PUBLICATION UPDATE

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Florida Family Law Practice Manual

Publication 80643 Release 60 June 2008

HIGHLIGHTS

- **Statutory Guidelines: Court-Ordered Electronic Communication Between Parent and Child**

New Forms

Affidavit of Diligent Search for Legal Father [Fla. Fam. L. R. P. Form 12.913(c)]

Petition for Temporary Modification of Active Servicemember's Custody of Child [Fla. S. Ct. Approved Fam. L. Form 12.905(d)]

Recent Cases

Life Insurance As Security for Support [*Massam v. Massam* (Fla. 2d DCA)]

Modification of Order for Shared Parental Responsibility [*Watt v. Watt* (4th DCA)]

Disability Pensions [*Gaffney* (4th DCA)]

Statutory Guidelines: Court-Ordered Electronic Communication Between Parent and Child

Florida Statutes Section 61.13003, which took effect on October 1, 2007, sets forth factors a trial court must consider before ordering electronic communication between a parent and child as part of a visitation order. The statute establishes a rebuttable presumption that it is in a child's best interests to have telephone communication with his or her parent. In addition, Section 61.13003 expressly authorizes a court to set guidelines for electronic communication and order parents to share the costs of implementing electronic communication. The new statute also (1) mandates that electronic communication supplement, not replace, face-to-face visitation; (2) addresses modification of existing visitation arrangements by ordering electronic communication, and (3) discusses the effect of electronic visitation on child support [*see* 2007 Fla. Laws, ch. 2007-179, § 2, *creating* § 61.13003, Fla. Stat.]. Discussion of Section 61.13003 may be found in Chapter 8, *Custody of Minor Children.*

New Forms

The Florida Supreme Court has approved two family law forms and a revision to Florida Family Law Rule 12.070, which

governs service of process [*see* In re: Amendments to the Fla. Family Law Rules of Procedure, 962 So. 2d 302 (Fla. 2007)]. One of the new forms and the amendment to Rule 12.070 reflect legislation that allows constructive service on a legal father in a paternity action if another man is alleged to be the child's biological father and the legal father cannot be located [*see* 2007 Fla. Laws, ch. 2007-85, §§ 1, 7, amending §§ 49.011, 409.257, Fla. Stat.]. The other new form arises from legislation that allows only temporary modification of custody if the primary residential custodian is on active military duty [*see* 2007 Fla. Laws, ch. 2007-132, § 1, *creating* § 61.13002, Fla. Stat.].

The constructive service form is entitled "Affidavit of Diligent Search for Legal Father" [*see* Fla. Fam. L. R. P. Form 12.913(c)]. It is set forth in Volume 4 of this set. Detailed discussion of the statutory and procedural rule amendments regarding service by publication on a legal father is set forth in Chapter 5, *Service of Process and Defaults*.

The modification form, which is entitled "Petition for Temporary Modification of Active Servicemember's Custody of Child" [*see* Fla. S. Ct. Approved Fam. L. Form 12.905(d)], may be found in Volume 4 of this set, and pertinent discussion of the underlying legislation may be found in Chapter 15, *Modification*.

Recent Cases

• **Life Insurance As Security for Support** —-This release includes coverage of a recent case, *Massam v. Massam* [2008 Fla. App. LEXIS 727, 33 Fla. L. Weekly D270, — So. 2d — (Fla. 2d DCA Jan. 23, 2008)], in which the "special circumstances" under which life insurance may be ordered as security for alimony has been enlarged to include circumstances in which it is likely the obligor will default on his or her support obligation [*see* Massam v. Massam, 2008 Fla. App. LEXIS 727, 33 Fla. L. Weekly D270, — So. 2d — (Fla. 2d DCA Jan. 23, 2008)]. In addition, *Massam*'s discussion about the effect of an existing life insurance policy possessed by the obligor on an order to secure alimony is covered [*see* Massam v. Massam, 2008 Fla. App. LEXIS 727, 33 Fla. L. Weekly D270, — So. 2d — (Fla. 2d DCA Jan. 23, 2008); *see also* ch. 10, *Spousal Support*].

• **Modification of Order for Shared Parental Responsibility**——According to a significant Fourth District opinion that is covered in this release, if parents reach a postjudgment impasse in decisionmaking regarding an aspect of their child's welfare, such as what school the child will attend, the impasse constitutes a substantial change in circumstances and one of the parents may be appointed to be the ultimate decisionmaker concerning that issue [*see* Watt v. Watt, 966 So. 2d 455 (Fla. 4th DCA 2007); *see also* § 61.13(2)(b)2.a., Fla. Stat. (court may grant one party ultimate responsibility over specific aspects of child's welfare)]. Discussion of the Fourth District's decision may be found in Chapters 8, *Custody of Minor Children*, and 15, *Modification*. Another recent case covered in this release and concerning modification of shared parental responsibility is *Lewandowski v. Langston* [969 So. 2d 1165 (Fla. 5th DCA 2007)]. In that case, the Fifth District held that a custodial mother's remarriage to a man who had been convicted of molesting his daughter was a substantial change in circumstances that could warrant modification of custody, depending on the child's best interests [*see* Lewandowski v. Langston, 969 So. 2d 1165 (Fla. 5th DCA 2007); *see also* ch. 15, *Modification*].

