

Minutes

Legislation Committee

FAMILY LAW SECTION OF THE FLORIDA BAR
(September 22, 2010)
Midyear Meeting - Orlando, Florida

MEMBERS IN ATTENDANCE:

Thomas Duggar, Co-Chair
Maria C. Gonzalez, Co-Chair
Heather Apicella, Co-Vice Chair
Ronald Bornstein, Co-Vice Chair
Susan Savard, Co-Secretary
Benjamin Hodas, Co-Secretary
Elisha Roy, Exec. Committee Liaison
Deborah Day, Psy.D., Sp. Advisor to
Chair
Hon. Elizabeth Adams
Patricia Alexander
Abigail Beebee
Ho. Barbara Beilly
Sheena Benjamin-Wise
Steven Berzner
Matthew Capstraw
Lawrence C. Datz
Terry L. Fogel
Amy Hickman
Robert J. Jones
A. Sam Jubran
Diane Kirigin, **SECTION CHAIR**
Hon. Norberto Katz
Patricia C. Kuendig
Michael Gilden
Caryn Green

Douglas Greenbaum
David Hirschberg
Rana Holz
Luis E. Insignares
Robert Merlin
Hon. Raymond McNeal
Ashley Myers
Shannon Novey
Stephen Pennypacker
Monica Pigna
Carin M. Porras
David Riggs
Kim Rommel-Enright
Scott Rubin
Thomas Sasser
Robin Scher
Jodi Seitlin
Sarah Sullivan
Robin Vines
David Manz
C. Debra Wech
Jeffrey Weissman
Julia Wyda
Adam Zborowski
Frank Zilaitis

GUESTS IN ATTENDANCE:

Elizabeth Alpert
Kathy Beamer
Robert Boyd
John Foster
Sheila Furr, Ph.D.
Nicole Goetz
Tenesia Hall

Cindy Harari
Susan Keith
Kelly Murray
Rosemarie Roth
Amy Sumacewski
Lana M. Stern, Ph.D.
Amy VanVelzar

Members excused absence:

Laura Davis Smith

Belinda Lazarra

1. Call to Order and Welcome by Co-Chairs: 3:37 pm. Thomas Duggar and Maria Gonzalez called the meeting to order at 3:37 p.m. ▾ Introduction of Committee Officers and lobbyists. Introduction of Guests: All guests introduced themselves.
2. Legislative Notebook and Committee Member Requirements:
 - a. Legislation Committee Notebooks previously distributed at Leadership Conference in Palm Coast
 - b. Information for meeting dates, live meetings, next live meeting in Orlando in January, 2011.
 - c. Call in number for telephonic meetings is also in the Notebook. Same call in number for all telephonic meetings.
 - d. Telephonic meetings will commence at beginning at legislative season, and are held from 12-1 pm each Friday. Voting members must be on the calls. Must e-mail in advance if a member of the committee cannot be present.
3. Member information sheet ▾ please e-mail to Ben Hodas or turn in today.
4. Lobbying contract approved for Nelson and Edgar ▾ They have agreed to continue to work with us. Lobbying contract has been approved and signed. Tom Duggar expresses gratitude for their efforts.
5. Approval of prior minutes: Minutes from 6/23/2010: Elisha Roy moves to approve ▾ duly seconded ▾ minutes approved. Minutes from 7/12/2010: Elisha Roy moves to approve ▾ duly seconded ▾ minutes approved.
6. Standing positions ▾ Standing positions have been forwarded to the Board of Governors for 2010-2012 cycle. We have 4 new positions which were previously approved by the Section.
7. Legislation Ad Hoc committee and subcommittee reports:

Tom Duggar thanks everyone who chaired these committees: Sarah Sullivan, Norberto Katz, Kim Nutter, David Manz and Julia Wyda. There has been extraordinary work in a short time to provide reports.

 - a. Sarah Sullivan ▾ paternity ad hoc committee: Proposed legislation under new business ▾ defer to that time.

