

## Minutes

January 22, 2009

Grand Floridian Resort: Orlando, Florida

### Adoption/Paternity/Dependency and Children's Issues Committee

(Family Law Section - Florida Bar)

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#### MEMBERS IN ATTENDANCE:

Maria Gonzalez, Co-Chair	Sheena Benjamin-Wise
Kim Rommel-Enright, Co-Chair	Tracy Stephen
Sarah Sullivan, Vice Chair	Steve Grossbard
Heather Apicella, Secretary	Julia Ledis
Jodi Seitlin	Betsy Hill
Terry Fogel	Ronald Gilbert
Thomas Duggar	Kathryn Beamer
Andrea Reid	Ron Bornstein
Abigail Beebe	JJ Dahl
Ray McNeal	Amy Hickman
	Chantale Suttle

CALL TO ORDER AND WELCOME BY CO-CHAIRS:

Co-Chairs Maria C. Gonzalez and Kim Rommel-Enright called the meeting to order at: 9:13am.

Co-Chair, Maria Gonzalez, thanked all the members who were present for attending the early morning live meeting. Maria introduced her fellow Co-Chair, Kim Enright, Vice Chair, Sarah Sullivan, and Secretary, Heather Apicella.

The Agenda and Minutes from the September 10, 2008 meeting were distributed. Maria requested that members in attendance introduce themselves.

**II. APPROVAL OF SEPTEMBER 10, 2008 MINUTES FROM TAMPA MEETING:**

Jodi Seitlin moved to approve the September 10, 2008 Minutes from the Tampa meeting. Thomas Dugger seconded the Motion. Vote was unanimous. Minutes approved.

**III. REPORTS AND UPDATES FROM SUBCOMMITTEE CHAIRS:**

**A. Aging out of DCF Subcommittee Report: Heather Apicella**

Subcommittee Chair, Heather Apicella, gave the report for the Aging Out of DCF Subcommittee. Heather recapped what occurred at the September, 2008 meeting in Tampa, Florida. Heather explained that at the time of the September, 2008 meeting she was waiting for Judge Baumann's Final Report (from the Supreme Court Steering Committee, Aging Out of DCF Subcommittee). She explained that the reason she wanted the Final Report was to ensure that her subcommittee was not duplicating the work done by Judge Baumann's subcommittee. After the meeting, Heather received

the Final Report from Judge Baumann's subcommittee. After reviewing the Final Report, her subcommittee is confident that they are not going to duplicate any of the work performed by Judge Baumann's subcommittee.

Heather emphasized that her subcommittee was originally formed solely for brainstorming purposes. The subcommittee has exhausted all brainstorming efforts. It has defined the goal which it believes would be best to pursue; however, Heather is concerned with the potential complications with this goal. The subcommittee has essentially come "full circle" with the idea of implementing an Independent Living Court throughout the State of Florida. Heather stated that they originally discussed this goal about two years ago. The Family Law Section is not the entity/forum to create or implement an Independent Living Court. Heather suggested we ask whether Scott Rubin is involved with the Supreme Court Steering Committee and address this issue with that Committee. If this Committee believes the subcommittee should focus on a different goal, it will reconvene with telephone conferences and determine the next goal.

Co-Chair, Maria Gonzalez, suggested discussing potential for this subcommittee's goals with the Judges in Leon County and Hillsborough County, which have already implemented the Independent Living Court. Magistrate Jon Johnson stated that he believes the helpful direction of this subcommittee would be to "help implement the Independent Living Court throughout the various counties via the Supreme Court Steering Committee.

Ronald Gilbert asked why the Independent Living Court cannot intertwine with foster care review hearings. Magistrate Jon Johnson explained that there is a great need for the case workers of the children aging out of foster care to focus on the check lists, etc. Unfortunately, at the foster care review hearings there is not enough time on a general docket to focus on the issues specific to those youth aging out of the system.

Co-Chair, Kim Enright, explained that the Circuit Court in Palm Beach County has also implemented an Independent Living Court. The reviews of the youth aging out are more formal and more in depth than a normal judicial review docket. Ronald Gilbert stated that in his Circuit (Miami-Dade County), some of the members who attend the foster care review hearings are professionals who can help assist the children which are also aging out of the foster care system. Vice-Chair, Sarah Sullivan, stated that she worked in South Carolina, helping with the implementation of a drug court, the idea of implementation is analogous to this subcommittee's goal. Sarah explained that these types of courts typically come from a Judge who feels very strongly about the particular issue. She expressed her concern that the subcommittee and Section must be careful not to step on the toes of Judges, etc. Sarah suggested that the subcommittee (and ultimately the Section) be very clear that we are here to assist with the implementation of this type of Court, not that we are taking over.

