

**IN THE SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO THE  
FLORIDA FAMILY LAW RULES

CASE NO: SC08-1660

**COMMENT OF THE FAMILY LAW SECTION OF THE FLORIDA BAR**

THE FAMILY LAW SECTION OF THE FLORIDA BAR, by and through its Chair, Scott Rubin, and the Chair of its Rules and Forms Committee, Ronald L. Bornstein, hereby files this Comment of the Family Law Section of The Florida Bar to proposed Amendments to the Florida Family Law Rules of Procedure and states:

**A. POSITION**

A Fast-Track Sub-Committee of the Rules and Forms Committee of the Family Law Section of The Florida Bar was appointed to consider matters requiring comment and/or action on a fast-track basis and in advance of regularly scheduled meetings of the Family Law Section and its Rules and Forms Committee, which includes the proposed Amendments to the Florida Family Law Rules of Procedure. The Sub-Committee presented its recommendations to the Executive Council of the Family Law Section at a specially-scheduled telephonic meeting on December 12, 2008, at which the Executive Council voted unanimously to approve the recommendations of the Sub-Committee as set forth in this Comment.

**B. DISCUSSION OF CONCERNS AND RECOMMENDATIONS**

- 1. Whether the proposed change to Rule 12.363(a) is an appropriate change or would alternative wording better reflect the statutory changes.**

The proposed amendment is as follows:

- (a) Appointment of Mental Health Professional or Other Expert**

**(1) When the issue of ~~visitation~~, parental responsibility, or residential placement of a parenting plan for a minor child is in controversy, . . . .**

The Family Law Section is concerned that the proposed amendments to this Rule are not the most artfully drafted, given that the definitions set forth in §61.046, Florida Statutes, includes parental responsibility, and the concept of “visitation” has been replaced with timesharing. Thus, the Family Law Section recommends the following alternative language:

**(a) Appointment of Mental Health Professional or Other Expert**

**(1) When the issue of ~~visitation~~ timesharing, parental responsibility, or residential placement of ultimate decision-making for a minor child is in controversy, . . . .**

**2. Whether the proposed Committee Note for Rule 12.650 OVERRIDE OF FAMILY VIOLENCE INDICATOR is appropriately worded.**

The proposed Committee Note states in part:

**“2008 Amendment, Chapter 2008-61, Laws of Florida, effective October 1, 2008, eliminated such terms as “custodial parent,” “noncustodial parent,” and “visitation” from Chapter 61, Florida Statutes. Instead, parents are to formulate a parenting plan that includes, among other things, their timesharing schedule for their minor children. . . .”**

The Family Law Section recommends that the language of this comment be modified to reflect that parenting plans are adopted or established by the court. The Family Law Section is concerned that the language in the comment as proposed is misleading, as it suggests that the parenting plan is only formulated by parents without any mention of the judicial oversight into the process or the ability of a court to establish a parenting plan if the parents are unable to formulate an acceptable plan. Thus, the Family Law Section recommends that the language be modified as follows:

**“2008 Amendment, Chapter 2008-61, Laws of Florida, effective October 1, 2008, eliminated such terms as “custodial parent,” “noncustodial parent,” and “visitation” from Chapter 61, Florida Statutes. Instead, ~~parents are to formulate~~ the court adopts or establishes a parenting plan that includes, among other things, their timesharing schedule for their minor children. . . .”**

The reasoning of the Family Law Section for not including the proposed language regarding the formation of a parenting plan by the parents was that an adoptable parenting plan could also result from a Parenting Plan Recommendation made by a licensed psychologist pursuant to §61.046(14) and §61.122, Florida Statutes.

**3. Whether the proposed changes to the Notice of Limited Appearance and Consent to Limited Appearance by Attorney are appropriate.**

The Family Law Section is concerned with the addition of the language “including establishing a parenting plan” in the recommended change to the Notice of Limited Appearance in 2 b. \_\_\_\_ Parental responsibility, as a parenting plan should contain information about parental responsibility. Unfortunately, there are inconsistencies in the definition of a Parenting Plan pursuant to §61.046(13) and §61.13, Florida Statutes, which makes this unclear.

§61.046(13), Florida Statutes, defines "Parenting plan" as “a document created to govern the relationship between the parties relating to the decisions that must be made regarding the minor child and **shall** contain a timesharing schedule for the parents and child. The issues concerning the minor child **may include**, but are not limited to, the child's education, health care, and 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.” (Emphasis added.)