- b. Norberto Katz v alimony ad hoc committee: Committee met this afternoon - well attended. 1) formed rapid response team to assist this body with issues that arise this session re: alimony issues v whether it be new legislation, water down last year=s amendments, etc. Committee will report to co-chairs and legislative committee 2) formed subcommittee to investigate proposed alimony guidelines. Will interact with the American Academy of Matrimonial Lawyers 3) standing position alimony for guidelines
 - i. The alimony ad hoc committee moves for a standing position: Recommended that the Section support alimony in current form and under current law with regard to temporary alimony, permanent periodic alimony, durational alimony, rehabilitative alimony, and bridge the gap alimony.
 - ii. Response team subcommittee: Tom Sasser, Scott Rubin, Elisha Roy, Ben Hodas, Sam Jubran, and Terry Fogel. Subcommittee is in place to deal with changes to the alimony bill, any other alimony bills which may come about from last year=s legislation. The subcommittee expects backlash.
 - c. GAL ad hoc committee- Maria Gonzalez. Next committee meeting will be in October. Subcommittee working on project to relax rules of evidence and permit GAL reports into evidence without violating hearsay rule. Subcommittee expects to have a product to present to legislation at next live meeting.
 - d. DV ad hoc committee- David Hirschberg. Thanks given by Tom Duggar for work of this committee. DV committee did admirable job drafting bill. Bill deals with firearms and revises Chapter 741 v weapons and ammunition are to be turned over to police at time of service of temporary injunction or within 24 hours after service if not in possession at time of service. Committee charged to either approve bill and send it to legislation, reject bill or approve it with revisions. Committee voted to approve with revisions. Committee has not come to consensus yet as to the revisions. Hirschberg will not make final decision on revisions- committee asked to present finished product at next meeting in January. Committee recognized v Robin Scher v Christopher Rumbel. Jodi Seitlin. Thanks to Robin Scher for drafting efforts and to belatedly correct minutes v Jodi=s name is not listed on subcommittee.
 - e. Julia Wyda v Probate/Family Jurisdiction. Julia has exchanged e-mails with Maria Gonzalez and is waiting on information. As of now, the committee has nothing to report. Committee will provide full
- {1019.001/00034994.DOC-}

report in January. Maria Gonzalez reported that Judge Rothenberg is interested in being advised on the progress of this subcommittee. Maria will forward information to Julia.

8. Proposals for next legislative cycle:
 - a. UIFSA B adopted 2001 and 2008 revisions not yet passed. We have approved and have standing position already. We need to propose this legislation. State does not need to lose any funds. It did not move forward last year because Sen. Storms wanted to move forward with the child support bill.
 - b. Equitable Distribution B David Manz: The committee is close to final formalization of paydown of marital mortgage on nonmarital property proposed statute. Final product expected within a month. Requests reservation of spot on legislative agenda for this year. Tom Sasser and Nicole Goetz are analyzing two remaining issues related to the statute. A standing position relating to the proposal was approved in June B 2-3 variables in formula need to be resolved. Proposed bill relating to interest on deferred equitable distribution payments is a continuation from last year=s proposal. It is unknown whether the old bill will flow through or be added on to another bill. Interest bill is exactly what was approved last year. Previously voted on and approved by legislation.
 - c. Glitch bill Ch. 39. : Keeping children safe bill. Thomas Duggar feels strongly that this bill must move forward. We have had in pas verbal support from DCF. It is unknown if this will continue. Was voted on and approved previously.
 - d. General Magistrates: Norberto Katz: same proposal as last year: Judges are excluded from jury duty and the proposed bill also excludes general magistrates and hearing officers for from jury duty. Previously approved last year.
 - e. DV bill B Jodi Seitlin B ready, willing and able to assist in presentation of the bill whenever the bill is ready (see above).
 - f. GAL bill-- Maria GonzalezB GAL acting as own attorney. The bill was previously approved, but not previously slated for lobbying efforts. The bill adds 1 line to current statute.

