests does not always advance the child's legal interests. Further, as there is no attorney/client

relationship between the guardian ad litem's attorney and the child, there is no obligation on that same attorney's part to advocate for a child's rights under chapter 39, such as permanency time limitations, or to advocate for the child's position on any issue.

An attorney representing a child has the specific, unbiased interest in assisting her child client. An attorney presents the legal issues and facts and argues the law as applied to the facts for the child as is done for all other parties in these cases. This guarantees that the Court has the information necessary from all parties' perspectives, including the child's, in order to make an informed decision. Contrarily, without an attorney for the child, there is no evidence presented or witnesses examined for the child, no legal advice given to a child of the ramifications of these legal matters, and no appeal by the child of adverse decisions.

A well-trained children's attorney understands the developmental ages of children and how to counsel and advise them in advance of having to make any representations to the court on an issue. A lawyer who represents an incapacitated client, such as a minor, is given direction by The Florida Bar to treat that client to the extent possible as he or she would any other client. R. Reg. Fla. Bar 4-1.14. Ultimately, it is the same as representing an adult. For example, an adult client may want a motion filed, but the attorney realizes tactically it is not the time or place for the filing of the motion and the motion is not filed. The same applies to a child client. Therefore, the concern that courts will be required to waste their time with frivolous motions from children should not be used to validate the denial of legal representation to one whose well-being is of most importance to the courts, the State, and the people of Florida.

The case of *R.S. v. Department of Children and Families*, 956 So. 2d

1242 (Fla. 4th DCA 2007), is illustrative of the impact an attorney for a child can have on the child he or she represents. In this case, the Department of Children and Families sought to terminate the parental rights to R.S. At trial, the father moved for a continuance on grounds that additional trial preparation was needed. The child was represented by counsel and objected to the delay. The Department of Children and Families also objected. Over the objections, the trial court granted the continuance. *Id.* at 1244. The continuance in effect, however, handed the child an additional 77 days in foster care. *Id.* The child appealed to the Fourth District Court of Appeal.

In its opinion, the Fourth District noted that "[t]he state has established a strong policy of ending a dependent child's uncertainties and achieving a permanent placement within one year." *Id.* at 1245. The trial court's discretion is limited in these cases as a result. Further, the Fourth District stated that "unless we grant extraordinary review, there is effectively no way for appellate courts in this state to review and correct trial court orders violating this important policy in the statutory scheme for terminating parental rights and permanent placement of children with adoptive parents." *Id.* Prior to issuing its opinion, the Fourth District had granted the child's petition for certiorari directing the trial judge to begin the trial "forthwith." *Id.* at 1244. This legal representation of the child resulted in the trial court beginning the trial within a few days of the order versus 77 days later. *Id.* at 1246. This case made clear the importance of maintaining statutory permanency time limitations—all a result of the child having had legal representation.

Legal Aid Society of Palm Beach County's performance in representing children provides an example of effective legal representation in

*continued, page 15*



## Chapter 39 Proceedings from previous page

dependency hearings. The Legal Aid Society's Foster Children's Project provides legal representation to children in foster care ages 0-12 with a goal of expeditiously advancing the child's permanency and removal from the foster care system. Chapin Hall studied this Project. Zinn, A. E. & Slowriver, J. (2008) *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*. Chicago: Chapin Hall Center for Children at the University of Chicago available at [www.chapinhall.org/research/report/expediting-permanency](http://www.chapinhall.org/research/report/expediting-permanency). The Report shows that children represented by Legal Aid Society attorneys achieved permanency quicker than children not represented by the Project. It is the attorney's expertise and use of legal strategies on behalf of these children that shortens the children's time in foster care and has them placed quickly into welcoming arms.

The Florida Bar's Legal Needs of Children Committee in 2009 drafted a legislative proposal that would establish a right to attorney representation to a child, whether through private or public counsel, in chapter 39 dependency cases. The proposal suggested that children in chapter 39 cases should have attorney representation when:

1. The child remains in foster care for lengthy periods,
2. The State seeks to medicate a child,
3. The child has a developmental disability and is in chapter 393 proceedings,
4. The State seeks to hold the child secure in a residential treatment center,
5. The child is 16 years of age and requires independent living services,
6. The child disagrees or conflicts with the guardian ad litem, and
7. A person seeks to waive the child's psychotherapist-patient privilege.

A public funding mechanism in the proposal allows the State to provide

funding to a 501(c)(3) organization that would then contract with children's attorneys around the State for representation. In December 2009, The Florida Bar Board of Governors approved a platform for attorney representation of children based upon this proposal. Unfortunately, the proposal did not get sufficient legislative support.

Florida, while recognizing the legal rights of children, has not provided children with the power necessary to protect their rights and interests before the courts which address their well-being after removal from their families. It is not enough for a child, who is a party to these proceedings and who is also the subject of the proceedings, to solely have others addressing the child's interests. Rather, these children would benefit from having their perspective advocated before the courts through an attorney.

Family law attorneys, having an innate affinity for family dynamics, are likely the best suited to assist these children. Although the challenges presented in representing children in foster care are daunting,

they can provide an attorney fulfillment. The smile of a child says it all. Please contact your local pro bono coordinator for opportunities in your community to assist these children. Their well-being depends on us all.

