

## MEMORANDUM

To: Ronald Bornstein, Chair Rules and Forms Committee  
From: Matthew Capstraw, Chair Fast Track Sub-Committee  
Rebecca Frieden, Monica Pigna, and Amy Hamlin  
Members of the Sub-Committee  
Date: August 14, 2008  
Re: Forms Advisory Workgroup Request

**NOTE: THIS MEMO REPRESENTS AN INTERIM DRAFT OF THE SUB-COMMITTEE. THE SUB-COMMITTEE, DUE TO TIME CONSTRAINTS, HAS NOT BEEN ABLE TO REVIEW THE MATERIALS IN THE DEPTH THAT IT DESIRES, BUT FELT THAT IT WAS MORE IMPORTANT TO PUT FORTH AN INITIAL LIST OF CONCERNS RELATED TO THE PROPOSED FORMS RATHER THAN FAIL TO ADDRESS THEM.**

### SUMMARY OF ISSUE REFERRED TO SUB-COMMITTEE

The sub-committee is reviewing General Information for Self-Representing Litigants, Final Judgment of Dissolution of Marriage with Dependent or Minor Child(ren), Instructions for Florida Supreme Court Approved Family Law Form 12.901(b)(1), Petition for Dissolution of Marriage with Dependent or Minor Child(ren), Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren), Instructions for Florida Supreme Court Approved Family Law Form 12.901(c)(1), Answer to Petition and Counterpetition for Dissolution of Marriage with Dependent or Minor Child(ren), and Petition for Dissolution of Marriage with Dependent or Minor Child(ren). The proposed parenting plans will be addressed in another memorandum.

### OPINION OF THE SUB-COMMITTEE

#### 1. General Information for Self-Representing Litigants

Page 3: Proposed Wording:

**Parenting Plan.** . .If your case involves minor or dependent children, a **Parenting Plan** shall be adopted by the court. **Parenting Plan**, Florida Supreme Court Approved Family Law Form 12.9– or **Supervised/Safety-Focused Parenting Plan**, Florida Supreme Court Approved Family Law Form, 12.9– .The parties may agree and develop a Parenting Plan for approval by the court. If the parties are unable to agree, a Parenting Plan **shall** be established by the Court. The Parenting Plan shall contain a time-sharing schedule and should address issues regarding the child(ren)'s education, health care, and physical, social and emotional well-being.

Comment: The first line should be changed to read: **Parenting Plan**. .If your case involves minor or dependent children, a **Parenting Plan** shall be ~~adopted~~ approved or established by the court. The rationale for adding the words: “approved or established” is to make it more consistent with F.S. 61.046 (13) . . . The parenting plan shall be developed and agreed to by the parents and approved by a court or, **if the parents cannot agree, established by the court.**

Page 9 Proposed Wording: I have bolded an typo related to spacing

Parenting Plan- a document created to govern the relationship between the parties relating to decisions that must be made regarding the minor child(ren). The Plan contains a time-sharing schedule for the parents and child(ren) and addresses issues concerning the minor child(ren). The issues concerning the minor child(ren) may include, but are not limited to, the child(ren)'s **education ,health** care, physical, social, and emotional well-being. In creating the plan, all circumstances between the parties, including the parties' historic relationship, domestic violence, and other factors must be taken into consideration. The parenting plan shall be developed and agreed to by the parents and approved by a court or, if the parents cannot agree, established by the court.

Comment: There is a minor typographical error that is in the **bold** section above. It may be a result of the use of Word perfect rather than Word but we are pointing it out just in case.

Page 9 Proposed wording:

Parenting Plan Recommendation-a plan and time-sharing schedule developed by a psychologist appointed by the court in a dissolution of marriage, a case of domestic violence, or a paternity matter involving the relationship of a child and a parent.

The sub-committee suggests that it be revised to the following:

Parenting Plan Recommendation-a plan and time-sharing schedule developed by a psychologist, who may be appointed by the court or retained by a party, that is not binding on a court.

Comment: There is no requirement in the statutes that the Parenting Plan Recommendation be made only by a psychologist appointed by the Court. Also the suggested definition neglects to include modification actions. It is important to include that the recommendation is not binding on the court.