- g. Rob Jones B amendment to 61.16 and 743.45 fees for fees issue. Legislative Committee previously voted in favor of this revision, as did Executive Council.

Discussion: Norberto Katz raises priority of legislation issue. Thomas Duggar advises we may not prioritize 5 bills. UIFSA must move forward this year. Scott Rubin: question for Nelson and Edgar B is it their concept that the 7 bills may be combined so that all 5 can be proposed? Some are combinable; Bills proposed in new business may come into play. Elisha Roy: The chapter 39 glitch bill and the revision to 69.401 may be combined. Support issues stand alone. Equitable Distribution also stands alone. Issue is whether any new business will put us over 5. Discussion delayed to new business below:

9. NEW BUSINESS:

- a. Proposal from RPPTL: 744.301 revision. Recognizes custody changes and parental responsibility changes. The change is in response to our previous statute revision and deals with same sex and natural guardian. The bill changes language from mother and father to natural parents. Thomas Duggar: we can vote to support, have no position or not support it. Elisha Roy: If we don't support it we may create problems with the other section. Thomas Duggar suggests we take no position.

Discussion: Rana Holtz: She previously drafted natural guardian statute. This was done about 2 years ago. Nearly 40% of kids are born out of wedlock in Florida. Guardianship is not a chapter 61 proceeding. Why are custody issues in guardianship statute. Her draft removes custody in guardianship statute- makes it even for the parents as it does not give mother custody. One-half of mothers or greater have not been fit in cases she has handled. Does not want to see in Guardianship statute when DCF is establishing child support, etc., does not want to see defaults in this setting. Neutralizes parents. Chapter 409 child support. Recipient has parental responsibility. Does not belong in guardianship statute. Suggests we take no position. If we are going to do anything with the proposed bill, take custody out. Thomas Sasser voiced concern about taking the language out because there must be some default position. It opens up guardianship B is it a parent? Someone may be on birth certificate and not be the biological parent. Grandparent issues on the death of a parent also arise. If no adjudication of paternity and mother dies, automatic guardianship in other parent when they have never been a part of the child's life. Grandparents will need to step in. Matt Capstraw asked if Rana Holz was requesting her statute be presented in January. Yes. Rana Holz does not believe that child born out of marriage may not be out of an intact relationship. More likely, if the father is on birth certificate, it is an intact couple. Rana is concerned with trampling on rights.

Motion made by Rob Jones, Norberto Katz 2nd: Take no position with respect to this statutory amendment.

Continued discussion: Thomas Sasser: Proposal changes and does away with existing presumption. RPPTL is looking at the issue only from a probate point of view and not family law. Guardianship is more than inheritance. This creates the exact situation Rana Holz was discussing. Father requires adjudication. Changing father to parent causes difficulties. Parent has a different meaning. If legal parent, that language may be acceptable. Scott Rubin reads a different purpose to statute. It is settlement of minor=s personal injury claims. Adjudication re: joint custody has been deleted; mother and father have been taken out. In 49 and maybe 50 states, there are same sex parents of adoptive children and no designation of mother and father. The proposed legislation does not say who gets decision making authority over child except a deleted sentence. Scott believes the statutory amendment is a benign change. Rana Holz suggests that we study the issue and have position ready for the next meeting. Thomas Duggar advises that we cannot do so. RPPTL sent it to us and we need to respond to it.

The legal parents are jointly guardians of their children. David Manz: If we change the bill, we cannot be neutral, and must support the bill with changes we propose. Elisha Roy: Doesn=t matter. They will take it to their legislative committee. It will not require any additional work from us. It only means that we won=t oppose it.

David Manz proposes a friendly amendment to Mr. Jones motion: Add a legal@ in front of parents. Norberto Katz seconds the amendment, and supports the bill. Ashley Myers: If RPPTL does not approve our amendment to the bill, do we then oppose it?

