



FAMILY LAW SECTION

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LEGISLATION COMMITTEE AGENDA

SEPTEMBER 9, 2009

TAMPA AIRPORT MARRIOTT

2:00 pm – 5:00 pm

(Times indicated are guidelines for reports, motions, discussion and vote)

- I. Welcome and Introduction of Officers, Members and Lobbyists (20 minutes)
- II. Brief Overview of Committee Responsibilities and Objectives – Information on What We Do and How We Do It.... (40 minutes)
Elisha Roy
Patty Alexander
Nelson Diaz
- III. Old Business – 2009 Bills
 - A. Equitable Distribution Bill – David Manz (10 minutes)
 - B. Alimony – Thomas Sasser (20 minutes)
 - C. Chapter 39 Glitch – Abigail Beebe (5 minutes)
 - D. Child Support – Mag. Diane Kirigin (20 minutes)
 - E. Collaborative Law – Scott Rubin (20 minutes)
- IV. New Business
 - A. Uniform Child Abduction Prevention Act (10 minutes)
Rana Holz
Rep. Darryl Rouson
 - B. Special Needs of Children of the Florida Bar Legislation (20 minutes)
Amy Hickman
Scott Rubin
 - C. New Committees:
 1. Attorney ad litem statute
 2. Relocation statute concern
 - D. Open Floor – Suggestions for Issues to Be Addressed (10 minutes)
- V. Adjournment

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Terms Expiring 2010:

Kathryn M. Beamer, West Palm Beach
Terry Fogel, Miami
Charles Fox Miller, Hollywood
Douglas Greenbaum, Ft. Lauderdale
Amy Hickman, Boynton Beach
Susan Savard, Orlando
Robin J. Scher, West Palm Beach
John Schutz, West Palm Beach

Terms Expiring 2011:

Ronald Bornstein, Greenacres
Lawrence Datz, Jacksonville
Thomas Duggar, Tallahassee
Maria Gonzalez, N. Miami
Caryn Green, Orlando
Benjamin T. Hodas, West Palm Beach
Laura Davis Smith, Miami
Frank Zilaitis, Indian Harbor Beach

Terms Expiring 2012:

Patricia Alexander, Boca Raton
Heather Apicella, Ft. Lauderdale
Angel Bello-Billini, Orlando
Melinda Gamot, West Palm Beach
Luis Insignares, Ft. Myers
Hon. Raymond McNeal, Ocala
Sarah Sullivan, Jacksonville
Jeffrey Weissman, Ft. Lauderdale

Terms Expiring 2013:

Odette Bendeck, West Palm Beach
Sheena Benjamin-Wise, Boca Raton
Nicole Goetz, Naples
Amy Hamlin, Longwood
G.M. Robert Jones, Miami
Norberto S. Katz, Orlando
Ingrid Keller, Winter Garden
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LEGISLATION SUBCOMMITTEE: EQUITABLE DISTRIBUTION
PROPOSED CHANGE TO CHAPTER 61.075 (10)

61.075(10) To do equity between the parties, the court may, in lieu of or to supplement, facilitate, or effectuate the equitable division of marital assets and liabilities, order a monetary payment in a lump sum or in installments paid over a fixed period of time. If deferred payment is ordered, the court shall require security and a reasonable rate of interest, or otherwise recognize the time value of money, in any such deferred distribution scheme, absent good cause. The court shall make written findings of fact relating to any deferred payment, security or lack thereof, and interest or lack thereof. Nothing in this section shall preclude application of Chapter 55 of the Florida Statutes to any subsequent default.

61.08 Alimony.--

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be bridge-the-gap, rehabilitative, durational or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony.

(2) In determining a ~~proper~~ whether to award of alimony or maintenance, the court shall first make a specific factual determination of whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance. If the court finds that a party has a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

(a) The standard of living established during the marriage.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of each party.

(d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.

(e) The earning capacities, educational levels, vocational skills and employability of the parties and when ~~When~~ applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

(g) The responsibilities each party will have with regard to any minor children they have in common.

(h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable, non-deductible payment.

(i) All sources of income available to either party including income available to either party through investments of any asset held by that party.

(j) Whether a supportive relationship has existed between the obligee and a person who is not related by consanguinity or affinity and with who the obligee resides as set forth in Section 61.14(b)(2), Florida Statutes.

(k) ~~Any~~ The court may consider any other factor necessary to do equity and justice between the parties.

(3) To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.

(4) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony shall not be modifiable in amount or duration.

(5) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either: a) the redevelopment of previous skills or credentials or b) the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials. In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony. An award of rehabilitative alimony may be modified or terminated in accordance with Section 61.14, Florida Statutes based upon a substantial change in circumstances, upon non-compliance with the rehabilitative plan, or upon completion of the rehabilitative plan.

(6) Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with Section 61.14, Florida Statutes. However, the length of an award of durational alimony may not be modified except under exceptional circumstances.

(7) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration, following a marriage of moderate duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are exceptional circumstances. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with Section 61.14, Florida Statutes.

(8)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall modify the terms of the

order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If the provisions of subparagraph 1. apply, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency shall have the same rights as the obligee in requesting that payments be made through the depository.

39.0139 Visitation or other contact; restrictions.—

(1) SHORT TITLE.—This section may be cited as the "Keeping Children Safe Act."

(2) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that:

1. For some children who are abused, abandoned, or neglected by a parent or other caregiver, abuse may include sexual abuse.
2. These same children are at risk of suffering from further harm during visitation or other contact.
3. Visitation or other contact with the child may be used to influence the child's testimony.

(b) It is the intent of the Legislature to protect children and reduce the risk of further harm to children who have been sexually abused or exploited by a parent or other caregiver by placing additional requirements on judicial determinations related to ~~visitation and other contact~~ contact between a parent or caregiver who meets the criteria under paragraph (3)(a) and a child victim in any proceeding under Florida law.

(3) PRESUMPTION OF DETRIMENT.—

(a) A rebuttable presumption of detriment to a child is created when ~~a parent or caregiver:~~

1. A court of competent jurisdiction has that found probable cause exists that a parent or caregiver has sexually abused a child as defined in s.39.01(66) ~~Has been the subject of a report to the child abuse hotline alleging sexual abuse of any child as defined in s. 39.01;~~

2. A parent or caregiver has ~~Has been found guilty of, regardless of adjudication, or has entered a plea of guilty or nolo contendere to, charges under the following statutes or substantially similar statutes of other jurisdictions:~~

- a. Section 787.04, relating to removing minors from the state or concealing minors contrary to court order;
- b. Section 794.011, relating to sexual battery;
- c. Section 798.02, relating to lewd and lascivious behavior upon or in the presence of a child;
- d. Chapter 800, relating to lewdness and indecent exposure in the presence of a child;
- e. Section 826.04, relating to incest; or
- f. Chapter 827, relating to the abuse of children; or

3. A court of competent jurisdiction has ~~Has been determined by the court~~ a parent or caregiver to be a sexual predator as defined in s. 775.21 or the parent or caregiver has received a substantially similar designation under laws of another jurisdiction.

