

EMPIRICALLY-BASED PARENTING PLANS: WHAT PROFESSIONALS NEED TO KNOW  
Florida's Shared Parenting Statute

# BENCH BAR SUPPLEMENT 2014

Florida Chapter of the Association of Family & Conciliation Courts (FLAFCC)  
Parenting Plan Task Force  
Chair, Debra K. Carter, Ph.D.  
Hon. Diana Moreland, Chair, Bench-Bar Supplement



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The 2014 Bench Bar Supplement is a revised and updated edition of the Bench Book Supplement which was published in 2009 to accompany the Florida Chapter of the Association of Family & Conciliation Courts (FLAFCC) Parenting Plan Task Force\* monograph entitled Empirically Based Parenting Plans: What Professionals Need to Know. The 2014 edition incorporates the most current social science research related to family law matters and children's best interests in addition to a comprehensive case law update. For additional information, please contact FLAFCC at [www.flafcc.org](http://www.flafcc.org).

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# TABLE OF CONTENTS

	<b>PAGE</b>
<b>I INTRODUCTION</b>	1
<b>II BACKGROUND</b>	1
<b>III WHAT TYPE OF PARENTING PLAN IS RIGHT?</b>	2
<b>A View for the Bench</b>	
Quick view chart: deciding what type of parenting plan is right?	3
Florida Supreme Court Approved Parenting Plans	5
<b>IV PARENTING PLANS WHEN DOMESTIC VIOLENCE IS AT ISSUE</b>	5
<b>A. What Is Domestic Violence?</b>	5
<b>B. Chapter 61 Rebuttable Presumption</b>	7
<b>C. The Batterer as Parent</b>	8
<b>D. The Victim as Parent</b>	8
<b>E. Perspectives on Joint Custody Presumptions</b>	9
<b>F. The Child as Victim</b>	10
<b>G. Safety-Focused Parenting Plans</b>	11
<b>H. Creating or Modifying a Parenting Plan</b>	13
<b>V APPLICATION OF EMPIRICAL RESEARCH TO TIMESHARING</b>	
<b>A. Empirically Based Parenting Plans</b>	13
1. Child’s Relationship With Parents	15
2. Gatekeeping	15
<b>B. Age Related Research Regarding Children’s Needs</b>	16
1. Parental Separation and Overnight Care of Young Children	16
2. Elementary & Middle School Children	18
3. Parenting Plans and Adolescents	18
<b>C. Equal Timesharing Presumptions</b>	19
1. Shared Parenting Time: Important Parameters to Consider	20
2. Risks of Equal Timesharing Presumption	21

3. Advantages to Equal Timesharing	21
<b>VI Highly Structured Parenting Plans</b>	
<b>A. Differentiating High-Conflict Cases</b>	22
<b>B. Factors that Contribute to Negative Outcomes for Children After Divorce</b>	22
1. Parental Alienation	22
2. Allegations of Child Sexual Abuse	23
3. When a Child Resists or Refuses Contact with a Parent	26
4. The Connection Between Time-Sharing Arrangements and Children's Adjustment	27
<b>VII RELOCATION AND PARENTING PLANS</b>	27
<b>VIII CONSIDERATIONS FOR MILITARY FAMILIES</b>	
<b>A. Unique Issues Related To Modification Involving Military Personnel</b>	30
<b>B. Relevant Case Law</b>	31
<b>C. Case Law Prior to Enactment of §61.13002</b>	31
<b>D. Mental Health and Parenting</b>	32
<b>IX CONSIDERATIONS FOR INCARCERATED PARENTS</b>	33
<b>X MODIFICATION OF PARENTING PLANS</b>	
<b>A. Relevant Statutes</b>	34
<b>B. Legal Standard – Substantial Change</b>	34
<b>C. Necessity of Pleadings</b>	37
<b>XI CASE LAW UPDATE</b>	
• <b>Residency</b>	38
• <b>Jurisdiction</b>	38
• <b>Shared Parental Responsibility and Child Support</b>	38
• <b>Shared Parental Responsibility and Modification</b>	38
• <b>Shared Parental Responsibility Parenting Plans and Timesharing</b>	39
• <b>Modification of Timesharing</b>	41
• <b>Paternity</b>	42
• <b>Disestablishment of Paternity</b>	43
• <b>Child Support</b>	43

• Childcare Expenses	45
• Uncovered Medical Expenses	46
• Insurance to Secure Support	46
• Private School Expenses	46
• Imputation of Income	47
• General Principles Regarding Modification	47
• Modification of Child Support	47
• Relocation	49
• Miscellaneous	51

## **XII RESOURCES**

<b>A. DISPUTE RESOLUTION PROCESSES</b>	52
Family Mediation	52
Case Management Conference (Settlement Conferences)	53
Collaborative and Cooperative Law	53
<b>B. MENTAL HEALTH ASSESSMENT/EVALUATIONS</b>	53
Mental Health Assessment	53
Psychological Evaluation	54
Psychiatric Evaluation	54
<b>C. INVESTIGATIONS/PARENTING PLAN RECOMMENDATIONS</b>	54
Brief Evaluation	54
Focused Evaluation	55
Home Study/Social Investigation	55
Social Investigation	55
Parenting Plan Evaluation (fka Custody Evaluation)	55
<b>D. ADDITIONAL MISCELLANEOUS SERVICES</b>	56
Counseling	56
Parenting Coordination	56
Supervised Visitation	56
Guardian ad Litem/Child Advocate/Attorney ad Litem	57

<b>XIII REFERENCES</b>	57
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## I INTRODUCTION

Education enhances the knowledge and skills of the judiciary and contributes to the administration of justice.<sup>1</sup> To further assist in the administration of justice, the Florida Chapter of Association of Family & Conciliation Courts (FLAFCC) has developed this Bench Book that addresses the issues involved with developing and modifying parenting plans. This Parenting Plan Bench Book was created to assist both new and experienced judges in Florida who are assigned family cases. Although the information encompassed in the book is extensive, it is not intended to be exhaustive. Therefore, all users are encouraged to continue learning to apply the greatest level of knowledge and efficiency due every party concerned.

## II BACKGROUND

In March 2007 the Twelfth Judicial Circuit family law community gathered together with the simple goal of revamping the existing visitation guidelines. The goal in 2007 was to develop a fluid Twelfth Judicial Circuit Parenting Plan Packet (PPP) capable of being published and used by both the public and legal communities. After hours of discussions, it was determined that creating parenting plan forms only would not accomplish that adopted goal. Users needed to be motivated, educated and guided - to the appropriate plan. Hence, the birth of the Twelfth Judicial Circuit's [\*Instruction and Self-Assessment for your Parenting Plan\*](#)<sup>2</sup>. Simultaneously, legal vernacular was being revised by Florida Statute Chapter 61, taking Florida from outdated and acrimonious terms such as "custody" and "visitation" to "shared parental responsibility" and "timesharing". In 2009, the Florida Supreme Court not only approved the Twelfth Judicial Circuit's four Parenting Plans, but also adopted three of their own.<sup>3</sup> Most important, the conversion from the one parent winning "custody" to each parent having rights and responsibilities has become well entrenched.

Likewise, FLAFCC has made an effort over the last seven years to update and incorporate the most current research to assist professionals in developing parenting plans that consider the most unique circumstances of each family. It is important to understand that since the last Bench Book was published in 2009, research has continued and empirical data compiled. It is essential that this recent information be appreciated, digested and utilized if the judiciary, and our partnering professionals, are to continue to provide the best future to our families. It remains important to recognize that parents may have been married, cohabitated, or never lived together as a couple or family unit; thus, not all parents who create parenting plans do so in response to a divorce process. Therefore, this document confines its information to parents who have divorced only when it is specifically limited to such in a particular study presented. Additionally, when this document refers to "parents and their children," it is meant to reference both parents and other guardians who are in the process of creating parenting plans.

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<sup>1</sup> In 2003 the Office of Court Improvement developed a Dependency Benchbook, which began its introduction with the same sentence.

<sup>2</sup> See. [www.jud12flcourts.org](http://www.jud12flcourts.org)

<sup>3</sup> See Fla.Fam.L.R.P. 12.995(a)-(c)

Finally, it continues to be of paramount importance to emphasize that there is no one-size-fits-all approach to parenting plan development, and it is up to both parents and their assisting professionals to appreciate each family's unique needs and requirements. Considerations such as ethnic, cultural and religious differences must also be accounted for to arrive at an effective plan.

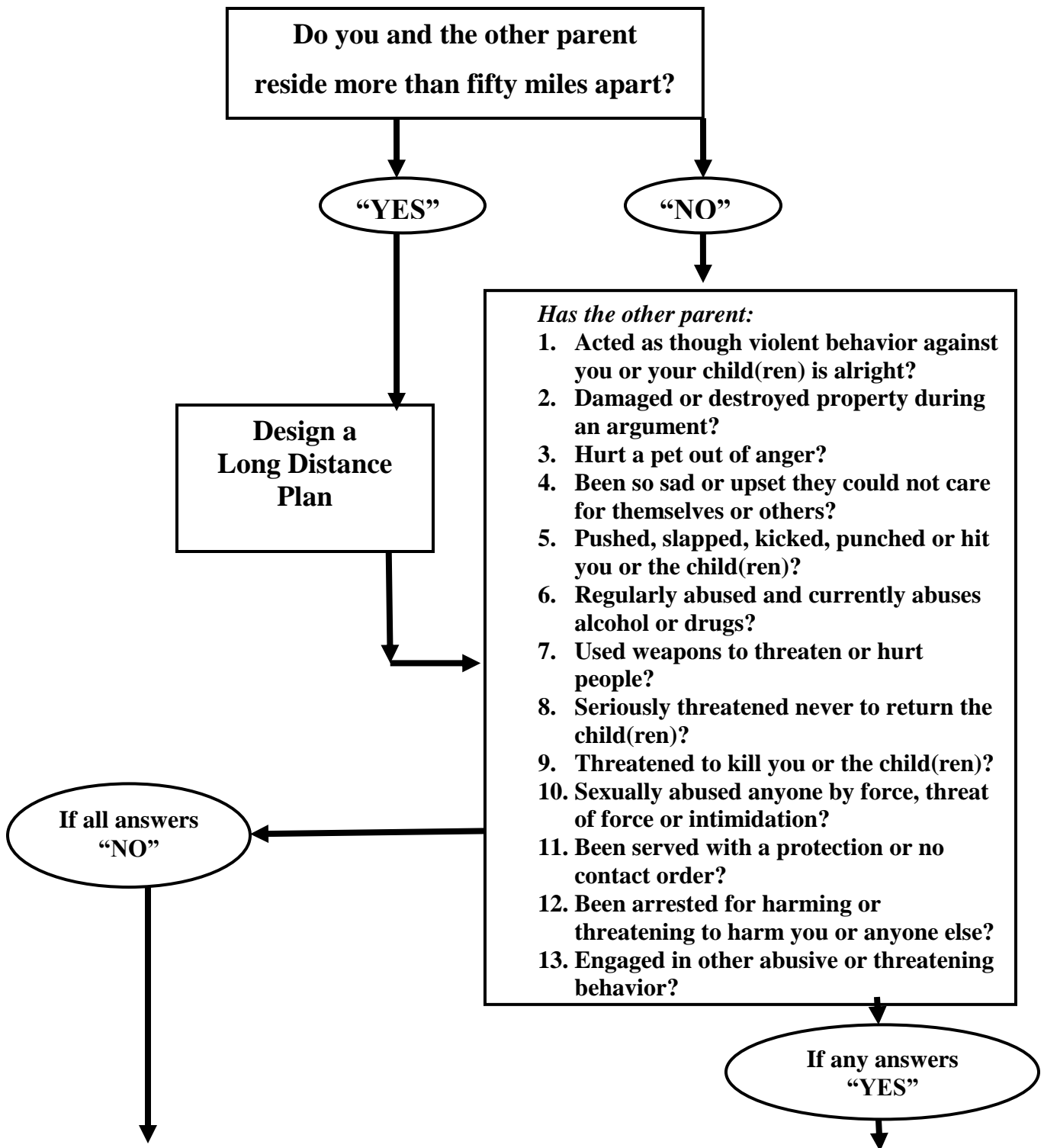
### III WHAT TYPE OF PARENTING PLAN IS RIGHT? A VIEW FOR THE BENCH

Over the last seven years, there have been an infinite number of ways parenting plans have been employed. The one constant appreciated by all those on the front line is that beginning with the right parenting plan is crucial to efficient customization and long term success. Therefore, the goal of this section is to guide the judiciary with the most pertinent considerations for determining which plan to use for each family presented. Towards that end, included is a flow chart and one process that may be helpful for the Court's consideration.

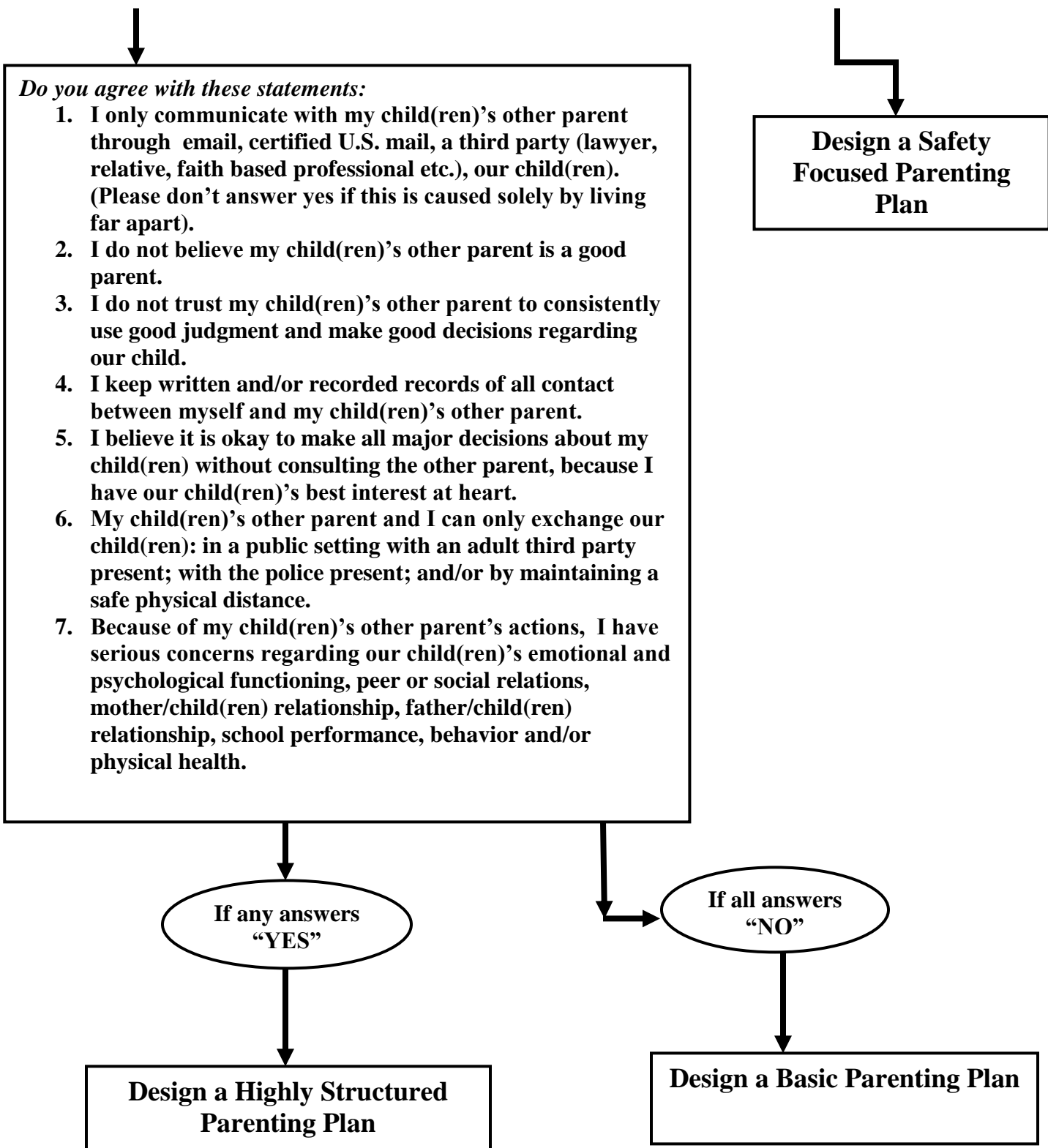
Remember the basic premise: **every family is unique and no single parenting plan will ever meet the needs of all families.** With that in mind, it is suggested that the Court begin each family's assessment as soon as possible. Understand walking into a hearing *cold* generally promotes inefficiency, prevents ruling from the bench and will inevitably exacerbate an already emotional situation. Therefore, prior to any hearing on time-sharing, attempt to become familiar with the parties' file well before entering the courtroom. Specifically, examine the file to: (1) identify the type of proceeding; (2) learn the names and ages of the children; (3) check the approximate number of moves the family, especially the children, has experienced as represented on the U.C.C.J.E.A.; (4) see if there are related cases, if legally appropriate; (5) become familiar with previous rulings; (6) review any court ordered memorandums; (7) review submitted case law; and (8) note of the number and types of previous court orders. The goal is to begin appreciating this family's unique characteristics from the onset and mentally commence a total family assessment based on past behavior, present actions and anticipated future adjustments. By engaging in this pre-hearing assessment, it may aid the Court in determining which form, whether a blank basic, safety focused, highly structured and/or long distance parenting plan, is appropriate to utilize in the courtroom for this particular family.