Page 10 two definition provisions

Supervised ~~Visitation~~ Time-sharing - a parenting arrangement under which time-sharing between a parent and his or her child(ren) is supervised by either a friend, family member, or a supervised visitation center.

And

Time-sharing schedule - a timetable that must be included in the Parenting Plan that specifies the time, including overnights and holiday, that a minor child or children will spend with each parent. If developed and agreed to be the parents of a minor child(ren), it must be approved by the court. If the parents cannot agree, the schedule shall be established by the court.

Comment: The titles are not capitalized correctly. They should be: "Supervised Time-Sharing" and "Time-Sharing Schedule"

## **2. Final Judgment of Dissolution of Marriage with Dependent or Minor Child(ren)**

Section III Paragraph 1 The proposed wording

1. Jurisdiction. The Court has jurisdiction to determine parental responsibility, to establish a Parenting Plan and time-sharing with regards to the ~~eustody of and visitation with the parties'~~ minor child(ren) listed in paragraph 2 below.

Comments: A parenting plan must contain time-sharing. To list time-sharing with parenting plan is redundant. If the committee chooses to keep the perceived redundancy, the new language paragraph should still reworded as follows: "parental responsibility, to establish or adopt a Parenting Plan, establishing time-sharing with regards"

Section III Paragraph 3

Comment: As parental responsibility is also covered in parenting plans. Paragraph 3 is unnecessary.

Section III Paragraph 5 the proposed wording:

5. Limitations on Parental Responsibility, ~~Visitation~~, and Time Sharing. Neither parent shall take the child(ren) from the ~~eustody of the~~ other parent or any child care provider or other person entrusted by the other parent with the care of the child(ren) without the agreement of the other parent during the other parent's time of parental responsibility, ~~or visitation~~. ~~The above reasonable (paragraph 4.a. above) or specified (paragraph 4.b. above) visitation shall be:~~

~~[/ if applies]~~

~~— a. supervised by a responsible adult who is mutually agreeable to the parties. If the parties cannot agree, the supervising adult shall be: {name} —.~~

~~— b. at the supervised visitation center located at: {address} —,~~

~~subject to the available times and rules of the supervised visitation center. The cost of such visits shall be paid by ( ) Mother ( ) Father ( ) Both.~~

This paragraph should be removed in total. It is more appropriate to be in a parenting plan.

## **3. Instructions for Florida Supreme Court Approved Family Law Form 12.901(b)(1), Petition for Dissolution of Marriage with Dependent or Minor Child(ren),**

Page 3 original language from the form that NEEDS to be corrected:

X **Family Law Financial Affidavit**, Florida Family Law Rules of Procedure Form 12.902(b) or (c). (This must be filed within 45 days of service of the petition on the respondent, if not filed at the time of the petition.)

Comment: This statement is incorrect in this document as well as the Petition and Counter Petition. F.S. 61.30 (14) states:

**(14) Every petition for child support or for modification of child support shall be accompanied by an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The affidavit shall be served at the same time that the petition is served.** The respondent, whether or not a stipulation is entered, shall make an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The respondent shall include his or her affidavit with the answer to the petition or as soon thereafter as is practicable, but in any case at least 72 hours prior to any hearing on the finances of either party. {Emphasis added}

Pursuant to the Statute, the an affidavit shall be filed and served with the petition.

C Family Law Financial Affidavit, Florida Family Law Rules of Procedure Form 12.902(b) or (c). (This must be filed with the petition if the petition seeks to establish child support. Otherwise it must be filed within 45 days of service of the petition on the respondent.)

Page 3 proposed language

~~Child Custody...~~ Parenting and Time-Sharing. . .If you and your spouse are unable to agree about with whom the child(ren) will live most of the time to a time-sharing schedule and Parenting Plan, a judge will decide for you. The judge will decide the parenting arrangements and time-sharing based on the child(ren)'s best interests. Regardless of whether there is an agreement, the court reserves jurisdiction to modify issues relating to the minor child(ren).

Comment: The sub-committee is concerned that this paragraph is confusing and suggests it be reworded to the following:

Parenting and Time-Sharing. . .If you and your spouse are unable to agree on parenting arrangements and a time-sharing schedule, a judge will decide for you as part of establishing a Parenting Plan. The judge will decide the parenting arrangements and time-sharing based on the child(ren)'s best interests. Regardless of whether there is an agreement, the court reserves jurisdiction to modify issues relating to the minor child(ren).