**Motion:** Ronald Gilbert made a Motion that the Aging out of DCF Subcommittee consider whether or not we can interface the Independent Living Court with the foster care review hearings. Chantal Suttle seconded the Motion.

Discussion ensued. Steven Grossbard stated that every child who ages out of the system has a significant impact on society either good or bad; we can make sure that we assist the impact to be a good one.

Steven Grossbard stated that the concept has been around for a very very long time; however, the Court itself just came about. Abby Beebe stated that in Palm Beach County the Independent Living Court has only been around for a couple years, if that.

Jodi Sietlin stated that for those cases which do not end up in the Independent Living Court there are statutory provisions which require specific reports to be reviewed in detail and provided by the case worker to the court. Discussion ensued regarding concern that these reports are not filled out at all or filled out poorly. Additional

discussion ensued regarding whether or not there is a procedure in place to make sure that the case workers are doing their job.

- In Favor = 1
- Opposed = 13
- Abstention = 2

Motion failed.

Heather explained that there is a present amendment to the Juvenile Rules of Procedure requiring that youth, age 16 years and older, be required to attend court hearings. Heather stated that the Oral Argument is set for February 3, 2009. The Committee can track the case via Case No. SC08-1236 on the Supreme Court's Website.

Co-Chair Maria Gonzalez stated that if anyone is interested in joining this subcommittee, to please contact Heather Apicella as she will add you on this subcommittee.

**B. Minors Signing Paternity Forms:**

Subcommittee Chair, Chantale Suttle, provided the report from the Minors Signing Paternity Forms Subcommittee. Chantal explained that there have been situations where minors are signing acknowledgment of paternity forms without the understanding that after 60 days, the acknowledgment of paternity becomes a final order and the minor is locked into paternity.

Chantale Suttle explained that she looked at Section 742.10 of the *Florida Statutes*

(disestablishment statute) to see if she could formulate language to put in this statute to ensure that minors cannot sign the acknowledgment forms. This form is presented, by default, at hearings. Chantale explained that by putting language in c742.10 or c742.18 the goal (not allowing minors to sign the forms) could be accomplished. Chantal passed around a handout with her subcommittees proposed language. The language would state that the minor could back out later, if they did sign this form as a minor. Chantale also stated that the handbook from DOR does not follow the statutory requirement of legal advice upon signing this form. Discussion ensued.

Amy Hickman expressed concern that we cannot dictate when paternity is okay in one part of the courthouse and not in the other part of the courthouse. Chapter 742 does interface with Chapter 63, due to the requirement of consent. Amy stated that the adoption statute has a good compromise c any child 14 years of age or under cannot sign an adoption form without the consent of their mother/father.

Chantale Suttle disagreed with Amy stating that this is about a DNA waiver. Amy stated she has a problem with the proposed language because we are carving out an exception for minors. Chantale asked whether or not the Committee believes we should force DNA upon minors? JJ Dahl asked why the Committee would not want minors to know whether or not this is their child? Discussion continued.

Amy Hickman re-expressed her concern, by stating that she believes this language may establish a false precedent. Amy further explained that basically what this language is saying is that upon 18 years of age the individual can go back and say, just kidding I am really not the father. Amy gave an example: what do you say to a 4 year old child, I am sorry this is not your father because he signed a waiver at 14 years old and now decided to challenge this waiver, after the father has been in

this child's life for 4 years. Chantale Suttle explained that this is why she specifically suggested we put the proposed language in the disestablishment statute.

JJ Dahl suggested the possibility of putting this language in another part of the statute.

Co-Chair, Kim Rommel-Enright, asked whether or not the subcommittee is bringing a motion to this Committee? Chantale Suttle stated that her charge was to make statutory changes. Chantale further stated that she does not mind having discussion on this further rather than putting forward a motion. Kim Rommel-Enright asked the committee whether or not they believed it was best to send this issue back to the subcommittee again? Chantale stated that she came to this committee from the Support Issues Committee (where she originally presented this very issue), and she has been working on this for two years now. Chantale stated that she has done the research as to what other states are doing such as Wisconsin and California.

Amy Hickman suggested we get a concept vote. She stated that this issue should be addressed, this is a problem; however, we need to determine if we want to put a form within the statute, or create language in a statute. Chantale Suttle re-expressed her concern, that minors are signing uninformed waivers. Chantale stated that she believes we must put a provision in the statute requiring that the minor be informed, and requiring that the minor sign a form stating that they were informed. Amy Hickman expressed that it comes down to whether we want a statutory change or a statutory disclosure.

Vice Chair, Sarah Sullivan, stated that we need to determine our goal. She believes we need to protect the rights of minors by not allowing minors to waive their rights AND at the same time not slowing down the adoption process. The focus of this committee should be to come up with a procedure that achieves this goal.