*William W. Booth is an attorney with the Legal Aid Society of Palm Beach County practicing in its Juvenile Advocacy Project. He represents children of all ages, but mostly teens, in dependency and delinquency courts. He also advocates with school districts on behalf of his clients. Most of his clients suffer a disability or mental illness or abuse substances. He has argued before the Florida Supreme Court and the Fourth District Court of Appeal. He is currently the Chair of the Florida Bar's Juvenile Court Rules Committee and a member of the Supreme Court's Steering Committee on Families and Children in the Court, the Independent Living Services Advisory Council, and the Florida Bar's Legal Needs of Children Committee. He has also trained local pro bono counsel on providing representation to children in court.*

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# Split Parenting Plan Arrangements and the Complicated Child Support Calculations They Now Demand

By Susan Savard, Esq., Orlando, FL



S. SAVARD

Split parenting plan arrangements arise when each parent has the majority of time-sharing with one or more of the children. The children are literally split between households. There is no statutory provision specifically authorizing the Court to make this award; it has been strongly disfavored and utilized in only the most exceptional of cases. A court should not generally separate siblings as part of a dissolution of marriage absent compelling circumstances to support doing so. See *Myrick v. Myrick*, 523 So.2d 172 (Fla. 2d DCA 1988) and *Arons v. Arons*, 94 So.2d 849 (Fla.1957)). This principle arises out of a recognition that in many cases, splitting children among divorcing parents “will result in further destruction of what is left, after divorce, of th[e] family unit.” *Arons*, 94 So.2d at 853.

In the rare circumstances when the Court does find that it is in the children’s best interests to divide them between the parents’ homes, there is no statutory guidance for calculation of child support under a split timesharing scenario. Examination of precedent is required. Under the case law as it currently exists, and without consideration to the statutory revisions effective January 1, 2011 relating to the substantial contact adjustment, the computation of child support under a split parenting plan would be as follows:

1. Determine the net monthly income of each party and the combined net monthly income;
2. Determine the base guideline amount pursuant to F.S. 61.30(6);
3. Allocate the base guideline support

amount to the number of children involved. (This is the only scenario where a per capita allocation of child support is permissible);

4. Multiply the support allocated to each child by the number of children in each parent’s care;
  5. Apply the parental payor percentages to each parent’s child support obligation to the other parent;
  6. Adjust each parent’s obligation for contribution toward health and medical insurance and daycare costs incurred by applying the parental payor percentages;
  7. Credit each parent for payments actually made for health and medical insurance premiums and daycare costs;
  8. Calculate the difference between each parent’s obligations for child support.
- Winters v. Katseralis*, 623 So.2d 613 (Fla. 2<sup>nd</sup> DCA 1993).
9. The net amount to be paid from one party to the other is one-half of the difference between the two child support amounts.

*Gingola v. Velasco*, 668 So.2d 1054 (Fla. 2<sup>nd</sup> DCA 1996)

Failure to consider applying one-half of the difference of the support obligations between the parties constitutes manifest injustice. *Logue v. Logue*, 766 So. 2d 313 (Fla. 4<sup>th</sup> DCA 2000).

Effective January 1, 2011, Chapter 61 has been amended to provide that substantial contact is defined as at least twenty percent (20%) of the overnights, and the “gross-up” method and adjustment then applies. Accordingly, in a split parenting plan arrangement, the substantial contact adjustment may well be required.

Below is an example of a Child Support Guideline Worksheet in a

split parenting plan arrangement following the statutory revision. The scenario assumes that each parent has one of the two children during the week (Monday morning through Friday morning). The weekends are alternated between the parents, with the children staying together. Holiday, vacation and spring and summer breaks from school have not been considered in the timesharing scheme.

Daughter with Mother 8 of 14 overnights (57%) and with Father 6 of 14 overnights (43%). Son with Father 8 of 14 overnights (57%) and with Mother 6 of 14 overnights (43%).

This scenario has the Mother providing health insurance for each of the minor children at a cost of \$125 each per month. It may be necessary allocate the premiums for all children to the number of children involved, as it is unlikely that the carrier will provide premium information for each child individually.

Gingola and Logue instruct that the difference between the amounts owed from each parent to the other must be divided in half to arrive at the given dollar amount to be exchanged between the parents on behalf of the children. There will be many instances where one parent owes the other for all or both children, given the change in overnight percentage which will invoke the statutory substantial contact adjustment. The scenario above illustrates this example. To divide the remainder in half, irrespective of whether each parent owes the other for a child, or whether one parent owes for all of the children, is both unfair and also results in an artificially low amount of support when the substantial contact adjustment comes into play. The Courts should be invited to revisit this issue.

**See charts on the following pages.**



## Child Support Guidelines Worksheet

(Split custody arrangement, calculation pursuant to  
*Winters v. Katseralis*, 623 So.2d 613 (Fla. 2nd DCA, 1993),  
*Gingola v. Velasco*, 668 So.2d 1054 (Fla. 2nd DCA, 1996), and  
*Logue v. Logue*, 766 So.2d 313 (Fla. 4th DCA, 2000).

