

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA  
RULES OF JUDICIAL ADMINISTRATION AND  
FLORIDA FAMILY LAW RULES OF  
PROCEDURE**

**CASE NO.:**

**AMENDMENTS TO DEFINITION OF  
FAMILY LAW PROCEEDINGS**

Katherine E. Giddings, Chair, Rules of Judicial Administration Committee, Steven P. Combs, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this out-of-cycle report under Fla. R. Jud. Admin. 2.140(f). The Rules of Judicial Administration amendment was approved by the committee by a vote of 28-0 and the Family Law Rules amendment was approved by the committee by a vote of 21-0. Both amendments were approved by the Executive Committee of The Florida Bar Board of Governors by a vote of 8-0. Because of time constraints, the proposals were not published for comment before filing.

In a September 29, 2010, letter, Thomas D. Hall, Clerk, Florida Supreme Court, referred to the Rules of Judicial Administration and Family Law Rules committees a recommendation from the 2008-2010 report of the Steering Committee on Families and Children in the Court. *See* Appendix C. The proposal recommended amending Fla. R. Jud. Admin. 2.545(d)(2) and Fla. Fam. L. R. P. 12.010(a)(1) to add proceedings for temporary custody of minor children by extended family, under chapter 751, Florida Statutes, to the definition of family law proceedings. Both committees concurred with this recommendation and have made the required amendments. The amendments also included “concurrent custody,” as added to Chapter 751, Florida Statutes by Chapter 2010-30, Laws of Florida. (*See* Appendix D.) The amended rules are provided in the full page format (Appendix A) and the two-column format (Appendix B).

The committees respectfully request that the Court amend the Florida Rules of Judicial Administration and Florida Family Law Rules of Procedure as outlined in this report.

Respectfully submitted \_\_\_\_\_.

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## CERTIFICATE OF COMPLIANCE

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

I certify that these rules were read against *West's Rules of Court – State* (2010 Revised Edition).

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Ellen H. Sloyer  
Rules Committee Liaison  
The Florida Bar  
651 East Jefferson Street  
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## **APPENDIX A**

## **RULE 2.545. CASE MANAGEMENT**

(a) **Purpose.** Judges and lawyers have a professional obligation to conclude litigation as soon as it is reasonably and justly possible to do so. However, parties and counsel shall be afforded a reasonable time to prepare and present their case.

(b) **Case Control.** The trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined. The trial judge shall take specific steps to monitor and control the pace of litigation, including the following:

- (1) assuming early and continuous control of the court calendar;
- (2) identifying priority cases as assigned by statute, rule of procedure, case law, or otherwise;
- (3) implementing such docket control policies as may be necessary to advance priority cases to ensure prompt resolution;
- (4) identifying cases subject to alternative dispute resolution processes;
- (5) developing rational and effective trial setting policies; and
- (6) advancing the trial setting of priority cases, older cases, and cases of greater urgency.

(c) **Priority Cases.**

(1) In all noncriminal cases assigned a priority status by statute, rule of procedure, case law, or otherwise, any party may file a notice of priority status explaining the nature of the case, the source of the priority status, any deadlines imposed by law on any aspect of the case, and any unusual factors that may bear on meeting the imposed deadlines.

(2) If, in any noncriminal case assigned a priority status by statute, rule of procedure, case law, or otherwise, a party is of the good faith opinion that the case has not been appropriately advanced on the docket or has not received

priority in scheduling consistent with its priority case status, that party may seek review of such action by motion for review to the chief judge or to the chief judge's designee. The filing of such a motion for review will not toll the time for seeking such other relief as may be afforded by the Florida Rules of Appellate Procedure.

**(d) Related Cases.**

(1) The petitioner in a family case shall file with the court a notice of related cases, if related cases are known or reasonably ascertainable. A case is related when:

(A) it involves any of the same parties, children, or issues and it is pending at the time the party files a family case; or

(B) it affects the court's jurisdiction to proceed; or

(C) an order in the related case may conflict with an order on the same issues in the new case; or

(D) an order in the new case may conflict with an order in the earlier litigation.

(2) "Family cases" include dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, UIFSA, custodial care of and access to children, proceedings for temporary or concurrent custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor, CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.

(3) The notice of related cases shall identify the caption and case number of the related case, contain a brief statement of the relationship of the actions, and contain a statement addressing whether assignment to one judge or another method of coordination will conserve judicial resources and promote an efficient determination of the actions.

(4) The notice of related cases shall be filed with the initial pleading by the filing attorney or self-represented petitioner.

(5) Each party has a continuing duty to inform the court of any proceedings in this or any other state that could affect the current proceeding.

(6) Whenever it appears to a party that two or more pending cases present common issues of fact and that assignment to one judge or another method of coordination will significantly promote the efficient administration of justice, conserve judicial resources, avoid inconsistent results, or prevent multiple court appearances by the same parties on the same issues, the party may file a notice of related cases requesting coordination of the litigation.

(7) The notice of related cases shall be served on all parties in the related cases, the presiding judges, and the chief judge or family law administrative judge.

(e) **Continuances.** All judges shall apply a firm continuance policy. Continuances should be few, good cause should be required, and all requests should be heard and resolved by a judge. All motions for continuance shall be in writing unless made at a trial and, except for good cause shown, shall be signed by the party requesting the continuance. All motions for continuance in priority cases shall clearly identify such priority status and explain what effect the motion will have on the progress of the case.

### **Committee Notes**

The provisions in subdivision (c) of this rule governing priority cases should be read in conjunction with the provisions of rule 2.215(g), governing the duty to expedite priority cases.

## **RULE 12.010. SCOPE, PURPOSE, AND TITLE**

### **(a) Scope.**

(1) These rules apply to all actions concerning family matters, including actions concerning domestic, repeat, dating, and sexual violence, except as otherwise provided by the Florida Rules of Juvenile Procedure or the Florida Probate Rules. “Family matters,” “family law matters,” or “family law cases” as used within these rules include, but are not limited to, matters arising from dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, an action involving a parenting plan for a minor child or children (except as otherwise provided by the Florida Rules of Juvenile Procedure), proceedings for temporary or concurrent custody of minor children by extended family, adoption, proceedings for emancipation of a minor, declaratory judgment actions related to premarital, marital, or post-marital agreements (except as otherwise provided, when applicable, by the Florida Probate Rules), injunctions for domestic, repeat, dating, and sexual violence, and all proceedings for modification, enforcement, and civil contempt of these actions.

