PUBLICATION UPDATE

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Florida Family Law Practice Manual

Publication 80643 Release 74 July 2015

HIGHLIGHTS

New Procedural Rules: Social Investigations

Procedural Rule Amendments: Parenting Coordinators

New and Revised Family Law Forms:

- Parenting Coordinators
- Stalking Injunctions

New Procedural Rules

Social Investigations

Discussion of a new procedural rule addressing social investigations is added to Chapter 8, *Parental Responsibility and Timesharing*, in this release. New Florida Family Law Rule of Procedure 12.364 supplements Florida Statutes Section 61.20, which authorizes social investigations and studies. According to the Florida Supreme Court, new Rule 12.364 does the following [*see In re* Amendments to the Fla. Family Law Rules of Procedure, 154 So. 3d 301 (Fla. 2014)]:

(1) Provides additional requirements and a process for appointment of a social investigator.

(2) Sets forth general requirements applicable to, and the required content of, an order for social investigation.

(3) Governs a social investigator's written study.

(4) Allows a party to file a motion for an additional social investigation.

(5) Provides for production of a social investigator's file to another investigator for review and testimony by the other investigator.

The text of the new rule is set forth in Volume 3 of this publication.

Experts Who Evaluate Minor Children

Throughout the set, discussion of experts appointed to examine children has been revised as necessary to reflect amendments to Florida Family Law Rule of Procedure 12.363 that were adopted to differentiate between such experts and court-appointed

social investigators, who are governed by Florida Statutes Section 61.20 and new Florida Family Law Rule of Procedure Rule 12.364. Amended Rule 12.363 is set forth in Volume 3.

Minimization of Sensitive Information in Filed Documents

Some family law procedural rules expressly require compliance with Florida Rule of Judicial Administration 2.425, which (1) identifies certain information as "sensitive"; (2) mandates that it be stated only in designated, truncated form; (3) sets forth exceptions; and (4) authorizes sanctions [*see* Fla. R. Jud. Admin. 2.425]. A new family law rule broadly requires that every pleading or other document filed in a family law proceeding comply with Rule 2.425 [*see* Fla. Fam. L. R. P. 12.012]. The new rule is cited-to in various places throughout the set and is set forth in Volume 3.

Procedural Rule Amendments

Parenting Coordinators

In this release, Chapter 8, Section 8.04A regarding parenting coordinators has been updated with amendments to the governing procedural rule, Florida Family Law Rule of Procedure 12.742 [*see In re*: Amendments to the Fla. Family Law Rules of Procedure; New Rules for Qualified & Court-Appointed Parenting Coordinators, 142 So. 3d 831 (Fla. 2014) (adopting amendments); *see also* Fla. Fam. L. R. P. 12.742]. The amendments to Rule 12.742 that have been incorporated into Section 8.04A in this release either supplement or clarify already-existing statutory provisions. Many of the amendments concern a parenting coordinator's communications with the court in emergency and nonemergency circumstances. In addition, the amendments add a new provision that defines a "parenting coordination session." This new provision is notable because it helps clarify when communications among the parties and the parenting coordinator are confidential [*see* Fla. Stat. § 61.125(7) (communications among parties and parenting coordinator during parenting coordination sessions are confidential)].

In addition to being updated with the rule amendments, Section 8.04A has been reorganized to differentiate between (1) the purpose of parenting coordination and general role of a parenting coordinator, and (2) the specific authority possessed by a parenting coordinator. Further, discussion about the minimum qualifications for parenting coordinators who are named by courts to serve has been separated from discussion about the circumstances in which potential or current parenting coordinators are disqualified from serving. A new subsection concerning information that a parenting coordinator must convey to the parties and their counsel at the first session has been added to Section 8.04A, and information about a parenting coordinator's term of service has been consolidated into one subsection, which cross-refers to pertinent discussion of the bases for involuntary termination of service by the court.

The text of amended Rule 12.742 appears in Volume 3 of this publication, along with Committee Notes accompanying the amendments. Also, new and amended parenting coordination forms are added to Volume 4 in this release [see *New and Revised Family Law Forms, Parenting Coordinators*, below].

Finally, coverage of ethical rules governing parenting coordinators has been added throughout Section 8.04A. According to the Florida Supreme Court in its opinion adopting the ethics rules, they explain the role of parenting coordinators and reinforce

the concepts of communication, negotiation, and facilitation on which parenting coordination is based [*see In re*: Amendments to the Fla. Family Law Rules of Procedure; New Rules for Qualified & Court-Appointed Parenting Coordinators, 142 So. 3d 831 (Fla. 2014); *see also* Fla. R. Qualified and Ct. App'ted Parenting Coordinators 15.000–15.210].