(b) For purposes of this subsection, "substantially similar" has the same meaning as in s. 39.806(1)(d)2.

(c) A person who meets any of the criteria set forth in paragraph (3)(a) may not visit or have contact with a child without a hearing and order by the court.

(4) HEARINGS.—~~A person who meets any of the criteria set forth in paragraph (3)(a) may visit or have other contact with a child only after a hearing and an order by the court that allows the visitation or other contact. At such a hearing who seeks to begin or resume contact with the child~~ victim shall have the right to an evidentiary hearing to determine whether contact is appropriate.

(a) Prior to the hearing the court shall ~~The court must~~ appoint an attorney ad litem or a guardian ad litem for the child if one has not already been appointed. Any attorney ad litem or guardian ad litem appointed shall have special training in the dynamics of child sexual abuse.

(b) At the hearing the ~~The court~~ may receive and rely upon any relevant and material evidence submitted to the extent of its probative value, including written and oral reports and or recommendations, from the child protection team, child's therapist, the child's guardian ad litem, and attorney ad litem ~~to the extent of its probative value in its effort to determine the action to be taken with regard to the child,~~ even if these reports, recommendations and evidence may not be ~~competent in an adjudicatory hearing~~ admissible under the rules of evidence.

(c) If the court finds the person proves by clear and convincing evidence that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by such visitation or other contact, the presumption in subsection (3) is rebutted and the court may allow visitation or other contact. The court shall enter a written order setting forth findings of fact and specifying any conditions it finds necessary to protect the child.

(d) If the court finds the person did not rebut the presumption established in subsection (3), the court shall enter a written order setting forth findings of fact and prohibiting or restricting visitation or other contact with the child.

(5) CONDITIONS.—Any visitation or other contact ordered under paragraph (4)(d) shall be:

(a) Supervised by a person who has previously received special training in the dynamics of child sexual abuse; or

(b) Conducted in a supervised visitation program, provided that the program has an agreement with the court and a current affidavit of compliance on file with the chief judge of the circuit in which the program is located affirming that the program has agreed to comply with the minimum standards contained in the administrative order issued by the Chief Justice of the Supreme Court

on November 17, 1999, and provided the program has a written agreement with the court and with the department as described in s. 753.05 containing policies and guidelines specifically related to referrals involving child sexual abuse.

6) ADDITIONAL CONSIDERATIONS.—

(a) Once a rebuttable presumption of detriment has arisen under paragraph (3) or if visitation is ordered under paragraph (4) and a party or participant, based on communication with the child or other firsthand knowledge, informs the court that a person is attempting to influence the testimony of the child, the court shall immediately suspend visitation or other contact. The court shall then hold a hearing and hold a hearing within 7 business days to determine whether it is in the best interests of the child to prohibit or restrict visitation or other contact with the person who is alleged to have influenced the testimony of the child.

(b) If a child is in therapy as a result of any ~~of the allegations~~ finding or convictions contained in paragraph (3)(a) and the child's therapist reports that the visitation or other contact is impeding the child's therapeutic progress, the court shall convene a hearing within 7 business days to review the terms, conditions, or appropriateness of continued visitation or other contact.

History.—s. 1, ch. 2007-109.

MINUTES
Chapter 39 glitch workgroup Subcommittee Meeting
Meeting Date: 8/25/09
Meeting Time: Noon

Attendees: Abigail Beebe- Chair of Sub- Committee
Kimberly Rommel- Enright
Amy Hickman
Thomas Duggar

Non-Attendes- Laura Davis Smith
Ray Mcneal
Ashley Myers
Maria Gonzalez
Toni Butler
Kleinberg

CALL TO ORDER

The meeting was called to order at 12:10 pm.

- Abigail Beebe gave a brief overview of the glitch bill and the changes that were made two years ago. Both Amy and Thomas agreed that the bill was in a good form for this year. All members agreed the bill was revised with limited changes to help it move through and that we should keep any changes to a minimum. All attending members agreed the language was good as is.

No members attending the call recommended any changes be made. However, Abigail Beebe suggested a few changes or thoughts on changes to be open for discussion.

(4) HEARINGS.

- (a) "special training" in the dynamics of sexual abuse

Abby explained to the group that this may cause a problem in having GAL or AAL appointed for these victims. The other members of the call agreed that the language was vague, but that it was better left in then taken out. Abby explained that training in this area could be very difficult and costly and that a lot of kids would lose the benefit of an attorney ad litem if this was a stringent requirement.

(5) CONDITIONS – any visitation or other contact ordered under paragraph (4)(d) shall be:

Abby suggested that this should read (4) alone since a judge may order contact under both 4(c) and (d).

(6) ADDITIONAL CONSIDERATIONS- Abby suggested that this paragraph should possibly be split to separate the differences b/t (3) and (4), but Amy and Thomas added that read in the context of requiring a hearing under both circumstances, that this paragraph read properly was written appropriately.

The subcommittee members in attendance all agreed to leave all language as it was re-written 2 years ago, however, we decided as a group to submit these comments to the committee for suggestion or vote.

ADJOURNMENT

The call was adjourned at 12:35 pm.

**SUMMARY of CHILD SUPPORT WORK GROUP
of the Family Law Section, The Florida Bar, Legislation
Committee's MEETING and RECOMMENDATIONS**

In attendance at the September 9th, 2009 Noon Meeting of the Child Support Work Group were the following persons:

Heather Apicella, Esquire
Hon. Barbara Beilly, General Magistrate
Pauline Black
Terry L. Fogel, Esquire
Diane M. Kirigin, Work Group Chair
David Riggs, Esquire
Hon. Lee Ann Schreiber, General Magistrate

Legend: In this SUMMARY the Child Support Work Group references the Section's 2009 Child Support Bill's line numbers in its RECOMMENDATIONS hereinafter.

The Child Support Work Group submits the following RECOMMENDATIONS to the Legislation Committee regarding *Florida Statutes Chapters 61, 409 and 742*.

Florida Statutes Section 61.13 (1) and (2):

Automatic termination of child support upon child's 18th birthday; automatic step-down schedule {lines 1 through 29}.

RECOMMENDATION: Re-Approve with 1 slight change at line 17 insert “, day” that was unanimously suggested by the Work Group.

Florida Statutes Section 61.14 (d)(6):

Companion language mirroring the 2008 legislative changes overruling *Vitt v. Rodriguez*, as it pertains to spousal alimony/spousal support {lines 39 through 41}.

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.14 (d)(12):

Interest on child support, alimony or spousal support enforceable through all methods available to enforce underlying support order, including contempt. Provides that interest shall not accrue on post judgment interest {lines 42 through 44}.