In addition to arriving on the bench with the blank parenting plan(s), the Court should be equipped with a form listing the pertinent statutory factors. Having a document with generously spaced statutory factors during testimony allows for immediate recording of the credible facts, findings and the party favored. In turn, the completed statutory factors document is imminently helpful during ruling from the bench. Likewise, the blank parenting plan promotes customizing as evidence and stipulations are received. So armed, hearings will often end with the Court instructing one party to get out his/her pen as the Court coherently announces statutory findings, rules on parental responsibility and dictates a parenting plan in a recognizable format. The ultimate objective is to legally and completely rule, design a parenting plan unique to the parties, decrease animosity and prevent future hearings because of too little detail.

**QUICK VIEW CHART:  
DECIDING WHAT TYPE OF  
PARENTING PLAN IS RIGHT?**







## **Florida Supreme Court Approved Parenting Plans- Forms A - C**

- (A) [Parenting Plan](#)
- (B) [Supervised/Safety-Focused Parenting Plan](#)
- (C) [Relocation/Long Distance Parenting Plan](#)

### **IV PARENTING PLANS WHEN DOMESTIC VIOLENCE IS AT ISSUE**

There are special considerations when developing and implementing parenting plans for families who have a history of domestic violence. The most important consideration is safety. The most dangerous time for victims of domestic violence and their children is at the time of separation, and violence often escalates following a divorce or parental separation. Therefore, it is critical to understand the potential safety issues and, if necessary, suggest changes to the parenting plan to address those issues.

- When the question of domestic violence arises this issue should be carefully and competently assessed, while developing differentiated parenting plans that are explicitly articulated, implemented and then monitored (Jaffe, et al. 2008).
- Unresolved emotions from the divorce involving anger and hurt powerfully predict problems pertaining to child sharing that later arise in the early post-divorce years (Pollack, et al., 2004).

Most parenting plans permit batterers to have supervised or unsupervised contact with the children. Consequently, it is also important to understand the impact that witnessing domestic violence has on the children, on their interactions with parents who are batterers and the parents who are victims, and the impact domestic violence has on the parenting abilities of both the batterers and the victims. Understanding both of these general dynamics, as well as the unique needs of a particular family, will assist each parent in safely and effectively implementing their parenting plan.

#### **A. What Is Domestic Violence?**

The legal definition of domestic violence is found at s. §741.28, Fla. Stat.(2014):

(2) “Domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

(3) “Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who

are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

The definition of domestic violence under Florida law addresses physical abuse only, and does not fully explain the many different types of other behaviors that constitute domestic violence. The broader definition of domestic violence is a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks that batterers use against their intimate partners, the intent of which is to establish power and control over the victim. Examples of coercive behaviors used by batterers include:

- Actual or threatened physical harm;
- Sexual assault;
- Name-calling or putdowns;
- Keeping a partner from contacting their family or friends;
- Withholding money;
- Stopping a partner from getting or keeping a job;
- Stalking, including cyberstalking or other monitoring of victim's activities;
- Intimidation;
- Threats to harm children, other family members, or pets;
- Destruction of or threats to destroy property;
- Threats to commit suicide if the victim leaves.

Recent research has identified other forms of domestic violence that may not embody the traditional model of a pattern of coercive behaviors to establish power and control. The other categories of domestic violence identified include:

- Situational couple violence, conflict-instigated violence, which may involve a bilateral assertion of power by both parents;
- Violent resistance, when a partner uses violence in defense;
- Separation-instigated violence perpetrated by either parent as a reaction to the stress of separation and divorce in a relationship that did not previously have violence. (Jaffe et al. 2008)

Categorization of types of domestic violence may have value in assisting the courts and others in determining the particular protections to put in place in a parenting plan. However, it is important to note that each of these other identified categories of domestic violence could be a part of, or triggered by, a relationship that involved a coercive pattern of behaviors and the victim may not have previously revealed these behaviors to the court or to anyone else. The domestic violence advocacy community has expressed concern that research differentiating among types of intimate partner violence will result in a failure to recognize a high lethality battering relationship (Kelly, J., & Johnson, M., 2008).

It is critical, then, that courts and others involved in developing, implementing or modifying a parenting plan screen for domestic violence both initially and on an ongoing basis, and recognize that persons who may appear as perpetrators of violence in a particular situation, may in fact be the victims of domestic violence (Frederick, L., 2008; Ellis, D., 2008).

## **B. Chapter 61 Rebuttable Presumption**

Florida law requires courts to consider domestic violence when making decisions about parenting time and time-sharing. Florida Statute section 61.13(2)(c)(2)(2014) states:

The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. [741.28](#) and chapter 775, or meets the criteria of s. [39.806](#)(1)(d), creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

If parents who committed domestic violence do not overcome the presumption, the court may impose restrictions on their contact with the children in the parenting plan.

There are only a few reported appellate cases in Florida that discuss the application of the rebuttable presumption. In Monacelli v. Gonzalez, 883 So.2d 361 (Fla. 4<sup>th</sup> DCA 2004), the court concluded that the father, who had a felony conviction of domestic violence, overcame the rebuttable presumption by providing evidence that:

the love, affection, and other emotional ties existing between the parents and children appear[ed] to be significantly greater towards the husband; (2) the husband had the greater capacity and disposition to provide the children with food, clothing, and medical care; (3) it was desirable to maintain continuity for the children in the “comparatively stable environment” in the home of their paternal grandmother; (4) the children preferred to be with their father; and (5) the Wife suffered from bipolar disorder, for which she had been Baker Acted on three occasions, and she refused to accept any treatment or medication for her illness.

The court in Doyle v. Owens, 881 So. 2d 717 (Fla. 1<sup>st</sup> DCA 2004) concluded that a father who had recently been released from prison for a felony domestic violence conviction had not overcome the presumption that shared parental responsibility of his four-year-old daughter was detrimental, and that the trial court erred in awarding the father unsupervised visitation. The father had attempted to overcome the presumption of detriment by presenting evidence that he

had taken anger management, parenting, and CPR courses, had a full-time job, and had complied with all court orders since violating the domestic violence injunction. He also had family visitation monitors testify that the supervised visitation had occurred without incident.

### **C. The Batterer as Parent**

Batterers often exhibit common characteristics, including controlling behavior, entitlement to a special status in the family, perceiving the spouse and children as owned objects, manipulateness, denial and minimization of the abuse, blaming the victim for the abuse, and inflexibility. Each of these characteristics impact the way batterers interact with their children. These parenting characteristics may be accentuated post-divorce or parental separation, when batterers are caring for their children for longer periods of time than usual.

Batterers often:

- Undermine the authority of parents who are the victims by creating a model for children of contempt for the victim, or making the children feel that the victim does not care about them or is unreliable;
- Create rivalries among siblings, build a special relationship with one of the children and increase inter-sibling conflict by favoring that child over the others, use the children as weapons to control or harm the victim, such as destroying their belongings, requiring the children to report on their mother's activities, or threatening to harm or kidnap the children if the victim tries to end the relationship;
- Use rigid, authoritarian parenting techniques, and attempt to control their children through intimidation;
- Use neglectful or irresponsible parenting techniques, intermittently show interest in their children, and then ignore them, use intentionally irresponsible parenting to win their children's loyalty by not imposing appropriate rules.

(Bancroft, L., 2002; Bancroft and Silverman, 2002).

### **D. The Victim as Parent**

There is no single profile of victims of domestic violence. The impact of battering on victims is varied, long-term, and differs from victim to victim. Similarly, victims' reactions to battering may vary from victim to victim. The range of responses includes, but is not limited to: emotional reactions (fear, anger, internalization of events, denial, sadness); physical responses (isolating oneself, self-destructive behaviors, attempts to resist, escape, or fight back); changes in beliefs about self, others, and the world (self-blame, distrust, generalized fear that the world is unsafe); and symptoms of psychological distress (depression, anxiety, paranoia, insomnia, substance abuse).

Each of these responses impacts the victims' ability to effectively parent. Parents who are victims are more likely than other parents to feel they must change their style of parenting when their partner is present.

Many victims:

- Parent in whatever manner they believe will keep the children safe in a particular situation. Because batterers often become violent when they believe victims are paying more attention to the children than to the batterer, victims may not respond immediately to the children, either because the victim is physically unable to, or believes it will keep the children safe;
  - Seldom contradict or disagree with batterers if the batterer is verbally abusive to the children;
  - Experience difficulties disciplining the children because the children do not respect the victim because the batterer has undermined the victim's credibility as a parent;
  - Engage in coercive or abusive parenting behaviors in an attempt to minimize or avoid more severe actions on the part of an abusive partner;
  - Engage in a compensating parenting style.
- (Bancroft, L., 2002; Jaffe & Crooks, 2005).

There are great implications upon the development of parenting plans when domestic violence and abuse are issues in the family.

- When the question of domestic violence arises, this issue should be carefully and competently assessed, while developing differentiated parenting plans that are explicitly articulated, implemented and then monitored (Jaffe, et al. 2008).
- Unresolved emotions from the divorce involving anger and hurt powerfully predict problems pertaining to child sharing that later arise in the early post-divorce years (Pollack, et al., 2004).
- When domestic violence is irrefutable and children are witnesses or recipients, temporary termination of access is necessary.

### **E. Perspectives on Joint Custody Presumptions – Domestic Violence**

Despite the trend toward statutory presumptions in favor of joint legal and physical custody, practitioners increasingly recognize that domestic violence has serious implications for the efficacy and safety of parenting and shared care.

Key Points for the Family Court Community (Brining, et al, 2014):

- Parents who are coercive controlling abusers frequently exhibit the types of problematic parenting behaviors which make shared parenting unrealistic.
- Instead of applying blanket joint custody presumptions, all family court practitioners, including judges, should: (1) be alert to signs that domestic violence may be an issue; (2) understand the nature and context of any abuse; (3) determine the implications, if any, of the abuse for parenting and co-parenting; and (4) account for the violence and its implications in their handling of cases.
- The inappropriate application of joint custody presumptions to many families for whom domestic violence is a significant issue occurs because: (1) abuse is often not detected by the system, (2) victims have problems proving that the abuse occurred, and (3) many practitioners are disinclined to believe that the abuse occurred.

## **F. The Child as Victim**

### Implications of Witnessing Domestic Violence on Children

The potential traumatic effects on children who witness the physical abuse of a parent are well established. While children are at risk of becoming physically injured during such assaults, either by accident or because they attempt to intervene, there are also potential long-term psychological and emotional effects on children who witness violence between their parents. Children can continue to suffer trauma after the parents are divorced or separate, and even after it appears the violence has stopped, because children continue to fear that any interaction between their parents could result in violence. Lundy Bancroft and Jay G. Silverman reported a case of a child's violent nightmares resuming after more than a year, when he witnessed verbal aggression by his father against his mother during a visitation exchange (Bancroft and Silverman, 2002).

Research demonstrates that the negative effects of witnessing domestic violence vary depending on the age of the child.

#### ***Infants:***

- Needs for attachment disrupted
- Poor sleeping habits
- Eating problems
- Higher risk of physical injury

#### ***Preschool:***

- Lack feelings of safety
- Separation/stranger anxiety
- Regressive behaviors
- Insomnia/parasomnias

#### ***School-Aged Children:***

- Self-blame
- Somatic complaints
- Aggressive behaviors
- Regressive behaviors

#### ***Adolescents:***

- School truancy
- Delinquency
- Substance abuse
- Early sexual activity

(Stiles, M. 2002)

There are several factors that aid in a child's recovery from exposure to domestic violence. These include:

- A sense of physical and emotional safety in their current surroundings;
- Structure, limits and predictability;
- A strong bond to the non-battering parent;

- Not feeling responsible to take care of adults;
- A strong bond to their siblings;
- Contact with the battering parent with strong protection for children's physical and emotional safety.

(Bancroft & Silverman, 2002)

### Physical and Sexual Abuse

- There is significant risk of co-occurrence of domestic violence and child maltreatment, including physical and sexual abuse. (McGuigan & Pratt, 2001);(Holt, et al 2008)
- Although difficult to estimate, research indicates an overlap of domestic violence and other child maltreatments in 30% to 60% of cases. (Osofsky, 2003)
- The risk of harm to the child increases when the victim parent seeks a divorce or to separate from the perpetrator. (Bancroft & Silverman, 2002)

### **G. Safety-Focused Parenting Plans**

When there is domestic violence, parenting plans should have particular safety-focused provisions that will enable both parents to safely and effectively implement the plan. The safety-focused provisions should take into account the unique needs of the particular family based on the history of the domestic violence.

Peter Jaffe's research suggests that when developing a safety-focused family plan, it is critical to evaluate the potency (the degree of severity, dangerousness, and potential risk of serious injury and lethality), the pattern (the violence is part of a pattern of coercive control), and the primary perpetrator of domestic violence in a family, and others have added the parenting skills of both parents and perspectives of the child.

Based on this evaluation, the safety-focused provisions in the parenting plan could range from highly restricted access arrangements (the abused parent and/or the children have no contact with perpetrators of domestic violence and/or supervised parenting time and/or monitored exchange), to relatively unrestricted ones, such as parallel parenting. Parallel parenting is when the parent's relationship is highly structured to minimize contact between the parents and protect the children from conflict. Each parent is responsible for making independent day to day decisions when the children are in their care, and responsibility for specific major decisions is assigned to one parent or the other.

Jaffe recommends that safety-focused parenting plans in the context of domestic violence address five guiding principles, in order of priority.

1. Protect children directly from violent, abusive, and neglectful environments.
2. Provide for the safety and support the well-being of parents who are victims of abuse (with the assumption that they will then be better able to protect their child).
3. Respect and empower victim parents to make their own decisions and direct their own



- lives (thereby recognizing the state's limitations in the role of loco parentis).
4. Hold perpetrators accountable for their past and future actions (i.e., in the context of family proceedings, have them acknowledge the problem and take measures to correct abusive behavior).
  5. Allow and promote the least restrictive plan for parent-child access that benefits the child, along with parents' reciprocal rights.
- (Jaffe et al., 2008)

Based on these guiding principles, safety-focused parenting plans where there is domestic violence should include, at a minimum, provisions that address the need for:

Restrictions on parenting time for the perpetrator, such as:

- No parenting time for the perpetrator;
- Supervised parenting time, either at a supervised visitation center or with a supervisor designated by the court or the parents;
- Unsupervised parenting time but no overnights;
- Limitations on a parent's travel with the children during time sharing, including out of state and foreign travel;
- Limitations on the time and manner of communication between the perpetrator and the children.

Plans should include safety precautions to protect the victim and the children, such as:

- Supervised exchange for time sharing;
- No firearms in the home, car or in the presence of the children;
- Restrictions on the use of alcohol or drugs (legal or illegal) prior to time sharing;
- Restrictions on a parent's participation in school or extra-curricular activities;
- No physical discipline of the children;
- Designation of certain persons who may not be present during a parent's time-sharing;
- Restrictions on access to certain records of the children.

Plans should include structured decision making and communication between the parents, such as:

- Provide for parallel parenting, rather than cooperative parenting;
- Restrictions on communications between the parents, ranging from no communication to communication via particular means only, such as telephone, email and/or through a designated third party;
- Designations of the parent who shall accompany the child to medical or other appointments;
- Designations of the parent who shall make key decisions relating to the child, such education, religion and health;
- Time sharing schedules for birthdays, holidays, and summer break.

## **H. Creating or Modifying a Parenting Plan**

Florida law requires courts to consider domestic violence when creating or modifying a parenting plan. Section 61.13(3), Fla. Stat. (2014) provides that:

For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

## **V APPLICATION OF EMPIRICAL RESEARCH TO TIMESHARING**

Below is a sampling of social science research regarding parental involvement following divorce and the impact of post-divorce conflict. Understanding what social science does and does not yet know about the impact of sharing arrangements best serves children's long-term interests and most responsibly supports parents as they endeavor to make parenting decisions on behalf of their children.

