PUBLICATION UPDATE

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Florida Family Law Practice Manual

Publication 80643 Release 83 September 2019

HIGHLIGHTS

Legislation

- *Parenting Coordinators*
- *Uniform Interstate Depositions and Discovery Act (UIDDA)*

Rule Amendments

- *Testimony and Attendance of Minor Child*

Cases

- **Florida Supreme Court**: *Standard for Admission of Expert Testimony*

Legislation

• *Parenting Coordinators*

Amendments to the statute governing parenting coordinators add (1) definitions of terms used in the statute; and (2) provisions pertaining to the training, qualifications, ethics, and discipline of parenting coordinators [*see* 2019 Fla. Laws ch. 2019-98, § 3, amending Fla. Stat. § 61.125; *see also* 8, *Parental Responsibility and Timesharing*].

• *Uniform Interstate Depositions and Discovery Act (UIDDA)*

The Uniform Interstate Depositions and Discovery Act (UIDDA) has been enacted in Florida and applies to requests for discovery in proceedings that are pending or commenced on or after July 1, 2019 [*see* 2019 Fla. Laws ch. 2019-13, §§ 1–3, amending Fla. Stat. § 92.251]. Under the UIDDA in Florida, and in the 41 other states and U.S. territories that have adopted the Act, attorneys or parties who seek discovery in foreign states or territories may file subpoenas with local court clerks in those jurisdictions and through the simplified UIDDA process, obtain domesticated civil subpoenas for discovery

in those jurisdictions [*see, e.g.,* Fla. Stat. § 92.251(3)(a)–(b)]. On issuance of such a domesticated subpoena, the out-of-state attorney or party is not subject to the jurisdiction of the local courts unless (1) the subpoena is challenged by the resident of the foreign jurisdiction who receives the subpoena, or (2) the out-of-state attorney or party seeks to modify or enforce the subpoena [*see* Fla. Sen. Jud. Com., *CS/SB 7006—Uniform Interstate Depositions and Discovery Act* (bill summary)]. The laws and rules of the foreign jurisdiction in which the subpoena is issued under the UIDDA govern service of the subpoena, discovery under the subpoena, and any application to a local court to quash, enforce, or modify the subpoena [*see, e.g.,* Fla. Stat. §§ 92.251(4)–(6)].

Rule Amendments

Testimony and Attendance of Minor Child

The Florida Supreme Court has adopted amendments to the family law procedural rule that concerns (1) the testimony of minor children at depositions and trial, and (2) the attendance of minor children at family law proceedings for purposes other than providing testimony. The amended rule narrows the category of minor children whose attendance at proceedings requires a court order based on good cause. More specifically, the amended rule applies only to minor children who are witnesses, potential witnesses, or related to the cases. This constitutes a significant change from the prior version of the rule, which also applied to children who were unrelated to the cases. However, although the amended rule narrows the category of children it governs, it expands the types of proceedings it affects, requiring court orders not only as to depositions and hearings, but also as to "any family law proceedings" [*see* Fla. Fam. L. R. P. 12.407(a)]. Finally, unlike the previous rule, there is no emergency exception under the amended rule. Thus, any child who qualifies as a witness, potential witness, or is related to the case may not testify, be subpoenaed, or be brought to a family law proceeding without court permission, regardless of whether an emergency exists [*see* Fla. Fam. L. R. P. 12.407]. The amendments, which took effect on December 13, 2018 [*see* In re Amendments to Fla. Family Law Rule of Procedure 12.407, 259 So. 3d 752 (Fla. 2018)], are reflected in Chapters 7, 8, and 13.

Cases

• **Florida Supreme Court:** *Standard for Admission of Expert Testimony*

The Florida Supreme Court has adopted Evidence Code provisions that codify the flexible *Daubert* standard for admission of expert testimony [*see* In re Amendments to the Fla. Evidence Code, 44 Fla. L. Weekly S 170, — So. 2d —, 2019 Fla. LEXIS 818 (Fla. May 23, 2019); *see also* Fla. Stat. §§ 90.702, 90.704; Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993)]. In adopting the legislation, the Court

receded from a prior opinion in which it declined to adopt the *Daubert* amendments to the Evidence Code to the extent they were procedural, and instead retained the stricter *Frye* standard as the test to be applied by Florida trial courts in determining whether to admit expert testimony [*see* In re Amendments to Florida Evidence Code, 210 So. 3d 1231, 1239 (Fla. 2017) (retaining *Frye v. United States* [293 F. 1013 (D.C. Cir. 1923)] and rejecting 2013 Fla. Laws, ch. 2013-107, §§ 1–2, amending Florida Statutes Sections 90.702, 90.704)].

