

Florida’s Family Court
Tool Kit: Volume II
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The practices in the Tool Kit should make the court experience better for all involved, including judges, staff and most importantly, families.

What is the Florida's Family Court Tool Kit: Volume II?

Coordinating multiple cases involving one family is a critical aspect of unified family court. Although it is not the defining characteristic, it poses certain implementation challenges and warrants careful examination.

This volume is an overview of some of the more frequent, difficult, and interesting legal questions that may arise when coordinating multiple cases. It does not address every possible legal issue that may arise when coordinating cases; certain issues do not yet have clear, bright-line answers, and many others are bound to evolve as courts continue to address these cases. This volume does, however, draw from the research and practical experiences of jurists working in a unified family court system. Inside, you will find many statutory references, rules, cases, practice points, and case examples to assist you in addressing certain possible legal issues.

Why use it?

This volume of the Tool Kit will take readers from wondering how the unified family court will work, to understanding that it is already working. It will help readers meet the challenges of handling coordinated cases by offering quick reference to familiar statutes, rules, and precedents.

Tackling the issues in this Tool Kit should help accomplish the following:

- decrease delays in case processing;
- minimize the issuance of conflicting orders;
- decrease the number of post-judgment actions;
- minimize duplication in hearings; and
- improve judicial decision-making.

Who should use this Tool Kit?

Judges, magistrates, hearing officers, court staff and attorneys will find the information in this volume helpful.

When should this Tool Kit be used?

Now! The efficiencies gained by coordinating cases will minimize the impact of shrinking resources and increasing caseloads.

References to statutes and rules in this volume are from the 2003 Florida Statutes and the 2004 Florida Rules of Court unless otherwise specified.

Unified Family Court in Practice

Why is UFC important? Why are we doing all this? Why should you take time to learn more about UFC? Attending to and helping families and children in crisis are some of the most important things that a judge, attorney, or service provider can do. Effectively resolving problems at the family level can have tremendous long term impact on both the courts and the community in general. The following examples are taken from real cases and they represent many of UFCs positive impacts.

Better Information Through Coordination

This family entered the system due to the mother's arrest for a reported domestic violence attack against the father in the presence of the three-year-old child. The father simultaneously filed for a domestic violence injunction and a petition for dissolution of marriage. The mother was charged with criminal assault and battery. DCF filed a dependency petition against the mother.

The cases were all filed within 48 hours of one another, and the father was given custody by ex parte orders in the domestic violence and dissolution of marriage cases. The dependency court, however, gave custody to the maternal grandmother. Two guardians ad litem were appointed, one in the dependency case and one in the dissolution of marriage case. Psychological evaluations were ordered in the criminal action and in the dependency case.

The cases were transferred into the UFC division (except the criminal case which was coordinated between the judges, attorneys, and the state attorney). At the initial case management conference, the parties agreed on an orderly procedure for all pending matters, including the coordination of discovery. The scheduled criminal court "Arthur" hearing was perceived to be a good opportunity for all to hear the mother's position. The parties agreed to one GAL and to keep the child placed with the maternal grandmother. All earlier conflicting orders were modified to be consistent.

As more information became available, it was learned that the father had been abusing the mother for years, and that he also abused drugs and alcohol. In fact, the mother's defense in the criminal case relied partly on the theory of battered woman's syndrome. Because these cases were coordinated, this information came to light in a manner that could be acted upon effectively. Due to the more complete information, the initial

dependency case plan was changed. The father was added to the dependency petition and services were modified to reflect the new information and the reality of the family situation.

While the parties were completing their case plans, the court granted the final judgment of dissolution of marriage. The criminal domestic violence case against the mother was dismissed. The parties were required to complete their dependency case plans, and if successful, they would then begin a structured custody and time sharing agreement that would remain in effect after the conclusion of the dependency case.

Case Management Before One Judge

Another family was simultaneously involved in a dissolution of marriage filed by the husband, a dependency case against the mother and father filed by the Department of Children and Families (it was the mother's fifth child but the father's first child), and shortly thereafter there was a termination of parental rights case filed against the mother. There were earlier closed cases of domestic violence alternately initiated by each parent, and in the remaining open domestic violence case the mother was the respondent.

The father's various court proceedings were not coordinated and were all before different judges. He had to take time off of work to attend a court date nearly every week. Each proceeding took extra time while the father had to re-explain a great deal of family history to each successive judge. By trying to conclude his cases in this manner, the father was missing more and more work, he was losing pay, and was in jeopardy of losing his job altogether. Since the child was placed with the paternal grandparents while the dependency progressed, both parents were ordered to pay child support. With all the different court dates the father needed to attend, the loss in pay was making it very hard for him to keep up with his child support obligations.

The cases were transferred to the UFC division, assigned to one judge, and a case management conference was held. The Department, the father, and the paternal grandparents appeared, but the mother did not. A final injunction of domestic violence was entered at one hearing and at the second hearing which was noticed as a final hearing in the dissolution and a judicial review, a final judgment of dissolution of marriage was entered and the Department agreed that the child should be placed in the custody of the father. Within the appropriate statutory time, there was a termination of supervision and all matters were resolved.

A Less Adversarial Environment

This family came into the system through three cases filed within three weeks of one another: a dissolution of marriage was instituted by the wife, the following week a domestic violence case was filed by the wife against the husband, and one week later a dependency petition was filed on behalf of the four children against both parties. The dependency petition alleged that the mother had abandoned the children. The domestic violence petition and the domestic relations petitions alleged that the father was violent to the mother and, therefore, the mother had to leave town for a day to borrow money from relatives to try to escape with the children. At the time of the filing of the dissolution proceedings, the mother was living in a domestic violence shelter along with the four children.

A guardian ad litem was appointed in the dependency case. This matter was transferred to the UFC division within a month of all of the filings as a result of a judge in the dissolution case discovering the related cases while conducting a case management conference. Once the transfer occurred, a case management conference addressing all of the family's cases was held. The court and the parties discovered that the children were having difficulty in school, their relative placement was failing, and the parties who had appeared to be indigent actually owned a home. Shortly after the case management conference, an agreed temporary child support order was entered and both parties consented to the dependency. The father also agreed to the entry of the domestic violence injunction. School officials were brought into the case to participate and assist the four children, particularly the oldest who had behavioral and learning problems.

Because all of the parties were present at the case management conferences, it was relatively easy to schedule hearings on property issues that did not need the presence of the GAL or the Department counsel and in that way resources were conserved.

All parties were advised of the decisions made. In the final resolution, the parties' home was sold and the proceeds were used to repay the Department for the foster care, create an account to fund the children's special needs, and the mother received enough funds to obtain her housing. The children were eventually returned to the parents - by agreement, the two older boys were placed in the father's care and the younger two in the mother's care.

Scheduling hearings that addressed multiple issues simultaneously was convenient for both the parties and the court. At the conclusion of the dependency case, the family's

other legal matters were also addressed to ensure that all matters were resolved and resolved consistently. Ultimately the parties in this case were able to settle all pending matters and there was no need for trial in any of the three cases.

Coordination of Case Files

Question:

- ? If one judge is going to handle all of one family's related cases, should those cases be consolidated in one court file with one case number or should they be "bundled" in their separate files with separate case numbers?

Answer:

- ✓ Cases should not be consolidated into one court file. The independent integrity of each file should be maintained. It is the coordination of these related proceedings that is paramount. The primary means of accomplishing this coordination currently is through local administrative orders pertaining to family court cases, and by assigning all of a family's related cases to one judge whenever possible. It is also recommended that there be a designation on the face of each UFC file so the clerk can easily identify related cases.

Background & Analysis

Using the word “consolidation” without explaining what is actually consolidated can create many problems with court files. Under Florida Rule of Civil Procedure **1.270(a)**, “when actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” The commentary to Rule **1.270** indicates that the court has the authority to order the consolidation of actions, trials, or hearings on any or all matters upon the court’s own initiative or upon motion by a party. The broad language of the rule and the stated rationale that “an action should not be handled piecemeal when it reasonably can be avoided, and it should be administered with the least expense and vexation to the parties” suggests that the rule is applicable to the coordination of a family’s pending cases. Commentary to Rule **1.270**.

It is also important to be mindful of closed cases which may contain judgments and orders that will impact pending cases. The court must be aware of and consider any orders or judgments that impact jurisdiction, establish a precedence of orders, or may contain inconsistent rulings. Also, reports, assessments, and histories may be readily available in closed files and provide a more accurate and complete family history. Each circuit should address issues related to coordination of UFC cases in its administrative order.

Filing Orders in Related Cases

Question:

- ? Will single orders be filed for all cases or will separate orders be filed with copies placed in all open and closed related case files?

Answer:

- ✓ In most cases, a single order that addresses and coordinates all of the related cases can be entered. The order should include the case numbers of all affected cases and a copy should be placed in each file. Copies of the order should go to the attorneys involved in all coordinated cases.
- ✓ Separate orders are sometimes required when coordinating certain criminal, domestic violence, and dependency matters.

Background & Analysis:

The court's focus should be on consistency, coordination, and clarity. Generally, the court can enter a single order that addresses and coordinates all related cases. A copy of the order should be filed in all related cases. However, the court may need to enter separate orders when coordinating pending proceedings with criminal, domestic violence, or dependency cases.

For example, a judge may modify the bond conditions in a criminal case to make them consistent with the contact provisions of a domestic violence injunction. While the orders should be consistent in each case, the bond conditions should be in a separate order to maintain the integrity of the criminal proceedings and to provide effective notice of the conditions to law enforcement.