### **A. Empirically Based Parenting Plans**

- There is no one-size-fits-all parenting plan.
- Parenting time should be meaningful, regular and ongoing.
- Each child's temperament and capacities must be carefully considered when developing sharing plans.
- It is not the amount of time children spend with a parent, but the quality of interactions accompanying longer contacts that strengthen the relationship.
- Pros and cons should be weighed, with attachment behaviors representing only one potent variable.

- The quality of family relationships – especially negative changes in parent-child relationships, as well as conflict between parents – represent strong predictors of diverse problem behaviors in children.
- The problems that exist within the parent-child relationship are powerful predictors of children's adjustment.
- Young children experiencing overnights with both parents evidenced fewer social problems as reported by both mothers and fathers, as well as fewer attentional and thought problems according to their mothers.
- Children with inconsistent schedules have more problems.
- When a child specialist guided families, the parenting plan was significantly more likely to be maintained, compared to the group without inclusion of the child's voice (McIntosh, 2009).
- A recent large study assessing different types of parenting arrangements (single parenting, parallel parenting and cooperative co-parenting) indicates that in the "good divorce" reflective of cooperative co-parenting, children displayed fewer behavioral problems and were closest to their fathers (Amato, 2011).
- Adults demonstrating flexibility on behalf of their babies and toddlers improve the likelihood of developing enduring and warm relationships with their children. Parenting coordination, mediation and specialized therapeutic interventions designed to strengthen parent-infant relationships facilitate this process (McIntosh, 2014).
- In the short run, litigation increases parental conflict while mediation decreases conflict. The highest level of increased long-term conflict was found in litigating parents, who showed the greatest increase in short-term conflict Sbarra (2008).
- Divorce plays a role as a risk factor for adjustment and developmental issues in children (Salem, Sandler, & Wolchik, 2013):
  - Increased risk for substance abuse and mental health problems
  - High risk sexual behavior
  - Continued problems into adulthood
  - Academic problems
- Indirect factors of the high-conflict parent relationship can interfere with the child's development of a secure attachment (Sroufe & McIntosh, 2011):
  - Decreased social support
  - Increased stress
  - Increased anxiety
- Parent-focused programs can help reduce the risks associated with divorce, in addition to other benefits:
  - Increase parental warmth and develop parenting skills
  - Even if just one parent participates in a program, research shows that children can benefit
  - Promotes effective discipline and co-parenting
  - Can also help decrease interparental conflict
  - Improve overall child outcomes

## 1. Child's Relationship With Parents

- High-quality parenting includes the following factors (Sandler, 2008):
  - Rules are fairly and consistently applied;
  - The child knows the rules;
  - Discipline is consistent, effective and not unnecessarily harsh interactions are characterized by positive affect.
- Kline-Pruett (2014) found that in terms of father involvement in children's lives it is not the strength of the father's wish or his intent to be present in the children's life but, rather, the mother's wish for his inclusion that makes the difference.
- Researchers found that a father's initial sensitive attunement to his toddler's play was persistent and predicted the child's attachment at age 10 and 16 as well.
- Fathers play a more predominant role than mothers in teaching children how to regulate aggression and develop comfort in exploring (Ludolph, 2012).
- Mothers in sole parenting situations exhibited more symptoms of anxiety and depression (Cyr, 2013).
- Fathers are more prone to depression post-divorce than mothers and are more reluctant to seek professional help.
- Children residing in a sole custody arrangement showed higher levels of hyperactivity, inattention and anxiety-based symptoms than similar children in intact families (Cyr, 2013).
- Children raised by only one parent evidenced significantly compromised behavioral adjustment, while children raised by divorced parents who work together did not evidence this finding (Cyr, 2013).
- High conflict individuals, as well as those with personality disorders, untreated and unacknowledged mental illness, substance abuse and physical abuse, typically are not good candidates for shared parenting (Jaffe, 2014).

## 2. Gatekeeping

Gatekeeping is a relatively new idea that can help organize one's understanding of the nature and basis for resistance to shared parenting. Gatekeeping refers to the cognitions (thinking) and behaviors of parents related to how they control access to the child (Ganong, Coleman, & McCalle, 2012). Cognitions refer to the value one parent (usually mother) believes the other parent brings to a child's life.

Cognitive components of gatekeeping include:

- Maternal preference and beliefs about the importance of father involvement;
  - Satisfaction with father involvement;
  - Valuation of father's competence .
- (Pruett, Arthur, & Ebling, 2007)

Behavioral components of gatekeeping:

- Facilitative/Positive gatekeeping refers to situations in which the parent encourages, supports and facilitates contact with the child.

- Restrictive/Negative gatekeeping refers to situations in which the parent discourages, interferes with or prevents contact with the child.
  - Protective gatekeeping refers to situations in which the parent, in an attempt to protect the child, prevents the other parent contact with the child.
  - Disengaged gatekeeping refer to situations in which the parent is indifferent and takes no initiative regarding the child's relationships with the other parent .
- (Austin, 2013)

Restrictive gatekeeping and parent's alienating behavior (PAB) include (Saini, et al. 2012):

1. Asserting the other parent is dangerous:
  - Make allegations of sexual or physical abuse
  - During visits, call continually to check on child
  - Discusses visits with child to detect "negative" occurrences of abuse, or negative feelings to stop or limit visitation
  - Find therapists for the child to support the allegation that the rejected parent should have limited, supervised, or no contact
2. Asserting the child does not need the other parent:
  - Removes references to rejected parent from the home
  - Does not give child letters or phone messages
  - Finds excuses to cancel scheduled visits
  - Intrusion and seduction with toys, goodies, exciting activities scheduled during the rejected parent's custodial time
3. Depending on circumstances (protective) gatekeeping can be an appropriate response.
4. Gatekeeping can be temporary, or situational, or enduring.

## **B. Age Related Research Regarding Children's Needs**

### **1. Parental Separation and Overnight Care of Young Children**

When crafting parenting plans for infants and toddlers there are two major goals for sharing arrangements (McIntosh, 2014):

- Strengthening the long-term relationships between children and both of their parents; and
- Promoting attainment of pertinent developmental challenges.

Overnight care for children from birth to age three should be included in the parenting plan when:

- Parents already have established a caretaking relationship producing feelings of safety and comfort in the child;
- Separations of children and each parent have been based on the children's comfort, rather than the adults' preference;

- Indicators of distress serve as a guide to adjust the length of separation according to the needs of the child.

Research does not support delaying inclusion of overnight contacts for infants and toddlers with each of their parents, except when parental fitness is in question, or when a relationship between a parent and the infant or toddler is absent (Braver, 2014).

Sensitively attuned, low conflict parenting partners are more likely to manage overnight contact (George, Solomon & McIntosh, 2011).

Based on an extensive review of relevant social science research on the developmental needs of young children in families living apart (Pruett, McIntosh, & Kelly, 2014), a seven point consensus has been offered to form the basis for timesharing recommendations and policy considerations:

1. Early childhood (0-3 years inclusive) is a period of critical to subsequent psychosocial and emotional development and is deserving of special attention and planning in family law matter.
2. Across all family structures, healthy development in the young child rests on the capacity of caregivers to protect the child from physical harm and undue stress by being a consistent responsive presence.
3. Similarly, healthy development rests on the capacity of caregivers to stimulate and support the child's independent exploration and learning and to handle the excitement and aggression that accompanies the process of discovery.
4. Secure development in this phase requires multiple supports to create both continuity and an expanding caregiving environment for the young child that includes family, community, educational, and cultural connections.
5. A "both/and" perspective on early attachment formation and joint parental involvement is warranted. The young child needs early, organized caregiving from at least one, and most advantageously, more than one available caregiver. An optimal goal is a "triadic secure base" constituted by both parents and the child as a family system, where a healthy co-parenting environment supports the child's attachment relationships with each parent and vice versa.
6. The small group of relevant studies to date substantiates caution about high frequency overnight time schedules in the 0-3 year period, particularly when the child's security with a parent is unformed, or parents cannot agree on how to share care of the child. Equally true, clinical and theoretical cautions against any overnight care during the first three years have not been supported.
7. Critical variables in considering readiness for the likely impact of overnight schedules include parents' psychological and social resources, the current nature of parental dynamics – particularly conflict, and the nature and quality of each parent-child relationship prior to separation.

Decisions regarding overnight contacts with infants and toddlers must be made on a case-by-case basis, based upon the specific factors pertinent to that case, such as:

- the quality of the pre-existing relationship;
- the quality of attachment and bonding;
- parenting skills and sensitivity;
- the parent's ability to soothe the child;
- the child's previous existing schedule;
- the child's temperament and resiliency.

(Ludolph, 2012; Warshak, 2014; Hynan, 2012; Klein Pruett, 2014)

## 2. Elementary & Middle School Children

- When directly questioned, children from 3.5 years to 7.5 years old provide responses of limited value. Themes arising from their play are much more informative in gaining the child's perspectives (Ebling, 2009).
- Elementary age children whose parents had separated displayed more internalizing and externalizing problems than older children. Increased anxiety in young children was associated with feeling abandoned, as well as reflective of their propensity for self-blame and reduced ability to benefit from available opportunities (Lansford, 2006).
- The timing of parental separation reveals differences between children whose parents separated in elementary school, versus those in middle or high school. Older children evidenced a reduction in academic marks (Lansford, 2006).

## 3. Parenting Plans and Adolescents

Adolescents (13-18 years old) do not exhibit typical reactions to divorce that younger children experience due to what is going on developmentally. During adolescence many changes are occurring at once - changes in their bodies, changes in their concepts of themselves and their future, and changes in their relationships with their parents. Other developmental milestones to be met are emotional and moral development. Although teenagers are determined to become independent of their parents at this stage, they are still very much aware of how much they need their parents for support.

Adolescents' feelings towards the divorce may include:

- Anxiety about the financial situation of the family and how this will affect them and their future plans;
- They may feel that the parent that moved away does not love them;
- They may feel rejected or neglected by one or both parents;
- They may feel confused and burdened by the parents' neediness;
- They may resent one or both parents for messing up their lives;
- They may feel embarrassed or ashamed about the divorce;
- They may feel sad, depressed, and angry.

Adolescents do not exhibit typical reactions to divorce that younger children experience due to what is going on developmentally. Some adverse reactions to divorce include:

- Withdrawal from social activities;

- Poor academic performance, behavioral problems at school, truancy;
- Increased aggression;
- Delinquent behavior-run ins with the police;
- Increased sexual behavior;
- Negative attitude towards parents;
- Negative view towards romantic relationships and the concept of marriage;
- Substance abuse;
- Leaving home earlier than planned.

Factors to consider regarding time-sharing with adolescents:

- Cooperative parenting is essential for this age group and putting the children's needs above the parents' needs helps maintain a close parent-child relationship. The more conflict between the parents, the more social dysfunction that adolescents may experience.
- Adolescents have their own activities and social lives and therefore need flexible schedules for sharing time with their parents. It is important for adolescents to have a balance that allows them to have plenty of time to do the things that matter to them, but to also share quality time with each parent.
- Adolescent delinquency was determined to be a consequence of environmental stress associated with parental divorce, rather than genetically determined (Burt, 2008).
- Teenagers can be derailed from their developmental trajectory when parents require them to focus on the teen-parent relationship at the expense of peer relationships (Bretherton, 2011).

### **C. Equal Timesharing Presumptions**

Joint legal custody presumptions (in Florida known as equal timesharing) are blunt instruments that largely operate without regard for the real needs of individual families and children. Rather than using a legal hammer to endorse a particular decision-making arrangement, there are more meaningful ways to support quality decision-making following parental separation (Ver Steegh & Gould-Saltman, 2014).

Recommendations for a deeper and more realistic commitment:

- Identify the knowledge, skills, and attitudes needed for shared decision-making.
- Create shared decision-making self-assessments for family members and provide accessible educational services and counseling for parents who want to improve their shared decision-making skills.
- Provide parents with access to an unbundled consultation with an attorney so that parents can confidentially disclose and discuss issues such as intimate partner violence, child abuse, substance abuse, and mental illness.
- Make individual determinations about whether shared decision-making will be in the best interest of a child.



- In appropriate cases, create shared decision-making parenting plans that identify responsibility for decision areas, create protocols for conferring and decision-making, designate responsibilities between parents as appropriate, and provide for monitoring and modification.

### 1. Shared Parenting Time: Important Parameters to Consider

A wide diversity of opinions exist regarding shared parents' time. One perspective is that parents should be encouraged to agree to a significant minimum quantum of time for each parent unless there are reasons to conclude that it would not be in their child's best interest. Others contend that shared parenting time should be the default presumption. Still others raise concerns about the wisdom of any legal presumption, particularly in cases involving infants and toddlers, high conflict, and domestic violence. Some of these professionals take a more circumspect approach, contending that, because one size never fits all, parenting time must be determined on a case-by-case basis, preferably by the parents themselves.

The Association of Family & Conciliation Courts held a three-day think tank in January, 2013 and concluded (Pruett & DiFonzo, 2014):

1. The most effective decision making about parenting time after separation is inescapably case specific.
2. Statutory presumptions prescribing specific allocations of shared parenting time are unsupportable because no prescription will fit all, or even the majority of, families' particular circumstances.
3. At variance from the majority, several think tank participants supported the notion of a statutory presumption of a minimum amount of time with each parent, but no optimal amount of time was specified. The concern also was expressed that, while tailoring individualized arrangements would be optimal, the lack of a clear policy and the guidance a clear policy offers could result in increased incidence of interparental conflict, which negatively affects everyone in the family.
4. Social science research strongly supports shared parenting (i.e., frequent, continuing, and meaningful contact) when both parents agree to it. There is also empirical support for shared parenting under broader conditions (e.g., some forms of parental conflict or disagreement) for children of school age or older.
5. There is no "one-size-fits-all" shared parenting time even for the most vulnerable of families.
  - Child development professionals agreed that the current state of research supports no definitive conclusion about the impact of some overnights, frequent overnights, or no overnights, on long-term parent-child relationships and child well-being.
  - Shared parenting in the midst of high conflict is generally not in children's best interests. However, some families are able to manage the conflict on their own or with third-party assistance, such that shared parenting can be implemented without harm to the children, thus bolstering the case for individualized parenting time determinations.

- While family violence usually precludes shared parenting, there are some cases in which the violence is tied to the separation or to the dynamics of the adults' relationship while living together and may end when the parents live apart. In such cases, shared parenting may be feasible. The context and meaning of the intimate partner violence (IPV) and the implications for parenting must be carefully determined for each family.
6. Regarding joint decision making: A majority of the think tank participants supported a presumption of joint decision making, while a substantial minority espoused a case-by-case approach.

## 2. Risks of Equal Timesharing Presumption

There is literature stating children's exposure to post separating parental conflict is damaging to children (McIntosh, Smyth, Kelaheer, Wills, & Long, 2011).

Presumptions against equal timesharing:

- Assumes one size fits all and is a cookie cutter approach.
- Does not take into consideration the unique needs of the child and family circumstances.
- Does not recognize parents are different, their parenting practices are different, and home environments are different.
- Ignores that special needs children have special considerations for timesharing.
- Is not workable for many families.
- Focus is on quantity of time versus quality of time.
- Infants and toddlers have unique needs.
- Increases loyalty conflicts.
- Children bear the burden of the organizational load (e.g. Keeping track of clothing, homework, and medicine).
- A cluster of developmental arguments against presumptions of shared parenting surround the disruptive nature of this lifestyle for young children, adding increased challenges and risks at a time when children's cognitive, social, and emotional development are reliant on stable responsive care.

## 3. Advantages of Equal Timesharing

- Stanford Child Custody Project (1984-1988): These children felt closer to both of their parents. Adolescents were better off academically and psychologically when compared to sole residence children (Nielson, L., 2013).
- Children were less depressed and had fewer health problems. They were cared for less by babysitters and daycare. Fathers were more active. (Melli & Brown, 2008)
- Children preferred two homes (Smart, 2011).
- Parents and children who lived together more of the time had the better relationships – especially those who had lived together 30% to 50% of the time (Fabricius, Diaz, & Braver, 2011).

## **VI HIGHLY STRUCTURED PARENTING PLANS**

### **A. Differentiating High-Conflict Cases**

1. Aspects that define high-conflict cases (Birnbaum and Bala, 2010), include:
  - High rates of litigation;
  - Anger and distrust;
  - Communication difficulties;
  - In some cases, domestic violence;
  - Parental alienation.
2. In order to best address high conflict cases and develop appropriate parenting plans, it is important to first identify the *type* of “high conflict” case:
  - Co-Parenting and Access Exchange Conflict  
Communication difficulties and inability to cooperate with the other parent
  - Domestic Violence  
Safety concerns for the child and spouse become an issue
  - Alienation  
Parents attempt to alienate child from other parent  
Should transfer custody to rejected parent and enter a no contact order

### **B. Factors that Contribute to Negative Outcomes for Children After Divorce**

#### **1. Parental Alienation**

Alienation involves:

- A pattern of behavior on one parent’s part toward the other;
- An intention for the child to reject the other parent;
- A behavioral phenomenon when parents separate, too ill-defined and controversial to be invoked as a psychological diagnosis.