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (2)(b)2:

Codifies both the burden a party seeking to impute income has; creates a rebuttable presumption permitting imputation; addresses the findings of fact that a Court must make when imputing income to a party {lines 101 through 110.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (2)(b)3:

Creates a rebuttable presumption permitting the Court to impute minimum wage under certain circumstances {lines 111 through 119.}

RECOMMENDATION: Re-Approve.

HOWEVER, there was some discussion about the inherent fairness in the application of 3.b. where there was a child of a prior (not subsequent) relationship who needed care rendering a parent unemployed or underemployed. A minority of the Work Group {Diane and Terry} felt that the language of 3.b. {i.e. “The parent needs to stay home to care for a child who is the subject of the child support calculation, thereby preventing the parent’s employment or rendering the parent underemployed.”} would prevent the Court from considering the needs of child(ren) born prior to the child or children who are the subject of a current child support calculation. Some Work Group members {Barbara and Lee} felt that a trial Court could look to 3.c. {i.e. “There are other circumstances over which the parent has no control, except for penal incarceration, which prevent the parent from earning an income.” and read it as encompassing prior born child(ren), whereas other Work Group members felt that because this permutation was not addressed by statute as an exclusion, that the legislature intended that this circumstance not serve as a mechanism to rebut the presumption.

Florida Statutes Section 61.30 (2)(b)3:

Creates a chronology for the imputation of income when a party is not residing in the State of Florida; requires that the imputation be based on the minimum wage of the State where party lives; and if there is no State minimum wage, then imputation is pursuant to the U.S. Department of Labor Federal minimum wage {lines 121 through 123.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (2)(b)4a.,b.):

Imposes certain limitations on the imputation of income beyond minimum wage {lines 124 through 132.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30(3)(a): Defines with more particularity, than previously, the allowable deductions from gross income for items in the nature of taxes and tax credits {lines 136 through 139.}

RECOMMENDATION: Re-Approve.

However, although the majority of Work Group members voted to re-approve this language, certain members {Lee and David} who had never previously reviewed this provision expressed confusion about the language “applicable deductions” questioning what exactly “applicable” it meant. In addition, a concern was raised about whether “applicable deductions” contemplated a pass through deduction from a business or not.

Florida Statutes Section 61.30 (6):

In accordance with the recommendations set forth in the F.S.U. Study the 3 lowest combined net monthly income levels of \$650.00, \$700.00 and \$750.00 were eliminated from the minimum child support guidelines chart to enable the Court to consider on a case-by-case basis {lines 157 through 159.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (6):

Eliminates “good fortune child support” by requiring that the percentages contained in the minimum child support guidelines chart where the parties have a combined net monthly income in excess of \$10,000.00 not be used to determine child support beyond an amount necessary to satisfy the “reasonable needs” of children {lines 172 through 173.}

RECOMMENDATION: Re-Approve. Immediate past Legislation Committee Co-Chair Terry L. Fogel cautioned the Work Group that Senator Storm and other members of the Committee that were presented with this proposed statutory change opposed it. They seemed inclined to favor “good fortune child support” so the Section may have to pave the way with education to successfully lobby this provision.

Florida Statutes Section 61.30(7):

Eliminates the 25% reduction of child care costs that are an add on to minimum base child support to comport with the 100% of eligible child care costs for allocation provided in the substantial time-sharing portion of *Florida Statutes Chapter 61* {lines 176 through 177.} *Comports with similar language in proposed changes to *Florida Statutes Section 61.30 (11) (b)5 renumbered* {see lines 238 through 239}.

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (8):

Clarifies that the total minimum child support includes child care and health insurance costs added to the minimum child support need {lines 189 through 190.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (10):

Establishes the methodology for payment of child support in the wake of the elimination of the phrases “primary” and “secondary residential parent” to be defined by overnight time-sharing where the threshold or cliff is 40% of the overnights by the paying parent to the parent having 60% of the overnights to trigger application of traditional child support formula {lines 193 through 194.}

RECOMMENDATION: Re-Approve; however, with the following amendment that the cliff be revised to 20% and 80% respectively.

There was a concern articulated by at least 1 Work Group member {David} that there are scenarios where this definition would prove inequitable because of a very large differential in the parties' earnings.

Florida Statutes Section 61.30 (11)(a) 8 Deleted:

Strikes the permissive deviation criteria set forth in subparagraph (8) which states: “The impact of the Internal Revenue Service dependency exemption and waiver of that exemption and the impact of any federal child care tax credit. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments” {lines 209 through 212.} *The language contained in this paragraph was, in part, incorporated within the proposed revisions contained in *Florida Statutes Section 61.30(3)(a)* {see lines 136 through 139} and *Florida Statutes Section 61.30 10(18)* {see lines 305 through 306}.

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (11)(a) 8. renumbered:

Provides for permissive deviation from child support guidelines when the application thereof would leave a parent with a net income lower than the current federal poverty guidelines {lines 215 through 217.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (11)(a) 9. renumbered:

Provides for permissive deviation from child support guidelines when the parenting plan provides that child(ren) spends a significant amount of time but less than 40% of the overnights with 1 parent {line 219.}

RECOMMENDATION: Re-Approve; however, with the following amendment that the cliff be revised to 20% of the overnights.

Florida Statutes Section 61.30 (11)(b)5 renumbered:

Eliminates the 25% reduction of child care costs that are an “add on” to minimum base child support to be uniform with the 100% of eligible child care costs for allocation provided in the substantial time-sharing portion of *Florida Statutes Chapter 61* {lines 238 through 239.} *Comports with language in proposed changes to *Florida Statutes Section 61.30 (7)* {see lines 176 through 177.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 (11) (b)8. renumbered:

Corrects “glitch” by providing for mandatory deviation from child support guidelines when the parenting plan provides that a child spends a significant amount of time-sharing (replacing the word “visitation”) when a parent exercises at least 40% overnights with the child(ren) {line 250.}

RECOMMENDATION: Re-Approve; however, with the following amendment that the cliff be revised to 20% of the overnights.

Florida Statutes Section 61.30 (11) (c) renumbered:

Corrects language by inserting “the” and striking the phrases “non-custodial” and “or agreed” in 2 different locations within this subparagraph which provides that a parent’s failure to exercise time-sharing where child support was calculated per the “gross-up” formula {either permissively or mandatorily} comprises a substantial change of circumstances for modifying child support {lines 252, 256 and 257.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 61.30 10(18):

Provides more logical placement within the scheme of *Florida Statutes Section 61.30* of the sentence that states “The court may, for good cause shown, order the parent otherwise entitled to the dependency exemption for a child to execute a waiver of the dependency exemption.” {lines 305 and 306.}

RECOMMENDATION: Re-Approve

Florida Statutes Section 409.2563

Corrects language in the administrative support section striking the phrase “it shall be presumed” and replacing it with “there shall be a rebuttable presumption” that a parent living in Florida can earn income equivalent to Florida’s minimum wage, but if the parent lives in another State, then minimum wage is imputed per that State’s law; and if that State has no State minimum wage, then minimum wage is imputed as determined by the U.S. Department of Labor for purposes of calculating child support administratively {lines 320 through 326.} *The intent of this paragraph is to have the imputation of minimum wage comport with the same proposed language contained in *Florida Statutes Section 61.30 (2)(b)3* {see lines 121 through 123.}

RECOMMENDATION: Re-Approve.