Inconsistent orders can arise when a party to a dissolution of marriage also has an injunction for protection against domestic violence. The typical scenario is of a petitioner with an injunction for protection that prohibits all contact between the parties who then gets a subsequent order in the dissolution case that allows for contact to exchange children for visitation. Clearly, the court needs to be aware of the domestic violence issues between the parties to make decisions regarding visitation and to tailor safe and effective means for exchanging children for visitation. If some contact for visitation purposes is allowed, the court may need to enter an amended injunction for protection that clarifies or modifies the contact the parties may have pursuant to the injunction for protection.

Sometimes an injunction for protection will arise during a pending dissolution of marriage case. Judges should be aware that section **61.052(6)**, Florida Statutes, requires that, “[a]ny injunction for protection against domestic violence arising out of the dissolution of marriage proceeding shall be issued as a separate order in compliance with chapter 741 and shall not be included in the judgment of dissolution of marriage.” The separate injunction for protection is filed in national and state crime information systems so it is readily available to other courts and law enforcement.

The court may also need separate orders when coordinating proceedings with a dependency case due to the confidentiality requirements in dependency. For example,

the court may enter a separate order for child support under a civil case number to make it easily enforceable by the Department of Revenue.

When dealing with related cases, the best way to ensure consistency among orders is to assign all of a family's related cases to one judge. Assigning all related cases to one judge allows the judge to be fully aware of the family's interconnected cases, and puts the judge in the best position possible to effectively coordinate proceedings and to create consistent and meaningful orders.

Transferring Related Cases

Question:

- ? What legal barriers exist for transferring diverse cases to a single judge and how can a unified family court ensure it operates within those parameters?

Answer:

- ✓ So long as the judge has jurisdiction to hear the types of cases involved, there is no legal barrier to transferring or assigning a family's related cases to a single judge. Florida rules already offer ways to transfer and assign cases to a single judge. However, developing a local administrative order which details how related cases will be assigned and transferred will help to ensure a uniform policy. Rather than legal barriers, the most prevalent barrier to implementing a unified family court may be a lack of willingness to change from familiar practices and adapt to a new coordinated system.

Background & Analysis:

Jurisdiction of the circuit courts is established pursuant to Article V, Section 5 of the Florida Constitution and is further enumerated in section **26.012**, Florida Statutes. A circuit judge's jurisdiction is not limited by court divisions. Willie v. State, 600 So. 2d 479, 481 (Fla. 1st DCA 1992) explains that:

“[I]t is the court, and not the particular judges thereof, that has jurisdiction over a particular cause, controversy and the parties thereto.” Kruckenbergh v. Powell, 422 So. 2d 994, 996 (Fla. 5th DCA 1982). Thus, “[a]ll circuit judges are empowered to hear and determine any case properly within [that] court’s jurisdiction.” Payette v. Clark, 559 So. 2d 630, 633 (Fla. 2d DCA 1990). While circuit courts are often divided into divisions for purposes of administrative efficiency, the assignment of a circuit judge to a particular division does not limit that judge’s jurisdiction; he or she continues to possess the authority to exercise the full power conferred on the circuit courts by the state. See, e.g., Kruckenbergh v. Powell, *supra*; Grossman v. Selewacz, 417 So.2d 728 (Fla. 4th DCA 1982).

Similarly, in In the Interest of Peterson, 364 So. 2d 98, 99 (Fla. 4th DCA 1978) the court held, “The circuit court has jurisdiction over all matters concerning the custody and welfare of children. All circuit court judges have the same jurisdiction within their respective circuits. A judge in the probate division or the juvenile division or the civil division or the criminal division has the authority and jurisdiction to hear cases involving child custody and dependency. The internal operation of the court system and the assignment of judges to various divisions does not limit a particular judge’s jurisdiction.”

The Florida Supreme Court has stated its determination to better serve Florida’s families through its opinion In re Report of the Family Court Steering Committee, 794 So. 2d 518 (Fla. 2001) and its predecessors. These opinions have the force of law and should be referred to when each circuit creates its administrative order designing and implementing its unified family court. As to the issue of UFC jurisdiction, the court has said, “[A] family’s interaction with the courts in all circuits **shall** be administratively coordinated and monitored in one unified family division, whether that interaction involves dissolutions of marriage (and attendant determinations of custody, visitation, child support, alimony, and modifications thereof), cases under the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Reciprocal Enforcement of

Support Act, adoption and paternity; domestic, repeat, dating, or sexual violence; juvenile delinquency and dependency, termination of parental rights, or cases of children or families in need of services. In re Report of the Commission on Family Courts, 633 So. 2d 14, 17 (Fla. 1994) (emphasis added).

Likewise, in recommendation #2 to the Florida Supreme Court, the Family Court Steering Committee observed that, “[a] model family court should include the following types of cases:

- dissolution of marriage
- division and distribution of property arising out of a dissolution of marriage
- annulment
- support unconnected with dissolution of marriage
- paternity
- child support
- URESA/UIFSA
- custodial care of and access to children
- adoption
- name change
- declaratory judgment actions related to premarital, marital, or postmarital agreements
- civil domestic and repeat violence injunctions
- juvenile dependency
- emancipation of a minor
- CINS/FINS
- truancy
- modification and enforcement of orders entered in these cases”

In re Report of the Family Court Steering Committee, 794 So. 2d 518, 525 (Fla. 2001).

In response to this recommendation, the court wrote, “ We specifically approve the recommendations regarding the enumerated cases that **shall** be included within the family division of each circuit.” Id. (emphasis added). The court went on to say, “Indeed, broad jurisdiction over all problems involving a single family is one of the key components of a unified court. Id.”

In addition to the directives and guidance already provided by the Florida Supreme Court, it may be helpful to one day have comprehensive and unified rules of procedure for unified family court cases. Presently, however, there are several rules of procedure

that aid in the transfer and coordination of cases. Florida Rule of Civil Procedure **1.270(a)** provides, “When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay.” This is a standard tool for the consolidation of civil cases. Florida Rules of Civil Procedure, however, do not apply to juvenile cases which are specifically governed by the Florida Rules of Juvenile Procedure.

Florida Rule of Juvenile Procedure **8.205(a)** provides, “If it should appear at any time in a proceeding initiated in a division other than the division of the circuit court assigned to handle dependency matters that facts are alleged that essentially constitute a dependency or the termination of parental rights, the court may upon consultation with the administrative judge assigned to dependency cases order the transfer of the action and the transmittal of all relevant papers to the division assigned to handle dependency matters. The division assigned to handle dependency matters shall then assume jurisdiction only over matters pertaining to dependency, custody, visitation, and child support.” This rule may be used for transferring custody, visitation, and child support matters to the dependency judge but it is limited in its scope.

Florida Family Law Rule of Procedure **12.270** indicates that, “[c]onsolidation or separation of trials shall be governed by Florida Rule of Civil Procedure 1.270.” Of greater interest is Florida Family Law Rule of Procedure **12.200** which provides for case management conferences that offer judges a variety of ways to aid with the coordination and management of cases.

Confidentiality in Domestic Violence Cases

Question:

- ? If a petitioner for a domestic violence injunction requests that his or her address be kept confidential, must anything be done in the other related case files?

Answer:

- ✓ Yes. This information is exempt from the public records provisions of section **119.07(1)**, Florida Statutes and section 24(a), Article I of the State Constitution. Once the request is made to keep the address confidential, it should remain confidential regardless of the type of file it is in. However, as a practical matter, this will take some diligence on the part of the petitioner in alerting the court and clerk of the confidential address and not disclosing the address on his or her own in other court documents.
- ✓ Unified family court personnel should work with clerk of court staff and the civil process personnel of the sheriff's office to develop a method to ensure that the address is truly confidential. A common way in which confidential addresses are inadvertently revealed in court files occurs when the sheriff's office files the return service.

Background & Analysis:

Section **741.30**, Florida Statutes, allows the petitioner for a domestic violence injunction to provide his or her address to the court in a confidential filing. This is for the safety of the petitioner. The Florida Legislature enacted the Address Confidentiality Program to “enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence,” pursuant to section **741.401**, Florida Statutes. The Attorney General’s office operates the Address Confidentiality Program pursuant to sections **741.401** through **741.409**, Florida Statutes. Furthermore, section **741.465(1)**, Florida Statutes, provides in part that, “The addresses, corresponding telephone numbers, and social security numbers of program participants in the Address Confidentiality Program for Victims of Domestic Violence held by the Office of the Attorney General are exempt from s. 119.07(1) and s. 24 (a), Art. I of the State Constitution.” This information, then, is not a matter of public record and must be kept confidential.

The confidentiality provisions of Chapter 741 are not distinctly cross referenced to the other statutes that cover related areas of UFC. The clear intent and language used to create the Address Confidentiality Program indicates that information made confidential under its provisions must remain confidential regardless of the context in which the information is kept. If this was not true, then a respondent to a domestic violence injunction could simply initiate some other court matter as a means to discover the whereabouts of the petitioner.

When a domestic violence case is related to pending proceedings, the court should be mindful of these issues of confidentiality and take steps to ensure the safe keeping of confidential information. Likewise, the person seeking to keep certain identifying information confidential must be diligent in informing the court and clerk of the request for confidentiality, and must not disclose the information on his or her own in other court documents.

Disagreements When Coordinating Related Cases

Question:

- ? When the assigned judges disagree on how to coordinate related cases, what should be done?