	FATHER	MOTHER	
Total actual income	\$ 8,593.49	\$4,520.13	
Imputed income	\$ _____	\$ _____	
Less total deductions (hypothetical only)	\$ 2,782.54	\$ 162.29	
Total Net Monthly Income	\$ 5,810.95	\$ 4,357.84	
<b>COMBINED NET MONTHLY INCOME</b>			<b>\$10,168.79</b>
Basic obligation (from chart)			\$2,240.66
Pro-rated for each child			\$1,120.33
Pro rate financial responsibility	57%	43%	
Pro rate share of basic obligation	\$638.59	\$481.74	
<b>Substantial Contact Adjustment for Son (majority timesharing with Father)</b>			
Share of basic monthly obligation (from above)	\$638.59	\$481.74	
Multiply each line by 1.5	\$957.89	\$722.61	
No. of yearly overnights with father: 208			
No. of yearly overnights with mother: 157			
Multiply each number of nights by 100 and divide by 365. This is the percentage of overnights for each parent	57%	43%	
Cross-Multiply as noted above to arrive at adjusted financial responsibility	\$411.89	\$411.89	
Parental percentage of health insurance for son (\$125/month, paid by Mother)	\$71.25	\$53.75	
Parental percentage of daycare (Not applicable - Son is 14 years of age)	\$ _____	\$ _____	
Adjustment for health insurance premiums and daycare expenses actually paid by each parent	\$ _____	\$ _____	- \$125.00
Child Support Obligation of each parent on behalf of Son:	\$483.14	340.64	
Difference between parents' obligation for support:	\$483.14		
	<u>- 340.64</u>		
Child Support to be exchanged between parents on behalf of Son (Paid by Father to Mother)	142.50		

*continued, next page*



### Substantial Contact Adjustment for Daughter (Majority timesharing with Mother)

	FATHER	MOTHER	
Share of basic monthly obligation (from above)	\$638.59	\$481.74	
Multiply each line by 1.5	\$ 957.89	\$722.61	
No. of yearly overnights with father: 157			
No. of yearly overnights with mother: 208			
Multiply each number of nights by 100 and divide by 365. This is the percentage of overnights for each parent	43%	57%	
Cross-Multiply as noted above to arrive at adjusted financial responsibility	\$546.00	\$310.72	
Parental percentage of health insurance for Daughter (\$125/month, paid by Mother)	\$71.25	\$53.75	
Parental percentage of daycare (Not applicable - Daughter is 15 years of age)			
Adjustment for health insurance premiums and daycare expenses actually paid by each parent			– \$125.00
Child Support Obligation of each parent on behalf of Daughter:	\$617.25	\$ 239.47	
Difference between parents' obligation for Daughter's support:			\$617.25 – 239.47
Child Support to be exchanged between parents on behalf of Daughter( Paid by Father to Mother)			\$377.78
Father's child support obligation for Son (from above):	\$142.50		
Father's child support obligation for Daughter (from above):	\$377.78		
Total Monthly Child Support to be Paid by Father:	\$520.28		

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# Mood Disorders, Teenagers and Divorce

By Mark R. Banschick, M.D., Katonah, NY



BANSCHICK

Mood disorders—whether depression, bipolarity, or some variation of the two—are more common in teenagers than we generally think. In the midst of divorce, diagnosis can be tricky; by default teenagers are inconsistent, moody, and often test limits. And in divorce, teenagers struggle with many additional destabilizing issues. Aside from general moodiness, they can be angry, despondent or undisciplined as a consequence of their family situation. It's the nature of the beast.

So how do you tell the difference?

What you are looking for is evidence of *extreme* moodiness. You should take careful note if your client's child stays in bed an excessive amount, or goes for long periods of time without showering or changing clothes. On the flipside, be on the lookout for flights of manic energy, sleeplessness and grandiosity. In these instances, you might be up against a bigger problem than mere teenage moodiness. Mood disorders are often hereditary, so have your client educate him or herself about his or her own family's history of mental health—and inquire about his or her spouse's side of the family as well. If the child is adopted, your client will have to dig further—did the biological parents have these issues?

Mood disorders, indeed any disorder, are defined not just by what one experiences but also how it impacts basic functionality. If your client notice that her son is acting depressed, but he isn't suicidal, he does well in school, he has good friends and an active social life, and he generally gives off an attitude of contentment, she is most likely dealing with normal teenage angst. If he occasionally complains about the divorce or his parents' parenting, but lives life well, he is probably okay. If, on the other hand, your client's daughter protests

constantly that she's "fine", but your client clearly witness her having trouble getting out of bed in the morning, her friends are no longer calling, and she has lost interest in what used to give her pleasure, this well may be an actual depression. Some teens going through divorce may actually become more compliant when depressed. They don't want to rock the boat.

Depression and other mood disorders are treatable, and very effectively so, but your client must be proactive and vigilant about getting the child seen by a mental health professional if a problem is suspected. Of course, there must be a Court Order or agreement between the parties to allow for such consultation.

I generally recommend that parents tell their children that they're coming in for an assessment—there's no obligation that they continue to see the therapist or to get treatment. We can always refer them to another therapist if it is required. This preamble generally lightens their load, allows them to feel less trapped, and paradoxically, lets them open up.

Once depression, bipolar disorder, or their less severe cousins - dysthymia and cyclothymia - have been diagnosed, treatment often includes a combination of supportive psychotherapy, cognitive behavior therapy (CBT) or prescribed medications.

Different types of therapy all have one thing in common: the therapeutic alliance. The adolescent must feel understood by their helping professional. Whether the therapist is a social worker, a psychologist, or a psychiatrist the development of trust in that relationship is critical.

Psychotherapy looks at how a child is doing and offers him or her ways to improve. The therapeutic alliance teaches a young person that they can really trust somebody. She doesn't have to be alone to cut herself because there is no one to turn to. He doesn't have to turn to self medicating with drugs or drinking because he feels desperate and unimportant. Depression creates a mindset of negativity and low self-

worth ("I don't want to burden anyone with my problems"). The therapeutic alliance teaches the patient that it is a strong person who reaches out for help. A good relationship with a therapist is a lifelong gift, even when the patient no longer needs our help. It is good enough that he or she knows where to go if things get rough.