Evaluation of Minor Children

Chapter 8 has also been updated with amendments to the rule governing experts appointed to examine, evaluate, test, or interview minor children under Florida Family Law Rule of Procedure 12.363. The amendments help differentiate such expert evaluations of children from broader social investigations of children and their families [*see* Fla. Fam. L. R. P. 12.363(f); *compare* Fla. Fam. L. R. P. 12.363 *with* Fla. Fam. L. R. P. 12.364]. In addition, the amendments effect the following [*see In re* Amendments to the Fla. Family Law Rules of Procedure, 154 So. 3d 301 (Fla. 2014)]:

(1) Replace the term "licensed mental health professional" in the rule with the term "expert," so the rule clearly refers to the appointment of any expert and not solely mental health experts.

(2) Add a provision that requires determination by the court that an expert is needed, before the court appoints an expert based on lack of agreement by the parties as to which particular expert should examine the child.

(3) Change requirements concerning provision of experts' reports and notices of communication with courts to require that such reports and notices must be provided to the parties rather than to the parties or their attorneys.

(4) Add a provision that requires an expert's report to be properly admitted into evidence and considered by the court before the report is made part of the court file.

Amended Rule 12.363 is set forth in its entirety in Volume 3.

General Magistrates

This release adds amended Florida Family Law Rule of Procedure 12.490 and its accompanying 2015 Committee Notes to Volume 3. The amended rule requires that the name of a general magistrate be stated in an order of referral. According to the Florida Supreme Court, the amendment was desirable because courts in some jurisdictions have entered orders of referral to any general magistrate within those jurisdictions, instead of naming particular magistrates as is required to allow parties to timely determine whether they should object [*see In re* Amendments to the Fla. Family Law Rules of Procedure, 154 So. 3d 301 (Fla. 2014); *see also* Fla. Fam. L. R. P. 12.200(a)(1)(P) (raising objections at case management conferences); Fla. Fam. L. R. P. Form 12.920(b), *Order of Referral to General Magistrate* (requiring that specific general magistrate be named)].

New and Revised Family Law Forms

Parenting Coordinators

Two new mandatory forms for use in parenting coordination proceedings are added to Volume 4 in this release. The first is a mandatory form for a parenting coordinator to use in reporting an emergency to the court [*see* Fla. Fam. L. R. P. Form 12.984(c)]. The second new mandatory form is for use by a parenting coordinator in requesting a status conference [*see* Fla. Fam. L. R. P. Form 12.984(d)].

Two amended parenting coordination forms are also included in this release and

replace the prior versions of each in Volume 4. One of the amended forms is a mandatory form of an order of referral to parenting coordination [*see* Fla. Fam. L. R. P. Forms 12.984(a)]. The other is a mandatory form of response by a prospective parenting coordinator to an order of referral [*see* Fla. Fam. L. R. P. Forms 12.984(b); *see also In re*: Amendments to the Fla. Family Law Rules of Procedure; New Rules for Qualified & Court-Appointed Parenting Coordinators, 142 So. 3d 831 (Fla. 2014) (adopting new forms and amendments to forms)].

Financial Affidavits

The mandatory financial affidavit forms have both been amended to instruct that if any listed expense amount constitutes an estimate of what the party expects it will be rather than the actual current amount of the expense, then the word "estimate" should be expressly written next to the amount stated in the affidavit. In addition, minor changes have been made to both affidavit forms to clarify insurance expense amounts and subtotals [*see* Fla. Fam. L. R. P. Forms 12.902(b) (short-form financial affidavit), 12.902(c) (long-form affidavit)]. Both of the amended forms are substituted for their predecessors in Volume 4. Finally, Florida Family Law Rules of Procedure Form 12.901(a), the petition for simplified dissolution of marriage, has been amended to remove a reference to filing a financial affidavit because parties in simplified dissolution proceedings are not required to file a financial affidavit [*see In re* Amendments to the Fla. Family Law Rules of Procedure, 154 So. 3d 301 (Fla. 2014) (adopting amendments to all three forms)]. The amended form has been incorporated into Volume 4 in this release.