As a result of high-conflict, parents may engage in “brainwashing,” in an attempt to turn the child away from the other parent (Rosen, 2013).

- The Alienating Parent
  - May create a negative picture of the targeted parent to child
  - May exaggerate negative aspects of the targeted parent and fabricate allegations of abuse.
- The Targeted Parent
  - Attempts to give child space may reinforce allegations of poor parenting
  - May actually have poor parenting abilities
- The Alienated Child

- Most children want healthy relationships with both parents
- Some may resist contact with one parent due to parental alienation from the other
- Effects of parental alienation increase risk for psychological issues into adulthood

Even in high-conflict cases, children generally want to keep contact with both parents (Fidler & Bala, 2010). Kelly and Johnston (2001) note that alienation is more likely to occur with adolescents than younger children.

Developing a parenting plan to avoid alienation can be difficult, especially with high conflict cases, however it is important to create a detailed and unambiguous parenting plan. Details including times, location, transportation, communication, and other decisions can assist in parallel co-parenting. It is also important to ensure that parenting plans are adhered to and that they are specific to the case itself (Fidler & Bala, 2010).

## 2. Allegations of Child Sexual Abuse

Allegations of child abuse in the context of decision-making over conflicting parental requests for child sharing arrangements present vexing issues for the bench. Often, clear and objective information necessary for making informed decisions is lacking and the “evidence” is in the eye of the beholder. Yet a great deal of psychological research does exist on this issue (Kuehnle & Connell, 2009; Ceci & Bruck, 1999).

Child Sexual Abuse is a life event, not a clinical diagnosis, and therefore, cannot be identified based on a predictable behavioral or emotional symptom pattern. (Kuehnle & Drozd, 2012).

- Factors that account for the broad range of behaviors and variability exhibited by child victims include: (Piper, et al., 2013)
  - Personality differences
  - Personal interpretation of the event
  - Identity of the perpetrator
  - Characteristics of the sexual acts
  - Co-occurring forms of family violence
  - Family stability
  - Parent’s response following disclosure
- Not all sexually abused children are traumatized or distressed by engagement in sexual activity that is defined as criminal. (Ceci & Friedman, 2000; Garven, Wood, Malpass, & Shaw, 1998)
- One-fourth to one-half of sexually abused children are asymptomatic.
- Sexually abused children:
  - display more psychological symptoms than non-clinic non-sexually abused children

- do not display more psychological symptoms than other children receiving mental health services (London, et al., 2005)
- Children sexually victimized by older children and adolescents show emotional and behavioral problems similar to those symptoms shown by those children sexually abused by adults. (Kuehnle, 2009)
- Research on sibling and peer sexual encounters suggests that “normal” sexual contact among children occurs on a continuum, and the differentiation between sexual play and sexual abuse is not always clear. (Kuehnle & Kirkpatrick, 2005)
- Preschoolers are most likely to exhibit accidental disclosures. (Eisen, et al., 1998)
- Adolescents are most likely to exhibit intentional disclosures. (Eisen, et al., 1998)
- Researchers are in agreement that if adults do not do anything to contaminate the memories of children or pressure children for certain answers, even very young preschool children can provide highly accurate accounts of their prior experiences. (Piper et al, 2013)
- There is little scientific support that memories from the first two years of life can be consciously recollected later in child- or adult-hood as experiences that happened to oneself. (Bruck, Melnyk, & Ceci, 2000; Eisen, Goodman, Qin, & Davis, 1998).
- The strongest factor associated with suggestibility is the age and developmental level of the child:
  - 3 and 4 year olds are most vulnerable to suggestive interviewing;
  - 6 and 7 year olds show significant increases in resistance to misinformation. (Kuehnle, 1996; London, et al., 2005)

### **Parenting Plan Evaluations with Allegations of Child Sexual Abuse (CSA):**

Assessing allegations of Child Sexual Abuse requires specialized training and competency. If CSA allegations occur within the context of a divorce or parental time-sharing dispute, the evaluator must also have specialized training in parental plan evaluations. The competent evaluator must develop multiple hypotheses (or alternative explanations), prior to commencement of the evaluation, in order to avoid: *False Negatives* – occurs when sexually abused children inaccurately identified as non-abused children; or *False Positives* – occurs when non-sexually abused children are inaccurately identified as abused. (Kuehnle, 1996; Kuehnle & Drozd, 2012)

(1) Tasks of the evaluator of allegation of child sexual abuse:

- a. Within the boundaries of the law, the evaluator should determine what information is relevant and pertinent for him/her to review. This decision should not be made by the parties.
- b. Should have access to all nonprofessional documents (e.g., non-recorded and audio/video recorded interviews of the child by the alleging parent, family members, or friends; photographs of child's vagina and/or anus taken after parent visits) that may contain information about the alleged sexual abuse.
- c. Should have access to all professional and nonprofessional documents that may contain information about the alleged sexual abuse, including:
  - All DCF and Law Enforcement reports
  - All electronic recording of professionals interviewing the child
  - Contact with professionals and nonprofessionals who have previously interviewed the alleged victim
  - Access to previous or ongoing treatment records/information for alleged child sexual abuse

(2) Data to Collect

Findings of child protection services (e.g., “founded” or “unfounded”) should not simply be accepted or dismissed because:

- Child victims may have inaccurately affirmed an experience of sexual abuse (Ceci & Friedman, 2000; Garven, Wood, Malpass, & Shaw, 1998)
- Child victims may have denied an actual experience of sexual abuse when questioned by state authorities (Pipe, et al., 2013; Chaffin, Lawson, Selby, & Wherry, 1997).
- When a child protection services agency (CPS) has primarily relied on the child's statement, further clarification through the examination of contextual factors surrounding the allegation is clearly reasonable. (Kuehnle & Kirkpatrick, 2005)

Consistent with Parenting Plan evaluations without allegations of child sexual abuse, data collection should include:

- multiple interviews of the parties
- collection of a thorough psychosocial history from all parties
- utilization of a structured interview protocol for the children
- the selection of appropriate psychological testing for the parties and their children
- interview of collaterals
- structured parent-child observations  
(Bow, Quinell, Zaroff, & Assemany, 2002).

### 3. When a Child Resists or Refuses Contact with a Parent

A child may resist or refuse contact with a parent as a part of normal development because of affinity or alignment. Alignment and estrangement represent the child's attitudes and behaviors toward his or her parent.

**Affinity** refers to the close relationship between a parent and child based on similar temperament or interests.

**Alignment** or alliance refers to the close relationship between a parent and child based on the family dynamics that have caused triangulation.

Alignment reflects the child's:

- Natural temperamental affinities predisposing them to think and feel more like one parent;
- Affinity to identify with the more vulnerable parent or with the more powerful or dominant parent, forming an alliance and supporting the aligned parent over the unaligned parent;
- Acceptance of the non-aligned parent and willingness to enjoy contact.

A child may resist time with or reject a parent because of parenting behaviors including:

- Deviant Parenting and Distorted Thinking
  - Alienation
  - Enmeshment: This is an extreme form of boundary dissolution between two persons (usually a parent and a child) when there is a lack of recognition or acknowledgement as to differences in feelings perceptions, emotions, or experiences of the two individuals.  
(Johnston, Roseby, & Kuehnle, 2009)
- Poor Parenting Skills
- Misattunement: This occurs when a parent does not understand child development or the specific personality and needs of their unique child.
- Intrusiveness: This occurs when the parent engages in psychological control over the child inhibits and manipulates the child in a way that the child fails to learn from their own mistakes and thus, the child lacks some sense of efficacy over his or her world (e.g. helicopter parenting or tiger parenting).
- Too Lax or Too Rigid Parent Structure: Parents who engage in parenting behaviors that are *too lax* may have few, if any, rules, boundaries or limits.
  - Children raised with lax parenting often times flounder –higher risk of alcohol and drug abuse as a teenager.

- Authoritarian parenting is often *too rigid*, discipline is harsh, boundaries or limits are too tight, and the child is allowed to make few, if any, decisions.
- Children who endure authoritarian parenting are often very dependent and/or defiant.
- Parent-centered vs. Child-centered: Parents who are more centered on their own needs often miss out on what their child needs tend to be concerned solely or chiefly with his or her own interests are selfish and egotistical fail to put their child's needs first.

When a child resists or refuses contact because of a parent's behaviors, it is referred to as estrangement. Estrangement involves:

- actual adverse behavior on the part of a parent, typically perceived as unreasonable, insensitive, overly harsh, emotionally volatile, or overly controlling;
- the child increasingly avoiding contact with that parent;
- estrangement-inducing parents who are not usually insightful or self-aware, prompting false claims of alienation to avoid acknowledging their own responsibility;
- the need for a differential diagnosis of these complex issues by seasoned, knowledgeable, specialty trained professionals. The FLAFCC website, <http://www.flafcc.org/>, has a list of members who meet this criteria.

#### 4. The Connection Between Time-Sharing Arrangements and Children's Adjustment

- A study of children concluded that higher parental conflict resulted in higher potential for maladaptive child behavior.
- Study shows children were less satisfied with joint physical custody arrangements than their parents.
- Study finds that the time-sharing arrangement had little effect on children's adjustment, but their parents' emotional adjustment to the divorce and post-separation child-care arrangements had an effect.
- McIntosh et al. (2011) found that successful shared care agreements consisted of parents who:
  - Lived near each other;
  - Respected each other; and
  - Were flexible rather than rigid in their approach.

However, this is often not the case with high-conflict divorces, making it especially difficult to develop optimal parenting arrangements for them.

## VII RELOCATION AND PARENTING PLANS

Parents who are separated or divorced may want to relocate with their children a distance away from the other parent. According to Florida Statute 61.13001, relocation is defined as a "change of the principle residence of a parent or other person from his or her principal place of residence at the time of the last order establishing or modifying time-sharing, or at the time of filing the pending action to establish or modify timesharing. The change of location must be at least 50 miles from that resident, and for at least 60 consecutive days not including a temporary absence



from the principal residence for purposes of vacation, education, or the provision of health care for the child.

The risks for children whose parents are separated or divorced when one parent relocates are greater than for children who move to new locations together with both parents. According to risk factors identified by the Relocation Risk Assessment (Austin, 2008) parenting plans should take into account:

### **1. Geographical distance and travel time**

- Provide for transfer method (car, bus, train, plane) and financial responsibility for such.
- Consider parents meeting halfway for exchanges.
- Include names of others permitted to travel with the children to ease the burden of the parents.
- If transportation is by plane, include arrangements regarding unaccompanied minors.
- Provide for ease of the transfers to encourage the continued availability of the distanced parent.

### **2. Psychological stability of the relocating parent and parenting effectiveness of both parents**

- Provide resources for counseling of parents directly in the parenting plan.
- Provide resources for parenting classes to both parents.
- Incorporate provisions for children's supervision when parents are not available such as: daycare, after-school care and other activities, and transportation to and from these activities.

### **3. Child's unique needs/Differences in the children's temperaments/special developmental needs**

- Ensure familiarity of space, objects, and activities in new location.
- Provide time for children to keep in touch with and visit old friends and family members.
- Ensure substantial time for siblings, if separated, as well as for children with distanced parent.
- Be aware that siblings do not have the same needs and temperaments, and plan accordingly.
- Build in availability of social resources: ways for children to meet others in the new area.
- Include a provision for continuity of care, for physical, psychological, and academic purposes.
- Provide for children with special needs, and require specific adjustment strategies that are recommended by their pediatricians, therapists, and other treating professionals.

- Counseling for parent moving and children in new location may be indicated, as well as support for those left behind.
- Parent's exchange of information from the new professionals is crucial.

#### **4. Involvement by parent left behind/Parental communication process**

- Improve visibility between distanced parents and children including new technologies as they become available (e.g., Face Time/Skype, web cam, photos).
- Include multiple ways to exchange written communication according to technological advances and appropriate media depending on the age of the child (e.g. email, text, social media/Facebook, Twitter, chats).
- Ensure that both parents have adequate information from school, including school records as well as contact with teachers, tutors, coaches, etc.
- Include the mechanism for information exchange (i.e., self-addressed stamped envelopes to teachers; inclusion by conference call/speaker phone in teacher's meetings, ID number to obtain school information regarding the children if posted on the internet).
- Take into account ongoing ways for the distanced parent to participate with the children and in children's activities in order to secure greater involvement of the parent left behind.
- Include ways for distanced parents to be involved by exchanging information regarding the children's social activities, friends, and neighbors.
- Update parents regarding milestones, academics, and activities of children.
- Provide for parent calls at established times to exchange and review information.
- Provide for parental communication process taking into account ease and conflict level: phone, e-mail, internet application/ourfamilywizard.com; text messages,
- Send photos of children's environment, etc.
- Keep distanced parent involved in school and medical situations as children's advocate.
- Include a list of acceptable babysitters: relative/non-relative, how old/experienced, who can transport, emergency situations, at what age sibling sitting is acceptable, and when each child can care for self.

#### **5. Gatekeeping and support for the other parent-child relationship**

- Include ways to foster the relationship between the children and the distanced parent.
- Have photos of the children with distanced parent visibly accessible to children.
- Setting of daily private (or un-interfered with, depending on age of child) calls between the children and the distanced parent.
- Provide for ongoing contact with relatives and friends left behind.
- Plan for various types of contact (phone, Face Time/Skype, e-mail, text, social media when appropriate) between children.
- Include that neither parent will refer to anyone else as children's mother or father.

#### **6. Safety considerations/Interparental conflict, domestic violence and abuse**

- Put the issue of domestic violence, partner intimidation, and abuse in context: if the violence is historical only, without residual pathological behaviors, and there has been a stable parenting plan in place for a long time, then its relevance to the relocation issue may be limited. With history, relocation might be considered as protective gatekeeping with a rational basis that is part of the safety plan (Austin & Drozd, 2012; Austin et al., 2013).
- If domestic violence or abuse is a concern, shield information regarding children's actual new location, or keep information from the distanced parent that might identify children's new location, such as school/day care.
- Provide for transfers at neutral locations that do not allow for parents to have any visible or audible contact, and include acceptable transfer agents and liaisons to assist in the transfer of information so that the children are not put in the middle.
- Above all, the parenting plan must ensure that both parents adhere to Injunctions for Protection or No Contact Orders.

## **7. Recentness of the separation/divorce**

- Include provisions for transitioning according to the developmental needs of the children, taking into account the recentness of the parents' separation or divorce.
- Allow flexibility to modify time-sharing arrangements that preclude important activities, participation in team sports, etc.
- Include ways to resolve these issues less adversarily, such as counseling, mediation, or parenting coordination, before resorting to court as an option.

# **VIII CONSIDERATIONS FOR MILITARY FAMILIES**

Military families present unique issues to the court. The following is intended to familiarize the judiciary with issues pertaining to the military family, which may otherwise be vulnerable to neglect.

## **A. Unique Issues Related to Modification Involving Military Personnel**

**Florida Statute [§61.13002](#)** – Temporary time-sharing modification and child support modification due to military service

**Highlights:** The statute creates a new methodology to be followed when a military parent is activated, deployed, or temporarily assigned to military service, and the military parent's ability to comply with time-sharing is materially affected as a result. The statute prohibits the court from modifying the time-sharing arrangement from that which existed prior to the military parent's activation, deployment or temporary assignment. However, the court may temporarily modify or amend the time-sharing schedule if the court finds, by clear and convincing evidence, that such temporary modification or amendment is in the child's best interest. If the court does so find and enters a temporary modification or amendment, the court must immediately reinstate the

prior time-sharing schedule when the military parent returns from activation, deployment or temporary assignment.

The military parent's activation, deployment or temporary assignment cannot, by itself, be considered a substantial change in circumstances to support a permanent modification of the prior time-sharing schedule.

If the military parent's activation, deployment or temporary assignment is scheduled to last more than 90 days, and if, as a result of the activation, deployment or temporary assignment, the military parent's ability to exercise time-sharing will be materially affected, the military parent can designate a person or persons to exercise the military parent's time-sharing. The military parent can designate a family member, a stepparent, or a relative of the child by marriage to exercise the military parent's time-sharing. The military parent must provide written notice to the other parent of the person or persons selected at least ten days before the beginning of any court-ordered period of time-sharing. The other parent can object to the third-party designee(s) only on the basis that the designee's time-sharing visitation is not in the best interests of the child. If there is such an objection, the same is to be resolved by either parent requesting an expedited hearing thereon.

