

Domestic Violence Committee
Florida Bar Family Law Section
Disney's Grand Floridian
January 22, 2009

I. Welcome and Introductions

In attendance were Co-Chair Amy Cosentino, Carolann Mazza, Diane Myers, Natalie Baird, Jodi Seitlin, Rana Holtz, Sarah Sullivan, Maria Gonzalez, Dr. Deborah Day, Robin Scher, Judge Ray McNeal, Natalia Kalishman, Margaret Stack and Matthew Capstraw who is serving as the secretary to this meeting.

Judge Karen was not able to make it today as she is making a speech today, but gives her best wishes for the committee.

The members in attendance introduced themselves and gave brief details of their practices and involvement in their respective communities.

II. Priority New Business

a. Statutory revisions for DV and Child Support Enforcement – Related to proposed changes to Chapter 741.

Maria Gonzalez – the sub-committee was created out of support issues rather than this body, it belongs in both, and the Chair of the Section would like the input of this body to the support issues committee. This product has already been presented to support issues. The proposed changes deal with the discretion of the court ordering temporary support to a petitioner. Mainly 741.301 which outlines to a court what relief it may grant a petitioner, and in paragraph 4 it authorizes temporary child support and temporary support. The change is to create child support as a mandatory but leaving other temporary support, alimony, as a may. Child Support would be covered out of the existing paragraph into a separate paragraph. This would be subject to modification. This statute was reviewed by Judge Karen and gave input into this draft and has given support.

The issues that have been raised with this statute, potential for abuse as there are no filing fees for DV, there were fears that this would be used as an inappropriate replacement for paternity and child support cases.

Maria looked to the office of state court administrators in f. year ending in 2007, total family court filings: 356,485 includes simplified, dissolution, child support, uifsa, other domestic, domestic violence, repeat violence, delinquency, dependency, and termination of parental rights. 18% or 65,000 are DV and an additional 35,000 for repeat violence. Dissolution is 25.8% of the cases 91,000 cases, initial filings. 93% of DV cases that are filed have children or have a related case, but we have no breakdown of what number to related cases and which are with children. Paternity actions would be in other domestic relations 40k a year. Criminal cases may be related cases.

Other concerns, insufficient time to properly compute c/s, lack of discovery, and establishment of paternity. The draft was defeated by one vote in the support issues committee, but all the members of the sub-committee were not there. The concept was well received, but there were still these concerns. The filing fee issue can be a concern, but as a general matter, the public is not going to know that.

Most circuits require a petitioner to file a financial but the problem with having a respondent to file one. Rana concerned about paternity being established without due process. Maria under current law would be required to have paternity previously established or acknowledged for child support to be

established. The language is in the form, but is not in the statute. The committee believes that language should be mirrored in the statute.

Rana also pointed out the interaction with the disestablishment of paternity and an acknowledgement could be res judicata in a later. Maria suggested that this is similar to chapter 61. Rana expressed concern about the short period of time to prepare, and that the initial injunction hearing should only be violence we should bifurcate. Possible solution would be to bring in the involvement of the DOR. Perhaps we are being too helpful; we have other mechanisms in place. Ray McNeal these are legal proceedings.

The sub-committee is trying to establish a specific stop gap, on a temporary basis or otherwise modified. This bill would not make a change where we are at current law.

Sarah moved to recommend take the language from the form related child support and paternity and include it into the statute. 8 – 0 – 1

Judge McNeal was curious if this committee wants judges to be able to establish paternity at a DV hearing.

Amy expressed the concern about the string of case law which states that domestic violence injunctions should not be used to a solution to create a permanent order in a paternity case. Sarah was concerned about someone declaring paternity in a case, in a quick hearing, under duress creating an obligation for the child's minority. The form currently allows acknowledgement on the record of paternity. It makes sense for it to be determined prior to the hearing, but at the hearing she has concerns.

Judge McNeal I have seen a judgment of paternity in a Dependency case, they should file a paternity case. The funding problems have removed indigent filings and there is creative.

Maria asked for a view of this committee related to the establishment of paternity as a while.

Sarah suggests that we could make it the position of this committee that paternity cannot be established in a DV hearing.

Only time a judge can address child support now is after there has been a prior acknowledgement of paternity or if there has been a prior adjudication.

Amy and Sarah suggested forming a subcommittee with a quick turn around (90) to report to report: Carol Ann, Maria, Sara, Amy, Natile related to establishment or acknowledgment of paternity in DV cases.

Tabling the remaining issues related to this proposal.

Rana suggested pulling in DOR.

III. OLD BUSINESS

- a. Statewide DV Strategic Plan
- b. 2008 Florida Legislative Coalition wrap up
- c. Website for Family law section
- d. Status of Dr. Day, Judge Del Pino and Amy Costentino's seminar speeches at the Dependency Seminar in September.
- e. Status of Seminar speeches – all went very well
- f. New Secretary for the Committee – unanimous approval of Judge Del Pino as the new secretary of this committee.
- g. AVDA race 10/2008 and future Races – Amy participated, finished and raised over \$1,000.00 for charity. Perhaps this committee could create a team
- h. vote on 9/08 minutes – moved seconded and approved without modification
- i. Members contact information – please update

IV. NEW BUSINESS

Taken out of order

- b. The co-chairs are working on a commentator article.
- c. Blogtalkradio – “Why are we beating each other down” it’s a good listen
- d. Future speakers for “Women of Tomorrow” Amy to circulate her last speech and asked folks to volunteer in the future.

- e. FCADV 2009 seminars
- f. National Conference on Health and DV –
- g. New York Times Article - New York is now getting to dating violence

A. Jodi Seitlin presenting about a case where there was a temporary injunction, the respondent had an AK-47, and there were concerns about his possession. The AK was not addressed in the Order or at the hearing. Shortly afterwards the petitioner and her father were killed by the respondent. The concern is there is not mechanism for the turning in of weapons. The statute has provisions about ordering law enforcement to take acts to effectuate the statute. This area may be one to look at.

Also of concern is the confidentiality provision of the statute as a Petitioner must request their location be kept confidential rather than it being the norm.

Can the committee create some statutory or procedural changes, possibly radical, to create a better way. The goal would be not to be found in the predicament.

There is a bill before the House to make continued possession of a weapon after an injunction which the section is supporting. There could be a way to order them to show proof of compliance as a proposal for future legislation.

Sarah contacted the Supreme Court work group to show them the forms she uses in hope they would implement them.

Judge McNeal reminded us that the Judge can require the guns be turned in or not.

Matt moved to creation of a sub committee related to the confiscation of firearms looking at any statutory changes, rule or form changes that may entail 10 – 0 -1 Volunteers: Jodi, Amy, Matt, Natalie, Margaret Stack, Ray but he makes not promises.

Adjourned 11:55