Psychotherapeutic treatment is not only focused on alleviating and coping with a youngster's unhappiness or instability, but also about understanding and dealing with the problems that trigger their mood swings in the first place. Common triggers include a rejection, a breakup, a move, a sense of failure, the death of a grandparent or a pet, and of course, a divorce.

Therapy alone sometimes does the job, but at times, the mood problem is so severe or longstanding that medication may have to be considered.

People often put off the decision of medicating a teenager, but many psychiatrists, including myself, will tell them that medication can be very effective—sometimes the most effective of all treatments. And when it is effective, it's a godsend. When it is appropriate, we medicate children in order to give them the strength to overcome the obstacles that affect them, so that in the future they can get back on track and fare well. Time spent being unhappy is time lost from the preciousness of one's life.

Mood disorders are real. Like anything else in life, they are best handled in a straightforward way. During the tumult of divorce, your client's teen may be upset, but that upset can sometimes be a sign of deeper suffering. Your client should keep his or her eyes open. Simple anger and disappointment may well be just simply anger and disappointment. But if your client thinks his or her child has a mood disorder, advise them to get a consultation, as permitted by Court Order, or agreement.

You will sleep better at night.

*Mark R. Banschick, M.D. is a child and adolescent psychiatrist in full*



time private practice in New York. He is a graduate of Georgetown University Hospital in General Psychiatry and New York Hospital/Cornell Weil Medical Center in Child and Adolescent Psychiatry. He is published in the fields of Child Development, Adolescence, Kids in Cyberspace, Integrative Medicine and Divorce. Dr. Banschick specializes in relationships both in marriage in divorce. He has served as an expert witness in court for custody matters and wrote *The Intelligent Divorce* (2010) after teaching a course of the same name. Currently, he is working on two more books in the *Intelligent Divorce* series and is preparing an online parenting course for Florida residents. Dr. Banschick has appeared on radio and on national television, including *The CBS Early Show*, *CBS Morning News* and has been quoted in *The New York Times*, *The Huffington Post* and *the New York Law Journal*.



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# Representing the Unaccompanied Immigrant Child

By Professors Ericka Curran and Sarah Sullivan, Florida Coastal School of Law, Jacksonville, FL

The recent decision of *Padilla v. Kentucky*, 130 S.Ct. 1473, 176 L. Ed. 2d 284 (2010 U.S.), sent a wave of panic through the legal community. The United States Supreme Court found that the defense provided ineffective assistance of counsel in failing to advise a criminal defendant of the risk of deportation.<sup>1</sup> The question must now be asked about the ethical obligations of Child and Family attorneys with regard to the consequences of their action or inaction in family law matters that impact the immigration status of foreign national clients. Children can be particularly vulnerable to immigration consequences as they typically have no say about their own migration.

## I. Introduction to the Plight of Unaccompanied Immigrant Children

Roland is a quasi-fictional 17 year-old Haitian boy. No one is quite sure how Roland came into the United States. He was four years old and doesn't remember. Roland thinks he was on an airplane. He might have come on a boat. He remembers a lady, but it wasn't his mom. Roland's mom was already in Florida. She had a green card, but nobody knows how she got it. Roland never knew his dad, except that he knew his name because it was on his birth certificate.

One year after Roland came into the United States his mother was killed in a car accident. Roland's 18 year-old uncle, Leo, came to the rescue. An attorney represented the family in probate proceedings and Uncle Leo was appointed to be Roland's guardian. No one ever asked about Roland's immigration status. No one asked about his uncle's immigration status. The attorney didn't ask, the judge didn't ask, and the family was too afraid to bring it up.

Twelve years later when Roland is in high school, he meets with his

school counselor. Roland is a top student with excellent grades. His counselor asks the question: "What about college?" She gives Roland applications for schools and for scholarships. When filling out the paper work, Roland realizes that he doesn't have some of the required documentation. He doesn't know why he doesn't have a social security card. He has no immigration papers, no social security card and no identification. Roland asks his uncle. His uncle tells him for the first time that he is illegally in the country. Roland always thought he was a U.S. Citizen because he knows his Uncle is. He has no memory of Haiti and now he thinks he has no future in the United States.

Then on January 12, 2010, a devastating earthquake hits Haiti. Roland is listening to the radio and learns about temporary immigration status for immigrants. Roland comes to a meeting at the local Legal Aid to learn about this option. This is the first time Roland has ever told his immigration story to an attorney. He learns that he might be eligible for a form of Haitian immigration relief called Temporary Protected Status. Additionally, he learns that he might be eligible to get his green card because he is an abandoned child. Roland would have been eligible to apply for his green card many years ago under a special provision of the Immigration and Nationality Act that applies to abused, abandoned, and neglected children, under Special Immigrant Juvenile Status. In fact because he is almost 18, Roland nearly misses the opportunity. Depending on his uncle's immigration status, Roland might also have been eligible to immigrate via adoption.