Answer:

- ✓ There is no absolute answer to this question, but there is a logical process that should be followed. Part of a judge's responsibility according to the Code of Judicial Conduct **Canon 3 C(1)** is that a judge "should cooperate with other judges and court officials in the administration of court business." The first step then is for the judges to do their best to resolve the matter themselves. If a legitimate disagreement can not be resolved by the judges themselves, then they should next refer to a comprehensive administrative order or local rule that anticipates and addresses potential problems and conflicts related to case coordination while taking into account the local judicial culture and the consensus of the circuit's judiciary to resolve the issue. If the disputed issue is not addressed by the administrative order, then the matter may be referred to the administrative judge. Ultimately, the chief judge of each circuit has the authority to resolve these matters pursuant to Florida Rule of Judicial Administration **2.215**.

Disagreements When Coordinating Related Cases

Background & Analysis:

Ultimately, the chief judge in each circuit has the authority to resolve conflicts between judges regarding related cases pursuant to Florida Rule of Judicial Administration **2.215**. The chief judge may also appoint an administrative judge to the family division who would also have authority to resolve conflicts therein. However, judges should be focused first on resolving disagreements among themselves without resorting to such measures. In fact judges “should cooperate with other judges and court officials in the administration of court business,” pursuant to Code of Judicial Conduct **Canon 3 C(1)**.

As a preemptive measure, however, implementing an effective local rule or administrative order that anticipates these potential conflicts and automatically regulates the coordination of cases will avoid the great majority of disagreements that could arise. The level of detail placed in the order or rule should take into account the local judicial culture and the consensus of the local judiciary. Great care should be taken to avoid interfering with a judge’s individual authority or discretion in a pending case. Reviewing administrative orders or local rules being used in other circuits may be helpful in implementing or improving an existing administrative order or local rule pertaining to case coordination.

“Ten years ago, with the Legislature’s creation of the Commission on Family Courts (‘Commission’), this State embarked on a mission to improve the resolution of disputes within the judicial system for children and families. When it created the Commission, the Legislature directed it to: (1) develop specific guidelines for the implementation of a family law division within each judicial circuit; (2) provide recommendations for statutory, rule, and organizational changes; and (3) recommend necessary support services.” In re Report of the Family Court Steering Committee, 794 So. 2d 518, 520 (Fla. 2001)(citation omitted). The goal of the program was to create “a fully integrated, comprehensive approach to handling all cases involving children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.” Id. at 519-520. To accomplish this goal, the Court gave its “support for the recommendation that there be a means to assign all family court matters that affect one family, including dissolution of marriage, custody, juvenile dependency and delinquency proceedings, to one judge.” Id. at 521 (citation omitted).

The following are some suggestions for consideration from a sampling of current administrative orders and from judges with UFC experience:

- Upon discovering a series of related cases, the judges involved meet with the administrative judge to resolve any coordination problems.
- If no agreement can be reached about which judge should take a series of cases, the cases could be assigned to the division (judge) with the earliest filed case.
- The judges involved should meet as soon as it is known that multiple cases are pending for one family because early detection of related cases is crucial.
- In some instances, if judges disagree about coordination of cases and there is a valid issue as to the management of the cases, then let the disagreement stand and allow all of the cases to proceed separately.
- If multiple cases are proceeding separately, all materials that are not confidential should be “cross-filed” in each case so that each judge is kept up to date on the status of the other related case and thereby avoid entering conflicting orders. Also, multiple cases could be scheduled on the same day to reduce multiple court appearances by one family.
- If there is a whole series of cases involving the same family, two judges could preside over the various cases while coordinating their efforts, avoiding a problem that might arise later if one of the judges is planning to transfer out of the family division, taking his or her knowledge and expertise regarding the family.
- When a new case is filed involving the same family during a pending case, automatically assign it to the same judge.
- Create a “conflict division” for utilization when judges disagree, and assign a judge to that division. When a disagreement arises, the judges could, at their discretion, transfer the cases to that division.

One Family/One Judge vs. One Family/One Team

Question:

- ? Are there situations in which the court should employ the one family/one team model over the one family/one judge model?

Answer:

- ✓ While there are no legal impediments to using either model, those who have been employing UFC concepts the longest have discovered many advantages in the one family/one judge model.

One Family/One Judge vs. One Family/One Team

Background:

The Florida Supreme Court endorsed the Coordinated Management Model for family court cases which was recommended by the Family Court Steering Committee. In re Report of the Family Court Steering Committee, 794 So. 2d 518, 531 (Fla. 2001). In this system all pending family cases are coordinated and managed by a team of staff members to facilitate the delivery of appropriate social services, maximize judicial resources, avoid conflicting court orders, and prevent multiple court appearances by the parties on the same issues. This model for case management allows for all of a family's cases to be heard by either a single judge or by multiple judges who will coordinate their efforts with one another and through a team of case managers.

For the coordinated case management model to work, there must be sufficient case management staff. As a practical matter, except for some of the funded UFC pilot circuits, sufficient staff does not exist at this time. Interestingly, one of the funded UFC pilot projects still did not have full case management team. As a result, it employed the one family/one judge model to most efficiently use the resources at its disposal while still implementing UFC principles. Now, with the creation of a permanent UFC division, the circuit has chosen to continue managing cases with the one family/one judge model due to its effectiveness.

Analysis:

In general, there is a presumption that assigning a family's various cases to one judge is a more efficient and less complicated method for handling the related cases of one family. In In re Report of the Family Court Steering Committee, 794 So. 2d 518, 521 (Fla. 2001) the Court reiterated, "We emphasize our support for the recommendation that there be a means to assign all family court matters that affect one family, including dissolution of marriage, custody, juvenile dependency and delinquency proceedings, to one judge." (citation omitted). But the Court also recognized that a one size fits all model is unlikely. Id. at 520. The goal continues to be efficient use of resources, better case management, and better service to Florida's families. The Court explained the importance of these issues:

Case management and coordination is a defining characteristic of a model family court. Case managers inform the family of voluntary services, refer the family to

mandatory court programs, and coordinate all cases involving the family to maximize judicial resources, avoid inconsistent court orders, prevent multiple court appearances by the parties on the same issues, and monitor compliance with court-ordered services. Case management staff provides continuity within the system by ensuring that all cases involving a single family are assigned to the same judge or by active oversight.... Id. at 529.

During the pilot projects it was discovered that there were many benefits to having one judge work on a family's cases. This was true in both rural and urban circuits. One example is that parties often dropped one or more of their pending cases because it became apparent that the matters could be resolved through a single case. Moreover, handling three cases before one judge saves the judicial time of two other judges. Cases need only be tried once, if at all. Often through comprehensive family mediation with a certified mediator the parties can agree upon a case plan that addresses the collateral issues, making a trial unnecessary. This also reduces duplicate services, such as psychological evaluations, from being ordered in multiple cases.

What appears to make the one family/one judge model particularly effective is that the parties learn that all of their legal issues will be addressed in the same forum by the same judge. They know that their interaction with the court system will have a beginning, middle, and end, and that they will not have to explain their story multiple times with each new judge. As a result of this certainty, the parties appear more willing to participate in the alternative dispute resolution process and are more willing to share information with the court. This, as a practical matter, is good for the judge managing a busy court docket and generally leads to better results for the family as well.

However, there may be instances when a circuit would want to employ the one family/one team model. Since criminal cases are not subject to UFC jurisdiction, a family with related criminal proceedings (such as a criminal domestic violence or child abuse case) will be served by more than one judge. This is when the team approach will be used most often because the criminal case can still be coordinated with the UFC case(s). The case management team and the judges should coordinate their proceedings to ensure consistency of orders, efficient scheduling of cases, and to maximize the use of services.

Legal time constraints in delinquency are often cited as a reason why multiple judges may be needed to handle UFC matters. Though early knowledge of the case and coordination are necessary, the schedule of a delinquency case is not a bar to one judge handling a delinquency along with other family cases. If an evidentiary hearing is

needed on the delinquency, it can be scheduled in the ordinary course, however, the attorneys in the associated cases would receive a courtesy copy of the notice as their attendance at the delinquency would be optional. Dispositions and pre-trials would be set on a UFC docket where all the parties, attorneys, and participants are present.

Lastly, cross jurisdictional cases may require more than one judge to handle a family's multiple cases if there are exceptional circumstances making transfer of these cases to one circuit impractical. In those situations, the case management teams and the individual judges can coordinate their efforts to ensure consistency between the cases and avoid duplication of effort. However, it is still a good idea to transfer these cases to the county that has the most experience with the family whenever possible. While one or two witnesses may be inconvenienced, it makes much more sense to let the court with the greatest knowledge of the family take these cases.

Question:

- ? Where there are multiple related cases, and there are different burdens of proof among the cases, or there is evidence admissible in one case, but not in another; should the judge consider not hearing all the cases to avoid the appearance of being unduly influenced by the conflicting evidence or lower burden of proof in one of the cases?

Answer:

- ✓ Our research has uncovered no Florida cases that would prohibit one circuit judge from handling overlapping UFC matters.
- ✓ The circuit court certainly has jurisdiction to hear related cases. “The circuit court has jurisdiction over all matters concerning the custody and welfare of children. All circuit court judges have the same jurisdiction within their respective circuits. A judge in the probate division or the juvenile division or the civil division or the criminal division has the authority and jurisdiction to hear cases involving child custody and dependency. The internal operation of the court system and the assignment of judges to various divisions does not limit a particular judge’s jurisdiction.” In re Peterson, 364 So. 2d 98, 99 (Fla. 4th DCA 1978).
- ✓ Cases have assumed that it is appropriate to handle overlapping matters. For example, in T.J. v. Dep’t of Children & Families, 860 So. 2d 517, 518 (Fla. 4th DCA 2003), the court observed that the burden of proof in a paternity case did not change because the paternity issue arose in a Chapter 39 proceeding.
- ✓ In handling multiple cases, however, the judge must be careful to announce the correct standard of proof upon which the judge’s rulings are being made.