Florida Statutes Section 742.08:

The language in this statutory subsection mirrors that which is also proposed in **Florida Statutes Section 61.14 (d)(12)* {see lines 42 through 44} providing that interest on child support, alimony or spousal support enforceable through all methods available to enforce underlying support order, including contempt. Provides that interest shall not accrue on post judgment interest {lines 332 through 333.} The other change states that attorney’s fees can be assessed against the D.O.R. pursuant to *Florida Statutes Section 57.105*. {lines 332 through 333.}

RECOMMENDATION: Re-Approve.

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Florida Statutes Section 61.14 (1)(a)1. and 2.:

Renumbers these paragraphs dealing with modification of support, maintenance and alimony. Inserts references to *Florida Statutes Section 61.30* and *61.30(11) (c)*.

RECOMMENDATION: Approve.

Florida Statutes Section 61.14(1)(a)3:

Current proposed legislation creates a mechanism for a temporary reduction, suspension, abatement of child support, together with an abatement or suspension of civil contempt or enforcement proceedings and outlines the procedure by which to seek said relief, capping the period of relief entitlement to 180 days, inclusive of any retroactive relief.

RECOMMENDATION: The Work Group declined to recommend re-approval of this language, finding the concept acceptable, but the language in need of further work. The Work Group recommends that this provision be referred to the Support Issues Committee for further refinement.

Florida Statutes Section 61.30 (11)(d):

The Work Group declined to recommend re-approval of this language, finding the concept acceptable, but the language in need of further work. The Work Group recommends that this provision be referred to the Support Issues Committee for further refinement.

I want to thank the Work Group members who participated and contributed to this survey and review of the Section's current proposed child support legislation.

By: _____

**Diane M. Kirigin
Child Support Work Group Chair**

1 Section 1. Paragraph (a) of subsection (1) of section 61.13, Florida Statutes, is
2 amended to read:

3 61.13 Support of children; parenting and time-sharing; powers of court. —

4 (1)(a) In a proceeding under this chapter, the court may at any time order either or both
5 parents who owe a duty of support to a child to pay support to the other parent or, in the case of
6 both parents, to the person with custody in accordance with the child support guidelines schedule
7 in s. 61.30.

8 1. All child support orders and income deduction orders entered on or after October
9 1, 2009, shall provide for:

10 a. Child support to terminate upon a child's 18th birthday unless the court finds or
11 has previously found that s. 743.07(2) applies, or unless otherwise agreed to by the parties; and

12 b. A schedule, based upon the record existing at the time of the order, stating the
13 amount of the monthly child support obligation for all the minor children at the time of the order
14 and the amount of child support that will be owed for the remaining children for whom child
15 support will continue when any child is no longer entitled to receive child support under this
16 subparagraph; and

17 c. The month, day and year that the reduction or termination of child support
18 becomes effective.

19 2. Notwithstanding subparagraph 1., the court initially entering an order requiring
20 one or both parents to make child support payments has continuing jurisdiction after the entry of
21 the initial order to modify the amount and terms and conditions of the child support payments
22 when the modification is found necessary by the court in the best interests of the child, when the
23 child reaches majority, when there is a substantial change in the circumstances of the parties,

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24 when s. 743.07(2) applies or when a child is emancipated, marries, joins the armed services or
25 dies. The court initially entering a child support order has continuing jurisdiction to require the
26 obligee to report to the court on terms prescribed by the court regarding the disposition of the
27 child support payments.

28 Section 2. Section 61.14, Paragraph (d) of section (6) and Paragraph (12) of section
29 61.14, Florida Statutes, is amended to read:

30 61.14. Enforcement and modification of support, maintenance, or alimony agreements or
31 orders. —

32 (6)

33 (d) The court shall hear the obligor's motion to contest the impending judgment within
34 15 days after the date of filing of the motion. Upon the court's denial of the obligor's motion, the
35 amount of the delinquency and all other amounts that become due, together with costs and a
36 service charge of up to \$ 7.50, become a final judgment by operation of law against the obligor.
37 The depository shall charge interest at the rate established in s. 55.03 on all judgments for
38 support. Payments on judgments shall be applied first to the current child support due, then to
39 any delinquent principal, and then to interest on the support judgment. Payments on alimony or
40 spousal support judgments shall be applied first to the current alimony or spousal support due,
41 then to any delinquent principal, and then to interest on the alimony or spousal support judgment.
42 (12) Interest on child support and alimony or spousal support judgments shall be enforceable
43 through all of the methods available to enforce the underlying support order, including contempt.
44 Interest shall not accrue on post judgment interest.

45 Section 2. Section 61.30, Florida Statutes, is amended to read:

46 61.30 Child support guidelines; retroactive child support.—

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47 (1)(a) The child support guideline amount as determined by this section presumptively
48 establishes the amount the trier of fact shall order as child support in an initial proceeding for
49 such support or in a proceeding for modification of an existing order for such support, whether
50 the proceeding arises under this or another chapter. The trier of fact may order payment of child
51 support which varies, plus or minus 5 percent, from the guideline amount, after considering all
52 relevant factors, including the needs of the child or children, age, station in life, standard of
53 living, and the financial status and ability of each parent. The trier of fact may order payment of
54 child support in an amount which varies more than 5 percent from such guideline amount only
55 upon a written finding explaining why ordering payment of such guideline amount would be
56 unjust or inappropriate. Notwithstanding the variance limitations of this section, the trier of fact
57 shall order payment of child support which varies from the guideline amount as provided in
58 paragraph (11) (b) whenever any of the children are required by court order ~~or mediation~~
59 ~~agreement~~ to spend a substantial amount of time with either parent as defined by 61.30(11)(b)8.
60 This requirement applies to any living arrangement, whether temporary or permanent.

61 (b) The guidelines may provide the basis for proving a substantial change in
62 circumstances upon which a modification of an existing order may be granted. However, the
63 difference between the existing monthly obligation and the amount provided for under the
64 guidelines shall be at least 15 percent or \$50, whichever amount is greater, before the court may
65 find that the guidelines provide a substantial change in circumstances.

66 (c) For each support order reviewed by the department as required by s.
67 409.2564(11), if the amount of the child support award under the order differs by at least 10
68 percent but not less than \$25 from the amount that would be awarded under s. 61.30, the
69 department shall seek to have the order modified and any modification shall be made without a

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70 requirement for proof or showing of a change in circumstances.

71 (2) Income shall be determined on a monthly basis for each parent as follows:

72 (a) Gross income shall include, but is not limited to, the following:

73 1. Salary or wages.

74 2. Bonuses, commissions, allowances, overtime, tips, and other similar payments.

