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# Florida Family Law Practice Manual

Publication 80643 Release 82 April 2019

## HIGHLIGHTS

- Rule Amendments—(1) Computation of Time Following Service by Email, and (2) Determining First Day of Time Period That Is Equal to Seven Days or More
- New Form—Notice of Action for Termination of Parental Rights and Stepparent Adoption
- United States Supreme Court—Constitutionality of Statute That Automatically Voids Former Spouse as Beneficiary
- Florida Supreme Court—(1) Biological Father's Standing to Rebut Common-Law Presumption of Legitimacy; (2) Reaffirmation of *Frye*

### Rule Amendments

***Computation of Time***

Amendments to Rules of Judicial Administration 2.514 and 2.516 reduce the amount of time to take action following service by email. Previously, five extra days were allowed, the same as action following service by postal mail. Now, if service is by email, action must be taken by the deadline that is otherwise applicable under the computation rules set forth in Rule 2.514, with no five days added due to the method of mailing [*see* In re Amendments to the Fla. Rules of Civ. Procedure, 257 So. 3d 66 (Fla. 2018) (adopting amendments to Florida Rules of Judicial Administration 2.514(b) and 2.516(b)(1)(D) to delete provisions allowing five extra days to take action following service by email)].

Another amendment to Rule 2.514 revises the definition of the first day of a time period, for purposes of computing time periods of seven days or more [*see* In re Amendments to the Fla. Rules of Civ. Procedure, 257 So. 3d 66 (Fla. 2018) (adopting amendment to Florida Rule of Judicial Administration 2.514(a)(1)(A))].

The amendments to Rules 2.514 and 2.516 are reflected, as appropriate, in Chapters 5, 6, and 7, and other chapters. Also, a more comprehensive discussion about

computation of time has been added to Chapters 5, 6, and 7.

## New Form

### *Stepparent Adoption*

The Florida Supreme Court has adopted a new form for use in adoption cases involving persons whose consent to adoption is required but who cannot be located, and as to whom constructive service must therefore be obtained [*see* Fla. Sup. Ct. Approved Fam. L. Form 12.913(a)(3), *Notice of Action for Termination of Parental Rights and Stepparent Adoption*; *see also* Fla. Stat. § 63.088(6)]. The new form is set forth in its entirety in Volume 4, and is referenced in Chapter 18, *Adoption*.

## United States Supreme Court

### *Statutory Revocation of Former Spouse as Beneficiary of Life Insurance Policy*

The United States Supreme Court held that a Minnesota statute providing for automatic revocation of a spouse's designation as beneficiary of the other spouse's life insurance policy on a later dissolution of their marriage did not violate the Contracts Clause of the United States Constitution. Florida Statutes Section 732.703 is substantively similar to the Minnesota statute at issue in the United States Supreme Court case, with regard to the features that the Supreme Court majority held prevented the Minnesota statute from violating the Contracts Clause [*see* Sveen v. Melin, ___ U.S. ___, 138 S. Ct. 1815, 201 L. Ed. 2d 180 (2018); *see also* Fla. Stat. § 732.703(4)(b)]. The Supreme Court's decision is covered in Chapters 10B, *Equitable Distribution of Marital Assets*, and 11, *Marital Settlement Agreements Negotiated by the Parties*

## Florida Supreme Court

### *Presumption of Legitimacy*

In *Simmonds v. Perkins* [247 So. 3d 397 (Fla. 2018)], the Florida Supreme Court resolved a conflict among the district courts of appeal regarding whether a biological father possesses standing to rebut the common-law presumption of legitimacy. According to the Florida Supreme Court, the presumption of legitimacy does not absolutely bar an action brought by a biological father to establish his parental rights. Rather, a biological father possesses standing to rebut the presumption of legitimacy if he has manifested a substantial and continuing concern for the welfare of the child. According to the Supreme Court in *Simmonds*, after a biological father's standing is established under this test, then the presumption of legitimacy becomes "central to the case" and the principles established by the Florida Supreme Court in *Dep't of Health & Rehabilitative Servs. v. Privette* [617 So. 2d 305, 307 (Fla. 1993)] become operational. The *Simmonds* Court summarized the application of *Privette* as follows: the party seeking to establish paternity in a person other than the mother's husband must establish by clear and convincing evidence that overcoming the presumption of legitimacy and having the mother's husband replaced as the legal father is the outcome most consistent with reason, primarily because it would promote the child's best interests [*see* Simmonds v. Perkins, 247 So. 3d 397, 402 (Fla. 2018) (discussing *Dep't of Health & Rehabilitative Servs. v. Privette* [617 So. 2d 305, 308–309 (Fla. 1993)])]. *Simmonds* is discussed in detail in Chapter 9, *Child Support*.