Background & Analysis:

There are numerous burdens of proof across the various types of cases and hearings that appear in family court. When coordinated cases are heard at the same time, the judge should orally announce the proper burden of proof for each case type before the hearing begins so there is no ambiguity in the record. This procedure was recommended in In re D.S., 849 So. 2d 411 (Fla. 2d DCA 2003). If the parties are advised of the proper burdens of proof at the outset, then an appeal based upon improper burden of proof will be foreclosed. Further, the court's decision should indicate that each matter heard was (or was not) proven by its respective burden of proof.

Chapter 61 Proceedings

Dissolution of Marriage

Generally, the burden of proof for Chapter 61 issues, as in other civil matters, is by the **greater weight of the evidence**. See Heim v. Heim, 712 So. 2d 1238, 1239 (Fla. 4th DCA 1998) (court observed that “[a]bsent some legislative direction to the contrary, we are reluctant to complicate the job of a trial court and require different quanta of proof for different issues in Chapter 61 proceedings”).

Equitable Distribution

Pursuant to section **61.075(1)**, Florida Statutes, the distribution of marital assets and liabilities should be equal unless other relevant factors would make an unequal distribution of marital assets necessary to do equity and justice between the parties. A trial court's ruling on the distribution of marital assets is subject to appellate review under an **abuse of discretion** standard. See Kovalchick v. Kovalchick, 841 So. 2d 669, 670 (Fla. 4th DCA 2003).

Alimony

The court *must* make findings of fact pursuant to section **61.08(2)**, Florida Statutes to properly determine alimony. An award of alimony is usually not reversed on appeal absent an **abuse of discretion**. See Ondrejack v. Ondrejack, 839 So. 2d 867, 870 (Fla. 4th DCA 2003) (citing to Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980)). “[A]s long as the award is ‘within the parameters of reasonableness,’ the trial court’s alimony award should not be disturbed on appeal.” Bacon v. Bacon, 819 So. 2d 950, 952 (Fla. 4th DCA 2002) (citation omitted).

For a modification of alimony, the moving party must demonstrate by the **greater weight of the evidence**: “(1) A substantial change in circumstances; (2) that the change was not contemplated at the final judgment of dissolution; and (3) that the change is sufficient, material, permanent, and involuntary.” Antepenکو v. Antepenکو, 824 So. 2d 214, 215 (Fla. 2d DCA 2002) (citation omitted).

Pursuant to section **61.14(7)**, Florida Statutes, “the proof required to modify a settlement agreement and the proof required to modify an award established by court order shall be the same.”

Child Custody and Visitation – Time Sharing of Minor Child(ren)

The trial court is afforded **wide latitude and discretion** in determining time-sharing of minor child(ren), and thus, this decision may not be reversed unless no reasonable person would take the view adopted by the trial court. See Artuso v. Dick, 843 So. 2d 942, 944 (Fla. 4th DCA 2003). Further, “the trial court’s factual determinations in custody proceedings should be accorded great weight due to the wide discretion reposed in the trial court where the future of young children is at stake.” Ford v. Ford, 700 So. 2d 191, 195 (Fla. 4th DCA 1997).

A trial court has **great discretion** in setting a time-sharing schedule of minor child(ren). Gerthe v. Gerthe, 857 So. 2d 306, 307 (Fla. 2d DCA 2003); Keitel v. Keitel, 724 So. 2d 1255, 1257 (Fla. 4th DCA 1999). It is within the trial court’s discretion to restrict or limit time-sharing as may be necessary to protect the welfare of the child, and the appellate court will not reverse a trial court’s order regarding time-sharing absent a finding of abuse of discretion. Damiani v. Damiani, 835 So. 2d 1168, 1169 (Fla. 4th DCA 2002).

A trial court does not have the same broad discretion in a modification of time-sharing as it does in an initial determination of custody, and, in fact, has far less discretion to modify an existing custody order. See Boykin v. Boykin, 843 So. 2d 317, 320 (Fla. 1st DCA 2003).

A “trial court may not modify time-sharing schedule unless the party moving for such modification demonstrates: (1) a substantial or material change in the circumstances of the parties since entry of the custody and visitation order, and (2) that the welfare of the child will be promoted by a change in custody and visitation.” Worthington v.

MacGregor, 771 So. 2d 576, 577 (Fla. 4th DCA 2000). In Knipe v. Knipe, 840 So. 2d 335, 340 (Fla. 4th DCA 2003) the court explained,

This ‘extraordinary’ burden test requiring a ‘substantial and material’ change in circumstances has been developed and applied in cases involving a change in primary physical custody. See Gibbs v. Gibbs, 686 So. 2d 639, 641 (Fla. 2d DCA 1997); Zediker v. Zediker, 444 So. 2d 1034, 1036-37 (Fla. 1st DCA 1984). The policies behind the test are to honor the res judicata effect of the original final judgment, See Zediker, 444 So. 2d at 1036, and to ‘preclude parties to a dissolution from continually disrupting the lives of children by initiating repeated custody disputes.’ Pedersen v. Pedersen, 752 So. 2d 89, 91 (Fla. 1st DCA 2000).

Child Support

“A child support determination is within the sound discretion of the trial court, subject to the statutory guidelines and the reasonableness test.” Ondrejack, 839 So. 2d at 871. The “statutory guidelines” mentioned in the opinion refers to section **61.30**, Florida Statutes.

The party seeking modification of child support must prove by the **greater weight of the evidence** that (1) the modification is necessary for the best interests of the child, or (2) the modification is necessary because the child has reached the age of majority, or (3) there is a substantial change in the circumstances of the parties. Overbey v. Overbey, 698 So. 2d 811, 813 (Fla. 1997) (emphasis added). The language from the opinion mirrors section **61.13(1)(a)**, Florida Statutes.

Paternity

“Under chapter 742, paternity must be established by clear **and convincing evidence**.” T.J. v. Dep’t of Children & Families, 860 So. 2d 517, 518 (Fla. 4th DCA 2003) (emphasis added); Gingola v. Fla. Dep’t of Health & Rehabilitative Servs., 634 So. 2d 1110, 1111 (Fla. 2d DCA 1994); and section **742.031(1)**, Florida Statutes.

This burden of proof cannot be avoided because the paternity adjudication was made in the context of another proceeding, such as one under Chapter 39. T.J., 860 So. 2d at 518.

Dependency

Section **39.507(1)(b)**, Florida Statutes, states that “a preponderance of the evidence will be required to establish the state of dependency.” See also B.A.L. v. Dep’t of Children & Families, 824 So. 2d 241, 242 (Fla. 4th DCA 2002) (applying a greater weight of the evidence standard).

Termination of Parental Rights

A statutory ground for termination of parental rights must be proven by **clear and convincing evidence** pursuant to section **39.809(1)**, Florida Statutes. The court must also consider the **manifest best interests** of the child pursuant to section **39.810**, Florida Statutes.

In In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995), the Florida Supreme Court observed that in reviewing findings of the trial court made under a “clear and convincing” evidentiary standard:

[O]ur task on review is not to conduct a de novo proceeding, reweigh the testimony and evidence given at the trial court, or substitute our judgment for that of the trier of fact. Instead, we will uphold the trial court’s finding “[i]f, upon the pleadings and evidence before the trial court, there is any theory or principle of law which would support the trial court’s judgment in favor of terminating ... parental rights.” (citation omitted).

Also, in N.L. v. Dep’t of Children & Family Servs., 843 So. 2d 996, 999 (Fla. 1st DCA 2003) the court indicated, “Our standard of review is highly deferential. A finding that evidence is clear and convincing enjoys a presumption of correctness and will not be overturned on appeal unless clearly erroneous or lacking in evidentiary support.”

Delinquency

“In a hearing on a petition alleging that a child has committed a delinquent act or violation of law, the evidence must establish the findings **beyond a reasonable doubt.**” (emphasis added) Section **985.35(2)(a)**, Florida Statutes.

Domestic Violence Injunctions

An ex parte temporary injunction may issue “when it appears to the court that an immediate and present danger of domestic violence exists.” Section **741.30(5)**, Florida Statutes. Additionally, Florida Family Law Rule **12.610(c)(1)(A)** indicates, “For the injunction for protection to be issued ex parte, it must appear to the court that an immediate and present danger of domestic, repeat, or dating violence exists.”

The evidence to support the issuance of an ex parte injunction should be “strong and clear” to balance the harm sought to be prevented against the respondent’s right to notice and a hearing. Kopelovich v. Kopelovich, 793 So. 2d 31, 33 (Fla. 2d DCA 2001).

Section **741.30(6)(a)**, Florida Statutes states that the court may grant appropriate relief, including an injunction, when “it appears to the court” that petitioner is “either the victim of domestic violence ... or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.”

Appellate courts review the issuance of a permanent injunction for an abuse of discretion. Moore v. Hall, 786 So. 2d 1264, 1266-67 (Fla. 2d DCA 2001). Whether the conduct meets the statutory basis for domestic violence is a question of fact for the trial court, reviewed under the abuse of discretion standard.