(2) The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceeding unless these rules or the Florida Rules of Civil Procedure, where applicable, specifically provide to the contrary. All actions governed by these rules shall also be governed by the Florida Evidence Code, which shall govern in cases where a conflict with these rules may occur.

### **(b) Purpose.**

(1) These rules are intended to facilitate access to the court and to provide procedural fairness to all parties, to save time and expense through active case management, setting timetables, and the use of alternatives to litigation, and to enable the court to coordinate related cases and proceedings to avoid multiple appearances by the same parties on the same or similar issues and to avoid inconsistent court orders.

(2) Nothing shall prohibit any intake personnel in family law divisions from assisting in the preparation of papers or forms to be filed in any action under these rules.



(c) **Title.** These rules shall be known as the Florida Family Law Rules of Procedure and abbreviated as Fla. Fam. L. R. P.

**APPENDIX B**

**Proposed rule**

**Reasons for change**

**RULE 2.545. CASE MANAGEMENT**

(a) [No change]

(b) [No change]

(c) [No change]

(d) Related Cases.

(1) [No change]

(2) “Family cases” include dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, UIFSA, custodial care of and access to children, proceedings for temporary or concurrent custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor, CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.

(3)–(7) [No change]

(e) [No change]

Amended to add proceedings for temporary or concurrent custody of minor children under chapter 751, Florida Statutes, to the definition of family law matters/cases.

**Committee Notes**

[No change]

**Proposed rule**

**RULE 12.010. SCOPE, PURPOSE, AND TITLE**

**(a) Scope.**

(1) These rules apply to all actions concerning family matters, including actions concerning domestic, repeat, dating, and sexual violence, except as otherwise provided by the Florida Rules of Juvenile Procedure or the Florida Probate Rules. “Family matters,” “family law matters,” or “family law cases” as used within these rules include, but are not limited to, matters arising from dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, an action involving a parenting plan for a minor child or children (except as otherwise provided by the Florida Rules of Juvenile Procedure), proceedings for temporary or concurrent custody of minor children by extended family, adoption, proceedings for emancipation of a minor, declaratory judgment actions related to premarital, marital, or post-marital agreements (except as otherwise provided, when applicable, by the Florida Probate Rules), injunctions for domestic, repeat, dating, and sexual violence, and all proceedings for modification, enforcement, and civil contempt of these actions.

(2) [No change]

**(b)** [No change]

**(c)** [No change]

Amended to add proceedings for temporary or concurrent custody of minor children under chapter 751, Florida Statutes, to the definition of family law matters/cases.

## **APPENDIX C**



# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

CHARLES T. CANADY  
CHIEF JUSTICE  
BARBARA J. PARIENTE  
R. FRED LEWIS  
PEGGY A. QUINCE  
RICKY POLSTON  
JORGE LABARGA  
JAMES E. C. PERRY  
JUSTICES

THOMAS D. HALL  
CLERK OF COURT

KEVIN WHITE  
ACTING MARSHAL

September 29, 2010

Mr. Steven Patrick Combs, Chair  
Family Law Rules Committee  
3217 Atlantic Blvd  
Jacksonville, Florida 32207-8901

Ms. Katherine Eastmoore Giddings, Chair  
Rules of Judicial Administration Committee  
Akerman Senterfitt  
106 E. College Avenue, Suite 1200  
Tallahassee, Florida 32301-7741

Re: Report of Steering Committee on Families and Children in the Court

Dear Mr. Combs and Ms. Giddings:

Pursuant to the Court's direction, I am writing to you as Chairs of the Rules of Judicial Administration Committee and the Family Law Rules Committee concerning the enclosed report of Steering Committee on Families and Children in the Court. The Court would like your committees to file a joint out-of-cycle report proposing rule amendments implementing the Steering Committee's recommendations concerning Rules of Judicial Administration 2.545(d)(2) and Family Law Rule of Procedure 12.010(a)(1).

Under the "Impediment 6 – Inconsistency of Definitions among Florida's Family Law Statutes" section of the report, the Steering Committee points out inconsistencies in the definitions of various terms in the statutes and the rules. To

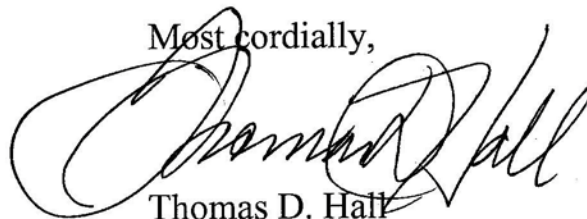
Mr. Steven Patrick Combs  
Ms. Katherine Eastmoore Giddings  
September 29, 2010  
Page: 2

address the inconsistencies in the rules, the Steering Committee drafted amendments to two rules. First, it drafted an amendment to the Rule of Judicial Administration 2.545 definition of "family cases" to include "temporary custody of minor children by extended family," an action created by chapter 751, Florida Statutes. The Steering Committee also drafted an amendment to Family Law Rule of Procedure 12.010(a) to include that type of action in the scope of the rules. The Steering Committee also recommended that, if legislation creating an action for "concurrent custody" is signed into law, the rules be further amended to add "concurrent custody" to the definition of family cases and scope of the rules. See Report at 9-10. The referenced legislation has been signed into law and became effective July 1, 2010 as chapter 2010-30, Laws of Florida, entitled "Child Custody—Temporary and Concurrent Custody."

Your committees should use their fast-track procedures to consider the Steering Committee's proposals. The Family Law Rules Committee is designated as the lead committee on this referral and is responsible for coordinating the committees' response. Your joint report should be filed with my office by April 1, 2011, with copies to your liaison justices and the director of central staff. If additional time is needed to address this issue, please file a motion for extension of time with my office.

Thank you in advance for your attention to this matter. If you should have any questions, please do not hesitate to call me.

Most cordially,

A handwritten signature in black ink, appearing to read "Thomas D. Hall", written in a cursive style.