The immigrant population in the United States is steadily growing. According to 2008 statistics, approximately 23% of children in the United States are either foreign-born or have

at least one foreign-born parent.<sup>2</sup> Every year thousands of unaccompanied immigrant children are taken into custody by U.S. immigration authorities. Many are caught at the borders and then sent to detention shelters run by the Office of Refugee Resettlement throughout the country where their stay ranges from a few weeks to as long as one year. As of fiscal year 2007, there were 43 facilities across the United States capable of accommodating unaccompanied children. These facilities were located in Arizona (4), California (8), Oregon (1), Washington (3), Illinois (2), Indiana (2), Texas (17), New York (1), Virginia (1), and Florida (3).<sup>3</sup>

Some children enter without detection, and like Roland, are residing in the U.S. for many years unaware that there might be help. Family law is now one of the many areas of the law that finds immigration issues popping up regularly. It is ethically imperative that family law attorneys know how to identify issues that involve immigration and to recognize the need for referral and consultation with an immigration attorney. In addition to substantive issues, in many cases, there are filing deadlines that impact a child's immigration possibilities.

## II. Overview of Special Immigrant Juvenile Status

Children do not generally have much control over where and with whom they live. Immigrant children come to the United States for many different reasons. Some come on their own and are fleeing persecution, such as human trafficking, forced marriages, recruitment in gangs, child labor, sexual servitude, and slavery. Some children are fleeing abusive families or have been abandoned or neglected by their caregivers. Sometimes they enter the U.S. to join relatives who are already in the United

*continued, next page*



## Immigrant Child from preceding page

States. Although not much is known for sure about Roland's entry, the family thinks that Roland's mother had a green card. However, because the waiting list for children of lawful permanent residents to enter the United States is so long, Roland's mother took a risk and had him smuggled into the United States to avoid the pain of separation from her young son. One thing is certain. At four years of age, Roland was not consulted about his migration to the United States.

Some children, like Roland, find themselves abandoned in the United

States by tragic circumstances. Roland was fortunate to have an uncle available to care for him. But somewhere along the way, attorneys who didn't ask the right questions placed Roland in great legal peril.

Alone and without the protection of a parent, Roland may be eligible for an Immigration Status, as briefly mentioned above, called Special Immigrant Juvenile Status. A little over 20 years ago, congress recognized the needs of unaccompanied immigrant children and passed a law that provided a pathway to citizenship for this vulnerable group of children.<sup>4</sup> This special immigrant juvenile visa, the J visa, enables these children to get permanent residence. It also provides a path to Citizenship.<sup>5</sup>

The basic requirements for Special Immigrant Juvenile Status (SIJS) as are as follows:

1. The child must be declared dependent in a juvenile court located in the United States, or

2. The court must have legally committed the child to, or placed the child under the custody of an agency or department of a state, or an individual or entity, appointed by a state or juvenile court ;

3. The juvenile court must find that reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law ;

4. A judge or administrative authority must

have determined that return to the child's or parent's country of nationality or country of last habitual residence is not in the child's best interest.

An alien is eligible for classification as a special immigrant under section 101(a) (27) (J) of the Act, if the alien:

1. Is under twenty-one years of age;
2. Is unmarried;
3. Has been declared dependent by and upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency while the alien was in the United States and under the jurisdiction of the court;
4. Has been deemed eligible by the juvenile court for long-term foster care;
5. Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and
6. Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents;

In order to obtain SIJS, a child must be still under the juvenile court's jurisdiction at the time of the adjudication of the application for permanent residence. In Florida, Chapter 39<sup>6</sup> allows for the extension of jurisdiction of the Juvenile Court to allow for the adjudication of the residence application through age 22, provided the application was filed prior the child reaching age 18. In Roland's situation, he must request an expedited adjudication from immigration of his application for adjustment of status to permanent residence under SIJS directly from United States Immigration and Citizenship Services (USICS) or determine whether it is possible to extend jurisdiction of the guardianship in Probate court.

In Roland's case, he became eligible when his mother died. Roland

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was essentially abandoned in the United States. His mother was deceased and he never had a father. But why couldn't Roland's uncle just adopt him? If Roland's uncle is a United States citizen, Family Based immigration is often a way to obtain lawful resident status. However, a seventeen-year old child is too old to qualify for this path to citizenship. Under our immigration laws, an adoption that occurs after a child reaches the age of 16 does not create a parent-child relationship for immigration purposes.<sup>7</sup> Also, in the case of Roland, even if his uncle had adopted him prior to age 16, no one knows how Roland entered the country. An adopted child who enters the country illegally would have to exit the United States and pass through the Visa process abroad. In Roland's case, travel to Haiti could have been very dangerous. Further if a child is from a Hague Convention country and the

child is already in the United States and has entered the U.S. unlawfully, the child may not be able to gain lawful status through a U.S. adoption.<sup>8</sup>

### III. Concerns for the Family Law Practitioner

In Roland's case, the attorneys who had contact with the family through the probate adjudication did not ask any questions regarding the family member's immigration status. This nearly resulted in Roland being unable to obtain a Visa. The family law attorney, like the criminal defense attorney, does not need to know the intricacies of immigration law. However, it is imperative that the family law attorney know the right questions to ask and that she or he is able to identify when she or he either needs to consult with an immigration attorney, or needs to refer the client to such an attorney. A child who "ages-out"

of an immigration benefit may lose the privilege to remain in the United States and may be subject to deportation back to the child's country of origin, even if the child's only memories are of life in the United States.