Violation of Domestic Violence Injunction

A violation of a domestic violence injunction is punishable as indirect criminal contempt pursuant to section **741.31(3)**, Florida Statutes and subject to Florida Rule of Criminal Procedure **3.840**. See also Wisniewski v. Wisniewski, 657 So. 2d 944 (Fla. 2d DCA 1995). The burden of proof in a hearing involving violation of terms of domestic violence injunction is **beyond a reasonable doubt**. Hunter v. State, 855 So. 2d 677, 678 (Fla. 2d DCA 2003). Additionally, a violation of a domestic violence injunction may be prosecuted criminally as a first degree misdemeanor pursuant to section **741.31(4)**, Florida Statutes.

A person accused of violation does not have the burden of going forward at the outset of the hearing to show why he or she should not be held in contempt. Tide v. State, 804 So. 2d 412, 413 (Fla. 4th DCA 2001). “Because criminal contempt is ‘a crime in the ordinary sense,’ a contemnor must be afforded the same constitutional due process protections afforded to criminal defendants.” Id. (quoting Feltner v. Columbia Pictures Television, Inc., 789 So. 2d 453, 455 (Fla. 4th DCA 2001)) (citation omitted). Therefore,

the person seeking the order of contempt has the initial burden of going forward at the contempt hearing.

In a case based entirely on circumstantial evidence, the party seeking the contempt finding has the burden of presenting evidence from which the court can exclude every reasonable hypothesis except that of guilt. Fay v. State, 753 So. 2d 682, 683 (Fla. 4th DCA 2000).

Criminal Contempt

The burden of proof in criminal contempt proceedings is **beyond a reasonable doubt**. See Kramer v. State, 800 So. 2d 319, 320 (Fla. 2d DCA 2001). Criminal contempt proceedings are subject to Florida Rules of Criminal Procedure **3.830** and **3.840** and to the “constitutional limitations applicable to criminal cases including the due process requirement of a burden of proof ‘beyond a reasonable doubt.’” Dowis v. State, 578 So. 2d 860, 862 (Fla. 5th DCA 1991).

If the State brings a criminal contempt charge against someone alleged to have violated the terms of an injunction, the judge who originally presided over the injunction hearing should consider recusing himself or herself from the criminal proceeding if there could be the appearance of bias.

Civil Contempt

Civil contempt is a remedy of a court “to coerce obedience to its orders which direct a civil litigant to do or abstain from doing an act or acts. . . .” Dowis v. State, 578 So. 2d 860, 862 (Fla. 5th DCA 1991). The **preponderance of the evidence** burden of proof applies to civil contempt proceedings. Kramer v. State, 800 So. 2d 319, 320 (Fla. 2d DCA 2001).

Ordering Child Support When There is a Change in Placement

Question:

- ? What happens when custody is taken from one parent and granted to the other parent and no child support order was entered?

Answer:

- ✓ Failing to address child support matters when changing the primary placement of a child causes significant problems. Ideally, when the court determines that a change in custody from one parent to the other parent is required, the court should terminate the child support obligation of the former non-custodial parent (except arrears), and order appropriate child support payments to the new custodial parent. In the absence of a court order for child support, the non-custodial parent has no legal obligation to pay child support to the custodial parent. However, when the child support matter is corrected, the obligated parent will be required to pay a particular amount of arrears.
- ✓ If the child is placed with someone other than a parent, as in a dependency case, then both parents should be ordered to pay their appropriate share of child support to the child's new custodian. If the child was placed with one parent at the time of such a change in placement, then the former custodial parent should be ordered to pay child support to the new custodian, and the former non-custodial parent's child support obligation should be recalculated, modified as necessary, and redirected to the new custodian.

Background & Analysis:

Section **61.13(1)(a)**, Florida Statutes, indicates, “In a proceeding for dissolution of marriage, the court may at any time order either or both parents who owe a duty of support to a child to pay support in accordance with the guidelines in s. 61.30.” As with any hearing, the parties to a child support hearing must have notice and an opportunity to respond. Either one or both parties may request that the court enter an order for child support in actions for paternity, dissolution of marriage, supplemental petitions for modification, or petitions for support during marriage. In cases with pro se litigants, the parties may fail to address child support and the judge should inquire about the parties’ intentions regarding child support to bring the matter to their attention so it can be properly addressed.

In successful modification actions, the parent awarded custody may seek retroactive child support back to the filing date of the supplemental petition for modification. In fact, it is error for the court to fail to award support from the date of the petition for modification “where the need for the support and the ability of the parent to pay existed at the time the petition was filed.” Young v. Young, 745 So. 2d 1074 at 1076 (Fla. 4th DCA 1999). See also Nierenberg v. Nierenberg, 758 So. 2d 1179 (Fla. 4th DCA 2000). A court cannot however, award retroactive child support in a modification action prior to the filing date of the petition. See Anderson v. Anderson, 609 So. 2d 87 at 88 (Fla. 1st DCA 1992) and Wertheim v. Wertheim, 667 So. 2d 331 (Fla. 1st DCA 1995).

However, if the court is being presented with an initial petition to *establish* child support, it has discretion to order retroactive child support even before the date of the filing of the petition. Pursuant to section **61.30(17)**, Florida Statutes, “In an initial determination of child support, ... the court has discretion to award child support retroactive to the date when the parents did not reside together in the same household with the child, not to exceed a period of 24 months preceding the filing of the petition, regardless of whether that date precedes the filing of the petition.” The section goes on to provide certain areas of inquiry required before the court should award such retroactive child support.

There are a number of times when a court hearing a dependency case must make findings related to child support. The first instance will be at the shelter hearing pursuant to section **39.402(11)**, Florida Statutes, which indicates, “If a child is placed in a shelter pursuant to a court order following a shelter hearing, the court **shall** require in the shelter hearing order that the parents of the child ... to pay, to the department or institution having custody of the child, fees as established by the department. ... The shelter order shall also require the parents to provide to the department and any other state agency or party designated by the court, within 28 days after entry of the shelter order, the financial information necessary to accurately calculate child support pursuant to s. 61.30.” (emphasis supplied).

Next, pursuant to section **39.6011(4)(c)**, Florida Statutes, one of the required elements of the case plan for parents of a child who is in an out-of-home placement is a description of the parent’s financial support obligation to the child, including health insurance. Likewise, in the dispositional order in a dependency case, the court **shall** make determinations regarding child support if the child is in an out-of-home placement pursuant to section **39.521(1)(d)7**, Florida Statutes.

Whether the child is placed in shelter care, foster care, with a relative caregiver, or with a non-offending parent, the non-custodial parent or parents have a continuing obligation to support the child and must be ordered to pay such child support accordingly.

Establishing Child Support Obligation

Child Support Orders in Domestic Violence and Dissolution Cases

Question:

- ? How should one reconcile a child support order in a domestic violence case with a child support order subsequently entered in a dissolution of marriage case?

Answer:

- ✓ The order in the dissolution case is controlling. The court should also reconcile the two accounts in the resulting order.

Establishing Child Support Obligation

Background & Analysis:

When properly managing cases in the family division, related cases will be identified either through inquiry of the parties or through a search of related cases by the case manager. When the court is aware of what cases a family has pending, the judge will be able to use the best method for establishing child support.

The primary focus of domestic violence matters is dealing with the violence between the parties. Though the court must address the questions of primary physical residence and child support in these cases, the domestic violence forum is not designed for establishing permanent child support obligations. In O'Neill v. Stone, 721 So. 2d 393, 396 (Fla. 2d DCA 1998) the court noted, "This case is a perfect example of why domestic violence proceedings should not be allowed to become the primary forum in which custody, visitation and support issues are litigated." The court went on to say, "The better practice in such a case would be for the trial court to enter a temporary order ... and direct the parties to litigate their subsequent custody and visitation disputes in a proper paternity proceeding where the orders entered would remain in effect beyond the temporary lifespan of most injunctions." Id. The courts holding exemplifies why section **741.30(6)(a)**, Florida Statutes and Florida Family Law Rule of Procedure **12.610(c)(1)C**, provide for establishing *temporary* custody and support for any minor child or children connected with the proceedings.

Dissolution of marriage cases inherently deal with matters pertaining to the entire family. This forum is better equipped to completely hear issues relating to the calculation and award of child support on a *permanent* basis. Section **61.30**, Florida Statutes, is clearly the authority for calculating and awarding child support regardless of the forum in which the issue arises.

Lastly, section **741.30(1)(c)**, Florida Statutes, says, "In the event a subsequent cause of action is filed under chapter 61, any orders entered therein shall take precedence over any inconsistent provisions of an injunction issued under this section which addresses matters governed by chapter 61." With respect to this section, the court in Clery held:

The dissolution proceeding in this case was filed a few days prior to the petition for an injunction against domestic violence. Nevertheless, in those circuits in which the domestic violence injunction is decided by a trial judge other than the judge assigned to

the pending dissolution proceeding, we conclude that matters governed by chapter 61 are controlled by the judge in the dissolution proceeding without regard to whether that proceeding is filed before or after the petition for injunction. We doubt the trial court in this case had a need to decide child custody and visitation issues at the conclusion of the brief hearing on the permanent injunction, but we will not reverse those rulings because the trial judge in the dissolution proceeding has authority to make more deliberate decisions. Cleary v. Cleary, 711 So.2d 1302 (Fla. 2nd DCA 1998).