Thomas D. Hall

TDH/dm/sb

Enclosure



Mr. Steven Patrick Combs  
Ms. Katherine Eastmoore Giddings  
September 29, 2010  
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cc: The Honorable Barbara J. Pariente, Steering Committee on  
Families & Children in the Court  
The Honorable Ricky L. Polston, Liaison Rules of Jud. Admin. Committee  
The Honorable James E. C. Perry, Liaison Family Law Rules Committee  
Ms. Dana Dowling, OSCA Staff to Steering Committee  
✓Ms. Jodi Jennings, Bar Staff Liaison to Rules of Jud. Admin. Committee  
Ms. Ellen Sloyer, Bar Staff Liaison to Family Law Rules Committee  
Ms. Deborah J. Meyer, Director of Central Staff

**End of Term Report 2008 - 2010**



**Florida Supreme Court**

**Judge Nikki Ann Clark, Chair**  
**First District Court of Appeal**

Justice Barbara J. Pariente, Supreme Court Liaison  
Florida Supreme Court

**COMMITTEE MEMBERS:**

Chair, The Honorable Nikki Ann Clark  
First District Court of Appeal  
Tallahassee

Ms. Kristine Knab, Executive Director  
Legal Services of North Florida  
Tallahassee

The Honorable Herbert Baumann Jr.  
Thirteenth Judicial Circuit  
Tampa

Dr. Rahul N. Mehra, M.D.  
Medical Director, MHC, Inc.  
Tampa

The Honorable Jeri Beth Cohen  
Eleventh Judicial Circuit  
Miami

The Honorable Robert Morris  
Second District Court of Appeal  
Clearwater

The Honorable Robert M. Evans  
Ninth Judicial Circuit  
Orlando

The Honorable Sandra Sue Robbins  
Fifth Judicial Circuit  
Ocala

Mr. Tom Genung  
Nineteenth Judicial Circuit  
Port St. Lucie

Ms. Elisha Roy  
Florida Bar Liaison  
West Palm Beach

The Honorable Marci L. Goodman  
First Judicial Circuit  
Milton

Ms. Julie Taylor, Senior Division Chief  
State Attorney's Office  
Jacksonville

Mr. Jon Johnson  
Thirteenth Judicial Circuit  
Tampa

The Honorable Raul Zambrano  
Seventh Judicial Circuit  
Bunnell

Ms. Susan Keith  
Fifth Judicial Circuit  
Ocala

Ms. Nina Zollo, Public Policy Director  
Florida Coalition against Domestic Violence  
West Palm Beach

## **FCC 2008-2010 End of Term Report**

The Court reconstituted the Steering Committee on Families and Children in the Court (FCC) on December 22, 2008, and assigned it three charges: resolving the nine impediments to the implementation of Unified Family Court (UFC); addressing the role of the courts in handling issues related to administering psychotherapeutic medication to dependent children; and providing a liaison to the multidisciplinary panel that provides assistance to the Dependency Court Improvement Project (DCIP). Two subcommittees were immediately established to begin work on the first two charges. These subcommittees met throughout the committee term via telephone or video conference. Two face-to-face meetings of the full FCC were held to vet subcommittee work product and resolve any outstanding issues. The accomplishments and recommendations of the FCC are summarized below.

Travel restrictions significantly impacted the efforts of the committee. Two one-day face-to-face meetings over the course of an 18 month committee cycle did not provide sufficient opportunity for the in depth dialogue necessary to thoroughly examine the issues related to each charge. Virtually all of the committee and subcommittee work was done telephonically or by video conference. Nevertheless, the committee made great progress as it worked diligently to identify and examine the issues encompassed by the charges; study the collateral impact of each issue on Florida's families, agencies and organizations; and develop appropriate work product and recommendations.

### **Committee accomplishments and recommendations**

**CHARGE 1 – Prioritize, study, and to the extent feasible within the tenure of the Steering Committee, recommend resolutions to the nine impediments within the statutes and rules of court procedure that were identified during the Steering Committee's 2006 - 2008 term as inhibiting unified family court operations. In the context of this charge, the Steering Committee is authorized to recommend changes to statutes and rules, as necessary, and any other system or process to enhance the operation of the unified family court concept and ultimately result in the creation of one complete set of family court rules.**

#### **Impediment 1 - Confidentiality of Communication(s) in Family Court Cases:**

Multiple and complex confidentiality issues exist in family court cases. When considered in conjunction with e-filing and the electronic access to court records

these issues become further complicated. Judges have access to all court files, including information that may be protected (for example, the addresses of domestic violence victims, financial information of domestic relations litigants, delinquency case information, and the identity of child subjects in dependency cases). Such data is important for the judiciary to have at the time of filing; however, keeping the information confidential in an electronic records system is paramount. While E-filing systems can allow for an unprecedented level of public access to court documents and information, systems must be programmed to prevent the inadvertent dissemination of protected information.

In September of 2008, the Access Committee submitted a report to the Court describing its efforts and making specific recommendations. In addition, the committee filed two rules petitions. On March 18, 2010, the court issued opinion number SC07 – 2050 In Re: Amendments to Florida Rule of Judicial Administration 2.420 and the Florida Rules of Appellate Procedure. After considering the issue and in light of the efforts of the Access Committee, the FCC deferred further action on the charge to a future committee.

### **Recommendation**

- A subsequent committee should revisit this impediment in light of current e-filing and electronic access efforts, the work of the Committee on Access to Court Records and opinion SC07-2050.

### **Impediment 2 - Child as a Party and Legal Representation of Children:**

Children are parties in various family court cases (dependency, delinquency, CINSFINS, name change, emancipation, truancy; and domestic, sexual, and repeat violence) and are the subject of many others (dissolution of marriage, paternity, child support/URES/UFSA, adoption; and domestic, sexual, and repeat violence). Regardless of their status in these cases, children are frequently excluded from court proceedings, and their opinions and preferences are infrequently heard. Children seldom have legal representation except in delinquency cases, and guardian ad litem representation is rare except in dependency and termination of parental rights cases under Chapter 39, Florida Statutes. Because of their age, past experiences, or lack of support from their parents or other adults, many children are unable to understand courtroom proceedings and fully participate in the hearings that could have drastic and long lasting impact on their lives.

This issue was addressed with some controversy in the 2010 legislative session. SB 1860 an act relating to, *inter alia*, legal representation for children in dependency cases, died in committee. The bill in its original iteration proposed mandating the legal representation of all children in dependency cases. The committee tracked this legislation and provided input to OSCA staff, but withheld from taking a position on the issue.

### **Recommendation**

- OCI staff should monitor this issue.