#### Endnotes:

- 1 *Padilla v Kentucky* 130 S. Ct. 1473; 176 L. Ed. 2d 284; 2010 U.S.
- 2 <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?ind=115>
- 3 Administration for Children and Families, US Department of Health and Human Services, fiscal year 2007 statistics
- 4 Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978, 5005-06 (1990) (codified at 8 U.S.C. § 1101(a)(27)(J)(2006)).
- 5 8 U.S.C. § 1101(a)(27)(J)(2006).
- 6 Fla. Stat. § 39.013(2)(2006).
- 7 INA §101 (b) (1) (E) (i)
- 9 8 CFR §204.307

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# The Alienated Child

By Sheila C. Furr, Ph.D., A.B.N., Lori D. Wasserman, Ph.D., A.B.Pd.N.,  
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In high conflict divorce, few issues are more contentious than determining time-sharing and the best interests of the child. A dysfunctional and, unfortunately not uncommon, circumstance is for one or both parents to allege that other parent is alienating, or interfering in a significant way with the relationship between the other parent and the child. There is little doubt that in many of these circumstances either or both parents have legitimate grievances. It is often the case that children in these situations see and hear things that they should not. Making the claim has serious implications not

only for the legal outcome, but also for mental health interventions and strategies with the family. This is a highly controversial area in psychology/ psychiatry and the issues are considerably more complex and complicated than this line of reasoning purports.

The term Parental Alienation Syndrome (PAS) is generally attributed to the work of Richard Gardner, M.D.<sup>1</sup> He described PAS as “a disorder of children, arising almost exclusively in child custody disputes, in which one parent (usually the mother) programs the child to hate the other parent (usually the father).” The child becomes an active participant in the denigration of the accused parent. Gardner’s work was based more on his personal observations than on

systematic research. In his approach the alienating parent was seen as the major, if not only, factor leading to the alienation. Dr. Gardner’s work was held as the standard for a number of years and his theory was the basis for considerable testimony in high conflict divorces.

More recently, the researchers Joan Kelly, Ph.D. and Janet Johnston, Ph.D., clinicians who work with separated and divorced families, including high conflict families, have suggested a reformulation of the concept in which they look at the family system more broadly instead of focusing all attention on one alienating parent and one victim parent.<sup>2</sup> In their work they describe an alienated child as “one who expresses freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child’s actual experience with the parent.” Their groundbreaking research has demonstrated that in high conflict families and divorce many parents engage in indoctrinating behaviors, but only a small portion of the involved children actually become alienated from the other parent.

Not all children who resist visitation do so because of parental alienation. Various reasons why children refuse and reject visitation include, but are not limited to:

- normal separation anxieties in a very young child
- fear or inability to cope with the high conflict transition when the child is transferred from one parent to the other
- resistance to a parent’s parenting style -- rigidity, anger, insensitivity, etc.
- resistance arising from the child’s concern about leaving an emotionally fragile custodial parent
- resistance arising from the remarriage of a parent

It is more helpful to think of children’s relationships with each parent along a continuum from positive to negative. It is certainly possible for a child to maintain a positive relationship with both parents. However, sometimes the child has more affinity for one parent, although he/she still desires continued contact with both. This may relate to differences in temperament of the parents, gender issues, shared areas of interest etc.

There are other children who demonstrate a consistent preference for one parent during the marriage and often want limited contact with the non-preferred parent after the separation. They do not completely reject or seek to terminate all contact and may express some ambivalence towards this parent as well as resistance to contact. For example, alliances may arise in older school-age children in response to the dynamics of the separation. A child may make a moral assessment and judgment about which parent caused the divorce or who was more hurt and vulnerable and who therefore, in their mind needs, or deserves, the child’s allegiance and support.

Some children are estranged as a realistic response to a parent’s history of violence, abuse or neglect. Often, these children only feel safe enough to reject the violent or abusive parent after the separation. This is a response to real trauma. Estrangement can arise as an appropriate response to severe parental deficiencies including persistent immaturity and self-centered behaviors or excessive rigidity and restrictive parenting styles. In these situations the estrangement is a reasoned, adaptive and protective response that would be incorrectly attributed to PAS.

Kelly and Johnston propose a system of multiple factors within the marriage and separation which, taken together, may result in a child who is truly alienated. These factors include the age and developmental level of the child, the child’s psycho-



logical vulnerability, the behaviors and personalities of both parents, sibling dynamics, if there has been a remarriage by either parent, and the adversarial nature of the custody litigation itself. In their research they found that it is not an indoctrinating parent who is the principal player in the child's alienation but rather that the child's rejection of the parent had multiple determinants, factors attributable to both the rejected and the preferred parent, in addition to characteristics about the child itself.

The January 2010 issue of the *Family Court Review* published by the Association of Family and Conciliation Courts (AFCC) is dedicated to study of the alienated child. In his editorial comments Andrew Schepard reviews how through their landmark publication in 2001 the focus moved from parents' behavior and an adversarial framework to considering the child's reactions. "The children's custody dispute resolution process' fundamental goal must be to cope with the *child's* feelings toward *both* the rejected parent and the alienating parent."<sup>3</sup> Over time the problem has been given more attention, in part due to the frustrations and lack of success in effectively intervening with these families. "These are complex cases. A significant portion... are not in fact alienation cases; for those where alienation is present, interventions will vary depending on the degree... More severe alienation cases are unlikely to be responsive to therapeutic or psycho-educational intervention..."<sup>4</sup>