Vote B 1 opposed, 1 abstention, all others in favor; Motion carries.

Diane Kirigin suggests that we let RPPTLs know what the vote was.

10. 61.30 glitch bill

Elisha Roy: Nothing to report at this time. The committee will be looking at a couple of glitches on the child support bill dealing with median income and poverty level and minimum wage. Will create subcommittee to look into it B Elisha Roy to chair. Rob Jones, Tom Sasser, Norberto Katz on the subcommittee.

Discussion: Jeff Weissman questioned the effective date of statute. Issue: Judges may not act in uniformity 10/1/2010 or 1/1/2011 effective date. Legislative session will be after that date, but cases will occur and go up on appeal as to when effective date of statute was. If we move forward with a glitch bill, the effective date of statute should be addressed. Thomas Sasser commented that the effective date of the statute is governed by case law. It is also not a substantive piece of {1019.001/00034994.DOC-}

legislation and cannot be passed in that way. Elisha Roy noted that the effective date was in a previous version of the amendment and was deleted by legislature. Thomas Duggar commented that the median income vs. minimum wage was Senator Storms proposal. If we try to amend the statute, it may cause problems for us. Tom Sasser: Problem we create is also social. If someone chose not to appeal and the legislature then says bill effective on X date; Legislative change would cause problems. Norberto Katz: Are we thinking as a glitch to go back and having legislature reconsider median income vs. minimum wage? It will create nightmare. Thomas Duggar: Subcommittee to make recommendation and present it to legislation committee. Tom Sasser requests Norberto Katz to send reasons he believes revisions will cause problems to Elisha Roy for discussion at the subcommittee. Norberto will do so. Jeff Weissman commented that the effective date of statute is problematic. It will create inconsistencies state wide. Tom's comments are good. Can we post advisory memo to Executive Council and Executive Council send advisory letter to judges re: effective date so that there can be some uniformity? County by county, they don't know when statute goes into effect. It is a disservice if we don't do anything about it. Scott Rubin questioned the authority of sending memo to judges. That is not something we have authority to do. Elisha Roy advises that she previously spoke with some of the judges. Lawyers should offer case law similar to case law that was discussed on effective date of parenting bill. Case law says that if legislative intent of effective date is clear, legislative intent will govern. Tom Sasser advises that he and Elisha Roy are authoring an article for the Bar Journal concerning the effective date of the statute.

11. NAME CHANGE ISSUE

Matthew Capstraw: The current statute provides that the petitioner must be fingerprinted. If the petition is brought on behalf of a minor child, the parent under current statute must be fingerprinted and not the child. This poses an ambiguity. Previously brought to the attention of this committee. Chief justice requested action on it. Matt Capstraw moves to approve the amendment; Scott Rubin seconds.

Discussion: None.

Vote: Unanimous B bill approved for presentation to Executive Council.

12. PATERNITY

Sarah Sullivan: Language being fine tuned. Amy Hickman and Steve Pennypacker also active. Amy Hickman gives synopsis of the changes. Statute begins with legislative intent B to understand that child should have 2 parents (whatever that may be). Chapters 63 and 39 are substantially different. Definition of parent changed; added language for legally established father.

{1019.001/00034994.DOC-}

39.401 B expanded inquiry of shelter and adjudicatory and termination phase B what inquiry the court must undertake and take testimony on. Expansion of 39 to include language found in 63. Anyone identified as potential biological father. Adds notice provision. Anyone identified receives notice by personal service of process even if legal adjudication already made. Similar to 62 but not identical. Mandates registration and filing of parenting plan. Comply with court ordered child support. Sets forth for father what he must do to seize his interests. Chapter 39 court has authority to adjudicate legal father. Expedited process on that issue if consent of all parties. If not consent of all parties, 742 to file Privette proceedings. Gives court jurisdiction to hear it. No default provision similar to chapter 63. Gives the court a lot of discretion to allow him to continue to receive notice. Provides strict guidelines when addressing more than 1 possible father. Steve Pennypacker advised that there is a committee meeting today and that concerns have been raised as to whether the statute tramples on due process rights of fathers. Amy Hickman responds that she has received complaints that the amendment provides less notice to dads. Expands notice to anyone mother identifies. Amy Sullivan: Children=s issue committee voted on form as Exhibit 13 B

Motion: Sarah Sullivan: Accept new revision as distributed B Second by Rana Holz.