### **Impediment 3 - Notice to Parties/Notice of Related Cases:**

A notice of related cases rule exists under Florida's Rules of Judicial Administration 2.545(d), which requires the petitioner in a family case to file with the court a notice of related cases, if related cases are known or reasonably ascertainable. A statewide notice of related cases form was proposed by The Florida Bar Family Law Rules Committee and submitted to the Court under case number SC08-92. The Court's opinion in which it adopted the form 12.900(h) was issued on October 16, 2008. However, no rule to specify or direct the use of the notice form has been adopted. For crossover cases – multiple pending cases at one time for one family, to truly be coordinated, all of the necessary parties and attorneys need to be properly noticed and made aware of who will be involved and the scope of the proceedings. If the necessary parties and attorneys are not properly notified, the parties and attorneys will remain uninformed of case coordination, unaware of the full nature of the legal matters, unable to determine the proper scope of their representation, and unable to resolve multiple legal matters effectively and efficiently.

The committee filed a comment that supported the Court's opinion in SC08-1141 that amended Family Law Rule 12.100 and adopted Florida Supreme Court Approved Family Law Form 12.928 (Family Court Cover Sheet). The cover sheet includes a section to indicate whether a related case form has been filed along with a recitation of the rule that requires its filing. The cover sheet was adopted by the Court on October 15, 2009, and will help to resolve the issues referenced above.

### **Recommendation**

- The Department of Children and Families (DCF) should file a notice of related cases whenever it files an action.

- A subsequent committee should study Florida's Rule of Judicial Administration 2.545(d) and propose a rule to ensure proper notification and prevent the possible notice, case coordination, scope of representation, and efficiency problems listed above.

#### **Impediment 4 - Judicial Procedures for Handling Related Cases:**

This impediment is the most complex of the nine. It entails eleven components involving the coordination of cases, informing the necessary parties and attorneys of the scope of the proceedings, developing a procedure for case coordination, determining the proper scope of attorney representation, and resolving multiple legal matters effectively and efficiently.

With regard to coordination of cases and orders, the committee focused on domestic violence injunctions because this was a tangible area of law that has generated a great deal of dialogue at the circuit level. Specifically, when issuing an ex-parte temporary domestic violence injunction, the court often has to issue a temporary order that addresses issues regarding children or property. These orders may conflict with existing orders and judgments already in place. To better inform the judiciary of existing orders, and in an effort to prevent the unintended entry of conflicting orders, the committee drafted an amendment to section 741.30(5)(b) that would permit the court to review related criminal, family, dependency and delinquency case orders and judgments:

(b) In a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, the court may review related criminal, family, dependency and delinquency case orders and judgments in an effort to address conflicting orders; no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Courts are faced with the challenge of addressing ex parte injunctions in a thorough and consistent manner and making expeditious rulings. While studying

the injunction issue, the committee recognized that the circuit courts currently hear ex parte injunctions in a timely manner while also handling heavy case loads. The committee concluded that it was best for each circuit to develop its own strategy for properly handling these matters.

In order to address the additional issues related to this impediment, the committee needed to assess current UFC implementation efforts throughout the state. To this end, the committee updated an existing Office of State Court Administrator (OSCA) cross-over summary spreadsheet. This information will be shared with subsequent committees to assist them in addressing the remaining impediments.

### **Recommendation**

- The committee recommends that the drafted amendment to section 741.30(5)(b) be referred to the OSCA Legislative Director to seek a legislative sponsor.<sup>1</sup>

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<sup>1</sup> This recommendation generated some controversy among the full committee, as articulated by Kris Knab, Legal Services of North Florida, and Nina Zollo, Florida Coalition Against Domestic Violence:

“While we recognize the interest in avoiding conflict with previously entered orders when there are related cases, we are concerned that the above language could lead a judge to the conclusion that an order in the injunction proceeding that conflicts with a previously entered order would not be appropriate, even when, based on the allegations in the petition for injunction, such an order is necessary to protect the safety of the petitioner and/or the children.

Research demonstrates that violence often occurs or escalates when a victim of domestic violence is seeking to separate from the abuser. Therefore, it is quite possible that following a temporary order in a divorce, violence occurs or the petitioner is threatened with violence necessitating an injunction and possible temporary modification of a previous order (for example, suspending or altering the respondent’s contact with the minor children). If a petitioner is pro se, he or she may not understand how to go back to the family court to ask for a modification of the order in the divorce proceeding. Additionally, the family court may not be in the position to provide an emergency hearing to address the allegations of abuse. As an alternative, we suggested to the Committee insertion of the following sentence after the first sentence in (5)(b):

5(b) In a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. However, the court may review related criminal, family, dependency, and delinquency case orders for the sole purpose of eliminating conflicting orders, but if a conflicting order is necessary based on allegations in the petition that justify a temporary modification of the previous order to protect the safety of the petitioner and the minor children, the judge may enter it. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.



- The committee makes no recommendation as to the hearing of ex parte injunction cases. Circuits should continue to implement local practices designed to ensure the appropriate response to these matters.
- A subsequent committee should review circuit efforts related to the implementation of UFC. Utilizing this information, the committee should examine any remaining issues related to this impediment and make recommendations for policy and rule changes.

**Impediment 5 - Parenting Coordination/Mediation:**

Parenting Coordination is being used successfully in Florida and is the subject of ever growing enthusiasm. At the time of the last committee report, there were no rules pertaining to parenting coordination and no statute was in place. However, the issue was addressed by the legislature soon after the FCC was reconstituted, with legislation taking effect in October of 2009. In response to this legislation, the Family Law Rules Committee filed a fast track rules petition. The Court, in case number SC09-1822, adopted the parenting coordinator rule and two forms (Rule 12.742 and forms 12.984 and 12.998). Upon examining the issue and in light of this activity, the committee did nothing further to address parenting coordination.

In dependency and other related family law cases, inconsistencies in the rules that govern mediation pose significant problems, particularly if a family has more than one related family court case.

For example, Family Law Rule 12.740(f) provides that "If counsel for any party is not present when the agreement is reached, the mediator shall cause to be mailed a copy of the agreement to counsel within 5 days. Counsel shall have 10 days from service of a copy of the agreement to serve a written objection on the mediator, unrepresented parties, and counsel. Absent a timely written objection, the agreement is presumed to be approved by counsel and shall be filed with the court by the mediator," while Rules of Juvenile Procedure 8.290(o) remains silent on this

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During the Committee's discussion of the two proposals, no member voiced any concern that our suggested alternative would cause harm. Rather, members stated that the language did not need to be as explicit as we recommended because common sense would dictate that a judge should enter a conflicting order if warranted by the allegations in the petition for injunction. However, it has been the experience of attorneys representing domestic violence victims throughout the state that, particularly with new judges, the clearer the standard, the less likelihood for confusion."

issue. Presumably the represented party participating in a dependency mediation without counsel present would not have the same protection enumerated in Rule 12.470(f). Furthermore, if a mediation addressed issues in two related cases – dissolution and dependency, it is not clear how the parties, the mediator or the court would interpret this discrepancy as it may apply to each issue in a mediation or to the whole agreement.