Additional comments:

The list of terms on page three (3) should be capitalized. (Reasonable time-sharing should be Reasonable Time-Sharing, etc.)

Child Support Paragraph: There is a typo. There is an extra period after "and the number of overnights the child(ren) spend with each parent."

The Sub-Committee is very concerned about the included language on page 2 relating that certain documents must be filed with the Petition. The requirement to file a parenting plan so early in the case is daunting for a pro-se, or even an attorney, and it would not be appropriate to do so in many cases as what is best for the children would still need to be developed. Also, the entry itself is inconsistent as it says in the last sentence that “a proposed Parenting Plan should be filed.”

The sub-committee suggests the removal of this provision:

! **Parenting Plan**, Florida Supreme Court Approved Family Law Form, 12-- or  
be filed.

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**4. Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren)**

The sub-committee has reviewed this document and the only suggestion is the removal of Section III paragraph 2 Parental Responsibility and for that information to be included in the parenting plan. That will necessitate a rewording of Section III paragraph 3 to the following:

3. The parties shall have time sharing and parental responsibility in accordance with the attached Parenting Plan.

Section III Title, to be consistent should it read: Parenting Plan, establishing Parental Responsibility and Time-Sharing

**5. Instructions for Florida Supreme Court Approved Family Law Form 12.901(c)(1), Answer to Petition and Counterpetition for Dissolution of Marriage with Dependent or Minor Child(ren)**

This form needs the same changes listed in number 3 above.

Additional comments:

Page 2 the Title: Parenting and Time-Sharing should read Parenting Plan and Time-Sharing. I believe this change should be made in the first sentence of the paragraph.

Page 3: The list of terms at the beginning of the page should be changed from Reasonable Parenting Time to "Reasonable Time-Sharing" to be consistent. This change needs to be made for Specified parenting time and Supervised parenting time.

6. **Answer to Petition and Counterpetition for Dissolution of Marriage with Dependent or Minor Child(ren)**

Section III

There are concerns with this entire section as parental responsibility is part of a parenting plan. The sub-committee suggests removal of all material from paragraph 2 onward and replace with the following:

2. Parenting Plan. . . It is the best interests of the minor child(ren) that

( T Check only one)

- \_\_\_\_\_ a. The attached proposed Parenting Plan be adopted by the court.
- \_\_\_\_\_ b. The court establish a Parenting plan which contains the following provisions:
  - \_\_\_ Shared Parental Responsibility
  - \_\_\_ Sole Parental Responsibility awarded to \_\_\_ Husband \_\_\_ Wife.
  - \_\_\_ No time-sharing for the \_\_\_ Husband \_\_\_ Wife
  - \_\_\_ Limited time sharing with the \_\_\_ Husband \_\_\_ Wife
  - \_\_\_ Supervised time sharing for the \_\_\_ Husband \_\_\_ Wife
  - \_\_\_ Time-sharing as determined by the Court
  - \_\_\_ Time-sharing schedule as follows:

3. Adoption of the proposed parenting plan or the establishment of a Parenting Plan is in the best interest of the minor child(ren) (if you are seeking sole parental responsibility you must explain why shared parental responsibility would be detrimental to the minor child(ren))

because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: This language is being proposed as a stop gap. Additional work will be needed.

Section IV Child Support

This provision has the same conflict with F.S. 61.30 as 3 above.

## Section VI

Proposed language:

3. establishing ~~the primary residential parent (custody)~~, parental responsibility, and ~~visitation~~ time-sharing for the dependent or minor child(ren) common to both parties, as requested in Section III of this petition.

Comment: This should be reworded to better deal with the statutory change.

3. adopt or establish a Parenting Plan containing provisions for parental responsibility and time-sharing for the minor child(ren) common to both parties, as requested in Section III of this petition.

Additional Comments:

Section III Title, to be consistent should it read: Parenting Plan, establishing Parental Responsibility and Time-Sharing

## 7. **Petition for Dissolution of Marriage with Dependent or Minor Child(ren)**

This document suffers from the same problems as No. 6 above