Steven Grossbard stated that he believes the minor should just do the testing and know whether or not he is the father of the minor child.

Amy Hickman reiterated her concern, that this committee cannot establish two different precedents; which we may be doing. Amy further explained, that we cannot say in the adoption world it is okay”, but in the “paternity world it is not.”

Judge Ray McNeal stated that he feels that we are not necessarily sacrificing one minor for another we are just sacrificing the minor, period. Judge McNeal also stated that we do not want to create language which would cause a delay in the adoption process.

Magistrate Jon Johnson stated that he believes we need to determine what this subcommittee should do and provide the subcommittee with some direction.

Abby Beebe inquired as to when this subcommittee has been holding meetings? Abby stated that she is this subcommittee and has never received an email alerting her of any of the meetings held by this subcommittee.

Motion:

Jodi Seitlin made a Motion that this subcommittee be tasked with drafting language similar to the statute in Wisconsin.

JJ Dahl made a **friendly amendment** to Jodi Seitlin’s Motion: that this subcommittee also look at this issue of informed disclosure to the minor.

Jodi accepted JJ Dahl's friendly amendment.

Magistrate Jon Johnson also requested a **friendly amendment** to Jodi Seitlin's Motion C that the subcommittee also consider that a minor may not sign an acknowledgment form unless that minor is represented by an attorney.

Jodi Seitlin explained that if Magistrate Jon Johnson is framing this issue in the question of whether or not the minor should have representation, then she will accept the friendly amendment.

Ronald Gilbert seconded the Motion with both friendly amendments to the same.

Vote was taken:

- In Favor = 15
- Opposed = 2
- Abstention = none.

**C. Sand Castles Program:**

Subcommittee Chair, Sheena Benjamin-Weiss, gave the report for the Sand Castles Program Subcommittee. Sheena explained that her subcommittee was tasked with looking at classes for minors ages 6 to 18 whose parents are going through divorce proceedings. Sheena stated that her subcommittee did some research as to what other states are doing. Sheen's subcommittee determined that there are strong feelings against the idea of the classes because people feel that this is an infringement of their rights.

Thirteen counties throughout the State of Florida are working with classes for divorced children. However, there is no uniformity with the classes, requirements, etc. It is left up to the individual jurisdictions.

Sheena requested more time to address this issue with her subcommittee and she will bring the subcommittee's recommendation back to the Committee at the next live meeting in June.

Co-Chair, Maria Gonzalez, encouraged members of this Committee to join the Sand Castles Subcommittee to contact Sheena.

#### IV. NEW BUSINESS:

##### A. Adequate notice to foster parents of hearing affecting children:

Ronald Gilbert raised the topic/issue of providing foster parents adequate notice of any hearings dealing with the children in that particular foster parents care. Ronald explained that foster parents are left "out of the loop" when it comes to the "notice" requirements for a hearing (i.e. even when the hearing pertains to removing a child who was in that foster parents care). Ronald stated that he believes it is extremely important that the foster parent be notified of anything having to do a child in their care.

In addition, Ronald explained that the foster parents have a lot of information regarding the child, and the case manager may not know the specific information which the foster parent can provide.

Abigail Beebe stated that there is a provision in the statute (Chapter 39) that makes the foster parents “a participant”. Abigail explained that if there is an emergency then the case worker and the parties are involved, and the foster parent as a participant will be provided with notice of any hearings, etc.

Steven Grossbard stated that he believes we need to be careful about the definition of a “party” vs. “participant”.

Co-Chair, Maria Gonzalez, asked Ronald Gilbert to clarify if he was suggesting that the “foster parents” who are defined as “participants” be changed to become “parties”?

Ronald Gilbert stated that he is not specifically suggesting that we must change the definition; rather he wants to ensure that the foster parents have input as to what is happening with the child in his/her care.

Co-Chair, Maria Gonzalez, asked Ronald whether or not it was his suggestion that we amend the rule requiring mandatory notice for judicial reviews and hearings?

Abigail Beebe stated that the rule already exists. JJ Dahl stated that the rule which the committee is referring to does not require mandatory notice. Abigail Beebe stated that she believes the rule states that the participants (i.e. foster parents) must be served. JJ Dahl stated that this has come up when dealing with the notice in cases involving grandparents. Abigail Beebe explained that she was referring to foster parents.

Discussion ensued. Co-Chairs, Maria Gonzalez and Kim Rommel-Enright, suggested a concept vote be taken on this issue.

Concept vote: whether or not the committee believes that there should be a formation of a subcommittee to deal with this issue?

Vote taken: concept failed.