The American Psychiatric Association is currently working on the next edition of the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V)*. Due to the lack of adequate research foundation there is current debate in mental health circles as to whether Parental Alienation, as postulated by Gardner, should be included, as either a mental disorder or even under the category of a parent-child relationship problem. Although there is considerable men-

tion of the topic in the professional literature, much of it is opinion articles or clinical descriptions rather than rigorous empiric research. In a letter written by Drs. Kelly and Johnston to the Disorders in Childhood and Adolescence Work Group of the National Institute of Mental Health they opine "that parental alienation can co-exist with realistic estrangement and with other factors that look like "parent alienation" and that this causes misdiagnosis of the needs of the family/child and leads to inappropriate treatment. We are also concerned about differential diagnosis of parental alienation from normal developmental phases and expectable reactions to the divorce situation as well as from PTSD and generalized anxiety."<sup>5</sup> There needs to be consideration that there is a difference between a parent who is rejected by a child for any of a myriad of even justifiable reasons, and a parent who is presumably causing a child's alienation.<sup>6</sup>

Johnston and Kelly address this as relates to the testimony of the mental health professional in Family Court. "Because of a lack sound research about etiology and effective intervention, mental health professionals and custody evaluators are not in a position to provide evidence about these cases that meet the standards for scientific evidence according to criteria set by Daubert."<sup>7</sup> They go on to say that when this label becomes part of the court proceedings it "may obscure the often complex psychological dynamics within these families and may not hold professionals and rejected parents accountable for their part in contributing to the problem."<sup>8</sup> They are concerned that the admittance of this testimony, and diagnostic label specifically, can have the effect of doing more harm than good.

In conclusion, a child may resist or reject a parent for a number of reasons. Gardner's original writings focused on the conduct of the alienating parent, at the expense of considering other contributory factors. More

recently, attention has been paid to other potential factors such as the rejected parent's parenting behavior, domestic violence, abuse or neglect, an emotionally fragile child who is aligned with one parent, and developmental factors such as separation anxiety or resistance to conflict from the divorce. It is essential to differentiate the child who is truly alienated from one who resists or rejects a parent for very different reasons. Expert testimony should consider a range of factors in explaining the dynamics of the family.

***Drs. Furr, Wasserman and Wasserman*** are board certified clinical psychologists in independent practice in Boca Raton, Florida at Psychology Consultants, LLC. They work with divorcing and high conflict families in therapy, psychological evaluations, parenting plan recommendation assessments, and parenting coordination. They have extensive experience offering expert opinion to the Courts on matters of parenting, family dynamics, psychological and developmental needs of children, time sharing and the impact of divorce on children. ([www.psychologyconsultantsLLC.com](http://www.psychologyconsultantsLLC.com))

#### Endnotes:

1 Richard A. Gardner, *The Parental Alienation Syndrome: A Guide for mental Health and Legal Professionals* (Creative Therapeutics, Inc. 1992).

2 Joan B. Kelly & Janet R. Johnston *The Alienated Child -- a Reformulation of Parental Alienation Syndrome*, 39 Fam. Ct. Rev at 249.

3 Andrew Schepard, *Editorial Notes*, 48 Fam. Ct. Rev 1, 2 (2010).

4 Barbara Jo Fidler & Nicholas Bala, *Children Resisting Postseparation Contact with a Parent: Concepts, Controversies and Conundrums*, 48 Fam. Ct. Rev 10, 10.

5 Posting of Letter from Joan B. Kelly & Janet R. Johnston to National Institute of Mental Health, Disorders in Childhood and Adolescence Work Group to [Forensic@lists.flapsych.com](mailto:Forensic@lists.flapsych.com) (10/28/2009).

6 Id.

7 Id.

8 Id.



# 21<sup>st</sup> Century Divorce: It's Time to Help the Children!

By Cindy Harari, Fort Lauderdale, FL

Almost a decade ago, the Florida Supreme Court stated: "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. The legal system should focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system." (*In re Report of Family Court Steering Committee*, 794 So. 2d 518, 524 (Fla. 2001).

This is not an easy task. One of the most challenging aspects of this mandate is the obligation to represent the interests of a party who is not necessarily in the room, but who, as all the evidence suggests, is seriously impacted by the process and its conclusions.

While parents focus on the "business" of divorce (and, sometimes, moving on with their own lives), children often become casualties of the divorce war. That's not news. What is news is that today, more than ever before, family law professionals are developing practice models and utilizing resources to help parents to help themselves – and their children. Some resources are not new but are beginning to be used differently; others are cutting-edge professional practice protocols. All are responsive to the Supreme Court's mandate.

## Consider the "Big Picture"

Remember that your client may be going through his or her very first experience with lawyers, judges, the court system, and the breakup of a marriage. Advise your client that he or she is about to enter a whole new world and that they have the power to make it a good experience -- if they decide to do so. Teach the client how

to be proactive and not reactive.

It is important to recognize that our clients are expected to function at a very high level when they are likely feeling at their worst; angry, depressed, overwhelmed and vulnerable. They must completely disassemble and restructure their financial and physical world. At the same time, they are expected to create a new parenting relationship with someone they often don't want to talk to and sometimes wish would just disappear. Attorneys today are including child-focused professionals in divorce cases at the outset, providing the parents with the opportunity to stop and think about how *their* divorce is affecting *their* children, and offering resources to shape a positive outcome. With guidance, parents can create a vision for the future of their family and have the chance to develop and maintain a new relationship and a new communication paradigm with their children's other parent. As the parents develop good skills, the children are the ultimate beneficiaries.