When unable to reach agreement on the delegation, either parent may request an expedited court hearing for a determination on the designation. If the military parent has already been activated, deployed or assigned, the court must allow the military parent to testify by telephone, video teleconference, webcam, affidavit, or other means. The statute does not apply to permanent change of station moves by the military parent. In those instances, the relocation statute, §61.13001, *Florida Statutes*, controls.

## **B. Relevant Case Law**

- *Canino v. Canino*, 125 So. 3d 990 (Fla. 4th 2013): after parties divorced, mother relocated with the child outside of Florida and the trial court entered an order modifying the time-sharing schedule to accommodate the move. Two years later, mother and the child moved back to Florida, and father filed a motion for contempt, evidently seeking a reinstatement of the original time-sharing schedule in effect prior to the move. Trial court denied the motion. On appeal, father alleged that §61.13002 mandated the Court's reinstatement of the original time-sharing arrangement. However, neither party was still in their military service during the relevant period of time covered in the litigation. The only problem with his argument, as pointed out by the Fourth District in its two paragraph opinion affirming the trial court's decision, was "[n]either party was in the military service during the relevant period of time. Therefore, the statute does not apply to this case." *Id.*, at 990, 991.

## **C. Case Law Prior to Enactment of §61.13002**

- *Stevens v. Stevens*, 929 So. 2d 721 (Fla. 5th DCA 2006): at the time of the divorce, father was on active duty in the US Marine Corps, awaiting overseas deployment for a number of years; mother was to have custody of the parties' children until 2003, when the father would then have custody; agreement incorporated into final judgment; in 2003, mother refused to

give father children. Father filed motion for contempt, which trial court granted. Mother appealed, arguing that father should have had to prove substantial change in circumstances. 5th DCA affirmed. Father was not seeking modification, merely enforcement of parties' agreement.

- ***Smoak v. Smoak***, 658 So. 2d 568 (Fla. 1st DCA 1995): mother awarded primary custody; after father discharged from military, child, with mother's consent, went to stay with the father for "extended visitation" for several months, then later spent year of kindergarten with father. During that year, father sought modification of custody, which trial court granted. 1st DCA reversed, reasoning that mother's agreement to allow liberal and extended contact could not serve as basis for modifying custody.

#### **D. Mental Health and Parenting**

- There are increasing numbers of military families with separation and divorce issues, particularly those involving complexity of assessment, such as the approximately 300,000 veterans who have served in Afghanistan and Iraq suffering Posttraumatic Stress Disorder (PTSD) (Seamone, 2012).
- Assessments should respect the unique circumstances underlying military family structure, easily confused for mental illness. These families are distinct from others as a result of many factors including: numerous relocations, short or long-term absence of one or both parents, the risk of parental loss or significant bodily or mental harm, isolation from friends and relatives, as well as the shared awareness from the military community of the specter of loss associated with deployment.
- The majority of military children function at or better than expected levels compared to civilian cohorts.
- Support programs within the military help to mitigate the potential stresses associated with deployments and parental absence.
- When addressing parental fitness for an individual suffering PTSD, the focus should be placed on the relationship between the disorder and the parent's demonstrated parenting capacity. When managing mental illness in a parent the American Bar Association, as well as the State Justice Institute, have recommended guidelines which include:
  - Gathering full mental health histories from professionals who have provided treatment;
  - Making a determination regarding parental compliance with prescribed medication protocol and attendance for therapy sessions;
  - Evaluating the child's ability to manage and comprehend his or her parent's mental health concerns;
  - Assessing mechanisms engaged by the parent to help his or her child understand the parent's mental health concerns;
  - Determining efforts made by the other parent to assist the child to understand the mental health issues involved;
  - Avoiding stereotypes related to specific types of infirmity.

- Full to partial improvement in symptoms should occur in approximately 90% of those suffering PTSD.
- Three vital variables that stand in the way of stability and continuity in terms of a solid parenting plan for military families are distance, disruption and deployment.
- Judges who are comfortable and knowledgeable about military families appreciate the benefits that accrue to children raised by a service member (Sullivan, 2014). They include:
  - The quality of education provided through the Department of Defense Dependent Schools;
  - The programs for recreational use on military bases;
  - The well run childcare facilities available for service members;
  - The child's ability to travel and learn from these experiences;
  - The availability of sponsors who help the family adjust to the new community;
  - Expanded opportunities for enrichment through diverse experiences not available to children of civilians.

## **IX      CONSIDERATIONS FOR INCARCERATED PARENTS**

Research demonstrates that children even form attachments to “bad” parents. Termination of parental rights may be the only remedy for parents who abandon their child, repeatedly abuse, neglect or harm their child, or mis-socialize their child. However, whenever the parent-child relationship is salvageable, efforts to rehabilitate and support that relationship usually are worthwhile and beneficial to the child.

- The best interest of the child standard is proposed when addressing parental fitness determinations after a parent has been incarcerated (Sherry, 2010).
- The Adoption and Safe Families Act (ASFA) requirement is that in circumstances in which the child has resided in a foster care circumstance for 15 of the previous 22 months, termination of parental rights proceedings should be initiated.
- However, for the 1.7 million children with a parent who is incarcerated for non-violent offenses, on average the adult will be sentenced to 51.6 months in a state prison. (Sherry, 2010)
- Rather than allowing the time that the child has been placed in foster care to drive these decisions, the quality of the relationship between the parent and child should be given greater consideration.
- Six factors are proposed in determining termination of parental rights:
  - Parental efforts to maintain the relationship with the child;
  - The child's age;

- The quality of the relationship between the child and parent prior to incarceration;
- The parent's ability to provide for the child;
- The length of the sentence;
- The nature of charge prompting incarceration.

## **X MODIFICATION OF PARENTING PLANS**

### **A. Relevant Florida Statutes**

- [§61.046\(14\)](#) – Parenting plan
- [§61.046\(23\)](#) – Time-sharing schedule
- [§61.13](#) (subsections (2) and (3))
- [§§61.515](#), [61.516](#), and [61.517](#) (jurisdiction provisions of Florida's Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA))

### **B. Legal Standard – Substantial Change**

- **Wade v. Hirschman**, 903 So. 2d 928 (Fla. 2005): Final judgments have *res judicata* effect and “presumption of reasonableness” which may be overcome only by showing of “change in circumstances [that] have arisen which warrant and justify modification of the original decree.” 903 So. 2d at 932-933. Supreme Court adopts two-part substantial change test as applying to all modifications (rejecting a third prong of “detriment” to the child, as had been held to apply in decisions from the 2nd and 3rd DCAs), whether reached by agreement or decided by court, and regardless of amount of time-sharing being exercised by either party. Court must then determine that best interests of child warrant modification.

- **Blackburn v. Blackburn**, 103 So. 3d 941 (Fla. 2d DCA 2012): General Magistrate recommended weekly rotating schedule for children, but doubted that the schedule would work because parties were not “completely settled into their postdissolution lives”, so General Magistrate recommended that future modification would be based solely on best interests. 2d DCA reversed, as General Magistrate had erroneously waived statutory requirement of alleging substantial change in circumstances.

### **What Is and What Is Not Substantial Change**

- **Segarra v. Segarra**, 947 So. 2d 543, 547 (Fla. 2006): a “desire to relocate alone, as a matter of law, is not a substantial change in circumstances sufficient to warrant modification of custody.” (*see also Ragle v. Ragle*, 82 So. 3d 109 (Fla. 1st DCA 2011))

- **Rossman v. Profera**, 67 So. 3d 363 (Fla. 4<sup>th</sup> DCA 2011): when a judgment contains an explicit restriction on relocation, and a parent moves during the pendency of a modification proceeding, leaving the child with the other parent and stating an intention not to

return regardless of the outcome, modification is appropriate because the moving parent, in essence, has created the substantial change.

- ***Ogilvie v. Ogilvie***, 954 So. 2d 698 (Fla. 1st DCA 2007): parents' inability to communicate does not constitute a substantial change.

- ***Tullier v. Tullier***, 98 So. 3d 84 (Fla. 4<sup>th</sup> DCA 2012): father who had been restricted to supervised time-sharing due to substance abuse/addiction issues sought lifting of supervision restriction; mother sought sole parental responsibility. At trial, father presented witnesses testifying to his completion of therapy and counseling and other evidence supporting his now living clean lifestyle. Trial court found he had met his burden and 4<sup>th</sup> DCA affirmed.

- ***Sanchez v. Hernandez***, 45 So. 3d 57 (Fla. 4<sup>th</sup> DCA 2010): acrimonious relationship and inability to communicate not a substantial change. Father sought modification, alleging mother had failed to honor shared parental responsibility obligations, made decisions unilaterally, and that child would be more stable with father. Trial testimony indicated increased lack of communication, threats to withhold contact, monitoring of phone calls, a threatened withhold and relenting of a time-sharing exchange, failure to keep him informed as to certain medical issues, and nasty e-mails. Guardian ad Litem also recommended child reside primarily with father. Trial court's decision granting the modification reversed by 4<sup>th</sup> DCA, since father needed to prove more than acrimonious relationship and a lack of effective communication in order to show a substantial change.

- ***Tucker v. Greenberg***, 674 So. 2d 807 (Fla. 5<sup>th</sup> DCA 1996): affirmed change in custody to the father in toxic relationship for children (when children were with the father, the mother would phone them and cry, would tell them of her intense dislike of their father to extent it affected their relationship with him; also, evidence that the former wife obsessed with making shared parenting as difficult as possible for the former husband, that she made questionable parenting decisions, and that her behavior was damaging to the children.

- ***Bachman v. McLinn***, 65 So. 3d 71 (Fla. 2d DCA 2011): 2008 changes to section 61.13 cannot serve as bases to create substantial change. Case began as child custody modification in 2007; went to trial in 2010 with father mainly asking for child support reduction and "more time." Trial court granted his motion to conform pleadings to evidence, over mother's objection, and applied amended statutes, which father also requested. 2d DCA reversed.

- ***Sidman v. Marino***, 46 So. 3d 1136 (Fla. 1st DCA 2010): informal agreement between parties that allowed other parent an additional overnight per week not a substantial change or basis for modification.

- ***Mayo v. Mayo***, 87 So. 3d 820 (Fla. 2d DCA 2012): parties divorced when child was three, father had primarily weekday visitation; when child started school, parties agreed to a different plan without seeking formal modification, which went on for several years, and when mother sought more child support, father sought majority time-sharing. Trial court found that the parties' agreement itself was a substantial change and ruled in favor of father. 2d DCA implicitly



acknowledged that father had met burden of proving substantial change but reversed because trial court had not considered best interests of child.

- ***Wilks v. Cronin***, 138 So. 3d 1141 (Fla. 5<sup>th</sup> DCA 2014): parent's change in work schedule may constitute substantial change. Father changed from night-shift to day-shift and sought modification. Mother's motion to dismiss was granted by trial court, but 5th DCA reversed, finding that there was not competent substantial record evidence to support trial court's conclusion that there had been no substantial change in circumstances, and further, trial court had not considered child's best interests or considered materiality of change.

- ***D.M.G. v. G.E.M.***, 32 So. 3d 750 (Fla. 2d DCA 2010): Unmarried mother initially awarded primary residential responsibility; father awarded visitation. Mother married and sought to relocate. Father sought custody alleging residential and employment instability (issues the mother possessed in the original proceeding). Case languished, and by time of trial, mother had divorced new husband and had withdrawn request to relocate. A finding of substantial change by a magistrate, ultimately approved by trial court, reversed by 2d DCA (only substantial change was mother's marriage and decision to relocate, both of which had evaporated by time of trial; mother's residential and employment history, though problematic both before and after original final judgment, had actually improved in the several years the case had been pending).

- ***Snowden v. Snowden***, 985 So. 2d 584 (Fla. 5th DCA 2008): parties can agree in advance as to what will constitute a change in circumstances; however, court must still make best interests determination. Mother had majority time-sharing; agreement had clause that neither consume alcohol or use drugs during their time with kids, and if either party violated, other party was to become primary parent; a few years later (after mother sought increase in support) father sought to change custody, alleging violation of alcohol/drugs clause; evidence showed mother had wine at restaurant with children present and had occasional glass or two of wine when children in her care (not in her presence); trial court found these isolated events did not arise to substantial change and not in best interests to modify custody. 5<sup>th</sup> DCA affirmed.

- ***Lane v. Lane***, 599 So. 2d 218, 219 (Fla. 4th DCA 1992): "It is undisputed that a trial court's responsibility to the child cannot be abdicated to any parent, any expert. That heavy responsibility mandates that a court is not bound by any agreement between parents, nor by the opinions of any experts or group of experts."

- ***Carey v. Batiste***, 96 So. 3d 459 (Fla. 4th DCA 2012): petition to modify majority time-sharing sufficient to allow court to modify time-sharing short of change in majority time-sharing; father's petition sought modification for majority time-sharing and for children to live with him in Maine; at trial, father sought to introduce alternative evidence that if court did not ultimately grant his petition, he wanted summer time-sharing and Christmas time-sharing. Mother objected that matter was not specifically pled and trial court sustained objection. Trial court's denial of father's petition reversed by 4<sup>th</sup> DCA, holding that his request for modification conferred jurisdiction on court to consider modification of time-sharing short of change of custody and Mother was on notice of that possibility.

- ***Abbott v. Abbott***, 98 So. 3d 616 (Fla. 2d DCA 2012): parent’s request for more time-sharing does not extend to implicitly including change in parental responsibility, which is a matter which must be specifically pled. Father had only supervised contact and mother had sole parental responsibility. Father sought unsupervised time and more time, at trial, he orally requested shared parental responsibility; he received more time but not shared parental responsibility; a few years later, he again asked for more time (did not plead for shared parental responsibility); received more time and shared parental responsibility (even though never even brought up at hearing or pronounced by trial court in oral ruling; 2nd DCA reversed).

### **C. Necessity of Pleadings**

- Fla.Fam.L.R.P. 12.070 – “proceedings to modify a final judgment” require service of process

- ***Ginnell v. Pacetti***, 31 So. 3d 217 (Fla. 4<sup>th</sup> DCA 2010): when a parent violates a time-sharing schedule, wherein the other parent had only supervised time-sharing, the trial court’s modifying the parenting plan by lifting the requirement of supervision and granting substantial make-up time-sharing upon the filing of a motion for contempt (as opposed to a supplemental petition for modification) was upheld on appeal, pursuant to the specific statutory authority set forth in §61.13(4)(c)(6).

- ***Delivorias v. Delivorias***, 80 So. 3d 352 (Fla. 1st DCA 2011): former husband filed motion for contempt as well as counter-petition for modification; trial court’s granting of motion for contempt affirmed by 1st DCA (former husband had adequately pled basis for modification and trial court had clearly considered best interests of the child even if there were no specific findings detailing such).

- ***Hunter v. Hunter***, 65 So. 3d 1213 (Fla. 2d DCA 2011): a trial court’s modification of custody, as relief pursuant to a motion for contempt, which motion did not specifically request modification, insufficient as violative of other parent’s due process rights.

**Practice Tip:** Better practice is never to rely on a motion alone to seek modification of parenting plan/time-sharing schedule. Always file an appropriate supplemental petition for relief alleging substantial changes and best interests promoted by change; if facts warrant seeking immediate expedited relief by motion under section 61.13(4)(c)(6), file that also, in addition to supplemental petition, not in lieu thereof.

## **XI CASE LAW UPDATE**

The intent of this update is to bring anyone new or returning to the area of family law “up to speed” with the general framework of the law. The excerpts are not exhaustive and the reader is encouraged to read the complete cases when concentrating on a topic in this update.

## **Residency**

***Rudel v. Rudel***, 111 So.3d 285 (Fla. 4<sup>th</sup> DCA 2013)

Residence as used in Chapter 61 requires that one of the parties in the divorce action reside for six months in Florida before filing the petition.

## **Jurisdiction**

***Lande v. Lande***, 2 So.3d 378 (Fla. 4<sup>th</sup> DCA 2008)

If the trial court has subject matter jurisdiction it can dissolve the marriage, but to adjudicate property disputes, support and equitable distribution, the court must have personal jurisdiction over both parties.

***Pulkkinen v. Pulkkinen***, 38 Fla. L. Weekly D2459 (Fla.1<sup>st</sup> DCA 2013)

The question is whether UIFSA conflicts with the FFCCSOA concerning a state's jurisdiction to modify a foreign child support order when the issuing state has lost continuing, exclusive jurisdiction; the petitioner is a resident of the state in which the action is brought; and the respondent is a nonresident who has not consented to the state's exercise of jurisdiction over the proceeding. The general rule of the FFCCSOA requires enforcement without modification of the child support orders of other states. Under the plain language of the FFCCSOA, modification may occur only "in a State with jurisdiction over the nonmovant for the purpose of modification."