75 3. Business income from sources such as self-employment, partnership, close
76 corporations, and independent contracts. "Business income" means gross receipts minus
77 ordinary and necessary expenses required to produce income.

78 4. Disability benefits.

79 5. All workers' compensation benefits and settlements.

80 6. Unemployment compensation.

81 7. Pension, retirement, or annuity payments.

82 8. Social security benefits.

83 9. Spousal support received from a previous marriage or court ordered in the
84 marriage before the court.

85 10. Interest and dividends.

86 11. Rental income, which is gross receipts minus ordinary and necessary expenses
87 required to produce the income.

88 12. Income from royalties, trusts, or estates.

89 13. Reimbursed expenses or in kind payments to the extent that they reduce living
90 expenses.

91 14. Gains derived from dealings in property, unless the gain is nonrecurring.

92 (b)l. Income on a monthly basis shall be imputed to an unemployed or underemployed

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93 parent when such employment or underemployment is found by the court to be voluntary on that
94 parent's part, absent a finding of fact by the court of physical or mental incapacity or other
95 circumstances over which the parent has no control. In the event of such voluntary
96 unemployment or underemployment, the employment potential and probable earnings level of
97 the parent shall be determined based upon his or her recent work history, occupational
98 qualifications, and prevailing earnings level in the community as provided in this paragraph;
99 however, the court may refuse to impute income to a parent if the court finds it necessary for the
100 parent to stay home with the child who is the subject of the child support calculation.

101 2. In order for the court to impute income beyond minimum wage under
102 subparagraph 1., the court must make specific findings of fact consistent with the requirements
103 of this paragraph. The party seeking to impute income has the burden to present competent,
104 substantial evidence:

105 a. That the unemployment or underemployment is voluntary; and

106 b. That identifies the amount and source of the imputed income, through evidence of
107 income from available employment for which the party is suitably qualified by education,
108 experience, current licensure, or geographic location, with due consideration being given to the
109 parties' time-sharing schedule and their historical exercise of the time-sharing provided in the
110 parenting plan or relevant order.

111 3. There shall be a rebuttable presumption entitling the court to impute Florida
112 minimum wage on a full time basis to a parent, absent a finding by the court that:

113 a. The parent has a physical or mental incapacity that renders the parent
114 unemployable or underemployed;

115 b. The parent needs to stay home to care for a child who is the subject of the child

116 support calculation, thereby preventing the parent's employment or rendering the parent
117 underemployed; or

118 c. There are other circumstances over which the parent has no control, except for
119 penal incarceration, which prevent the parent from earning an income.

120

121 If evidence is produced that demonstrates that the parent is a resident of another state, that state's
122 minimum wage law shall apply. In the absence of a state minimum wage, the federal minimum
123 wage as determined by the United States Department of Labor shall apply.

124 4. Unless the court makes the appropriate findings under sub-subparagraph 2.b.,
125 income may not be imputed beyond minimum wage requirements in subparagraph 3. based
126 upon:

127 a. Income records that are more than 5 years old at the time of the hearing or trial at
128 which imputation is sought; or

129 b. Income at a level that a party has never earned in the past, unless recently
130 degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic
131 location, with due consideration of the parties' existing time-sharing schedule and their historical
132 exercise of the time-sharing provided in the parenting plan or relevant order.

133 (c) Public assistance as defined in s. 409.2554 shall be excluded from gross income.

134 (3) Net income is obtained by subtracting allowable deductions from gross income.

135 Allowable deductions shall include:

136 (a) Federal, state, and local income tax deductions, adjusted for which shall be
137 calculated using gross income, actual filing status, personal and dependency exemptions,
138 applicable deductions, earned income credits, child and dependent care credits and other

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139 allowable tax credits ~~and allowable dependents and income tax liabilities.~~

140 (b) Federal insurance contributions or self-employment tax.

141 (c) Mandatory union dues.

142 (d) Mandatory retirement payments.

143 (e) Health insurance payments, excluding payments for coverage of the minor child.

144 (f) Court-ordered support for other children which is actually paid.

145 (g) Spousal support paid pursuant to a court order from a previous marriage or the
146 marriage before the court.

147 (4) Net income for each parent shall be computed by subtracting allowable
148 deductions from gross income.

149 (5) Net income for each parent shall be added together for a combined net income.

150 (6) The following guidelines schedule shall be applied to the combined net income to
151 determine the minimum child support need:

152 Combined Child or Children

153 Monthly

154 Net

155

156 Income One Two Three Four Five Six

157 ~~650.00~~ ~~74~~ ~~75~~ ~~75~~ ~~76~~ ~~77~~ ~~78~~

158 ~~700.00~~ ~~119~~ ~~120~~ ~~121~~ ~~123~~ ~~124~~ ~~125~~

159 ~~750.00~~ ~~164~~ ~~166~~ ~~167~~ ~~169~~ ~~171~~ ~~173~~

160

161 INSERT BALANCE OF GUIDELINES SCHEDULE

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162 For combined monthly net income less than the amount set out on the above guidelines schedule,
163 the parent should be ordered to pay a child support amount, determined on a case-by-case basis,
164 to establish the principle of payment and lay the basis for increased orders should the parent's
165 income increase in the future. For combined monthly net income greater than the amount set out
166 in the above guideline schedule, the obligation shall be the minimum amount of support provided
167 by the guidelines schedule plus the following percentages multiplied by the amount of income
168 over \$10,000:

169 Child or Children

170	One	Two	Three	Four	Five	Six
171	5.0%	7.5%	9.5%	11.0%	12.0%	12.5%

172 These percentages shall not be used to determine child support beyond the amount necessary to
173 satisfy the reasonable needs of the child or children.

174 (7) Child care costs incurred on behalf of the children due to employment, job search,
175 or education calculated to result in employment or to enhance income of current employment of
176 either parent shall be ~~reduced by 25 percent and then shall be~~ added to the basic obligation. After
177 the ~~adjusted~~ child care costs are added to the basic obligation, any moneys prepaid by a parent
178 for child care costs for the child or children of this action shall be deducted from that parent's
179 child support obligation for that child or those children. Child care costs shall not exceed the
180 level required to provide quality care from a licensed source for the children.

181 (8) Health insurance costs resulting from coverage ordered pursuant to s. 61.13(1)(b),
182 and any noncovered medical, dental, and prescription medication expenses of the child, shall be
183 added to the basic obligation unless these expenses have been ordered to be separately paid on a
184 percentage basis. After the health insurance costs are added to the basic obligation, any moneys

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185 prepaid by a parent for health-related costs for the child or children of this action shall be
186 deducted from that parent's child support obligation for that child or those children.

187 (9) Each parent's percentage share of the child support need shall be determined by
188 dividing each parent's net monthly income by the combined net monthly income.