§61.13(2)(b), Florida Statutes, states that “any parenting plan approved by the court **must, at minimum,** describe in adequate detail how the parents will share and be **responsible for the daily tasks** associated with the upbringing of the child, the **timesharing schedule** arrangements that specify the time that the minor child will spend with each parent, a designation of who will be responsible for any and all forms of health care, school-related matters, other activities, and the methods and technologies that the parents will use to communicate with the child.” (Emphasis added.)

Due to these inconsistencies, the proposed change may or may not be redundant. Thus, the Family Law Section recommends that the language be modified as follows: “2 b. \_\_\_\_ Parental responsibility and time-sharing.” This change will clearly place the limited appearance in the areas required in §61.13(2)(b), Florida Statutes.

**4. Changes to Family Law Rules of Procedure Form 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings.**

The proposed changes to Interrogatory 6(e) are inconsistent with the changes in law and could be more artfully drafted so as to better explain what is being sought. The Family Law Section suggests the following changes to the proposed language:

**“e. If you are claiming that the other parent’s ~~contact or timesharing~~ with the minor child(ren) should be limited, supervised or otherwise restricted, or that you should have sole parental responsibility for the minor child(ren), with or without timesharing with the other parent, or that you should have ultimate responsibility over specific aspects of the child(ren)’s welfare or that these responsibilities should be divided between you and the other parent, state your reasons and all facts which you rely upon to support your claim.”**

The Family Law Section’s reasoning is that removal of the word “contact” in favor of the current term of art, “timesharing,” makes the language more consistent. The additions of “supervised or otherwise restricted” clarifies that the paragraph is not only seeking limitations in time, but also in how the timesharing is to be conducted.

**5. Changes to Family Law Rules of Procedure Form 12.930(c), Standard Family Law Interrogatories for Modification Proceedings.**

The proposed changes to 6(c) and (d) could be worded so as to more clearly explain what is being sought. The Family Law Section suggests the following changes to the proposed language:

**c. If you are requesting a change in shared or sole parental responsibility, ultimate decision making, timesharing schedule, the parenting plan, or any combination thereof, for the minor child(ren), describe in detail the change in circumstances since the entry of the Final Judgment sought to be modified that you feel justify the requested change. State when the change in circumstances occurred, how the change of circumstances affects the child(ren), and why it is in the best interest of the child(ren) that the Court make the requested change. Attach your proposed parenting plan.**

**d. If you do not feel the requested change in shared or sole parental responsibility, ultimate decision-making, timesharing schedule, the parenting plan, or any combination thereof, for the minor child(ren) is in their best interests, or if you feel there has not been a change in circumstances since the entry of the Final Judgment sought to be modified, describe in detail any facts ~~since the entry of the Final Judgment sought to be modified~~ that you feel justify the Court denying the requested change. State, ~~in your opinion~~, what requested change, if any, in shared or sole parental responsibility, ultimate decision-**

**making or timesharing schedule, or of the parenting plan is justified or agreeable to you and why it is in the best interests of the child(ren).**

The Family Law Section suggests the addition of “ultimate decision-making” and “timesharing schedule” to better reflect the categories of things that may be changed. In (d), the addition of the language “or if you feel there has not been a change in circumstances since the entry of the Final Judgment sought to be modified” was added to aid the gathering of information if an opposing party is denying that there has been a change in circumstances since the last Final Judgment. The language, “in your opinion” was stricken for consistency. The word “requested” was added before “change” to clarify that it is referring to changes that have been requested in the Supplemental Petition for Modification, rather than any change in which the person responding to the interrogatory may desire.

WHEREFORE, THE FAMILY LAW SECTION OF THE FLORIDA BAR respectfully files this Comment, requesting that the amendments to the Florida Family Law Rules of Procedure and associated Forms are made consistent with this Comment.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that the original and nine copies of the foregoing Comment have been furnished to the Clerk of the Supreme Court and that a true and correct copy of the foregoing has been furnished to Robyn Vines, Esq., Chair, Florida Bar Family Law Rules Committee, Ruden McClosky, 200 East Broward Boulevard, Fort Lauderdale, Florida 33301-1963, by electronic mail and U.S. mail this 15<sup>th</sup> day of December, 2008.

Respectfully submitted,

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