These issues were considered by the committee, but considering time constraints a full resolution was not achieved.

### **Recommendation**

- The parenting coordination and mediation issues should be referred to the appropriate Alternative Dispute Resolution committee with liaison to the FCC.

### **Impediment 6 - Inconsistency of Definitions among Florida's Family Law Statutes:**

Multiple terms are defined differently throughout Florida statutes. In some instances, the definitions of the words vary in important ways with far-reaching consequences. The committee considered specific instances of these discrepancies, including the terms “abandonment” which is defined differently under chapters 39, 63, and 984; and “adult” which is defined differently under chapters 39, 984, 985, and 63. Additionally, while the terms “time sharing”, “visitation”, and “custody” are often used in practice interchangeably, their statutory implementation is inconsistent -- only chapter 61 uses the new term “time sharing” when addressing parental/custodial responsibilities and visitation; while the other family law chapters continue to use the terms “custody” and “visitation”. Considering the time constraints of the committee and that the matter involves multiple areas of statute, the committee worked with the OSCA Legislative Director to submit a list of inconsistent family law definitions to legislative staff with the suggestion that the issue become an interim legislative project.

Some inconsistencies also exist within the definitions of various court rules. Chapter 751 Florida Statutes creates a type of action called “temporary custody by extended family” members. However, these cases are not included within the

Judicial Rule of Administration 2.545 definition of family law cases. To address this inconsistency, the committee drafted a proposed rule amendment to Judicial Rule of Administration 2.545(d)(2) that would add temporary custody of minor children by extended family cases to the definition of "family cases":

(2) "Family cases" include dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, UIFSA, custodial care of and access to children, temporary custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor, CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.

Related to this, the committee identified that temporary custody of minor children by extended family cases were not included within the scope of the Florida Family Law Rules. To address this inconsistency, the committee drafted a proposed rule amendment to Family Law Rule 12.010(a)(1) that would add these cases.

(a) Scope.

(1) These rules apply to all actions concerning family matters, including actions concerning domestic, repeat, dating, and sexual violence, except as otherwise provided by the Florida Rules of Juvenile Procedure or the Florida Probate Rules. "Family matters," "family law matters," or "family law cases" as used within these rules include, but are not limited to, matters arising from dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, an action involving a parenting plan for a minor child or children (except as otherwise provided by the Florida Rules of Juvenile Procedure), temporary custody of minor children by extended family, adoption, proceedings for emancipation of a minor, declaratory judgment actions related to premarital, marital, or post-marital agreements (except as otherwise provided, when applicable, by the Florida Probate Rules), injunctions for domestic,

repeat, dating, and sexual violence, and all proceedings for modification, enforcement, and civil contempt of these actions.

### **Recommendation**

- The committee recommends that the proposed rule amendments to Florida Family Law Rule 12.010 and Judicial Rule of Administration Rule 2.545 should either be approved by the Court or sent to the Florida Bar Family Law Rules Committee for further consideration. Furthermore, if HB 25 or SB 334 is signed into law, the committee recommends that the definition under each rule above should be expanded further to also include “concurrent custody” as a recognized family case type.
- The committee recommends that the legislature use the information provided by OSCA to address the inconsistencies in family law definitions amongst various statutes. Ideally this effort would be completed as an interim work project so that statutory revisions could be addressed during the next legislative session.

### **Impediment 7 - Reconciling Differences between Termination of Parental Rights (TPR) Proceedings in Chapters 39 and 63, Florida Statutes:**

Significant differences exist between the procedures for termination of parental rights under Chapters 39 and 63, Florida Statutes. Three major examples were considered: (1) the putative father registry requirements of Chapter 63, Florida Statutes, do not apply under Chapter 39, although the definition of who is a father under Chapter 39 refers to a father whose consent is required under Chapter 63, thus indirectly implicating the registry and its requirements; (2) the time periods for a prospective father or unmarried biological father to take steps necessary to perfect his inchoate claim of parenthood are different under the two statutes, as he has (generally) until the TPR petition is filed under Chapter 63, but until the adjudicatory hearing under Chapter 39; and (3) the right to counsel is treated differently under the two statutes. Considering time constraints and the limited ability to meet, the committee was unable to resolve these issues.

### **Recommendation**

- A subsequent committee should work in conjunction with the dependency panel to draft appropriate statutory/rule language that addresses these issues.

### **Impediment 8 - Extending Jurisdiction to Allow Continued Services for All Dependent Youth to Nineteen Years of Age:**

Section 39.013 (2), Florida Statutes allows youth to petition the court at any time before his or her 19th birthday requesting the courts continue jurisdiction. The court may retain jurisdiction for a period not to exceed one year following the youth's 18th birthday. Such extended jurisdiction helps to ensure that appropriate aftercare support, including Road to Independence Program benefits, is made available. Many youth, judges and attorneys are unaware of this option or are not aware of its associated benefits. There is a perception that this option is underutilized.

The dependency panel and the Dependency Court Improvement Program (DCIP) initiative have worked with various groups to develop a court guide for youth in court. Among other important topics, this guide includes information regarding the availability of this option.

### **Recommendation**

- OCI should work with the dependency panel and other stakeholders to develop and distribute a best practices manual that provides guidance to circuit courts on issues related to extending jurisdiction. Colloquies should be included that could be used during judicial review and other hearings to inform youth of their ability to petition the court for extended jurisdiction.
- The OCI should continue to work with the dependency panel and other stakeholders to develop a form petition that youth can easily understand and complete for filing in their cases. The form should be submitted to the Court for approval.

### **Impediment 9 - Adult Transition Services Needed for Youth Aging Out of the Juvenile Justice System:**

Youth who are under the supervision of Florida's Department of Juvenile Justice (DJJ) would greatly benefit from Adult Transition Services. Such services are designed to ensure that youth acquire the knowledge, skills, and aptitudes that are essential to success in adult life. Service activities may include career planning, budgeting workshops, parenting classes, and personal health guidance. To provide for these services, changes must be made to Section 985.03, Florida Statutes. Recommended statutory changes should be made in conjunction with DJJ because collateral issues may impact that agency.

After the committee received its charges it became aware of draft legislation (ultimately SB 1356) that would provide these services to "crossover" youth

(those engaged both in the delinquency and dependency systems). Because the issue was already being moved by DJJ, the committee determined that it should simply monitor the pending legislation. Ultimately neither the house nor the senate version of DJJ's proposed legislation passed during the 2010 Legislative Session.