This indicates that the court hearing a dissolution proceeding is the preferred forum for establishing permanent obligations of child support.

Child Support in Dependency Cases

Question:

- ? Can a dependency court issue a child support order or suspend child support (consistent with the current placement of the child)?

Answer:

- ✓ Yes. A dependency court has jurisdiction over all child support matters including whether to suspend or modify child support obligations consistent with its placement of the child.

Background & Analysis:

Florida law provides specific authority for the dependency court to calculate, order, and enforce child support. Section **39.521(1)(d)7**, Florida Statutes, provides that, “The court may exercise jurisdiction over all support matters, shall adjudicate the financial obligation, including health insurance, of the child’s parents or guardian, and shall enforce the financial obligation as provided in chapter 61.” If the dependency court has the authority to order child support, it follows then that it also has the inherent authority to suspend or modify a child support obligation if custody of the child is changed, even on a temporary basis. This specific point, however, is not directly addressed by rule or statute.

Starting with a shelter hearing, section **39.402(11)**, Florida Statutes, provides that parents are responsible for the support of a child who is in an out-of-home placement. The section goes on to say that parents must provide the dependency court with a financial affidavit within twenty-eight days of a shelter order so that the court can calculate child support pursuant to section **61.30**, Florida Statutes. At the disposition of a dependency case, if the child is in an out-of-home placement, section **39.521(1)(d)7**, Florida Statutes, (as discussed above) applies along with Florida Rule of Juvenile Procedure **8.340(c)(6)** which indicates that a disposition order in a dependency matter shall include a determination as to child support if the child is in an out-of-home placement.

Every parent is responsible for the support of his or her child. When a child is not living with one or both of his parents, the parental obligation of support does not lapse, but is due to the child through his or her custodian for the care, support, and maintenance of the child.

Establishing Child Support Obligation

Crediting Established Arrears When There is a Change in Placement

Question:

- ? Can the dependency court award credit towards established arrears when the child is placed with the parent who is in arrears?

Answer:

- ✓ Probably should not because child support, once due, is the vested right of the payee on behalf of the child. If a previously delinquent parent is awarded temporary custody of the child in a dependency case, the dependency court probably should not award that parent a credit towards his or her child support arrearage. The more appropriate procedure would be for that parent to pursue a modification of support.

Establishing Child Support Obligation

Background & Analysis:

Florida Statutes provide authority for the dependency court to issue child support orders, but do not provide authority to award credit toward arrearages. In fact, awarding credit toward child support arrearages – irrespective of the forum – is generally not accepted practice in Florida. There may, however, arise special circumstances in which equitable considerations would warrant a setoff.

The issue of credit toward child support arrears has come up most frequently in domestic relations cases where there is a general rule against reducing child support obligations retroactively or forgiving arrearages. Fausnight v. Teasdale, 803 So. 2d 800 (Fla. 5th DCA 2002). This rule is due to the fact that child support obligations are the “vested rights of the payee and vested obligations of the payor which are not subject to retroactive modification.” Onley v. Onley, 540 So. 2d 880 (Fla. 3rd DCA 1989) (citing Pottinger v. Pottinger, 133 Fla. 442 (1938)).

In Puglia v. Puglia, 600 So. 2d 484, 485 (Fla. 3rd DCA 1992), the non-custodial father “sought credits for weeks the child resided with him. Although the father could have sought modification of the child support order in advance, he did not do so. Having failed to do so, it is too late to seek this remedy retroactively.” The court explained that “child support payments may be modified only prospectively through a modification of the child support agreement. ... Credits towards child support arrearages have the appearance of a retroactive modification, and if so, constitute error.” Id. However, if the *dependency* judge changes custody or placement of the child but does not address child support in that ruling, an argument may be made that child support should be retroactive to the date of the change in custody or placement and not be limited to the date the petition for child support was filed.

As a practical matter, the trial court could often deal with this situation by ordering the “new” non-custodial parent to pay monthly child support in the same amount that the “new” custodial parent is ordered to repay on the arrearage. The parents will submit their respective payments for the child support and delinquent support arrearages and end up largely or entirely canceling each other out. By requiring both of these payments, the parties and the court will have a record of the payments should there be any dispute in the future.

However, a departure from the foregoing cases is found in a recent appellate case involving a paternity and custody matter in which the trial court’s decision to create just

this sort of setoff was upheld. In Artuso v. Dick, 843 So. 2d 942 (Fla. 4th DCA 2003) the court awarded the father primary physical residence of the child. The mother was already due child support arrearages totaling \$4,900, however, at the time of the final judgment the father was due \$5,525 in child support that was retroactive to the time he filed the petition for support. Id. at 945. “Rather than have each party have an arrearage due, the court ‘washed out’ each arrearage.” Id. The court went on to say, “While the mother’s right to her arrearage was vested, the court simply used that award to offset against what would have been her greater obligation of support to the father. We affirm the trial court’s ruling.” Id.

In situations where the payor paid or overpaid *other* obligations, such as alimony or mortgage payments, the courts have refused to use those payments as a basis to award credit towards child support arrearages, stating that the payor should petition for modification prospectively. See, e.g. Waldman v. Waldman, 612 So. 2d 703 (Fla. 3d DCA 1993) (error to offset alimony overpayment against past due child support); Jones v. Jones, 689 So. 2d 1264 (Fla. 4th DCA 1997) (error to offset Christmas gifts against child support); DOR v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) (error to offset payments in the nature of gifts against child support).

However, the court should also consider the equitable circumstances of the case. In State of Florida, Department of Revenue of Behalf of Pulliam v. Watt, 681 So. 2d 800 (Fla. 2nd DCA 1996) the court indicated that special circumstances existed where the child lived with the payor father for a period of twenty-one months. The trial court’s order crediting the father for those twenty-one months was upheld. Id. Giving guidance in determining appropriate equitable defenses, the court in State of Florida v. Stanjeski, 562 So. 2d 673, 678 (Fla. 1990) wrote:

The following three equitable defenses may be appropriate grounds for relief: (1) payment--a direct payment is made to the payee because of the exigencies of the family situation or a family emergency; (2) no further obligation to pay support--a minor child reaches majority, marries, enters the armed services, or dies, or a former spouse receiving alimony remarries or dies; or (3) change of custody--a full change of child custody has occurred and the former custodial parent no longer supports the child or retains fiscal obligations relating to the child. There may be other equitable defenses that can be raised based on other types of extraordinary circumstances. We emphasize that the underlying purpose of this process is to assure the payment of child support for the welfare of the child.

Simply put, while child support arrearages are ordinarily vested in the custodial parent, “payments made for the benefit of the child may, under equitable considerations, entitle that parent to a setoff.” Tash v. Osterle, 380 So. 2d 1316 (Fla. 3rd DCA 1980). Courts have approved credit based on these types of equitable considerations. See State of Florida, Dept. of Rev., v. Kiedaisch, 670 So. 2d 1058 (Fla. 2d DCA 1996) (allowed setoff for payments for rent, food, clothes, utilities, and health insurance after child attained eighteen); Garcia v. Gonzalez, 654 So. 2d 1064 (Fla. 3d DCA 1995) (allowed setoff for payment of housing expenses); Goldman v. Goldman, 329 So. 2d 1260 (Fla. 3d DCA 1988) (payment for college room and board complied with spirit of the child support order); Nolte v. Nolte, 544 So. 2d 1146 (Fla. 2d DCA 1989) (non-custodial parent assumed care after custodial parent permanently expelled the child from the home).

Retroactive Child Support in a Dependency Cases

Question:

- ? Can the dependency court retroactively order support to the date the other parent gained legal custody even though in domestic relations cases retroactive support is limited to the date of the petition (except in establishing paternity)?

Answer:

- ✓ This issue is unsettled. While this particular issue is not addressed by statute, the reasoning used in domestic relations cases that prohibits retroactive support that predates the petition may be applicable in a dependency. However, an argument can be made that in the context of dependency, if the custody or placement of the child is changed by state action or by the court, then child support should accrue from the date of the change in custody or placement.

Background & Analysis:

Florida Statutes provide authority for the dependency court to issue child support orders, but are silent as to the specific issue of retroactive support in a dependency case. Issues relating to retroactive child support, as they have been dealt with in domestic relations cases, are discussed in the first question under this heading. In that section, it was indicated that the parent who was awarded custody may only seek retroactive child support back to the filing date of the petition for modification. In fact, it is considered error for the court to not award support from the date of the petition for modification “where the need for the support and the ability of the parent to pay existed at the time the petition was filed.” Young v. Young, 745 So. 2d 1074 at 1076 (Fla. 4th DCA 1999). See also Nierenberg v. Nierenberg, 758 So. 2d 1179 (Fla. 4th DCA 2000). A court cannot however, award retroactive child support in a modification action prior to the filing date of the petition. See Anderson v. Anderson, 609 So. 2d 87 at 88 (Fla. 1st DCA 1992) and Wertheim v. Wertheim, 667 So. 2d 331 (Fla. 1st DCA 1995). It would appear that this line of reasoning could be applicable when these issues arise in a dependency setting.

While Chapter 39 gives the dependency court authority to decide all matters pertaining to child support, it neither mentions nor requires either parent to file a petition to change custody or child support. This is a distinct difference from dissolution matters. Instead, in dependency the court’s jurisdiction is invoked when the State files a petition pursuant to section **39.013(2)**, Florida Statutes. As a result of that petition, the court has jurisdiction to place the child with a non-offending parent and to order the previous custodial parent to pay support. It follows that the order for child support (if not announced at the time of the change in placement) should be retroactive to the date the State placed the child with the non-offending parent.