***Sazonov v. Karpova***, 39 Fla. L. Weekly D27 (Fla. 3d DCA 2013)

Because the Mother is a plaintiff from another country with little to no connection to Florida, the Father argued that the Mother was not entitled to the presumption in favor of the plaintiff's forum choice in a forum non conveniens analysis and the appellate court agreed.

***Billie v. Stier***, 39 Fla. L. Weekly D850 (Fla. 3d DCA 2014)

The trial court correctly found that although the Mother's filing in the Tribal Court preceded the Father's filing, the Tribal Court did not substantially comply with the jurisdictional requirements of the UCCJEA and, therefore, pursuant to the UCCJEA, jurisdiction should be in Circuit Court.

## **Parental Responsibility and Child Support**

***DOR ex rel. Sherman v. Daly***, 74 So.3d 165 (Fla. 1<sup>st</sup> DCA 2011)

***DOR ex rel Zeoli v. Kline***, 95 So.3d 440 (Fla. 1<sup>st</sup> DCA 2012)

For the substantial timesharing credit to apply when calculating child support, a court approved parenting plan is required.

## **Parental Responsibility and Modification**

***Gerencser v. Mills***, 4 So.3d 22 (Fla. 5<sup>th</sup> DCA 2009)

Shared parental responsibility should continue until there is convincing evidence that it is unworkable.

***Abbott v. Abbott***, 98 So.3d 616 (Fla. 2d DCA 2012)

The expansion of timesharing does not necessarily presume a modification of parental responsibility.

### **Parental Responsibility, Parenting Plans and Timesharing**

***Winters v. Brown***, 51 So.3d 656 (Fla. 4<sup>th</sup> DCA 2011)

***ALG v. JFD***, 85 So.3d 527 (Fla. 2d DCA 2012)

The trial court's decision on timesharing must be based on the best interest of the child even if the parties aren't married. The trial court must evaluate the statutory factors.

***Waybright v. Johnson-Smith***, 115 So.3d 445 (Fla. 1st DCA 2013)

It was error for the trial court to order rotating custody when neither party requested it; and there were no findings to support it.

***D.M.T. v. T.M.H.***, 38 Fla. L. Weekly S812 (Fla. 2013)

The Florida Supreme Court recognizes the fundamental right to parent one's child notwithstanding the parent's sexual orientation or the manner in which the child was conceived. The Florida Supreme Court held that F.S. 742.14 as a bar to T.M.H.'s assertion of parental rights is unconstitutional, stating: "The due process guarantees in the Florida and United States Constitutions and the privacy provision of the Florida Constitution do not permit the State to deprive this biological mother of parental rights where she was an intended parent and actually established a parental relationship with the child." F.S. sections 742.13(2) and 742.14, "in providing an exception to the statutory relinquishment of parental rights for egg and sperm donors who are part of a heterosexual 'commissioning couple,' but not those who are part of a same-sex couple, violate the Florida and federal Equal Protection Clauses. We therefore hold that T.M.H.'s parental rights have not been terminated by law. Accordingly, we affirm the Fifth District's determination of statutory unconstitutionality, answer the certified question in the affirmative, and determine that T.M.H. has a constitutionally protected interest to parent the child under the United States Constitution and separately under the Florida Constitution."

***Fazzaro v. Fazzaro***, 110 So.3d 49 (Fla. 2d DCA 2013)

There was insufficient evidence to support the trial court's award of ultimate decision-making authority on certain issues to the Mother. The District Court reversed, stating that "nothing showed a continuing pattern of hostility that reasonably would lead one to conclude that the parties will be unable to effectively work together for their child's best interests."

***Weissman v. Weissman***, 112 So.3d 735 (Fla. 2d DCA 2013)

Like in *Fazzaro*, the trial court's decision to exclude Father from decision-making on a certain issue was not supported by the evidence. Although the order was intended to be temporary, it provided no guidance on when the restriction would end or what he needed to do for the restriction to be removed. Likewise, the case was reversed and remanded back to the trial court.

***Pierson v. Pierson***, 39 Fla. L. Weekly D1741 (Fla. 1st DCA 2014)

Another case where ultimate decision-making authority was granted to one party, the Mother for issues relating to religion. The appellate court found the evidence did not establish the harm

necessary to award the Mother ultimate religious decision-making authority and to restrict the Father from "doing anything" in front of or around the children that "conflicts" with the Catholic religion, and the case was reversed.

***Nunes v. Nunes***, 112 So.3d 696 (Fla. 4th DCA 2013)

Although the trial court must consider what is in the child's best interest when granting make-up timesharing, there is no statutory requirement that the court order enumerate the reasons why make-up timesharing is in the child's best interest.

***Jeffers v. McLeary***, 118 So.3d 287 (Fla. 4th DCA 2013)

It was error for the trial court to enter an amended final judgment of paternity setting a timesharing schedule after holding a hearing at which the Father failed to appear without first holding a hearing on Father's motion for rehearing/relief from judgment so that Father could present evidence regarding the best interests of the child. The District Court ruled "Even when a parent willfully fails to attend a hearing, the trial court should still give the parent the opportunity to be heard and to present evidence before reaching a decision affecting time-sharing." The appellate court further stressed that "this opinion should not be extended beyond cases affecting the best interest of the child. Our cases discussing these issues emphasize that these rulings are exceptional due to the importance of the rights of the child."

***Herrera v. Frias***, 39 Fla. L. Weekly D185 (Fla. 2d DCA 2014)

When a parent is in willful violation of a pretrial order addressing the removal of the children from the jurisdiction of the court, it is well within the discretion of the trial court to award sole responsibility to the parent who is properly before the court and compliant with the orders of that court. The trial judge was affirmed.

***C.B. v. M.A.***, 38 Fla. L. Weekly D2187 (Fla. 2d DCA 2013)

***Mills v. Johnson***, 39 Fla. L. Weekly D1569 (Fla. 2d DCA 2014)

It is error to fail to include a summer or holiday timesharing schedule in a parenting plan.

***Lifleur v. Webster***, 39 Fla. L. Weekly D957 (Fla. 3d DCA 2014)

The trial court erred in denying Mother's Motion for Return of Custody from third party. Father, who had custody of the child due to Mother's history of mental illness, was sentenced to 12 years in prison. Under these circumstances trial court could not place child with third-party without evidence that it would be detrimental to the child to be in Mother's custody.

***Davis v. Lopez-Davis***, 39 Fla. L. Weekly D725 (Fla. 4<sup>th</sup> DCA 2014)

The magistrate recommended awarding the Former Wife 100% of the timesharing with the child. The magistrate found it was "not appropriate at this time for the Former Husband to have any visitation/time-sharing with the minor child" because "[t]he Former Husband does not know the minor child at all" and because "[t]he minor child does not know who the Former Husband is." The trial court entered an amended final judgment of dissolution of marriage, adopting the magistrate's report and recommendations. The decision is contrary to the public policy of this state which requires that each minor child has frequent and continuing contact with both parents after the marriage of the parties is dissolved. The Former Husband's absence from Florida, and the fact that the Former Husband and child do not know each other, does not establish that it

would be detrimental or harmful for the Former Husband to have any contact with the child. The judgment is also deficient in that it does not set forth the steps the Former Husband must take to establish timesharing with the child. For these reasons the case is reversed.

***Julia v. Julia***, 39 Fla. L. Weekly D1792 (Fla. 4th DCA 2014)

In awarding the children exclusive use and possession of the marital home, with the parents rotating in at two-week intervals, the trial court's decision made no mention of "the best interests of the children" with respect to this ruling. This is a required factor for the court to consider when determining parental responsibility.

### **Modification of Timesharing**

*Additional case law regarding modifications of parenting arrangements is included in Section X, Modification of Parenting Plans.*

***Sanchez v. Hernandez***, 45 So.3d 57 (Fla. 4<sup>th</sup> DCA 2010)

Father must prove more than merely an acrimonious relationship and lack of effective communication to show a substantial change in circumstances. *See also: Ogilvie v. Ogilvie*, 954 So. 2d 698 (Fla. 1<sup>st</sup> DCA 2007), the inability to communicate does not constitute a substantial change in circumstances.

***Ragle v. Ragle***, 82 So. 3d 109 (Fla. 1<sup>st</sup> DCA 2011)

"Because custody modifications disrupt children's lives, trial courts enjoy a lesser degree of discretion in custody modification proceedings than they do when making an initial custody determination, and such orders need specificity and substance to be affirmed." Former Husband's 28 mile move, although the source of friction between the parties, was insufficient to establish a substantial change in circumstances.

***Sidman v. Marino***, 46 So. 3d 1136 (Fla. 1<sup>st</sup> DCA 2010)

***Brown v. Brown***, 38 Fla. L. Weekly D2247 (Fla. 1<sup>st</sup> DCA 2013)

There must be competent substantial evidence to prove a substantial and material change in circumstances. A parent allowing extra visitation is not a proper basis for a modification to increase the other parent's timesharing. (In *Brown* the other parent not only objected to the modification but she filed her own modification petition.)

***Blackburn v. Blackburn***, 103 So.3d 941 (Fla. 2d DCA 2012)

***Griffith v. Griffith***, 39 Fla. L. Weekly D501 (Fla. 2d DCA 2014)

"A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child." In *Griffith*, neither the record nor the order specified what the substantial change was.

***Fernandez v. Wright***, 111 So.3d 229 (Fla. 2d DCA 2013)

Order modifying parenting plan was reversed when it did not comport with the oral pronouncement that stated the order was temporary.

***Tullier v. Tullier***, 98 So.3d 84 (Fla. 4<sup>th</sup> DCA 2012)

The trial court's final judgment demonstrated that there was a material and substantial change in circumstances supporting a modification of Former Husband's visitation and that the modification was in the best interest of the children. The appellate court will not disturb the findings of the trial court when the consideration of the evidence is thorough and conscientious and the order establishing the basis for modification is detailed and clear.

### **Paternity**

***Slowinski v. Sweeney***, 64 So.3d 128 (Fla. 1st DCA 2011)

It was fundamental error for the trial court to grant relief in a paternity action brought by a biological father when the child was born to an intact marriage and cannot be the subject of a paternity proceeding.

***J.T.J. v. N.H.***, 84 SO.3d 1176 (Fla. 4<sup>th</sup> DCA 2012)

The trial court dismissed the biological Father's petition to establish paternity without holding an evidentiary hearing on the ground that Mother was married to another man when the child was born. However, the Mother did not list her husband on the child's birth certificate and both Mother and her husband signed a surrender of parental rights and the child was placed in DCF's custody. The District Court discussed the strong but rebuttable presumption "that a man married to the biological mother is in fact the legal father of the child" and went on to state that the presumption is not conclusive and may be overcome with a "clear and compelling reason based on the child's best interests". The District Court reversed the trial court's order and remanded the matter back to the trial court for an evidentiary hearing.

***Sirdevan v. Strand***, 120 So.3d 1280 (Fla. 1st DCA 2013)

It was error for the trial court to deny legal Father's motion for summary judgment when he challenged biological Father's standing to file a paternity action. The District Court granted the petition and quashed the trial court's order.

***A.A.B. v. B.O.C.***, 112 So.3d 761 (Fla. 2d DCA 2013)

The biological Father obtained a judgment of paternity granting him parental rights, establishing a parenting plan and providing for child support and the Mother appealed. The biological Father's sister and the Mother lived in a committed relationship for a number of years; when they decided to have a child together the brother agreed to donate his sperm. Using a "do-it-yourself" method for impregnation rather than a clinical one, the child was conceived. The biological Father was not involved in the child's life until after the bio Mother and his sister ended their relationship and the biological Mother refused to allow his sister to have any contact with the child. The trial court refused to recognize the oral agreement that the biological Father was the sperm donor because the parties failed to use a traditional clinical procedure for impregnation. The District Court found that the trial court erred by not recognizing the oral agreement of the parties. The plain reading of F.S. 741.14 reveals that absent several exceptions, a sperm donor relinquishes all rights and obligations for any resulting children.

***Van Weelde v. Van Weelde***, 110 So.3d 918 (Fla. 2d DCA 2013)

The trial court erred in granting Wife's motion for summary judgment in a dissolution action that

in effect “de-legitimized” the child where the Husband is the legal but not biological father of the child. The District Court found that “the trial court erred by focusing solely on biology and failing to consider whether there was a clear and compelling reason based on R.D.W.’s best interests to overcome his presumption of legitimacy and to remove the Husband’s rights as his legal father.” Therefore, the case was reversed and remanded to the trial court to reconsider the motion using the correct legal standard.

### **Disestablishment of Paternity**

***Aulet v. Castro***, 44 So.3d 140 (Fla. 3d DCA 2010)

The trial court properly granted a motion to dismiss Father’s petition to disestablish paternity when he failed to comply with F.S. 742.18(1) which required him to file his petition within 90 days of the date the DNA test was administered, showing that he was not the biological father.

***DOR v. G.A.T., JR.***, 76 So.3d 1083 (Fla. 2d DCA 2011)

It was error for the trial court to grant the petition to disestablish paternity after the Mother failed to produce the child for a DNA test without determining whether the nonappearance was willful.

***P.G. v. E.W.***, 75 So.3d 777 (Fla. 2d DCA 2011)

It was error for the trial court to deny the petition to disestablish paternity when the male did not engage in the conduct proscribed in F.S. 742.18(3) after he learned he was not the biological father of the child even though he was significantly involved in the child’s life, aggressively pursued primary custody of the child when the parties divorced and indeed became the child’s primary parent. This law provides for the means to disestablish paternity to avoid the further obligation to support the child even after a father-child relationship has been established not withstanding what might be in the best interest of the child.

***Hickman v. Milsap***, 106 So.3d 513 (Fla. 5th DCA 2013)

The granting of a petition to disestablish paternity does not include relief from child support arrearages, only relief from prospective child support payments.

### **Name Change**

***Wilson v. Smith***, 38 Fla. L. Weekly D2328 (Fla. 2d DCA 2013)

The trial court erred in denying the exceptions to the magistrate’s report and in adopting the magistrate’s recommendation granting the petition for name change. The magistrate’s use of the incorrect legal standard [correct standard is child’s best interest or welfare] and incorrect burden of proof [burden on Petitioner to establish name change is in child’s best interest] were errors of law that the circuit court simply had no discretion to ignore. Therefore, since the factual findings had no evidentiary support they should not have been adopted by the trial judge. Accordingly, the case was reversed and remand for further proceedings.

### **Child Support**

***Mayfield v. Mayfield***, 103 So.3d 968 (Fla. 1<sup>st</sup> DCA 2012)



Voluntary overpayments of child support in the past cannot be used as a credit against future child support obligations; to award such credits was an abuse of discretion.

***Palewsky v. Fla. DOR ex. Rel. Miller***, 81 So.3d 584 (Fla. 3d DCA 2012)

The Father appealed the child support award because the Mother had not filed a financial affidavit and minimum wage was imputed to her. Rule 12.285(e)(1), Fla. Fam. L. R. P. requires the filing of a financial affidavit in an initial request for permanent financial relief by both parties. Without a properly sworn financial affidavit the trial court cannot accurately determine whether imputing minimum wage income is appropriate; therefore, the child support award was reversed and remanded to the trial court.

***Hoffman v. Hoffman***, 98 So.3d 196 (Fla. 2d DCA 2012)

The trial court's "pro rata ratio type" determination of the Father's income in order to calculate child support was not supported by the record. The case was remanded for further proceedings to recalculate Father's child support obligation.

***Chovan v. Chovan***, 90 So.3d 898 (Fla. 4<sup>th</sup> DCA 2012)

Portions of the final judgment were inconsistent with the oral pronouncement on the record and accordingly, that portion of the final judgment was reversed.

***Marlowe v. Marlowe***, 38 Fla. L. Weekly D2271 (Fla. 1st DCA 2013)

The child support worksheets contained in the record reflected that the Former Husband paid alimony for months that he actually did not. When calculating the child support guidelines, it was error for the trial court to give the Former Husband credit for alimony payments that he did not pay.

***Russell v. McQueen***, 115 So.3d 1084 (Fla. 5th DCA 2013)

When calculating child support it is error not to include Father's health insurance expense in the calculation. Further, if Father is ordered to pay a flat monthly amount to cover his share of the child's uncovered medical expenses he cannot in addition be required to pay a percentage of the child's uncovered medical expenses.

***Ballard v. Ballard***, 39 Fla. L. Weekly D1670 (Fla. 1<sup>st</sup> DCA 2014)

Trial court erred on two counts; first, by failing to impute income to Father who voluntarily retired early and was capable of work and second, by awarding retroactive child support to the Mother without taking into account that the Husband had paid some of the children's health insurance premiums.