### **Recommendation**

- The Court should support legislation consistent with SB 1356 that would provide for services to crossover youth aging out of the delinquency system.

**CHARGE 2 – Review the rules, statutes, and procedures that pertain to the authorization and administration of psychotherapeutic medications to children in foster care and child protective services and, as appropriate, recommend ways existing practices and procedures should be revised to ensure adequate oversight and review of the administration of medication to children and adolescents in the dependency system.**

The committee worked closely with DCF and other groups that also were considering this issue and prioritized efforts in three areas:

- **Physician's Affidavit** – The committee identified the lack of uniform and comprehensive medical information being provided to the courts when considering issuing an order for psychotropic medications. To address the issue, the committee drafted a uniform physician's affidavit to be provided to the court before a court issues an order concerning the use of any psychotropic medication.
- **Psychotropic Medications Reference Guide** – In order to assist judges in their decisions regarding psychotropic medications, the committee drafted a comprehensive Psychotropic Medications Reference Guide. The guide provides background information and side-effects for most psychotropic medications.
- **Psychotropic Medications Benchcard** – The committee developed a benchcard to provide guidance to courts as they navigate the substantive and

procedural issues involved when handling a request to order the use of psychotropic medications.

- Psychotropic Medication Legislation – The committee provided input to DCF as the agency worked to draft legislation regarding the administration of these medications to children in foster care.

### **Recommendation**

- During the development of the physician's affidavit, DCF was developing a psychotropic medication administrative rule that included an analogous form, entitled a medical treatment plan. Upon learning of the efforts by DCF, the committee compared their physician's affidavit with DCF's medical treatment plan. Because the committee determined that these forms were substantially similar and because DCF was prepared to implement the rule, the committee recommends tabling its physician's affidavit at this time in order to determine the success of DCF's implementation efforts. OCI should work closely with DCF and monitor the statewide use of the medical treatment plan.
- The above mentioned reference guide and benchcard should be printed and distributed to all dependency judges, magistrates, and court staff.
- A copy of the "Big Blue Book" and DSM-IV should be available in every courthouse for judges to consult when considering these issues.

**CHARGE 3 – Provide for a liaison to the multi-disciplinary dependency court advisory panel that must be established by the Office of the State Courts Administrator to guide the state court system's efforts in meeting its Dependency Court Improvement Grant obligations.**

Judge Jeri Beth Cohen was the FCC liaison to the dependency court advisory panel, which she also chaired. Judge Cohen kept the FCC well apprised of the panel's efforts and ensured that these efforts were consistent with the work of the FCC. Panel efforts included the following:

- Court-related quality improvement plan for dependency proceedings - Following a careful review of the findings from the federal audit of the state's child welfare system, the panel worked on a court-related performance improvement plan that runs parallel with the agency's federally mandated improvement plan. The court-related plan serves as the work plan for the multidisciplinary panel and contains overlapping tasks that appear on the agency's quality improvement plan.
- Safety tool for judges and magistrates - One of the key tasks in the court-related quality improvement plan was to identify or develop a safety tool for judges. The panel met on December 8, 2009 in Tampa, Florida for a one-day meeting to review and receive training on the ABA publication Child Safety: A Guide for Judges and Attorneys. Co-author Therese Roe Lund (National Resource Center for Child Protective Services) and Timothy Travis (Travis Consulting Company) presented the guide. Following the day-long session, the CIP panel agreed to promote the tool and provide training opportunities for judges statewide.
- Involving children in court initiative - The CIP panel distributed a resource packet, Involving Children in Court, to all dependency judges, magistrates, and court staff. In addition to the packet, the panel provided input and oversight on a variety of activities regarding involvement of children in court including workshops, judicial retreats, youth guides, videos, and Department of Children and Families regional trainings.
- Revisions to the Dependency Benchbook- In an effort to revise the dependency benchbook with the most current promising practices and information, the panel embarked on a major initiative to refine and improve the benchbook. This has primarily involved two initiatives: 1) the creation of hearing benchcards for the nine significant court hearings in dependency court; and, 2) the development of detailed checklists for relevant, recurring issues in dependency court.
- 2009 Dependency Summit Judicial Track - CIP staff and the CIP multidisciplinary panel coordinated a judicial track at the 2009 summit for



- judges and magistrates. Each judicial workshop paired a national presenter with a Florida judge (and panel member) to cover a topic that addressed court-related strategies to improve outcomes, as indicated in the federal audit.
- Dependency issues at Florida Judicial College – Two committee judges developed curricula and delivered training for new judge's college that emphasized dependency issues.

### **Subsequent Committee Charges**

Should the FCC be reconstituted, the following charges would forward current committee efforts:

- Examine confidentiality issues in light of current e-filing and electronic access efforts, the work of the Committee on Access to Court Records and opinion SC07-2050. Make best practices recommendations.
- Examine Florida's Rule of Judicial Administration 2.545(d) and propose a rule that ensures proper notification and prevents the notice, case coordination, scope of representation, and efficiency problems contemplated in Impediment 3.
- Review circuit efforts related to the implementation of UFC. Utilizing this information, examine any remaining issues related to Impediment 4 and make recommendations for policy and rule changes.
- Liaison with the appropriate ADR committee regarding the parenting coordination and mediation issues referenced in Impediment 5.
- Work in conjunction with the dependency panel to draft appropriate statutory/rule language that addresses the difference between Termination of Parental Rights proceedings under Chapters 39 and 63, Florida Statutes.

In addition, sufficient in person meetings should be authorized. While telephonic or video conference technology is adequate as a supplement to in person meetings, they are inadequate as a substitute. In person meetings provide the most effective forum for the comprehensive dialogue required to fully address issues. Not allowing such meetings precludes a committee from capitalizing on the professional expertise and diverse geographic makeup of its membership.



