

Eighth Judicial Circuit Family Law Advisory Group (FLAG) Minutes of June 23, 2008

The FLAG met on Monday, June 23, 2008 at the Alachua County Family and Civil Justice Center. Present were: Harvey Baxter, Tracey Carlisle, Mary-Ellen Cross, Pete Enwall, Bill Farley, Beverly Graper, Judge Stan Griffis, Donna Houghton, Arlene Huszar, Sheree Lancaster, Myrna Neims, Judge James P. Nilon, Judge Frederick D. Smith, Candace Valenstein, Jean Westin, and several Family Court externs.

The minutes of the May 19, 2008 meeting were approved.

Old Business

Myrna Neims reported that she had attended the Association of Family & Conciliation Courts (AFCC) annual conference in Vancouver in May. She noted that the July issue of the Family Court Review, an AFCC publication, is about domestic violence. It can be found at <http://www.blackwell-synergy.com/toc/fcre/46/3>. In that issue is an article about the Wingspread Conference, which was held to give a group of professionals the opportunity to look at domestic violence in a different, more collaborative way. The Conference report is published at <http://www.blackwell-synergy.com/doi/full/10.1111/j.1744-1617.2008.00214.x>.

The Parenting Plan Committee of the FLAG did not have a report. With the recent changes in legislation, they put their work on hold because the Family Law Section of the Florida Bar is working on the same issue.

Program

Judge Glant spoke to the group about revisions to the certain areas of family law. He first discussed section 61.075, Florida Statutes, regarding equitable distribution. The term "special equity" has been abolished but the same relief is available to the parties as a "claim for unequal distribution." Another form of relief now known as "interim partial distribution" has always been available by motion but now requires a sworn motion. The burden of proof for these claims is clear and convincing evidence. The changes to this statute take effect July 1, 2008.

Judge Glant then addressed the changes to Chapter 61. All references to "custody" have been eliminated as well as the terms "obligor" and "obligee" in relation to child support. There will be no more primary residence and no more rotating custody. What was formerly a visitation schedule will be a time-sharing or parenting plan. Time-sharing will be awarded by percentages. The 40% rule regarding overnight visits and the mandatory reduction in child support remains. There will be no more custody evaluations but, instead, there will be parenting plan recommendations although only licensed psychologists will be able to perform them. In section 61.20, there is a provision for social investigations that mental health professionals other than licensed psychologists could conduct.

It will no longer be possible to order reasonable and liberal visitation although Judge Smith suggested that it would be permissible to order reasonable and liberal

time-sharing but not less than a certain percentage of time. As under current law, fifty/fifty time-sharing will not preclude an award of child support.

Judge Glant noted that the parenting plans will still be considered custody orders for the purposes of the Hague Convention and child abduction laws.

The factors in determining custody in section 61.13(3), Florida Statutes, have changed. There are now 20 factors to be used in determining a parenting plan and many require a "demonstrated capacity and disposition" to do certain things. This will favor the parent who has spent the most time with the children. Delegation of parental responsibility to third parties is now included as a factor. The geographic viability of the plan takes into account the travel time of the children.

Section 61.13(4)(c) contains an enforcement provision that allows for sanctions against a non-visiting parent.

Section 61.13002 provides that time-sharing and child support may be modified temporarily due to military service. Harvey Baxter explained that, sometimes a parent will obtain a change of custody when the other parent is deployed and the parent in the military would then have to show a substantial change in circumstances to get custody changed back. The new statute would not require that.

If a domestic violence injunction is entered and the respondent is to have no contact with the children, 100% time-sharing will be awarded to the petitioner.

There was some discussion about whether these changes were substantive or merely a matter of semantics. It was noted that changes to the Supreme Court approved forms to conform with the new language are being fast-tracked through the Family Rules Committee.

These changes to the statute will take effect October 1, 2008.

The next meeting of the FLAG will be Monday, **July 28**, at 4:00 PM.