The admission of expert testimony is discussed in Chapters 8, *Parental Responsibility and Timesharing,* 10B, *Equitable Distribution of Marital Assets*, and 13, *Dissolution Trial/Final Judgment*.

• **Florida Supreme Court:** *Judicial Notice*

The Florida Supreme Court has adopted, to the extent it is procedural, a Florida statute that authorizes a trial court in a family law proceeding to take judicial notice of court records without a prior opportunity for the parties to be heard, if an imminent threat of harm to persons or property has been alleged and it is impractical to give prior notice [*see* In re: Amendments to the Fla. Evidence Code—2019 Regular-Cycle Report, 44 Fla. L. Weekly S 161, 270 So. 3d 314, 2019 Fla. LEXIS 676 (Fla. May 2, 2019) (adopting Florida Statutes Section 90.204(4)); *see also* ch. 13, *Dissolution Trial/Final Judgment.*

• **Florida Third District Court of Appeal:** *Temporary Relocation Orders*

If a relocating parent fails to comply with statutory requirements for relocating with the parties' child, or evidence at a preliminary hearing indicates that he or she is unlikely to receive permission to relocate with the child, the trial court is authorized to temporarily restrain relocation, order return of the child if the relocation has occurred, or order "other appropriate relief" [*see* Fla. Stat. § 61.13001(6)(a)]. This release adds a new section to Chapter 8, *Parental Responsibility and Timesharing*, that addresses what constitutes "other appropriate relief" in the context of temporary relocation orders. Included in the discussion is a recent Third District decision in which the court held that a trial court properly exercised its statutory discretion in a case involving a mother who had relocated with only the oral approval of the father and not with written consent of the father or court approval as required by statute. Specifically, the Third District held that the trial court properly denied the father's motion for physical custody of the child and fashioned appropriate remedial relief by (1) obtaining a commitment from the mother that she would promptly file a proper motion for relocation, (2) ordering appointment of a guardian ad litem to investigate, and (3) referring the child to Family Court Services for individual therapy [*see* Allende v. Veloz, — So. 3d —, 2019 Fla. App. LEXIS 2379, 44 Fla. L. Weekly D533 (Fla. 3d DCA Feb. 20, 2019) (trial court had

found that it would be disruptive to child to remove him from his school, and that child's medical and school records revealed no issues); *see also* chs. 8, *Parental Responsibility and Timesharing*, 12, *Temporary Relief*].

• **Florida Fourth District Court of Appeal:** *Marital Settlement Agreements*

The Fourth District Court of Appeal held that a marital settlement agreement (MSA) required payment of lump-sum alimony as support and not as an exchange for valuable property rights, because although the MSA stated that the lump-sum alimony constituted a "full and final settlement of all claims between the parties for spousal support, property settlement and all other matters," the MSA read as a whole, along with the parties' testimony at trial, clarified that the parties intended the lump sum to operate exclusively as spousal support [*see* Kenney v. Goff, 259 So. 3d 140, 147 (Fla. 4th DCA 2018); *see also* ch. 11, *Marital Settlement Agreements Negotiated by the Parties*].

• **Other District Court Decisions:** A number of other recent district court of appeal decisions are covered in this release. The subjects they cover include discovery of financial information from a nonparty business or professional practice in which a spouse possesses an ownership interest [*see* Phillips v. Phillips, 264 So. 3d 1129 (Fla. 2d DCA 2019)], ordering a psychological examination of a parent in a timesharing case [*see* Oldham v. Greene, 263 So. 3d 807 (Fla. 1st DCA 2018)]; imposing a constructive trust on proceeds of a life insurance policy in favor of a former spouse who was not named beneficiary of the policy by the named insured prior to his or her death, in violation of a final dissolution judgment [*see* Brown v. Poole, 261 So. 3d 708 (Fla. 5th DCA 2018)]; dissipation of marital assets [*see* Welton v. Welton, 267 So. 3d 6 (Fla. 4th DCA 2019)]; and lump-sum alimony [*see* Rawson v. Rawson, 264 So. 3d 325 (Fla. 1st DCA 2019)].

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Publication 80643 Release 83 September 2019

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