In addition to covering recent significant cases that address modification of shared

parental responsibility orders, this release adds the following subdivisions to the discussion in Chapter 8, to facilitate a practitioner's search for information regarding modification based on these grounds: (1) parental decisionmaking, (2) time with child, (3) convicted or incarcerated parent, and (4) electronic contact with child.

- **Disability Pensions—** This release contains revision of Chapter 10B, *Equitable Distribution of Marital Assets*, to more thoroughly discuss the treatment of disability benefits paid by the military in dissolution of marriage actions. More specifically, the chapter now discusses the rights of a nonmilitary spouse who is awarded a portion of military retirement benefits in equitable distribution and who later becomes disentitled to receive such benefits due to the military spouse's election to receive nondivisible military disability payments in lieu of the divisible retirement benefits [*see* Mansell v. Mansell, 490 U.S. 581, 109 S. Ct. 2023, 104 L. Ed. 2d 675 (1989) (under USFSPA [10 U.S.C. § 1408(a)(4)(C)], military disability benefits are not divisible by state courts)]. The chapter incorporates a recent Second District case, *Blann v. Blann* [971 So. 2d 135 (Fla. 1st DCA 2007)], and an earlier First District decision, *Janovic v. Janovic* [814 So. 2d 1096, 1099 (Fla. 1st DCA 2002)]. Fundamentally, *Blann* and *Janovic* elaborate on an earlier-established principle that the nonmilitary spouse has recourse if (1) the final judgment contains a provision that he or she will be indemnified if the military spouse takes action that defeats the nonmilitary spouse's right to receive military retirement pay, and (2) the indemnification is not required to be paid from disability funds [*see* Abernethy v. Fishkin, 699 So. 2d 235 (Fla. 1997)]. Under *Blann* and *Janovic*, a right to indemnity may be implied from the nonmilitary spouse's waiver of alimony in the parties' agreement or the trial court's award of a percentage of the military retirement pension in the final judgment [*see* Blann v. Blann, 971 So. 2d 135 (Fla. 1st DCA 2007); Janovic v. Janovic, 814 So. 2d 1096 (Fla. 1st DCA 2002)]. *Janovic* also discusses what evidence is sufficient to show a lack of reliance on disability funds for indemnification [*see* Janovic v. Janovic, 814 So. 2d 1096 (Fla. 1st DCA 2002); *see also* ch. 10B, *Equitable Distribution of Marital Assets*].

The discussion of disability pensions in Chapter 10B has also been revised to reflect case law that requires examination of the underlying purpose of a disability pension to determine whether any part of the pension may be a marital asset subject to equitable distribution. Such examination is necessary because under the case law-approved "analytical approach" to categorizing disability pensions, such a pension is a marital asset to the extent it is paid to accomplish purposes like retirement compensation instead of compensation for pain and suffering, disability, and disfigurement associated with a disability [*see* Gaffney v. Gaffney, 965 So. 2d 1217 (Fla. 4th DCA 2007); *see also* ch. 10B, *Equitable Distribution of Marital Assets*].

- **Relocation**—-By statute enacted in 2006, a parent who has primary residential custody of a child and who desires to relocate more than 50 miles from his or her principal place of residence must obtain an agreement or court order [*see* § 61.13001(2)-(3), Fla. Stat.; *see also* 2006 Fla. Laws, ch. 2006-245, § 2]. There are not many district court opinions that have applied the 2006 relocation statute. However, several such appellate opinions do exist. Of those, two have held that allowing relocation was improper under the statutory relocation factors set forth in the statute [*see* Paskiewicz v. Paskiewicz, 967 So. 2d

277 (Fla. 3d DCA 2007); Muller v. Muller, 964 So. 2d 732 (Fla. 3d DCA 2007)]. One has held that allowing relocation was proper pursuant to the statutory factors. However, in that case, the appeals court also observed that the parties had presented limited evidence on the issue and affirmance was required under the abuse-of-discretion standard of review [*see* Norris v. Heckerman, 2008 Fla. App. LEXIS 820, — Fla. L. Weekly —, — So. 2d — (Fla. 1st DCA January 28, 2008)]. This release contains coverage of these decisions in Chapter 8, *Custody of Minor Children*, and 15, *Modification*.

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Florida Family Law Practice Manual

Publication 80643 Release 60 June 2008

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