## **APPENDIX D**

## CHAPTER 2010-30

### Council Substitute for Committee Substitute for House Bill No. 25

An act relating to temporary and concurrent custody of a child; amending s. 61.13002, F.S.; providing that a parent activated, deployed, or temporarily assigned to military service on orders in excess of a specified period may designate a person or persons to exercise time-sharing with the child on the parent's behalf; limiting who may be designated; providing for limited objections by the other parent; providing for expedited hearings; requiring a servicemember and a nonmilitary parent to cooperate with each other to resolve issues; requiring information sharing; providing for agreements for persons to exercise time-sharing on a parent's behalf; providing for expedited hearings to enforce time-sharing rights; revising ch. 751, F.S., relating to petitions and court orders awarding the temporary custody of a child to an extended family member, to also provide for concurrent custody with the parents of the child; amending s. 751.01, F.S.; conforming provisions to changes made by the act; amending s. 751.011, F.S.; revising definitions; defining the term "concurrent custody"; amending s. 751.02, F.S.; providing requirements for concurrent custody; amending s. 751.03, F.S.; revising the petition for concurrent custody to require additional information; amending s. 751.04, F.S.; conforming provisions to changes made by the act; amending s. 751.05, F.S.; providing that if a parent objects to a petition for concurrent custody, the court may not grant the petition and must give the petitioner the option of converting the petition to one for temporary custody; providing for dismissal of the petition; providing that an order granting concurrent custody does not affect the ability of the parents to obtain the physical custody of the child at any time; providing for the court to terminate an order for concurrent custody if either or both parents object to the order; providing for filing for temporary custody if an order for concurrent custody has been terminated; providing for the court to modify an existing child support order; amending s. 49.011, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 61.13002, Florida Statutes, is amended to read:

61.13002 Temporary time-sharing modification and child support modification due to military service.—

(1) If a supplemental petition or a motion for modification of time-sharing and parental responsibility is filed because a parent is activated, deployed, or temporarily assigned to military service and the parent's ability to comply with time-sharing is materially affected as a result, the court may not issue an order or modify or amend a previous judgment or order that changes time-sharing as it existed on the date the parent was activated, deployed, or temporarily assigned to military service, except that a court may enter a temporary order to modify or amend time-sharing if there is clear and convincing evidence that the temporary modification or amendment is in the best interests of the child. When entering a temporary order under this section, the court shall consider and provide for, if feasible, contact between the military servicemember and his or her child, including, but not limited to, electronic communication by webcam, telephone, or other available means. The court shall also permit liberal time-sharing during periods of leave from military service, as it is in the child's best interests to maintain the parent-child bond during the parent's military service.

(2) If a parent is activated, deployed, or temporarily assigned to military service on orders in excess of 90 days and the parent's ability to comply with time-sharing is materially affected as a result, the parent may designate a person or persons to exercise time-sharing with the child on the parent's behalf. The designation shall be limited to a family member, a stepparent, or a relative of the child by marriage. The designation shall be made in writing and provided to the other parent at least 10 working days before the court ordered period of time-sharing commences. The other parent may only object to the appointment of the designee on the basis that the designee's time-sharing visitation is not in the best interests of the child. When unable to reach agreement on the delegation, either parent may request an expedited court hearing for a determination on the designation.

(3) The servicemember and the nonmilitary parent shall cooperate with each other in an effort to reach a mutually agreeable resolution of custody, visitation, delegation of visitation, and child support. Each party shall provide information to the other party in an effort to facilitate agreement on custody, visitation, delegation of visitation, and child support. Agreements on designation of persons to exercise time-sharing with the child on the parent's behalf may also be made at the time of dissolution of marriage or other child custody proceedings.

~~(4)~~(2) If a temporary order is issued under this section, the court shall reinstate the time-sharing order previously in effect upon the servicemember parent's return from active military service, deployment, or temporary assignment.

(5) Upon motion of either parent for enforcement of rights under this section, the court shall, for good cause shown, hold an expedited hearing in custody and visitation matters instituted under this section, and shall permit the servicemember to testify by telephone, video teleconference, webcam, affidavit, or other means where the military duties of the servicemember parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing.

~~(6)~~(3) If a temporary order is entered under this section, the court may address the issue of support for the child by:

(a) Entering an order of temporary support from the servicemember to the other parent under s. 61.30;

(b) Requiring the servicemember to enroll the child as a military dependent with DEERs, TriCare, or other similar benefits available to military dependents as provided by the service member's branch of service and federal regulations; or

(c) Suspending, abating, or reducing the child support obligation of the nonservice member until the custody judgment or time-share order previously in effect is reinstated.

~~(7)~~(4) This section does not apply to permanent change of station moves by military personnel, which shall be governed by s. 61.13001.

Section 2. Section 751.01, Florida Statutes, is amended to read:

751.01 Purpose of act.—The purposes of this chapter ~~ss. 751.01–751.05~~ are to:

(1) Recognize that many minor children in this state live with and are well cared for by members of their extended families. The parents of these children have often provided for their care by placing them temporarily with another family member who is better able to care for them. Because of the care being provided the children by their extended families, they are not dependent children.

(2) Provide for the welfare of a minor child who is living with extended family members. At present, such family members are unable to give complete care to the child in their custody because they lack a legal document that explains and defines their relationship to the child, and they are unable effectively to consent to the care of the child by third parties.

(3) Provide temporary or concurrent custody of a minor child to a family member having physical custody of the minor child to enable the custodian to:

(a) Consent to all necessary and reasonable medical and dental care for the child, including nonemergency surgery and psychiatric care.;

(b) Secure copies of the child's records, held by third parties, that are necessary for ~~to~~ the care of the child, including, but not limited to:

1. Medical, dental, and psychiatric records.;

2. Birth certificates and other records. ~~;~~ ~~and~~

3. Educational records.;

(c) Enroll the child in school and grant or withhold consent for a child to be tested or placed in special school programs, including exceptional education. ~~;~~ ~~and~~

(d) Do all other things necessary for the care of the child.

Section 3. Section 751.011, Florida Statutes, is amended to read:

751.011 Definitions.—As used in this chapter ~~ss. 751.01–751.05~~, the term:

(1) “Concurrent custody” means that an eligible extended family member is awarded custodial rights to care for a child concurrently with the child’s parent or parents.

(2) “Extended family member” means a ~~is any~~ person who is:

~~(a)~~(1) A relative of a minor child within the third degree by blood or marriage to the parent; or

~~(b)(2)~~ The stepparent of a minor child if the stepparent is currently married to the parent of the child and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the child's parents as an adverse party.

Section 4. Section 751.02, Florida Statutes, is amended to read:

751.02 ~~Determination~~—of Temporary or concurrent custody proceedings; jurisdiction.—

(1) The following individuals may bring proceedings in the circuit court to determine the temporary or concurrent custody of a minor child:

~~(a)(1)~~ Any extended family member who has the signed, notarized consent of the child's legal parents; or

~~(b)(2)~~ Any extended family member who is caring full time for the child in the role of a substitute parent and with whom the child is presently living.