189 (10) The total minimum child support need shall be determined by adding child care
190 costs and health insurance costs to the minimum child support need. Each parent's actual dollar
191 share of the total minimum child support need shall be determined by multiplying the minimum
192 child support need by each parent's percentage share of the combined monthly net income. The
193 resulting amount shall be paid by the parent having less than 20 percent 40% of the overnight
194 time-sharing to a parent having more than 80 percent 60% of the overnight time-sharing.

195 (11) (a) The court may adjust the total minimum child support award, or either or both
196 parents' share of the total minimum child support award, based upon the following deviation
197 factors:

- 198 1. Extraordinary medical, psychological, educational, or dental expenses.
- 199 2. Independent income of the child, not to include moneys received by a child from
200 supplemental security income.
- 201 3. The payment of support for a parent which regularly has been paid and for which
202 there is a demonstrated need.
- 203 4. Seasonal variations in one or both parents' incomes or expenses.
- 204 5. The age of the child, taking into account the greater needs of older children.
- 205 6. Special needs, such as costs that may be associated with the disability of a child,
206 that have traditionally been met within the family budget even though the fulfilling of those
207 needs will cause the support to exceed the presumptive amount established by the guidelines.

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208 7. Total available assets of the obligee, obligor, and the child.
209 8. ~~The impact of the Internal Revenue Service dependency exemption and waiver of~~
210 ~~that exemption and the impact of any federal child care tax credit. The court may order a parent~~
211 ~~to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent~~
212 ~~is current in support payments.~~

213 98. When application of the child support guidelines requires a person to pay another
214 person more than 55 percent of his or her gross income for a child support obligation for current
215 support resulting from a single support order or when the application of the child support
216 guidelines leaves a party with a net income that is lower than the current federal poverty
217 guidelines.

218 409. The particular parenting plan, such as where the child spends a significant amount
219 of time, but less than 4020 percent of the overnights, with one parent, thereby reducing the
220 financial expenditures incurred by the other parent; or the refusal of a parent to become involved
221 in the activities of the child.

222 4110. Any other adjustment which is needed to achieve an equitable result which may
223 include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense
224 or debt may include, but is not limited to, a reasonable and necessary expense or debt which the
225 parties jointly incurred during the marriage.

226 (b) Whenever a particular parenting plan provides that each child spend a substantial
227 amount of time with each parent, the court shall adjust any award of child support, as follows:

228 1. In accordance with subsections (9) and (10), calculate the amount of support
229 obligation apportioned to each parent without including day care and health insurance costs in
230 the calculation and multiply the amount by 1.5.

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- 231 2. Calculate the percentage of overnight stays the child spends with each parent.
- 232 3. Multiply each parent’s support obligation as calculated in subparagraph 1. by the
233 percentage of the other parent’s overnight stays with the child as calculated in subparagraph 2.
- 234 4. The difference between the amounts calculated in subparagraph 3. shall be the
235 monetary transfer necessary between the parents for the care of the child, subject to an
236 adjustment for day care and health insurance expenses.
- 237 5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each
238 parent for the expenses incurred for day care and health insurance coverage for the child. ~~Day~~
239 ~~care shall be calculated without regard to the 25 percent reduction applied by subsection (7).~~
- 240 6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by
241 crediting or debiting the amount calculated in subparagraph 5. This amount represents the child
242 support which must be exchanged between the parents.
- 243 7. The court may deviate from the child support amount calculated pursuant to
244 subparagraph 6. based upon the deviation factors in paragraph (a), as well as the obligee parent’s
245 low income and ability to maintain the basic necessities of the home for the child, the likelihood
246 that either parent will actually exercise the time-sharing schedule set forth in the parenting plan
247 granted by the court, and whether all of the children are exercising the same time-sharing
248 schedule.
- 249 8. For purposes of adjusting any award of child support under this paragraph,
250 “substantial amount of time” means that a parent exercises ~~visitation~~ time-sharing at least 40
251 percent of the overnights of the year.
- 252 (c) A parent’s failure to regularly exercise the court-ordered ~~or agreed~~ time-sharing
253 schedule not caused by the other parent which resulted in the adjustment of the amount of child

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254 support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of
255 circumstances for purposes of modifying the child support award. A modification pursuant to
256 this paragraph shall be retroactive to the date the ~~noncustodial~~ parent first failed to regularly
257 exercise the court-ordered ~~or agreed~~ time-sharing schedule.

258 (12)(a) A parent with a support obligation may have other children living with him or her
259 who were born or adopted after the support obligation arose. If such subsequent children exist,
260 the court, when considering an upward modification of an existing award, may disregard the
261 income from secondary employment obtained in addition to the parent's primary employment if
262 the court determines that the employment was obtained primarily to support the subsequent
263 children.

264 (b) Except as provided in paragraph (a), the existence of such subsequent children
265 should not as a general rule be considered by the court as a basis for disregarding the amount
266 provided in the guidelines schedule. The parent with a support obligation for subsequent children
267 may raise the existence of such subsequent children as a justification for deviation from the
268 guidelines schedule. However, if the existence of such subsequent children is raised, the income
269 of the other parent of the subsequent children shall be considered by the court in determining
270 whether or not there is a basis for deviation from the guideline amount.

271 (c) The issue of subsequent children under paragraph (a) or paragraph (b) may only
272 be raised in a proceeding for an upward modification of an existing award and may not be
273 applied to justify a decrease in an existing award.

274 (13) If the recurring income is not sufficient to meet the needs of the child, the court
275 may order child support to be paid from nonrecurring income or assets.

276 (14) Every petition for child support or for modification of child support shall be

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277 accompanied by an affidavit which shows the party's income, allowable deductions, and net
278 income computed in accordance with this section. The affidavit shall be served at the same time
279 that the petition is served. The respondent, whether or not a stipulation is entered, shall make an
280 affidavit which shows the party's income, allowable deductions, and net income computed in
281 accordance with this section. The respondent shall include his or her affidavit with the answer to
282 the petition or as soon thereafter as is practicable, but in any case at least 72 hours prior to any
283 hearing on the finances of either party.

284 (15) For purposes of establishing an obligation for support in accordance with this
285 section, if a person who is receiving public assistance is found to be noncooperative as defined in
286 s. 409.2572, the IV-D agency is authorized to submit to the court an affidavit attesting to the
287 income of that parent based upon information available to the IV-D agency.

288 (16) The Legislature shall review the guidelines schedule established in this section at least
289 every 4 years beginning in 1997.

290 (17) In an initial determination of child support, whether in a paternity action,
291 dissolution of marriage action, or petition for support during the marriage, the court has
292 discretion to award child support retroactive to the date when the parents did not reside together
293 in the same household with the child, not to exceed a period of 24 months preceding the filing of
294 the petition, regardless of whether that date precedes the filing of the petition. In determining the
295 retroactive award in such cases, the court shall consider the following:

296 (a) The court shall apply the guidelines schedule in effect at the time of the hearing
297 subject to the obligor's demonstration of his or her actual income, as defined by subsection (2),
298 during the retroactive period. Failure of the obligor to so demonstrate shall result in the court
299 using the obligor's income at the time of the hearing in computing child support for the

300 retroactive period.