Discussion: Rob Jones B service must be personal B what if you don=t know address, etc. Amy Hickman responded that the statute discusses affidavit of due diligence. Matt Capstraw voiced concern over 39.502 (6)(b) and the items to be completed within 30 days. Amy Hickman responded that he must file affidavit of paternity. Matt Capstraw: substantial relationship issues raised. Rana Holz: Step up to the plate or your rights will be extinguished. Makes them act within 30 days rather than 20.

Vote: 33 in favor; oppose 1; abstentions 4. MOTION CARRIES.

13. REPEAT DOMESTIC VIOLENCE:

Heather Apicella: Takes language from 784.046 and cuts and pastes into statute re 741.30.

Motion: Heather makes Motion to have the language mirror one another.

Discussion: Tom Sasser had comment regarding the cut and paste and suggested removal of the irrelevant language. Is this making it harder for parent to get DV injunction for a child? Are we fixing a problem that doesn=t exist? No second so motion dies. Heather Apicella will send this to DV committee for review. We will come back to the issue in January.

{1019.001/00034994.DOC-}

14. COLLABORATIVE LAW:

Thomas Duggar: Uniform law commissions drafted uniform collaborative law act and worked with us as section to come up with bill B part statute and part rule B when passed would be uniform collaborative law act. The advisory/ad hoc committee looked at it and made proposals on statute and rule portions. That has been sent to uniform commission. They have provided product B reviewed by Elisha Roy and other ad hoc committee members. Committee decided which parts should be part of the statute B versus rules of professional responsibility and rule of procedure. It has been formatted and vetted by the sub committee. It was presented to the collaborative law committee this morning. Will be presented to EC tomorrow. Political realities in Tallahassee. Uniform law has been approved in many states. Uniform commission would have opposed the prior draft of the statute. In many ways the current draft mirrors the prior draft from the committee. Thanks extended to the collaborative law committee and its work over the past several years. Hopefully we will have a good shot at getting this statute passed. Bob Merlin recognizes Matt Capstraw for all of his efforts on drafting the previous drafts for the Collab law committee.

15. PATERNITY ISSUES – Other

Issues proposed by Judge Goldenberg on rule changes 742 interplay and amendments. Thomas Duggar wants subcommittee to investigate it. Suggested that children=s issues committee investigate the issue. Sarah Sullivan B will do so.

16. Priority of legislation.

Thomas Duggar noted that the number of bills are limited. We have more bills than slots. Interstate support MUST go forward because of funding issues. Not much we can tack on to it. May be able to tack on child support glitch fix B will not do so if it will kill the bill. Equitable Distribution bill is next on the list. Equitable Distribution language on time value of money plus new legislation on coverture fraction. DV bill had been put off until January. Chapter 39 bill B 39 glitch B glaring fix that needs to be made B widely abused statute. General magistrates bill B very good bill, but small B one line B can we append on to something different? Legislative perspective B to get sponsor on one line bill will be difficult.

Elisha Roy voiced concern relative to the collaborative law bill as it is not part of this committee and not approved by EC yet. We need to save a slot for this if

{1019.001/00034994.DOC-}

approved by EC. Thomas Duggar recommendation that we reserve slot for UCLA B if we need to fill the spot if EC disapproves so be it. Norberto Katz advised that he does not want to take up a slot for the magistrates issue B Nelson to assist if he can in getting it on another bill.

Tom Sasser: Motion to adjourn

Duly seconded B