(2) In addition to the requirements of subsection (1), an individual seeking concurrent custody must:

(a) Currently have physical custody of the child and have had physical custody of the child for at least 10 days in any 30-day period within the last 12 months; and

(b) Not have signed, written documentation from a parent which is sufficient to enable the custodian to do all of the things necessary to care for the child which are available to custodians who have an order issued under s. 751.05.

Section 5. Section 751.03, Florida Statutes, is amended to read:

751.03 Petition for temporary or concurrent custody; contents.—Each petition for temporary or concurrent custody of a minor child must be verified by the petitioner, who must be an extended family member, and must contain statements, to the best of the petitioner's knowledge and belief, providing showing:

(1) The name, date of birth, and current address of the child.;



(2) The names and current addresses of the child's parents.;

(3) The names and current addresses of the persons with whom the child has lived during the past 5 years.;

(4) The places where the child has lived during the past 5 years.;

(5) Information concerning any custody proceeding in this or any other state with respect to the child.;

(6) The residence and post office address of the petitioner.;

(7) The petitioner's relationship to the child.;

(8) If concurrent custody is being requested:

(a) The time periods during the last 12 months that the child resided with the petitioner;

(b) The type of document, if any, provided by the parent or parents to enable the petitioner to act on behalf of the child;

(c) The services or actions that the petitioner is unable to obtain or undertake without an order of custody; and

(d) Whether each parent has consented in writing to the entry of an order of concurrent custody.

A copy of the written consent and any documents provided by the parent to assist the petitioner in obtaining services must be attached to the petition.

~~(9)~~(8) If temporary custody is being requested, the consent of the child's parents, or the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child as defined in chapter 39.;

~~(10)~~(9) Any temporary or permanent orders for child support, the court entering the order, and the case number.;

~~(11)(10)~~ Any temporary or permanent order for protection entered on behalf of or against either parent, the petitioner, or the child; the court entering the order; and the case number;

~~(12)(11)~~ That it is in the best interest of the child for the petitioner to have custody of the child; and

~~(13)(12)~~ A statement of the period of time the petitioner is requesting temporary custody, including a statement of the reasons supporting that request.

~~Only an extended family member may file a petition under this chapter.~~

Section 6. Section 751.04, Florida Statutes, is amended to read:

751.04 Notice and opportunity to be heard.—Before a decree is made under this chapter ss. 751.01–751.05, reasonable notice and opportunity to be heard must be given to the parents of the minor child by service of process, either personal or constructive.

Section 7. Section 751.05, Florida Statutes, is amended to read:

751.05 Order granting temporary or concurrent custody.—

(1) At the hearing on the petition for temporary or concurrent custody, the court must hear the evidence concerning a minor child’s need for care by the petitioner, all other matters required to be set forth in the petition, and the objections or other testimony of the child’s parents, if present.

(2) Unless the minor child’s parents object, the court shall award ~~the~~ temporary or concurrent custody of the child to the petitioner if ~~when~~ it is in the best interest of the child ~~to do so~~.

(3) If one of the minor child’s parents objects to:

(a) The petition for concurrent custody, in writing, the court may not grant the petition even if the other parent consents, in writing, to the entry of the order. The court shall give the petitioner the option of converting the petition to a petition for temporary custody. If the petitioner so elects, the court shall set the matter for further hearing, provide notice to the parent or parents, and proceed pursuant to

paragraph (b). If the petition is not converted into a petition for temporary custody, it shall be dismissed without prejudice.

(b) The petition for temporary custody ~~granting of temporary custody to the petitioner~~, the court shall grant the petition only upon a finding, by clear and convincing evidence, that the child's parent or parents are unfit to provide for the care and control of the child. In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child, as defined in chapter 39.

(4) The order granting:

(a) Concurrent custody of the minor child may not eliminate or diminish the custodial rights of the child's parent or parents. The order must expressly state that the grant of custody does not affect the ability of the child's parent or parents to obtain physical custody of the child at any time.

(b) Temporary custody of the minor child to the petitioner may also grant visitation rights to the child's parent or parents, if it is in the best interest of the child to do so.

(5)~~(a)~~ The order granting temporary or concurrent custody of the minor child to the petitioner:

(a) May not include an order for the support of the child unless the parent has received personal or substituted service of process, the petition requests an order for the support of the child, and there is evidence of the parent's ability to pay the support ordered.

~~(b) The order granting temporary custody~~ May redirect all or part of an existing child support obligation to be paid to the extended family member who is granted temporary or concurrent custody of the child. If the court redirects an existing child support obligation, the order granting temporary or concurrent custody must include, if possible, the determination of arrearages owed to the obligee and the person awarded temporary or concurrent custody and must order payment of the arrearages. The clerk of the circuit court in which the ~~temporary custody~~ order is entered shall transmit a certified copy ~~thereof~~ to the court originally entering the child support order. The temporary or concurrent custody order shall be recorded and filed in the original action in which child support was determined and become a part thereof. A copy of the temporary or concurrent

custody order shall also be filed with the depository that serves as the official recordkeeper for support payments due under the support order. The depository must shall maintain separate accounts and separate account numbers for individual obligees.

(6) At any time, either or both of the child's parents may petition the court to modify or terminate the order granting temporary custody. The court shall terminate the order upon a finding that the parent is a fit parent, or by consent of the parties. The court may modify an order granting temporary custody if the parties consent or if modification is in the best interest of the child.

(7) At any time, the petitioner or either or both of the child's parents may move the court to terminate the order granting concurrent custody. The court shall terminate the order upon a finding that either or both of the child's parents object to the order. The fact that an order for concurrent custody has been terminated does not preclude any person who is otherwise eligible to petition for temporary custody from filing such petition.

(8) At any time, the petitioner or either or both of the child's parents may move the court to modify the existing child support order pursuant to chapter 61. The court may modify an existing order granting child support if the parties consent and if modification is in the best interest of the child. Any order modifying child support in a concurrent custody proceeding shall be copied and placed in the related family court files.

Section 8. Subsection (14) of section 49.011, Florida Statutes, is amended to read:

49.011 Service of process by publication; cases in which allowed.—  
Service of process by publication may be made in any court on any party identified in s. 49.021 in any action or proceeding:

(14) For temporary custody of a minor child, under chapter 751 ~~ss. 751.01-751.05~~.

Section 9. This act shall take effect July 1, 2010.

Approved by the Governor May 7, 2010.

Filed in Office Secretary of State May 7, 2010.