Additional jurisdictional questions may arise in a circuit following the “one family, one team” model as opposed to the “one family, one judge” model. Clearly, if all UFC matters are addressed before one judge, there is much less confusion as to which forum should deal with which issue. In a “one team” setting, if child support was originally ordered in a dissolution case, and a subsequent dependency arose, then it would appear the domestic relations court would be the more appropriate forum for determining retroactive support while taking into consideration any placement changes that may have been ordered in the dependency action.

Establishing Child Support Obligation

Suspension of Child Support When Child is in a Commitment Facility

Question:

- ? Can the court suspend payment of child support while a child is in a DJJ commitment facility?

Answer:

- ✓ Probably not, however, this issue has not been settled in Florida by either statute or case law. States that have dealt with this issue tend to support a modification of child support during a period of commitment, but rarely go so far as to suspend child support altogether.

Establishing Child Support Obligation

Background & Analysis:

States that have dealt with this issue support a modification of child support during a period of commitment. The rationale for continuing child support payments even while a child is in a commitment program is that while a child's needs may change upon commitment, that does not mean that the child has no needs at all. Garver v. Garver, 981 P. 2d 471 (Wyo. 1999). Clearly, even though a custodial parent would not have the same financial demands for child support when the child is in a commitment facility, there are nonetheless fixed costs such as for housing, transportation, and utilities that would be unaffected or only slightly affected by the child being in an out-of-home placement.

Florida also has established requirements that parents pay towards the cost of their child's care when such child is found to be dependent, in need of services, or delinquent and is in the care of a state agency - not just a DJJ commitment facility. For example, section **985.231(1)(b)1**, Florida Statutes says, "When any child is adjudicated by the court to have committed a delinquent act and temporary legal custody of the child has been placed with a licensed child-caring agency or the Department of Juvenile Justice, the court shall order the parents of such child to pay fees to the department..." Likewise, section **984.14(6)**, Florida Statutes, requires the collection of fees related to the care, support, and maintenance of a child in shelter care. Section **39.521(7)** requires the disposition order in a dependency case to include the child support obligations of the parents if the child is in an out-of-home placement. Lastly, section **402.33(2)**, Florida Statutes, requires the assessment and collection of fees established by the Department of Health and Human Services for children who are in the care of the Department or one of its agencies or contractors. With these required child support obligations or fees for children in out-of-home placements, it follows that any child in the care of the State continues to have needs of support which are the obligations of the parents. As the court said in Armour, "Child support is a right which belongs to the child. It is not a requirement imposed by one parent on the other; rather it is a dual obligation imposed on the parents by the State." Armour v. Allen, 377 So.2d 798 at 800 (Fla. 1st DCA 1979).

While the change in circumstance resulting from a change in placement from a custodial parent to a state agency may indeed be the basis for a modification of child support, it would not be a sufficient basis to suspend child support obligations altogether. In

deciding the issue of modifying support, section **61.30**, Florida Statutes, is the controlling authority.

Modifying Child Support from a Dependency Case that has closed

Question:

- ? How should continuing matters pertaining to child support be addressed when the only order of child support was entered in a dependency case that has since closed?

Answer:

- ✓ The dependency court, when originally ordering child support, may make a separate child support order to be filed with a civil case number so it can be enforced by the Department of Revenue, avoid revealing confidential information, and be modified after the dependency court's jurisdiction terminates. Another option is for the final order in the dependency case to provide that any future issues regarding child support be handled in the domestic relations forum. Lastly, the court may terminate supervision in the dependency case but retain jurisdiction to address subsequent child support issues.
- ✓ Of course, if all of these matters are in a full-functioning UFC division, then these questions of jurisdiction and forum become moot. The Supreme Court adopted the Family Court Steering Committee's Recommendation #2 entitled "Family Division Structure and Jurisdiction" In re Report of the Family Court Steering Committee, 794 So. 2d 518, 525 (Fla. 2001). That recommendation anticipates that a fully implemented UFC will be a single, cohesive division of the court that is vested with jurisdiction over: dissolution of marriage; division and distribution of property arising out of a dissolution of marriage; annulment; support unconnected with dissolution of marriage; paternity; child support; URESA/UIFSA; custodial care of and access to children; adoption; name change; declaratory judgment actions related to premarital, marital, or post-marital agreements; civil domestic and repeat 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. Id.

Background & Analysis:

For a dependency case to close, either the parents have successfully completed a case plan and the child is reunified with the family, the child was reunified with only one parent, the parents' rights to the child were terminated, or a long-term relative placement was made. If the child is reunified with the parents, then child support would only continue to be relevant at the close of the case if the parties are separated or there is a primary custodial parent for some other reason. In that situation, the dependency matter is truly closed and there seems to be little justification to retain jurisdiction to address future child support issues. The proper forum to address continuing matters of child support would be domestic relations. The only reason dependency should be reopened in that situation is if a lack of payment led to a new dependency. As stated above, however, a fully implemented UFC would have overarching jurisdiction to decide all of these matters without the concerns of forum. The Supreme Court indicated that UFC jurisdiction should include dealing with matters of child support that are unconnected to a dissolution of marriage case. In re Report of the Family Court Steering Committee, 794 So. 2d 518, 525 (Fla. 2001).

Similarly, where the child is only reunified with one parent (such as when a parent's whereabouts are unknown or a single parent TPR) there may be no child support obligation, or, if there is still an obligation of support, then the matter again would best be addressed in a domestic relations forum.

Where the dependency is closed because parental rights are terminated, there would be no continuing obligation of support.

With a long-term relative placement, there will certainly be continuing child support obligations and indeed the possibility of continuing issues of which the dependency court may want to be aware. This scenario may be one in which the dependency court chooses to terminate supervision but retain jurisdiction.

Lastly, one of the methods already being employed to deal with this issue is the creation of a procedure whereby the clerk automatically creates a new domestic relations case number, at the close of the dependency case, and files therein a copy of the child support order from the dependency case. This creates a civil case number that the Department of Revenue can use to deal with any enforcement issues that may arise,

and it also gives the parties a means to come back before the court to modify child support pursuant to Chapter 61.

Question:

- ? Can the same Guardian Ad Litem serve in both a dependency case and a related domestic relations case?

Answer:

- ✓ Yes. There is no legal impediment to a Guardian Ad Litem being dually appointed to a domestic relations case and a dependency case, in fact, dual appointments are often both practical and efficient.

Background & Analysis:

A guardian ad litem (GAL) “is appointed by the court to represent the best interests of a child in a [legal] proceeding.” Section **39.820**, Florida Statutes. The Florida Rules of Juvenile Procedure grant specific authority to appoint a GAL in dependency cases (Rule **8.215**), delinquency cases (Rule **8.170**), and in CINS/FINS cases (Rule **8.617**). Likewise, a court may appoint a GAL in a domestic relations case pursuant to section **61.401**, Florida Statutes. Additionally, the court may appoint an attorney ad litem pursuant to Rule **8.217** to represent any child alleged to be dependent.

Appointment of a GAL by the court is required in certain cases. “A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect” case. Section **39.822 (1)**, Florida Statutes. The court is also required to appoint a GAL in domestic relations cases “which involve an allegation of child abuse, abandonment, or neglect as defined in s. 39.01, which allegation is verified and determined by the court to be well founded....” Section **61.401**, Florida Statutes.

Regardless of the type of proceeding or proceedings for which a GAL is appointed, the purpose is always to represent the best interests of the child. If the court believes that the best interests of the child will be served by dually appointing a GAL, then the practice clearly comports with the law and its intent.

For a GAL to effectively represent the best interests of the child, the GAL must be impartial. In M.R. v. A.B.C., 683 So. 2d 629, 631 (Fla. 3d DCA 1996), where the guardian in a paternity case was simultaneously confronted with his own paternity action, the court found that, “the child is entitled to the services of an impartial guardian ad litem.” Even the appearance of a conflict of interest should be avoided. Should a conflict arise between the child and the GAL, the court or the GAL himself should consider and move for the appointment of an attorney ad litem. The appointment of an attorney ad litem, as provided for by Florida Rules of Juvenile Procedure **8.217**.

It is interesting to note that in M.R. v. A.B.C., the court said, “The guardian ad litem who was chosen had previously served as the guardian ad litem for the children during the divorce proceeding between M.R. and I.R. Consequently, it was a *logical step* to employ the same guardian ad litem for the paternity action.” Id. (emphasis supplied)

Frequently, the impetus to dually appoint a guardian starts with the GAL programs themselves. For example, in a dependency case, once appointed, the GAL may seek appointment in a related criminal proceeding or domestic relations proceeding. This is both logical and efficient since the goal of the best interest of the child will be the same in all cases. At a time when the GAL programs across the state have limited resources and a shortage of volunteers, dual appointments are both practical and efficient.

An added benefit of a GAL serving in multiple proceedings is that it can help enhance communications among the parties, which should lead to improved decision making and greater efficiency. One of the greatest benefits is that the actions in each proceeding will tend to be more child-friendly/sensitive and treatment oriented, rather than punitive.

Utilizing a GAL and her report in both dependency and domestic relations cases is possible, but with regard to the report, one should be mindful of matters of confidentiality under Chapter 39. To deal with this, a GAL could create individual reports that address the necessary details of each case instead of using an identical report for each case. Training of GALs on these issues would help to ensure that the confidential report in a dependency case would not be used in a domestic relations case in a manner that raised concerns of breach of confidentiality.