**B. Uniformity regarding what constitutes diligent search under Chapter 382:**

Co-Chair, Maria Gonzalez, asked Judge McNeal whether or not this Committee should consider anything further under Chapter 382? Judge McNeal stated nothing further.

**C. Proposed amendment to Chapter 751- re: relatives petitioning for concurrent child custody (kinship):**

Co-Chairs, Maria Gonzalez and Kim Rommel-Enright, explained that The Family Law Section does not have a current standing position regarding kinship or current custody.

Co-Chair Maria Gonzalez asked Abigail Beebe if she could give the Committee a brief update as to what she found when researching this issue.

Abigail Beebe explained that what we are calling "kinship" is defined as "concurrent custody": under the Chapter 751 (temporary custody statute). Pursuant to Chapter 751, there is a requirement of consent which must be obtained from the parent, or a finding of abuse, abandonment, or neglect.

Abigail explained that last year our big issue was that people were going into court under Chapter 751 without having to meet the requirements of Chapter 751. There is a new proposed bill which deals with this issue. Abigail further explained that there

are groups which are actively involved with this piece of legislation.

Co-Chair, Maria Gonzalez, explained that we do not have the proposed legislation right now; rather the purpose of bringing this issue to this Committee is to determine whether or not we need to create a subcommittee to review this bill? If so, that subcommittee would give a recommendation of whether to support or oppose the bill. This subcommittee will be a fast track committee, which will be required to respond immediately once the bill is made available.

Tom Duggar advised that Norberto Katz (Co-Chair of the Legislation Committee) has a subcommittee which tracks these pending bills of interest to the Section. Co-Chair, Maria Gonzalez, explained that our Chair (Scott Rubin) is aware of this issue and he would like to know whether or not this Committee believes a subcommittee should be formed to address this issue quickly.

Co-Chair, Maria Gonzalez asked the Committee, whether or not a subcommittee should be formed regarding the issue of “concurrent child custody” to review the proposed Bill, if the proposed Bill comes down?

Amy Hickman asked the Co-Chairs, if the subcommittee is formed, can we do an email vote of this Committee so we do not have to wait until the next live meeting in June? Co-Chair, Maria Gonzalez, stated that a telephonic meeting would be scheduled immediately address the Motion, or any other business of this potential subcommittee.

Motion:

Co-Chair, Kim Rommel-Enright, made a Motion to create a concurrent child custody subcommittee to review any bills dealing with this issue.

Vote was taken:

In favor = Unanimous

Motion Carried.

Co-Chair, Maria Gonzalez, stated that Abigail Beebe agreed to serve as Chair of this subcommittee. Maria further requested that any individuals interested in participating on this subcommittee, please sign-up (sign-up sheet passed around the room).

**D. UCCJEA ISSUE:**

Co-Chair, Maria Gonzalez, stated Raquel Rodriguez raised a potential issue which she wanted to bring to the attention of this Committee regarding the “home state of a child” and the UCCJEA requirements. Maria gave the example that: a mother is pregnant, leaves Florida and goes to Georgia; the father files a Petition for Paternity in the Florida court; the mother files a Petition in Georgia. Under this scenario, the question is whether or not the mother is just temporarily out of the state; or permanently out of the state, and the issues which surround the UCCJEA (i.e. jurisdictional issues).

Ronald Gilbert stated that even under the six month window (to establish the home state of the child) there is case law which has addressed this issue. Ronald further explained that there are factors which are created to assist the Court in determination as to the proper jurisdiction.

Chantale Suttle stated that she did not think that this is the appropriate forum to take any action regarding this issue. Chantale explained that this is a UCCJEA issue which is not specific to the states, rather established through case law.

Discussion ensued. Ron Bornstein stated he believes the UCCJEA controls and answers the issue

No motion was made. Issue was moot.

**E. CLOSING REMARKS:**

Co-Chair Maria Gonzalez, asked the Committee whether there was any other new business or old business which someone would like to address? Hearing none, Maria Gonzalez stated that the next live Committee meeting will take place in June at the Orlando Marriott World Resort. Maria explained that the Section is getting more accustomed to posting the information on the website; and requested that the Committee check the website prior to the June meeting for up-to-date information. Maria requested that the Subcommittee Chairs send their subcommittee reports from the respective meetings to Kim Rommel-Enright and/or Maria Gonzalez. Maria stated that these reports will be posted on the website.

If you have any new business for the June meeting please advise and we will place it on the website.

**V. FOR THE GOOD OF THE ORDER.**

**VI ADJOURN:**

Kim Rommel-Enright moved to adjourn. Vice-Chair, Sarah Sullivan seconded the Motion. Motion carried.

Meeting adjourned at 10:25am.

Submitted by,

Heather Apicella,

Secretary

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