301 (b) All actual payments made by a parent to the other parent or the child or third
302 parties for the benefit of the child throughout the proposed retroactive period.

303 (c) The court should consider an installment payment plan for the payment of
304 retroactive child support.

305 (18) The court may, for good cause shown, order the parent otherwise entitled to the
306 dependency exemption for a child to execute a waiver of the dependency exemption.

307 Section 3. Paragraph (a) of subsection (5) of section 409.2563, Florida Statutes, is
308 amended to read:

309 409.2563 Administrative establishment of child support obligations.—

310 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

311 (a) After serving notice upon a parent in accordance with subsection (4), the
312 department shall calculate that parent's child support obligation under the child support
313 guidelines schedule as provided by s. 61.30, based on any timely financial affidavits received
314 and other information available to the department. If either parent fails to comply with the
315 requirement to furnish a financial affidavit, the department may proceed on the basis of
316 information available from any source, if such information is sufficiently reliable and detailed to
317 allow calculation of guideline schedule amounts under s. 61.30. If a parent receives public
318 assistance and fails to submit a financial affidavit, the department may submit a financial
319 affidavit for that parent pursuant to s. 61.30(15). If there is a lack of sufficient reliable
320 information concerning a parent's actual earnings for a current or past period, ~~it shall be~~
321 ~~presumed~~ there shall be a rebuttable presumption for the purpose of establishing a support
322 obligation that the parent had an earning capacity equal to the Florida federal minimum wage on

323 a full-time basis during the applicable period, unless evidence is presented that the parent is a
324 resident of another state, in which case that state's minimum wage shall apply. In the absence of
325 a state minimum wage, the federal minimum wage as determined by the United States
326 Department of Labor shall apply.

327 Section 4. Section 742.08, Florida Statutes, is amended to read:

328 742.08 Default of support payments. — Upon default in payment of any moneys
329 ordered by the court to be paid, the court may enter a judgment for the amount in default, plus
330 interest, administrative costs, filing fees, and other expenses incurred by the clerk of the circuit
331 court which shall be a lien upon all property of the defendant both real and personal. Interest on
332 support judgments shall be enforceable through all of the methods available to enforce the
333 underlying support order, including contempt. Interest shall not accrue on post judgment interest.
334 Costs and fees shall be assessed only after the court makes a determination of the nonprevailing
335 party's ability to pay such costs and fees. In Title IV-D cases, any costs, including filing fees,
336 recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk
337 of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes
338 a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department
339 of Revenue shall not be considered a party for purposes of this section; however, fees may be
340 assessed against the department pursuant to s. 57.105(1). Willful failure to comply with an order
341 of the court shall be deemed a contempt of the court entering the order and shall be punished as
342 such. The court may require bond of the defendant for the faithful performance of his or her
343 obligation under the order of the court in such amount and upon such conditions as the court
344 shall direct.

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MINUTES

Collaborative Law Legislation Subcommittee Meeting

Meeting Date: 8-28-09

Meeting Time: Noon

Attendees: Scott Rubin, Chair (votes to break tie vote)
Voting Members:
- Steve Berzner
- Judge Paul Kanarek
- Rosemarie Roth
- Frank Zilaitis
Non-Voting Attendees:
- Robert Merlin
Absent Voting Members:
- Ben Hodas
- Richard Hujber
- GM Robert Jones
- Jeffrey Weissman
- Dr. Debra Carter
- David Hirschberg

CALL TO ORDER

The meeting was called to order by Scott Rubin at 12:04 p.m.

OPENING DISCUSSION

Mr. Rubin opened the telecon by stating he expected to vote on each amendment (proposed by Mr. Berzner) of the UCLA as previously amended by Mr. Merlin, entertain additional amendments and/or proposals and then on the entire UCLA with all amendments.

GENERAL DISCUSSION

Mr. Rubin began with Item 2 of Mr. Berzner's e-mail dated August 27, 2009, to wit:

2. Section 5: Beginning and Concluding a Collaborative Law Process. Add the following as the new (b):

In connection with proceedings arising under chapter 61 and chapter 742, all time periods during which a person must enforce or exercise his or her legal rights are tolled as between the parties to "a" (friendly amendment from "the") collaborative participation agreement while such agreement remains in effect. This subsection applies to statutes of limitation, filing deadlines, any other time limits imposed by law and deadlines to exercise contractual rights as between the parties.

Motion for Vote by Mr. Berzner, Second by Ms. Roth.

Vote: To add to Section 5 of the UCLA, as amended by Mr. Merlin, Subparagraph (b).

Tally: YES – Berzner, Kanarek, Roth and Zilaitis. NO – none. UNANIMOUS.

Mr. Rubin then requested a vote on Item 1 of Mr. Berzner's e-mail dated August 27, 2009, to wit:

1. Section 19: Limits of Privilege. Add the following as subsections under (a):

(5) A communication or document in existence that was in existence prior to the parties entering into collaborative participation agreement.

(6) A communication or document that was otherwise known or disclosed publicly (Editor's note: fixed typo – was "publically") outside the collaborative process.

Motion for Vote by Mr. Berzner, Second by Ms. Roth.

Vote: To add to Section 5 of the UCLA, as amended by Mr. Merlin, Sub-subparagraphs (5) and (6) of Subparagraph (b).

Tally: YES – Berzner, Kanarek, Roth and Zilaitis. NO – none. UNANIMOUS.

Mr. Rubin inquired as to whether there were any additional proposals for amending the UCLA as amended by Mr. Merlin and, hearing no comments, proceeded to end the meeting.

CLOSING REMARK

Mr. Rubin thanked the members of the Subcommittee for their work and noted that our work-product will be delivered to Elisha Roy, FLABAR FLS Legislative Committee Co-Chair.

Per **Mr. Rubin's** request, a copy of the UCLA with the Merlin and Berzner Amendments as voted on by this Subcommittee (File Name: **UCLA-FL 2009_08_28.doc**) is incorporated into these minutes.

The meeting adjourned at 1:12 p.m.

Respectfully submitted,

Frank Zilaitis
Counselor and Attorney at Law

UNIFORM COLLABORATIVE LAW ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
SANTA FE, NEW MEXICO
JULY 9 - JULY 16, 2009

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 15, 2009

UNIFORM COLLABORATIVE LAW ACT

SECTION 1. SHORT TITLE. This {act} may be cited as the Uniform Collaborative Law Act.

SECTION 2. DEFINITIONS. In this {act}:

(1) “Collaborative law communication” means a statement, whether oral or in a written record, ~~written,~~ verbal or nonverbal, that:

(A) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded; and

(B) is made for the purpose of conducting, participating in, continuing, or reconvening a collaborative law process.

(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

(3) “Collaborative law process” means a procedure intended to resolve a matter without intervention by a tribunal in which parties:

(A) sign a collaborative law participation agreement; and

(B) are represented by collaborative lawyers.