***Christensen v. Christensen***, 39 Fla. L. Weekly D1741 (Fla. 1st DCA 2014)

The trial court failed to include alimony when determining Former Wife's income for the calculation of child support. Moreover, the trial court also adjusted the parties' child support obligation based on the assumption that Former Wife would exercise substantial time-sharing pursuant to section 61.30(11)(b), Florida Statutes (2012) while it was unclear from the court's timesharing order whether she would be exercising the statutorily required amount of visitation to get the substantial timesharing credit. Therefore the case was reversed and remanded back to the trial court.

***DOR v. Cody***, 39 Fla. L. Weekly D309 (Fla. 1<sup>st</sup> DCA 2014)

Order erroneously gave the Father a deduction from his gross income for a prior child support order that he was not paying. Until and unless he actually pays his child support for his other child, he is not permitted to take the deduction.

***DOR v. Verrette***, 39 Fla. L. Weekly D257, (Fla. 2d DCA 2014)

***DOR v. Williams***, 39 Fla. L. Weekly D166 (Fla. 2d DCA 2014)

The court erred when it deviated from the child support guidelines based upon a written, signed, and notarized visitation agreement that was not court-approved. If the circuit court approves the parties' parenting plan on remand, it may be considered in recalculating the support obligation and may be used to support a deviation of more than five percent if appropriate. In *Williams*, the appellate court further opined, "Although we agree with the trial court's conclusion that both equity and policy support the deviation in this case, a court cannot "substitute its judgment for that of the Legislature insofar as the wisdom or policy" of clear legislation."

***Bower v. Hansman***, 39 Fla. L. Weekly D1685 (Fla. 3d DCA 2014)

It was error for the trial court to include child support received by Mother for a child from another relationship when calculating her net income for the calculation of child support. The case was reversed.

***Johnson v. McCullough***, 39 Fla. L. Weekly D1639 (Fla. 4<sup>th</sup> DCA 2014)

Trial court reversed for adopting a child support guideline worksheet submitted after the hearing, as the worksheet is not evidence.

***Steele v. Love***, 39 Fla. L. Weekly D1534 (Fla. 4<sup>th</sup> DCA 2014)

Trial court affirmed for imputing regular in kind gifts from Husband's parents that reduced his living expenses as income. F.S. 61.30(2)(a)(13), Florida Statutes (2012), specifically lists "[r]eimbursed expenses or in kind payments to the extent that they reduce living expenses" as gross income to be considered in determining child support. Generally, gifts received from a party's parents are irrelevant for child support determination. *Vorcheimer v. Vorcheimer*, 780 So. 2d 1018, 1019 (Fla. 4th DCA 2001) (citing *Shiveley v. Shiveley*, 635 So. 2d 1021 (Fla. 1st DCA 1994)). However, regular periodic payments to a child by a parent are considered income for child-support determination. *Ordini v. Ordini*, 701 So. 2d 663, 666 (Fla. 4th DCA 1997) (citing *Cooper v. Kahn*, 696 So. 2d 1186 (Fla. 3d DCA 1997)).

### **Childcare Expenses**

***Knudson v. Drobnak***, (Fla. 4<sup>th</sup> DCA 2014)

***LaFountain v. LaFountain***, 39 Fla. L. Weekly D319 (Fla. 2d DCA 2014)

It was error for the trial court to include in the arrearages childcare expenses that were not incurred. In *Knudson*, the order on appeal contained no indication that the Father's arrearages were credited for the period of time the Mother did not actually incur childcare expenses. The case was remanded so the trial court could recalculate the arrearages, subtracting childcare expenses for the months the Mother did not incur them.

### **Uncovered Medical Expenses**

***Mayfield v. Mayfield***, 103 So.3d 968 (Fla. 1<sup>st</sup> DCA 2012)

The trial court's relabeling certain uncovered health expenses was in fact a unilateral modification of the parties' agreement and therefore was an abuse of discretion.

***Henderson v. Lyons***, 89 So.3d 1109 (Fla. 2d DCA 2012)

Psychological expenses fall under the paragraph in the final judgment dealing with uncovered medical and dental expenses. The trial court entered a contrary ruling so the case was remanded to the trial court to reconsider its order on the counseling expenses while giving Father the opportunity to challenge the reasonableness and necessity of the expense.

***Harris v. Harris***, 114 So.3d 1095 (Fla. 2d DCA 2013)

The trial court erred by failing to include provisions in the final judgment for health insurance and the payment of uncovered medical expenses for the minor children.

***Fairchild v. Fairchild***, 39 Fla. L. Weekly D712 (Fla. 5th DCA 2014)

The trial court erred in failing to include the month, day and year that the reduction or elimination of child support will become effective in the final judgment and by ordering the parties to split the cost of their minor child's uncovered medical expenses equally. As the Father properly conceded, these expenses should be split on a pro rata basis according to the parties net income.

### **Insurance to Secure Support**

***Froeschle v. Froeschle***, 122 So.3d 967 (Fla. 2d DCA 2013)

***Brennan v. Brennan***, 122 So.3d 923 (Fla. 4th DCA 2013)

***Zvida v. Zvida***, 103 So.3d 1052 (Fla. 4th DCA 2013)

***Sweeny v. Sweeny***, 113 So.3d 987 (Fla. 5th DCA 2013)

***Packo v. Packo***, 120 So.3d 232 (Fla. 5th DCA 2013)

Before life insurance can be ordered to secure a child support and/or alimony award the court must find that it is affordable and necessary and that the amount of life insurance required does not exceed the support obligation.

***Busciglio v. Busciglio***, 116 So.3d 620 (Fla. 2d DCA 2013)

The final judgment mandated that the Wife maintain her current life insurance policy and that Husband and the children continue as equal beneficiaries of the policy. It was unclear if the policy was to secure child support, alimony or both, and both parties requested clarification. Absent special circumstances, it is error for trial court to require spouse to maintain life insurance for purpose of securing alimony award.

### **Private School Expenses**

***Brennan v. Brennan***, 38 Fla. L. Weekly D2081 (Fla. 4th DCA 2013)

A trial court may require a noncustodial parent to pay for private school only if it finds: (1) the parent has the ability to pay for private school, (2) the expense is in accordance with the family's

established standard of living, and (3) attendance is in the child's best interest. Where the trial court fails to make each of the required factual findings reversal is required.

### **Imputation of Income**

***Adelberg v. Adelberg***, 39 Fla. L. Weekly D1108 (Fla. 4<sup>th</sup> DCA 2014)

To impute a specific amount of income, it is unnecessary to prove that an employer would actually hire the spouse. Because the Former Wife admitted that she did not intend to look for a job, and expert testimony established that she qualified for available jobs, her unemployment was self-imposed and the court erred in not imputing income to her. In addition the court should have considered interest income.

***Brennan v. Brennan***, 38 Fla. L. Weekly D2081 (Fla. 4<sup>th</sup> DCA 2013)

When imputing income at an amount other than the median income, a trial court is required to make specific findings, which are supported by competent substantial evidence. The trial court failed to make a finding as to whether Wife's unemployment was either voluntary or involuntary; it did not find whether she was able to obtain employment, only that she was able to seek employment.

***Marlowe v. Marlowe***, 38 Fla. L. Weekly D2271 (Fla. 1<sup>st</sup> DCA 2013)

Here, the trial court failed to provide a factual basis to support the conclusion that the Former Wife was voluntarily underemployed or that the Former Wife should be working 40 hours a week. The record is undisputed that the Former Wife is a homemaker with limited work experience, no marketable skills, and no resume. In fact, evidence shows that Former Wife was forced to leave her minimum wage job as a teacher's assistant because of child care issues with her youngest of seven children of this marriage. Without any factual findings, the imputation of income must be reversed.

### **General Principles Regarding Modifications**

***Worthington v. Worthington***, 38 Fla. L. Weekly D2253 (Fla. 2<sup>d</sup> DCA 2013)

It was reversible error for the trial court to grant relief that was neither properly noticed nor requested in pleadings.

***Mayfield v. Mayfield***, 103 So.3d 968 (Fla. 1<sup>st</sup> DCA 2012)

***Cash v. Cash***, 122 So.3d 430 (Fla. 2<sup>d</sup> DCA 2013)

***Hedstrom v. Hedstrom***, 123 So.3d 150 (Fla. 5<sup>th</sup> DCA 2013)

It is an abuse of discretion for a trial court to fail to grant a modification retroactive to the date the petition was filed if the reasons justifying the modification existed at that time.

### **Modification of Child Support**

***Hammesfahr v. Hammesfahr***, 104 So.3d 1129 (Fla. 2<sup>d</sup> DCA 2012)

Evidence was sufficient to establish trial court's finding that Former Husband's voluntary underemployment, closing his thriving practice due to "lack of patients", caused his reduction of income. *See Thomas v. Thomas*, 589 So.2d 944, 947 (Fla. 1<sup>st</sup> DCA 1991) ("The clean hands

doctrine prevents a court from relieving a party of his support obligation when the decrease in financial ability to pay is brought about by that party's voluntary acts of, for example, permitting a thriving business to be closed down and making no effort to find other employment, or by willfully divesting himself/herself of the ability to pay.”).

***Marlowe v. Marlowe***, 38 Fla. L. Weekly D2271 (Fla. 1st DCA 2013)

It was error for the trial court to include Former Husband's payment of alimony in the child support calculation for a period of time when he was not paying alimony.

***Emmenegger v. Emmenegger***, 38 Fla. L. Weekly D1957 (Fla. 2d DCA 2013)

It was reversible error for the trial court to reduce child support based on Father's increased timesharing when the Father waived the modification in an agreement with Mother, absent an additional substantial change in circumstances that would justify the change.

***Brennan v. Brennan***, 122 So.3d 923 (Fla. 4th DCA 2013)

The trial court must demonstrate how the child support arrearage was calculated. In this case neither the record nor the order illustrated how the trial court came up with the arrearage figure.

***D.O.R. v. Garmon***, 39 Fla. L. Weekly D932 (Fla. 5<sup>th</sup> DCA 2014)

The trial court erred in decreasing Father's child support obligation when he did not prove that a substantial change in circumstances occurred. (His income was the same at the time of the modification as it was at the time of the original final judgment.)

***Driggers v. Driggers***, 38 Fla. L. Weekly D2489 (Fla. 2d DCA 2013)

Husband demonstrated an unanticipated substantial change in circumstances that was not voluntary or temporary by establishing a 40% drop in his business income, which was not likely to improve soon, the unavailability of additional money and assets available to him and grim job expectations. The denial of a downward modification of child support was an abuse of discretion and was reversed. The order of contempt was also reversed.

***Kozell v. Kozell***, 39 Fla. L. Weekly D1040 (Fla. 4<sup>th</sup> DCA 2014)

After hearing, Magistrate made findings that “the Husband is able to manipulate his income from year to year” and that “it is not possible from the evidence presented to make a definitive determination as to his income.” Notwithstanding these findings, the magistrate recommended reducing the Husband's child support obligation. The trial court overturned the Magistrate's modification stating “The law is settled that a party seeking to modify a judgment of support must allege and prove a substantial change in circumstances which was not contemplated at the time of the Final Judgment and that the change is significant, material, involuntary and permanent. The Magistrate's findings show that the Husband failed to prove all the necessary elements.” The trial judge was affirmed.

***Sanford v. Davis***, 39 Fla. L. Weekly D880 (Fla. 1<sup>st</sup> DCA 2014)

When neither party requests a modification of child support it is an abuse of discretion to enter an order reducing child support. (Moreover neither the magistrate nor the judge made any factual findings to support the reduction.)

## **Relocation**

***Norris v. Heckerman***, 972 So.2d 1098 (Fla. 1<sup>st</sup> D.C.A. 2008)

When the trial court did not make critical findings regarding the statutory factors in a relocation case, it was not an abuse of discretion when the failure was as a result of the parties' failure to present evidence on such factors.

***Arthur v. Arthur***, 54 So.3d 454 (Fla. 2010)

The trial court permitted Mother to relocate with minor child to Michigan but delayed the move until the child reached the age of three, giving detailed reasons for both permitting and delaying the move. Father appealed, citing *Janousek [v. Janousek]*, 616 So.2d 131 (Fla. 1<sup>st</sup> DCA 1993)]. The Second District Court of Appeal affirmed, in direct conflict with three opinions from another appellate court. The Florida Supreme Court granted review and found that the trial court's "prospective based analysis" was unsound, stating that any one of the factors outlined in F.S. 61.13001(7) could change within the extended period prior to relocation. To determine what is in a child's best interest, a present based analysis is required. The Florida Supreme Court approved the decisions in the other district, vacated the provision allowing the Mother to relocate and remanded the matter with directions to the trial court to prohibit relocation.

***Bainbridge v. Pratt***, 68 So. 3d 310 (1<sup>st</sup> DCA 2011)

The trial court erred by ordering a rotating timesharing schedule wherein the record did not support that such a schedule was in the child's best interest. Further, the appellate court found that the order must be reversed because under Florida law, a trial court may not order an annual, rotating time-sharing plan where neither parent requested such a plan in the pleadings, nor argued for the plan at the final hearing. Such a decision raises concern about the parties' right to due process.

***Orta v. Suarez***, 66 So.3d 988 (3d DCA 2011)

Mother, a Venezuelan educated dentist, challenged the denial of her petition to relocate to California with the minor child, the only state where she could work without re-attending dental school even though the Father had agreed to the move there until Mother became pregnant and filed for divorce. During the pendency of the litigation Father failed to adequately support the Mother and child. The trial court's findings addressing both in F.S. 61.13(3) and F.S. 61.13001(7) confirm that Mother more than carried her burden of proving that relocation to California was in the child's best interest; the court should have granted Mother's petition for relocation.

***Rossman v. Profera***, 67 So. 3d 363 (4<sup>th</sup> DCA 2011)

The Father objected to Mother's relocation request and filed a supplemental petition to modify timesharing and residential responsibility. Mother, who had been the primary parent, had already left Florida with her entire family except for the child subject to this action, who remained with Father. The Mother made it clear that she would not be returning to Florida, no matter how the court ruled. The trial court denied Mother's relocation request and granted Father's supplemental petition to modify issuing a detailed written order finding that Mother's substitute timesharing plan was inadequate and would substantially interfere with the child's relationship with the Father and by modifying timesharing and parental responsibility. Mother appealed and the

appellate court found that the trial court's findings were supported by substantial competent evidence, stating that the relocation had to be in the best interest of the child and cannot be based solely upon a finding that it would serve the best interest of the custodial parent. Further, based on Mother's firm position that she would not be returning to Florida under any circumstances, it was not error to grant Father's supplemental petition to modify.

***Raulerson v. Wright***, 60 So.3d 487 (1<sup>st</sup> DCA 2011)

Mother moved from Perry to another county within Florida without complying with F.S. 61.13001. Father filed a request for injunctive relief. The trial court denied the injunction because Mother had already relocated and entered an order allowing her to remain out of county with the child on a temporary basis. It was error for the trial court to allow Mother to remain out of the jurisdiction pending the final hearing when she had not complied with the requirements of the relocation statute.

***Crombie v. Williams***, 51 So.3d 559 (Fla. 3d DCA 2011)

The trial court did not err by applying the factors contained in F.S. 61.13001(7) to find that Mother failed to prove by a preponderance of the evidence that relocation was in the best interest of the child. The evidence supported the trial court's denial of Mother's petition for relocation. There is no presumption for or against relocation.

***Wraight v. Wraight***, 71 So.3d 139 (Fla. 5<sup>th</sup> DCA 2011)

The trial court properly considered the factors contained in F.S. 61.13(3) and F.S. 61.13001(7) and made appropriate written findings concerning those factors. The appellate court found that there was substantial competent evidence to support the trial judge's decision. The appellate court cannot reweigh the evidence considered by the trial court.

***Alinat v. Curtis***, 86 So.3d 552 (Fla. 2d DCA 2012)

The trial court entered a temporary relocation order that allowed Mother to relocate to Australia with the children so she could take a temporary job for a three-year term. Father appealed and the appellate court held that F.S. 61.13001(2011) does not contemplate a "temporary" relocation order of three years' duration with the resulting substantial delay in holding a final hearing and rendering a final order. F.S. 61.13001(6)(b) allows a trial court to grant a temporary relocation order "pending final hearing." To grant a temporary relocation the trial court must find from an examination of the evidence presented that there is a likelihood that on final hearing the court will approve the relocation of the child, which findings must be supported by the same factual basis as would be necessary to support approving the relocation in a final judgment. The statute provides for priority scheduling for a hearing or trial and requires a hearing on a motion for temporary relocation to occur, absent good cause, no later than thirty days after the motion is filed. "If a notice to set the matter for a nonjury trial is filed, absent good cause, the nonjury trial must occur no later than 90 days after the notice is filed." *See* § 61.13001(10).