## Be More Than An Attorney – Be A Resource and a Role Model

Create a list of books, web sites, professionals, and programs and give it to your clients for reference. Review these resources at the beginning of the process, during the process and at the end. Teach your client how to search for answers to issues that come up in the future. Remember that you are a counselor at law, learn to recognize when your clients need more than legal assistance and be prepared to direct them accordingly.

Start with a free online resource (with no hidden products for sale). [www.uptoparents.org](http://www.uptoparents.org) is an award-winning website developed by an attorney/mediator and a mental health professional to help parents shift their focus away from their fight and

toward their love for their children. Watching and listening to children talk about their families can be a real eye-opener for parents who are caught up in their own tumult.

Attorneys who spend just a few minutes online will understand its value. If both parents are counseled to do the work on this website, it has the potential to positively impact the resolution of every child-centered issue.

## Don't Wait -- Mediate

Are we making the best use of mandatory mediation? Many attorneys schedule a single "marathon mediation" on the eve of trial, but that was not the intention when our family law mediation statute was enacted. It is time to re-examine this process.

Today's successful family lawyer is scheduling mediations early and often, utilizing the expertise of the mediator to bring another perspective to the process. The mediator can develop relationships with the parties, be an "agent of reality" and provide a sense of continuity throughout the process.

We can use mediation sessions as opportunities to be role models while interacting with the other attorney, the other party and the mediator. Consider the messages parties receive when they remain in the same room as compared with being separated and employing the mediator for "shuttle diplomacy." The professionals set the tone with respectful, considerate, behavior, recognizing that the parents ultimately need to sit on the same side of the table – together – when focused on their children.

## Think About Preserving the Assets

If clients are still living together, they need to figure out how they are going to create two households



and raise their children. Currently, there is a trend toward utilizing one financial professional to facilitate resolution of issues and away from the old-school “battle of the financial experts” as attorneys acknowledge their clients’ clear desire to control the costs of divorce.

### Develop A Parenting Plan ASAP

If clients are living in separate homes, there is already a *de facto* parenting plan in place, and reducing the plan to writing will focus on the needs of the children. Who creates the plan? This is a perfect opportunity to work proactively with a parenting coordinator whose engagement can begin by joint stipulation. In accordance with Florida’s statute, a parenting coordinator can meet with the parents, create a comprehensive plan, and facilitate development and implementation of the plan.

One major benefit of this approach is the introduction of a “go-to” resource for the parents. Providing assessment, education, and assisting with resolving disputes, the parenting coordinator appropriately brings the children’s voices into the process.

### Consider Child Inclusive Mediation

This does not mean bringing the children to mediation sessions, but, rather, suggests enhancing traditional family mediation by introducing a “child specialist” into the process. This professional assesses the children within a few meetings, and safely and appropriately brings the children’s perspective into the mediation.

### Recommend Divorce Education and Parent Education

In almost all circuits in Florida, mandatory 4-hour classes are offered live; online classes are also available. Be able to recommend a good 4-hour class as early in the process as possible.

While this “level 1” class is a basic foundation, some parents need more. Find out about “level 2” divorce

education classes as well as parent education classes in your community, and counsel your clients about the benefits of this education for their entire extended and blended family.

### Learn About Alienation and Reunification

Currently, there is conversation within the psychological community about including a diagnosis of “Parental Alienation Syndrome” to the Diagnostic and Statistical Manual of Mental Disorders (DSM). At this time, responsive therapies exist for reunification of parents and children utilizing traditional psychological protocols and an intensive “reunification camp” program.

### Recognize True Mental Health Issues

Some attorneys can identify basic mental health issues that compromise our clients’ abilities to function. We understand that if these issues remain unresolved, the family is likely to get “stuck” and the children will suffer. One way to serve our clients and their children is to encourage parents to focus on themselves; if they are ok, odds are better that their children will be ok too.

### Create a Team – Be the Leader

In the past, family law attorneys have jumped on board (or led the way) to fuel the destructive fires divorce,

tearing families apart and earning reputations as sharks, bulldogs or killers. As a result, divorcing parties are turning away from attorneys in record numbers.

In response, today’s family lawyer is doing things differently. Rather than waging war, some lawyers are utilizing “peacemaker” skills, recognizing that we are dealing with families whose lives go on long after we close our files. We counsel our clients to stay out of court and guide them toward resources that will help their entire family.

So often, we read the literature and hear firsthand about children who are caught in the middle, used as pawns and used as messengers. Some children act out, some try to be perfect, and some take responsibility for one or both of their parents. We see parents who “act like children.”

We understand the effects of a significant other, a new spouse or a new stepsibling on the dissolution process and post-judgment matters. We know how new parental relationships affect children.

But is it the attorney’s job to “spot the issues” for the family? Is it the attorney’s job to help parents learn how to parent? To help our clients avoid or correct situations that we know are harmful to children? To refer our clients to others who can help them and their children? Almost a decade ago the Florida Supreme Court said “yes.” Attorneys who fulfill this mandate will change the public image of attorneys and advance the practice of family law.

### Answers to the crossword puzzle on page 6:

#### Across:

- 2 Douglas Greenbaum
- 4 Judge Amy Gray Cassidy
- 6 Court Order
- 7 Hammock Beach Resort
- 8 Developmental Ages
- 9 Coastal Insurers
- 11 Helen Bracco Kirigin

#### Down:

- 1 Immigrant Children
- 3 Dysthymia
- 5 Summer Hall
- 10 Two



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