### *Reaffirmation of Frye*

The Florida Supreme Court has held that the Florida Legislature's adoption of the flexible *Daubert* standard for admission of expert testimony unconstitutionally infringed on the Supreme Court's rulemaking authority [*see* 2013 Fla. Laws, ch. 2013-

107, § 1, amending Fla. Stat. § 90.702]. The Supreme Court reaffirmed the stricter *Frye* standard as the test to be applied by Florida trial courts in determining whether to admit expert testimony. The Supreme Court characterized the *Daubert* standard as requiring trial courts to consider the reliability of experts' principles and methodology but not their conclusions, in contrast to the *Frye* standard, under which expert testimony must be deduced from generally accepted scientific principles [*see* DeLisle v. Crane Co., 258 So. 3d 1219 (Fla. 2018); *see also* Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993); Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)].

The Florida Supreme Court's decision and the *Frye* standard are discussed in Chapters 8, *Parental Responsibility and Timesharing*, and 10B, *Equitable Distribution of Marital Assets*.

## Florida District Courts

### *Relocation Statute*

The Fourth District has ruled that the relocation statute applies to an involuntary relocation. Thus, in a dissolution of marriage case involving a wife's request for permission to relocate with the parties' child to the Philippines if the wife's request for United States citizenship were denied, the trial court was not authorized to grant the relocation without conducting the inquiry required by the relocation statute. The involuntary nature of the wife's relocation, if it occurred, did not affect the applicability of the statute [*see* Castleman v. Bicaldo, 248 So. 3d 1181, 1182 (Fla. 4th DCA 2018)].

In another Fourth District decision, the court differentiated the relocation statute from the modification statute, ruling that a trial court considering whether to modify an existing timesharing schedule to allow relocation need not review the proposed relocation under the modification statute, which requires a showing of a material and substantial change in circumstances. Instead, the court must review the request only under the relocation statute, which does not require a substantial change in circumstances but recognizes that a relocation is inherently a disruption in the child's life and requires the court to ensure frequent, continuing, and meaningful contact between the child and the nonrelocating parent [*see* Saponara v. Saponara, ___ So. 3d ___, 2018 Fla. App. LEXIS 16681, 43 Fla. L. Weekly D2592 (Fla. 4th DCA 2018) (comparing Florida Statutes Sections 61.13(3) with 61.13001(7)(c))].

Both relocation cases are discussed in Chapter 8, *Parental Responsibility and Timesharing.*

### *Use of Contempt to Enforce Performance of Act Required to Effectuate Property Settlement*

The Fourth District Court of Appeal reaffirmed the use of contempt to enforce performance of an act necessary to effectuate a property settlement agreement, if the act does not constitute the payment of money [*see* Williams v. Williams, 251 So. 3d 926, 928 (Fla. 4th DCA 2018)]. In reaffirming the rule, the Fourth District effectively aligned itself with the Second District Court of Appeal, which in 2008 certified conflict with the Fifth District's decision in *La Roche v. La Roche* [*see* Roth v. Roth, 973 So. 2d 580, 592 (Fla. 2d DCA 2008) (certifying conflict with *La Roche v. La Roche* [662 So. 2d 1018 (Fla. 5th DCA 1995)])]. The Fourth District's ruling also conflicts with the most recent opinion of the Third District, which like *La Roche*, indicates that contempt may not be used to enforce a property settlement regardless of

the specific term that is sought to be enforced [*see* Hine v. Hine, 558 So. 2d 496, 498 (Fla. 3d DCA 1990)]. Discussion of contempt and these cases may be found in Chapter 14, *Enforcement*.

The First District has clarified the test for determining challenges by natural parents to requests for temporary custody by extended family members brought under Florida Statutes Chapter 751. Specifically, the First District ruled that the common law parental-preference rule must be applied in such cases. Under the common law rule, a trial court must defer to the natural parent unless he or she is shown to be unfit, which is the statutory standard for temporary custody by an extended family member [*see* Fla. Stat. § 751.05(3)]. However, the common-law rule adds the following ground on which a third party may prevail in a custody dispute with a natural parent: the existence of a substantial threat of significant and demonstrable harm to the child [*see, e.g.*, LiFleur v. Webster, 138 So. 3d 570, 574 (Fla. 3d DCA 2014)]. Also, the First District ruled that the type of detriment that will allow a grant of temporary custody to an extended family member in a relocation case is more serious than the normal discomfort felt by a child who is moved from a familiar environment; instead, the detriment must be a longer-term adverse effect that transcends the normal adjustment period in such cases [*see* Morris v. Morris, 255 So. 3d 908, 910 (Fla. 1st DCA 2018); *see also* Ch. 8, *Parental Responsibility and Timesharing*].

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