Stalking Injunctions

This release contains two amended family law forms concerning injunctions for protection against stalking. First, a form of order setting a hearing on a petition for stalking injunction has been amended to better reflect findings that a trial court must make if it denies an *ex parte* temporary injunction [*see* Fla. Sup. Ct. Approved Fam. L. Form 12.980(b)(1)]. Second, a form of temporary injunction against stalking has been revised to eliminate a provision that required the respondent to participate in treatment, intervention, or counseling services at his or her own cost [*see* Fla. Sup. Ct. Approved Fam. L. Form 12.980(u)]. The reasons for the amendments are discussed in the Florida Supreme Court's opinion adopting them [*see In re*: Amendments to Fla. Supreme Court Approved Family Law Forms, 142 So. 3d 856 (Fla. 2014)]. The amended forms replace their predecessors in Volume 4 of this publication.

Case Law

Alimony

• The Fourth District Court of Appeals held that a trial court erred in not imputing employment income to a wife when determining alimony in the dissolution of the parties' 17-year-old marriage. The wife was 59, had been employed during part of the marriage, and wanted to continue a retirement that she had commenced at the urging of the husband after he was laid-off his job and received generous after-tax severance pay. Substantial, competent evidence showed that the wife was qualified for available jobs, and the trial court should have imputed income to her based on her work history and qualifications instead of considering only her reliance on the husband's promise that she would never have to work again. The Fourth District also held that the trial court erred in not including potential income from the sale of a home owned by the parties, as well as income

derived from the spouses' respective nonmarital IRAs and bank accounts, in determining alimony [*see* Adelberg v. Adelberg, 142 So. 3d 895 (Fla. 4th DCA 2014); *see also* ch. 10, *Spousal Support*].

• The Second District Court of Appeal reversed and remanded an award of permanent alimony to the wife of a 12-year, moderate-term marriage because the trial court had not based the award on clear and convincing evidence. Instead, the trial court's findings appeared to support an award of durational alimony [*see* Valente v. Barion, 146 So. 3d 1247 (Fla. 2d DCA 2014); *see also* Fla. Stat. § 61.08(7) (durational alimony may be awarded if permanent alimony is inappropriate), (8) (permanent alimony may be awarded to the spouse of a moderate-duration marriage if the award is appropriate based on clear and convincing evidence)].

• The Second District Court of Appeal held that a marital settlement agreement ("MSA") requiring a husband to pay alimony to his wife for her lifetime, and also providing that the alimony was to be nonmodifiable, unambiguously obligated the husband to continue paying alimony after the wife's remarriage. In so holding, the district court rejected the husband's argument that the MSA's lack of an express provision addressing remarriage rendered the agreement ambiguous.

Attorneys' Fees

• In a case involving counsel's attaching a motion for sanctions under Florida Statutes Section 57.105 to an e-mail without including any information required pursuant to Florida Rule of Judicial Administration 2.516 for service of a motion by e-mail, the Fourth District Court of Appeal held that the purported service did not strictly comply with Florida Statutes Section 57.105's requirement of service. Therefore, the Fourth District held, the motion for fees was appropriately denied by the trial court [see Matte v. Caplan, 140 So. 3d 686 (Fla. 4th DCA 2014); *see also* ch. 17, *Attorney's Fees*].

Civil Procedure

• ***Stays***—A trial court should stay a suit that is brought in the court's general civil division in favor of a previously filed family law action if the actions involve the same parties and the same or substantially similar issues [*see* Flynn v. Flynn, 132 So. 3d 904 (Fla. 2d DCA 2014); *see also* ch. 4, *Initiating the Dissolution*].

• ***Venue***—The discussion of transfer of venue has been expanded and updated in this release. The requirement that a respondent show substantial inconvenience or undue burden to justify transfer under the transfer statute, Florida Statutes Section 47.122, is set forth. Also, a recent case is discussed in which the appeals court clarified that as a threshold matter apart from questions of convenience, Section 47.122 only permits transfer to a court where the action could have been properly brought [*see* McGee v. McGee, 145 So. 3d 955 (Fla. 1st DCA 2014)]. In a dissolution of marriage case, therefore, the county where the parties last resided with an intent to remain married is the only county to where the action may be transferred under Section 47.122 [*see* McGee v. McGee, 145 So. 3d 955 (Fla. 1st DCA 2014); *see also* Carroll v. Carroll, 341 So. 2d 771 (Fla. 1977) (trial court must look to single county where intact marriage was last evidenced by continuing union of partners who intended to remain married indefinitely if not permanently)]. Also in this release, the form of motion to transfer and the form affidavit in support of motion to transfer have both been rewritten to set forth provisions specifically for use in dissolution of marriage cases. The form of motion has additionally

been updated with regard to (1) the types of service included in the certificate of service, (2) the information about the party or his or her attorney on whom service was made, and (3) the information about the party or his or her counsel who are filing and serving the motion. A mandatory statement to be completed by any nonlawyer who assists in the completion of the form has also been added.