(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law process who has met the education and training requirements established by the Supreme Court. ~~who has met the education and training requirements established by the Supreme Court.~~

(5) “Collaborative matter” or “matter” means a dispute, transaction, claim, problem, or issue for resolution described in a collaborative law participation agreement. The term includes, but is not limited to, ~~but, not limited to,~~ a dispute, claim, or issue in a proceeding.

(6) "Law firm" means lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or other association, ~~or~~ lawyers employed in a legal services organization, ~~or~~ the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(8) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a matter.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) "Proceeding" means:

(A) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related pre-hearing and post-hearing motions, conferences, and discovery; or

(B) a legislative hearing or similar process.

(11) "Prospective party" means a person that discusses the possibility of signing a collaborative law participation agreement with a prospective collaborative lawyer.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Related to a collaborative matter" or "related to a matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, claim, issue, or dispute as a matter.

(14) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Tribunal" means

(A) a court, arbitrator, administrative agency or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter; or

(B) a legislative body conducting a hearing or similar process.

SECTION 3. APPLICABILITY; SCOPE.

(a) This {act} applies to a collaborative law participation agreement that meets the requirements of section 4 signed {on or }-after [the effective date of this {act}].

(b) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT; REQUIREMENTS.

(a) A collaborative law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties' intention to resolve a matter through a collaborative law process under this {act};

(4) describe the nature and scope of the matter;

(5) identify the collaborative lawyer who represents each party in the collaborative law process; and

(6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(b) Parties to a collaborative law participation agreement may agree to include additional provisions not inconsistent with this {act}.

SECTION 5. BEGINNING AND CONCLUDING A COLLABORATIVE LAW PROCESS.

(a) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) In connection with proceedings arising under chapter 61 and chapter 742, all time periods during which a person must enforce or exercise his or her legal rights are tolled as between the parties to a collaborative participation agreement while such agreement remains in effect. This subsection applies to statutes of limitation, filing deadlines, any other time limits imposed by law and deadlines to exercise contractual rights as between the parties.

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(c) A collaborative law process is concluded by a:

- (1) negotiated resolution of the matter as evidenced by a signed record;
- (2) negotiated resolution of a portion of the matter as evidenced by a signed

record where the parties agree that the remaining portions of the matter will not be resolved in the collaborative law process; or

- (3) termination of the process.

(d) A collaborative law process terminates:

(1) when a party gives notice in a record that the collaborative law process is ended; or

(2) when a party:

(A) begins a proceeding related to the collaborative matter without the agreement of all parties; or

(B) in a pending proceeding related to the collaborative matter:

(i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) requests that the proceeding be put on the [tribunal's active calendar]; or

(iii) takes similar action requiring notice to be sent to the parties; or

(3) except as otherwise provided by subsection (e), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party. The party's collaborative lawyer shall give prompt notice in a record of such discharge or withdrawal to all other parties.

(de) A party may terminate a collaborative law process with or without cause. A notice of termination need not specify a reason for terminating the process.

(ef) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (c)(3) is sent to the parties:

(1) the unrepresented party engages a successor collaborative lawyer; and

(2) in a signed record:

(A) all parties consent to continue the process by reaffirming the collaborative law participation agreement;

(B) the collaborative law participation agreement is amended to identify the successor collaborative lawyer; and

(C) the successor collaborative lawyer confirms ~~that~~ the lawyer's representation of a party in the collaborative process.

(fg) A collaborative law process does not terminate if, with the consent of all parties, a party requests a tribunal to approve a negotiated resolution of the matter or any portion thereof as evidenced by a signed record.

(gh) A collaborative law participation agreement may provide additional methods of terminating a collaborative law process.

SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT.

(a) Parties to a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a matter related to the proceeding. Parties shall ~~promptly file~~ ~~promptly~~ a notice of the agreement with the tribunal after the collaborative law participation agreement is signed. Subject to subsection (c) and Section 7 and 8, the filing operates as a stay of the proceeding.

(b) Parties shall ~~file promptly~~ promptly file a notice of termination in a record with the tribunal when a collaborative law process terminates. The stay of the proceeding under subsection (a) is lifted when the notice is filed with the tribunal. The notice may not specify any reason for the termination. Either party may file the notice of termination with the tribunal.

(c) A tribunal may require parties and collaborative lawyers to provide status reports on the proceeding.

(d) Except as authorized by subsection (e), a status report may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process.

(e) A tribunal may require the parties and lawyers to disclose in a status report whether the process is ongoing or concluded.

(f) A communication made in violation of subsection (d) may not be considered by a tribunal.

(g) If a notice of a collaborative law process is filed in a pending proceeding, a tribunal may not dismiss the proceeding based on delay or failure to prosecute without providing the parties and their collaborative lawyers appropriate notice and an opportunity to be heard.

SECTION 7. EMERGENCY ORDER. During the collaborative law process a tribunal may issue emergency orders to protect the health, safety, welfare, or interests of a party or [insert term for family or household member as defined in [state civil protection order statute]]. The collaborative lawyer is authorized to seek or defend an emergency order under section 9(c)(2).

SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL. A tribunal may approve an agreement resulting from a collaborative law process.

Legislative Note: In states where judicial procedures for management of proceedings may be prescribed only by court rule or administrative guideline and not by legislative act, the duties of courts and other tribunals listed in Sections 6 through 8 should be adopted by the appropriate measure.

SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM.

(a) Except as otherwise provided in subsection (c), a collaborative lawyer may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interests of a party, or [insert term for family or household member as defined in [state civil protection order statute]] if a successor lawyer is not immediately available to represent that person. In that event, subsections (a) and (b) apply when the party, or [insert term for family or household member] is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interests of that person.

SECTION 10. LOW INCOME PARTIES.

(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent the party without fee in the collaborative matter or a matter related to the collaborative matter if:

(1) the party has an annual income which qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(2) the collaborative law participation agreement so provides; and

(3) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

SECTION 11. GOVERNMENTAL ENTITIES AS PARTIES.

(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent the government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(1) the collaborative law participation agreement so provides; and

(2) the collaborative lawyer is isolated from any participation in the collaborative matter or matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.

SECTION 12. DISCLOSURE OF INFORMATION. Upon the request of another party During the collaborative law process, ~~on the request of another party~~, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without the necessity of formal discovery procedures, and shall ~~update promptly~~ promptly update information that has materially changed. Parties may define the scope of disclosure, except as provided by law other than this {act}.

SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING. This {act} does not affect:

(a) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(b) the obligation of a person to report abuse or neglect of a child or adult under the law of this state.

SECTION 14. APPROPRIATENESS OF THE COLLABORATIVE LAW PROCESS.

(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(1) discuss with the prospective party factors the prospective collaborative lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(2) provide the party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

(3) advise the party that:

(A) after signing an collaborative law participation agreement:

(i) if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates; and