***Essex v. Davis***, 116 So.3d 445 (Fla. 4<sup>th</sup> DCA 2012)

Mother and Father were never married. Mother relocated with the child to Louisiana prior to Father's filing of a petition for paternity and before the entry of any order establishing or modifying timesharing. Without having an evidentiary hearing the trial court entered an order directing the return of the child notwithstanding Mother's argument that the relocation statute did

not apply. The trial court's order was reversed and the case was remanded for the trial court to conduct an evidentiary hearing.

***Shiba v. Gabay***, 120 So.3d 80 (Fla. 4th DCA 2013)

Mother and Father were never married but were living together. Without Father's knowledge Mother relocated to Illinois with the children. Ultimately after it was determined that Florida was the children's home state an evidentiary hearing was held and the trial court entered a temporary order requiring the return of the children pending the final hearing. Both parties received sufficient notice and had an adequate opportunity to be heard; therefore the trial court's temporary order was upheld.

*Note:* The Mother argued on appeal that the relocation statute does not apply. However, since she did not object to the trial court's authority to order the return of the children, the appellate court found this point to have no merit.

***Milton v. Milton***, 113 So.3d 1040 (Fla. 1st DCA 2013)

Mother relocated with the child without filing a petition to relocate and otherwise following the requirements of F.S. 61.13001. It was error for the trial court to allow Mother to remain out of state pending the final hearing when she had not complied with the requirements of the relocation statute.

***Eckert v. Eckert***, 107 So.3d 1235 (Fla. 4th DCA 2013)

The trial court entered an order allowing Mother to relocate to another county without making the findings required by F.S. 61.13001. Mother's only reason for moving was that she had a home available to her in Vero Beach. It was an abuse of discretion to allow relocation when there was no record to support it; further, having a home in another jurisdiction cannot be the sole basis for permitting relocation.

***Rivero v. Rivero***, 111 So.3d 233 (Fla. 4th DCA 2013)

The trial court entered a temporary order allowing Mother to relocate to North Carolina without having an evidentiary hearing. F.S. 61.13001(6)(b) requires an evidentiary hearing prior to entering a temporary order. Finally, Father's amended answer to the petition for relocation, which was verified, relates back to the original unverified answer, which was timely filed. Hence, it was error for the trial court to find that his answer was not timely filed.

***Rolison v. Rolison***, 39 Fla. L. Weekly D1625 (Fla. 1<sup>st</sup> DCA 2014)

The relocation statute does not apply if parent relocates child before petition for dissolution of marriage is filed.

**Miscellaneous**

***Jackson v. Jackson***, 98 So.3d 112 (Fla. 2d DCA 2012)

In a civil contempt proceeding for failure to pay, the movant must show that a prior court order directed the obligor to pay the support or alimony, and that the obligor failed to make the ordered payments. The burden of producing evidence then shifts to the defaulting party, who must dispel the presumption of ability to pay by demonstrating that, due to circumstances beyond his control which intervened since the time the order directing him to pay was entered, he no longer has the



ability to meet his support obligations. The court must then evaluate the evidence to determine whether it is sufficient to justify a finding that the defaulting party has willfully violated the court order. In this case, the Husband failed to dispel the presumption that he had the ability to pay and should have been held in contempt.

***Ashby v. Murray***, 113 So.3d 951 (Fla. 5th DCA 2013)

The trial court erred in refusing to dissolve ex parte temporary injunction when the Father failed to present sufficient evidence to keep the emergency ex parte order in place at a hearing on the Mother's motion to dissolve.

***Carrillo-Jimenez v. Carrillo***, 110 So.3d 490 (Fla. 4th DCA 2013)

Father lacked standing to assert the child's psychotherapist-patient privilege as basis for striking social investigation report when Father was pursuing his own interest and the child is not a party to the underlying action. Hence, Father's petition for writ of certiorari was denied. See also: ***Hughes v. Schatzberg***, 872 So.2d 996 (Fla. 4<sup>th</sup> DCA 2004).

***Davis v. Davis***, 108 So.3d 660 (Fla. 5th DCA 2013)

Although harmless in this case, it was error to admit into evidence DCF Investigative Summaries when the creators of the summaries were not called to testify.

## **XII RESOURCES**

Domestic Relations Courts are designed to deal with legal issues arising from family relationships. The family court practitioner understands that legal issues are only a fraction of what many families, especially high-conflict families, need addressed. It is not uncommon for family court litigants to be experiencing extreme levels of stress, as well as unprecedented personal, emotional, and financial hardship. Families that have found themselves in the family court system can benefit from the services of professionals from various disciplines prior to, during, and even continuing long after court involvement. Choosing the most effective process for each case may minimize costs and reduce the time needed to make the best decisions for parents and children.

When determining if the process is appropriate for a particular family, the court should consider:

- The amount of time involved to conduct the process;
- The cost of the process;
- The professional qualified to conduct the process;
- The information or recommendations that may be gleaned through the process and reported to the court;
- The scope of each process as defined by statute, court rule, administrative order, and the court's order of referral.

### **A. DISPUTE RESOLUTION PROCESSES**

- **Family Mediation**

The process of mediation may be governed by Florida Statute Chapter 44, Florida Family Law Rules of Procedure 12.740-12.741, and the Florida Rules for Certified and Court-Appointed Mediators. A family mediator is a trained neutral facilitator who assists the parties by facilitating discussion, identifying issues, and exploring options and alternatives, in order to resolve issues related to their divorce or separation, including property division, financial support, and the development of a parenting plan. Parties with a combined gross income of \$100,000.00 or less may be eligible for referral to a court based family mediation program, and fees are dictated by Florida Statute. Otherwise, private mediation fees are determined by the mediator and are normally based upon the hours spent with the parties. What occurs during the mediation is generally confidential, except for the agreements facilitated, which may be submitted to the court and ratified by the judge into a court order.

- **Case Management Conference (Settlement Conferences)**

A Case Management Conference, also known in some jurisdictions as a Settlement Conference, may offer the parties the opportunity for "reality testing" of their perceptions and positions, and may offer insight to the possible outcome of their case. Such realizations may save the parties the additional emotional and financial expenses associated with a formal trial. This process takes place before the court, with the parties and their attorneys in attendance. It may be ordered by the court at any time, or requested by a party. The conference is designed for the court to manage the case, schedule appropriate hearings or trials, hear pending motions related to evidence, explore the possibilities of settlement and stipulations in order to narrow the issues, and direct referrals when necessary.

- **Collaborative and Cooperative Law**

Collaborative and cooperative law processes were devised to assist parties through the legal process of separation and divorce by focusing on the family as a system, rather than parents as adversaries. These processes will often utilize other community providers and experts as part of a team to assist the parents in developing plans in the best interests of their children. In each of these processes, the parties and their representatives enter into an agreement that specifies that their intention is to settle the case. In collaborative law, if the parties do not settle, their attorneys must withdraw from the case; in cooperative law, the attorneys are permitted to represent their clients through trial. The parties' agreement is entered into the court docket, and the process itself remains confidential. The parties are responsible for the fees of their respective attorneys; however, all other providers as part of the collaborative team are contracted jointly as neutrals in the case. Since the parties are splitting the additional costs of the neutrals, such as a financial advisor, mental health professional, evaluator, and/or parenting coordinator, the fees are usually substantially less than paying for experts for each side of the case.

## **B. MENTAL HEALTH ASSESSMENT/EVALUATIONS**

- **Mental Health Assessment**

A Mental Health Assessment is limited in scope as to a party's general mental health functioning and may be court ordered for the purpose of identifying the presence of a

mental condition and indication for therapeutic intervention or more in depth psychological or psychiatric evaluations. These assessments should be conducted by licensed mental health providers according to Florida Statute 490/491 who will select the protocols and instruments to be utilized commensurate with their licensure and training. The cost may vary according to mental health provider, but is generally less than a psychological evaluation, since psychological testing is not included.

- **Psychological Evaluation**

A psychological evaluation may be court ordered for the purpose of identifying the presence of a mental disorder, cognitive impairment, neurological indicators, and differential diagnosis. It will generally involve the use of psychological testing instruments. A report is provided to each party evaluated according to Florida Family Law Rules of Procedure 12.363(b) and the party's attorney, if represented, and Guardian ad Litem, if any. If a child is evaluated, the report is sent to both parents (unless otherwise directed by the court), their attorneys, and Guardian ad Litem. The court is provided notice that the report has been completed and that the appropriate parties and their counsel have received a copy. A psychological evaluation is generally conducted by practitioners who are licensed under F.S. 490. Forensic evaluations are not usually covered by insurance. Fees are usually charged per hour and may vary depending on the provider. Some university graduate schools have clinics in which students provide the testing and their reports are supervised by their licensed providers. The costs when student interns are involved are substantially less than most private providers. Completion of psychological evaluations may vary depending on the cooperation of the party and the availability of relevant records.

- **Psychiatric Evaluation**

A psychiatric evaluation may be court ordered to gain a neurological understanding of mental illness and the use of effective biological medications, and can only be conducted by practitioners who are licensed under F.S. 458. The evaluation will focus in more depth on both biological causes of mental health issues and biological interventions. The psychiatrist may answer specific questions concerning issues of competency, criminal responsibility, mitigating factors, or examination of youth issues concerning abuse, and best interest in respect to custody. A psychiatrist functioning within the legal system does not have a doctor-patient relationship as such, and this needs to be evident and documented at the earliest stage of the evaluation.

## **C. INVESTIGATIONS/PARENTING PLAN RECOMMENDATIONS**

- **Brief Evaluation**

The Brief Evaluation is defined as a broad survey conducted to expedite information to the court, the parents, and the parents' attorneys, and results in a report that is more descriptive than analytic, with a focus on the near term rather than the long-term needs of the family. It can consist of screenings, interviews and surveys of broad areas, and is expedited since the court is often dependent upon the report to continue the parties' legal proceedings. A Brief Evaluation is generally conducted by a licensed mental health provider who is trained in procedures to gather information about children's and parents' needs and

functioning. The cost of a Brief Evaluation can vary according to the private practice rate of the mental health professional and may be provided by court services for no fee by some circuits, if ordered by the court. This is the most expeditious way to obtain preliminary information for the court.

- **Focused Evaluation**

A Focused Evaluation, sometimes called Issue Specific Evaluation, addresses narrowly defined referral questions identified by the judge. These evaluations may be conducted by appropriately trained clinicians licensed under F.S. Chapters 490 or 491, depending on the specific information requested. The time required for a Focused Evaluation is dependent upon the referral question. Fees vary depending upon private practice rates of the mental health provider and at no charge if provided by court services staff. Fees may be greater if the Focused Evaluation includes psychological testing.

- **Home Study/Social Investigation**

A Home Study is designed to be an evaluation of the suitability of the home and environment in terms of safety and meeting the needs of the child, pursuant to Florida Statute 61.20. A Home Study may be included as part of a Social Investigation or it may be conducted independently as a stand-alone process. The period of time to complete the Home Study ranges from 45–75 days. They are generally conducted by a Mental Health Provider licensed under F.S. 490 or 491, or an individual as otherwise ordered by the court. The cost of a Home Study will typically be less than a Social Investigation, since the range of service is not as comprehensive. A report is filed with the court regarding the observations of the provider.

- **Social Investigation**

A Social Investigation is a more complete assessment than a Home Study in that its report also includes findings on child/parent relationships and the caregiving of the child in each home. A report is generated by impartial mental health professional, according to F.S. 61.20, regarding specific risks in each home and may include recommendations as to timesharing. A social investigation may or may not include psychological testing. If included, the psychological testing must be conducted by a licensed and trained professional. The report should be submitted within 45-75 days, dependent upon the circuit, or at least 30 days before trial. The costs range from \$650 - \$1800 for those circuits which have programs designed to service low-income litigants. If the service is provided by someone in the private sector, the fees generally range from \$150 to \$400 per hour, depending on the qualifications and experience of the investigator and if psychological testing is administered. A retainer is often required.

- **Parenting Plan Evaluation (fka Custody Evaluation) & Recommendation**

A parenting plan recommendation requires the greatest professional training and expertise and are usually the most expensive to administer. These evaluations involve psychological testing of both parents and each child; in-depth interviews of parents and children and observations of each child with each parent; interviews of significant others, others residing with the children, collaterals and character references; detailed study of legal issues as they pertain to the best interests of the children; as well as medical and

psychological issues including those addressed in previous reports. They are conducted by psychologists as per F.S. 61.20, although they may be administered by interns if appropriately supervised by a licensed professional. Reports to the court will include detailed finding and results of testing administered, and may include recommendations to the court regarding risks, services and treatment recommended, possible time-sharing schedules, and services indicated.

#### **D. ADDITIONAL MISCELLANEOUS SERVICES**

- **Counseling**

Parties may seek on their own, or the court may order various types of counseling to help them facilitate their parenting plan. Individual counseling may help a parent address unresolved personal issues that impede co-parenting and timesharing of the children; extended co-parenting counseling can address parental relationships, foster appropriate communication procedures and assist with time-sharing issues. Family counseling often includes both parents and children, who may invite significant others such as step-parents and grandparents. Alienation/reunification counseling will involve both parents and their children with a plan of action to reestablish the necessary relationships. The costs for counseling services will vary depending on the type of counseling sought and the qualifications of the provider. Parties should explore the possibility of counseling services provided through community agencies, their insurance provider, and employers, such as employee assistance programs.

- **Parenting Coordination**

Parenting coordinators serve as neutrals in a hybrid role including parent education, case management, conflict resolution and, depending upon the scope of the court order, arbitration. This process may be court ordered as per F.S. 61.125 when parents are engaged in high conflict, unable to implement their parenting plan, and appeal repeatedly to the court to address their non-legal child related issues. Parenting coordinators come from varied professional fields, such as mental health providers, attorneys and family mediators; have family mediation training; and additional training specifically in parenting coordination, including domestic violence and abuse. According to statute, they may assist the parties in the creation, modification, or implementation of their parenting plan. The term of the process is most often for two years, and can be re-ordered after that term expires. Parents pay per hour of service and are often charged a fee retainer.

- **Supervised Visitation**

The court may order supervised visitation in cases where the court is concerned about the safety of a child, if a child has been estranged or alienated from a parent, if there are cross allegations regarding a child's relationship with a parent, if there are issues regarding access to the child, or if an investigation is needed and the judge does not want to suspend all time between the child and parent until it is completed. For these cases, the supervised contact may last for a specific designated amount of time or until an investigation is completed and reviewed by the court. Supervised visitation observers have mental health training with education in the effects of high conflict on children and parents, attachment, domestic violence, abuse and sexual abuse. *Therapeutic supervised visitation* may be

ordered when a child has been alienated or estranged from a parent, has witnessed domestic violence, or is otherwise resistant to time with a parent. When access is the primary issue, *monitored exchanges* may be ordered, where the observations are specific to the transfers of the children from one parent to the other. The cost for supervised visitation or monitored exchanges may vary, depending on the type of service, duration and the selected provider. Some jurisdictions may have court or agency programs that provide these services, while others may refer to private professionals. Reports to the court may be generated by the programs including observations of the parent/child interactions, but will not include recommendations.

- **Guardian ad Litem/Child Advocate/Attorney ad Litem**

A Guardian ad Litem or Child Advocate may be court ordered to investigate the best interests of the child and speak on the child's behalf in court when there are safety issues or concerns. The Guardian ad Litem will generate a report to the court on findings, based upon interviews with the parents, the child and collateral sources. Most often attorneys and mental health professionals are utilized in this capacity; however, trained lay providers may also be appointed by the court. By contrast, an Attorney ad Litem is a legal professional appointed by the court to represent the legal rights and wishes of a child. Unlike the Guardian ad Litem, the Attorney ad Litem advocates for the child's desired position. If the child is not old enough to express his or her wishes, the Attorney ad Litem investigates and determines the best interests for the child and advocates that position. The Attorney ad Litem and Guardian ad Litem may charge a fee, the fee may be paid by the state or program, or the provider may work on a pro bono basis. These advocates generally provide a written report to the court of their findings and recommendations.

[Content extracted in part from the 2008 Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) Task Force work on Social Investigations and Parenting Plan Evaluations ("SIPPE Task Force"). Task Force Co-Chairs: Linda Fieldstone, M.Ed. and Debra Carter, Ph.D. Members: Ruth Angaran, LCSW, Michelle Artman-Smith, Esq., Jill Conti, Esq., Richard Dehmer, LMHC; Leslie Haswell, Esq., Hon. Mark Moseley, Myrna Neims, LCSW, and Robert Wernick, Ph.D.]

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