Enforcement

• If, as a matter of international comity, a Florida trial court is enforcing a temporary assets-freeze ordered by a court of a foreign country in divorce proceedings, the Florida court may not require a bond or increase the bond amount ordered by the foreign court. Instead, the Florida court should require the party requesting the bond to seek relief in the primary judicial forum—the foreign court [*see* Cermesoni v. Maneiro, 144 So. 3d 627 (Fla. 3d DCA 2014); *see also* ch. 14, *Enforcement*].

Equitable Distribution

• In a case illustrating that an unequal division of marital assets may be justified based on disparate use of marital funds to pay attorneys' fees, the Fifth District held that a trial court erred in failing to credit a husband in equitable distribution with half of the marital funds that the wife had used to pay her attorneys' fees while the dissolution action was pending. The husband had paid his attorneys' fees from nonmarital funds, and the wife had used a marital account to pay her attorneys' fees. The husband owed the wife an equalizing payment as part of the trial court's equitable distribution scheme, and the court had denied the husband's request for a setoff against the equalizing payment to reflect the wife's use of marital funds to pay her attorneys' fees. In reversing the trial court's denial of the setoff, the district court noted that if the wife were in need of assistance with her attorneys' fees after she received the equitable distribution equalizing payment, then she could file motion for fees pursuant to Florida Statutes Section 61.16 [*see* Fairchild v. Fairchild, 135 So. 3d 537 (Fla. 5th DCA 2014); *see also* ch. 10B, *Equitable Distribution of Marital Assets*].

• A spouse who is properly charged with the value of marital funds used by him or her for a purpose unrelated to the marriage may not also be charged with an amount equal to lost interest or earnings on the funds, unless adequate evidence of the value of the lost earnings is presented. Further, even if sufficient evidence is put on regarding the value of the lost earnings, it is questionable whether lost earnings may properly be included in equitable distribution [*see* McNorton v. McNorton, 135 So. 3d 482 (Fla. 2d DCA 2014)].

Parental Responsibility and Timesharing

• Acknowledging that its interpretation of the relocation statute might be "troubling," the First District Court of Appeal nevertheless held that the plain language of the statute rendered it inapplicable to dissolution of marriage proceedings that were initiated by a parent-spouse one month after the other spouse had unilaterally relocated with the parties' children. That is, the First District held that the parent who relocated was not required to seek the other parent's agreement to the relocation or a court order permitting the relocation, as contemplated by the relocation statute, and therefore the relocated parent could not be ordered to return the children under the auspices of the statute. The First District discussed possible recourse for the nonrelocated husband in dicta [*see* Rolison v. Rolison, 144 So. 3d 610 (Fla. 1st DCA 2014) (interpreting Florida Statutes Section 61.13001); *see also* ch. 8, *Parental Respon-*

sibility and Timesharing].

• Discussion concerning the proof of harm required to justify a trial court's restriction of parental responsibility or timesharing based on a parent's religion has been expanded through coverage of a number of cases, including *Pierson v. Pierson* [143 So. 3d 1201 (Fla. 1st DCA 2014)], in which the court ruled that a court-ordered restriction on a parent's ability to expose the parties' child to the parent's religious beliefs will be reversed unless it is supported by clear, affirmative evidence that the religious beliefs in question would be harmful to the child.

• A Florida trial court properly determined that it possessed jurisdiction to decide custody issues under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) because a tribal court did not substantially conform with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) in making a prior temporary custody determination. The tribal court's custody determination was not in substantial compliance with the UCCJEA because (1) the father did not receive notice of the reason for the tribal court proceedings and he had not submitted himself to the court's jurisdiction; and (2) at the hearing, the father was not allowed to be accompanied by his attorney, was not provided with an interpreter, and was unable to understand the proceedings, which were conducted largely in the Miccosukee language [*see* Billie v. Stier, 141 So. 3d 584 (Fla. 3d DCA 2014); *see also* ch. 8, *Parental Responsibility and Timesharing*].

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Publication 80643 Release 74 July 2015

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