Additionally, with respect to the GAL's report, situations may arise that raise the specter of ex parte communications. Typically, a GAL report in a dependency case is filed with the court, such as for a Judicial Review hearing. In a domestic relations case, however, the GAL's report is usually only accepted by the court by stipulation of the parties. To deal with this issue, at the time of appointment the court should make clear the manner in which the report of the GAL will be used or received in each case.

Courts are never bound by a GAL report, but may use them for guidance and give weight to them as is deemed appropriate.

Judicial Access to Court Records and Confidentiality Considerations

Question:

- ? Are there any statutory barriers to a judge's access to court files in related cases, and if so, how can a unified family court ensure it operates within those parameters?

Answer:

- ✓ A circuit judge's jurisdiction is not limited by division, and therefore judges will have equal access to all court files. Nonetheless, judges must be mindful of matters of confidentiality of court files and the appropriate ways to use files of related cases.

Background & Analysis:

Most records in juvenile matters are confidential. Pursuant to sections **39.0132 (3)** and **(4)**, Florida Statutes, all official records in dependency court are confidential. Furthermore, section **39.0132 (6)**, Florida Statutes indicates that court records under Chapter 39 are not admissible in evidence in other civil or criminal proceedings with few, limited exceptions. Likewise section **985.04 (3)** and **(4)**, Florida Statutes, provides that juvenile delinquency records are confidential, and section **985.05 (4)**, Florida Statutes, indicates that court records under Chapter 985 are not admissible in evidence in other civil or criminal proceedings with few, limited exceptions. Both Chapters 39 and 985 allow for inspection of court records by judges, authorized court personnel, law enforcement, treatment personnel, attorneys representing parties, and others with a special relationship to the juvenile or the court proceeding, or a person authorized to inspect the records pursuant to court order.

Adoption records and hearings are confidential pursuant to section **63.162**, Florida Statutes.

In domestic violence matters a provision in section **741.30**, Florida Statutes, authorizes the petitioner of a domestic violence injunction to file a confidential address with the court. The provisions for the Address Confidentiality Program operated through the Office of the Attorney General are delineated in sections **741.401** through **741.409**, Florida Statutes.

Under section **90.503(4)(b)**, Florida Statutes, the psychotherapist-patient privilege does not apply to communications made in a court-ordered examination of the mental or emotional condition of the patient. The findings from such an evaluation would be made available to the court and the parties. However, federal law governing treatment programs authorized or funded by federal agencies makes all records and communications between the treatment provider and the patient confidential. Thus, unless the patient (or in the case of a child patient, the parent or guardian) has waived confidentiality and signed a form consistent with the federal act, the court can only access the records after a hearing with notice to the patient, or parent or guardian, and treatment provider, and a showing of good cause for the waiver of confidentiality. This is true even though the court ordered the treatment. In most cases this will be easily shown, but the process can delay the court proceedings. A written waiver obtained at

the time treatment is ordered would effectively resolve this issue and prevent unnecessary delay.

The Florida Evidence Code authorizes a court to take judicial notice of its own records, the records of other Florida courts, and records from any other state or federal court of the United States. Use of records of related cases is governed by sections **90.202** and **90.204**, Florida Statutes, pertaining to matters of which judicial notice may be taken.

However, In re Adoption of Freeman, 90 So. 2d 109 (Fla. 1956) presents a situation in which the court used records from another case to make its decision, but did so improperly. In that case the court stated, “It is the rule in this State that a court shall not take judicial notice of what may be contained in the record of another distinct case unless it be brought to the attention of the court by being made a part of the record.” Id. at 110 (citation omitted). The Florida Supreme Court clearly explained the reason for this rule in Atlas Land Corporation v. Norman, 156 So. 885, 886 (Fla. 1934):

The court in which a cause is pending will take judicial notice of all its own records in such cause and of the proceedings relating thereto. But orders and other proceedings which do not properly belong to the record of a case being considered by a court must be proved or in some way directly brought into the record of the pending case by some order of the court referring to and adopting the outside records or proceedings as part of its own record, in order that an appellate court may, in the event of an appeal, know the exact nature, character, scope, and extent of the matters upon which the court below arrived at the decision appealed from and carried on the record to the appellate court.

In terms of UFC, the types of records sought will regularly be the court’s own records and those of “proceedings relating thereto,” as mentioned in Atlas. The decision in Atlas is also helpful in alerting the court of the need to make any material relied upon by the court in its decision making a part of the record.

Jurisdiction to Access Court Records of Related Cases

Question:

- ? Do all judges hearing family cases have the right to review the contents of other family-related case files?

Answer:

- ✓ Yes. “All circuit court judges have the same jurisdiction within their respective circuits. ... The internal operation of the court system and the assignment of judges to various divisions does not limit a particular judge’s jurisdiction.” In the Interest of Peterson, 364 So. 2d 98, 99 (Fla. 4th DCA 1978). Since any circuit judge may be called upon to hear any case under the circuit court’s jurisdiction, it is necessary for all judges to have equal access to all court files.

Background & Analysis:

Certainly, a judge may look at any court record for a court in which the judge has jurisdiction. Court staff may also look at any case file for the judge and report to the judge. Though judges will have access to files, it is the proper use of those files that becomes the concern. The chief distinction to be mindful of is the difference between simply knowing of the existence of related cases and the legal issues therein, and the use of information in related cases for evidentiary purposes. (Many issues pertaining to proper use of records of related cases are discussed above.)

Case managers and staff may advise the court of the existence of other related proceedings and furnish administrative information about such cases. Of course, the court may simply ask the parties if there are any related cases as well. Court staff may also advise the judge as to the legal issues involved in the other related cases to aid the judge in carrying out his or her adjudicative responsibilities, pursuant to Canon **3 B(7)(c)**, Code of Judicial Conduct. Staff and other judges may be consulted on matters of pure law or pure decision-making issues, but may not provide evidentiary material to the judge.

However, the judge should not look at evidentiary matters in other files without first notifying the parties and giving them an opportunity to be heard. As the Commentary to Canon **3 B(7)**, Code of Judicial Conduct indicates, “A judge must not independently investigate facts in a case and must consider only the evidence presented.”

Disclosing the Review of Court Records of Related Cases

Question:

- ? Does a judge have to disclose the review of related case files to anyone?

Answer:

- ✓ Sometimes. If the judge becomes aware of evidentiary matters while reviewing a related case file, the judge must disclose this to the parties and give them an opportunity to respond. A review of purely administrative matters that gives no advantage to any party is not considered ex parte and does not require disclosure to the parties.

Background & Analysis:

If a judge is reviewing related case files for evidentiary matters, it could appear that the judge is investigating the facts independently and in a manner that does not allow the parties either notice or an opportunity to respond. As stated above, the Commentary to Canon **3 B(7)**, Code of Judicial Conduct indicates that, “A judge must not independently investigate facts in a case and must consider only the evidence presented.” The judge should not look at evidentiary matters in other files without first notifying the parties and giving them an opportunity to be heard. If the judge becomes aware of an evidentiary matter in reviewing another file, then the parties must be notified and given an opportunity to be heard as to the effect of this information. This is in keeping with Canon **3 B(7)**, Code of Judicial Conduct.

Reviewing a file for scheduling purposes and other purely administrative matters does not raise an ex parte concern and disclosure of the review is not required. This is obviously a common practice necessary for the efficient operation of the courts.

Communications Between Judges

Question:

- ? To what extent can judges communicate with other judges regarding case management and case coordination?

Answer:

- ✓ A judge may consult with other judges to better carry out his or her adjudicative responsibilities. A judge may also consult with court personnel whose function is to aid the judge in carrying out his or her adjudicative responsibilities. Canon 3 B(7)(c), Code of Judicial Conduct.

Background & Analysis:

It is apparent that in facilitating the case management and coordination process in a Unified Family Court system, inter-court and intra-court communications are necessary. These communications will naturally deal with the administrative aspects of the cases and, in part, with substantive aspects of the cases - as often occurs when the duty judge briefs the assigned UFC judge about a new case. Judges must be able to communicate with each other in order to maximize court resources, avoid conflicting decisions, prevent duplicative hearings, and minimize inconvenience to the parties.

Canon 3 B(7)(c) makes it clear that judges have the freedom to consult with other judges. As long as these communications do not violate other ethical responsibilities espoused in the judicial canons, judges may consult with one another regarding issues of case management and coordination. A judge may also consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

In order to fulfill the purposes of the Unified Family Court, judges must be allowed to confer regarding case management and coordination. These communications are ethical and are anticipated by the Judicial Canons. In fact, Canon 3 C(1) indicates that a judge "should cooperate with other judges and court officials in the administration of court business."

The promulgation of a rule of judicial administration that requires judges who are assigned to different cases involving the same family to confer regarding case management and coordination could be tailored to eliminate any question as to the proper extent of judicial communications. However, the Supreme Court noted, "Of course, if all cases involving the same family are identified and assigned to a single judge, many of these problems of coordination and confidentiality will be eliminated." In re Report of the Family Court Steering Committee, 794 So. 2d 518, 526 (Fla. 2001). Additionally, procedures for the automatic transfer and coordination of cases involving the same family would efficiently overcome many of these issues. This is yet another reason why so much attention to detail must be paid to the creation of the local administrative order pertaining to family cases.

Ex Parte Considerations

Question:

- ? Do the communications presented in the preceding question constitute ex parte communication?

Answer:

- ✓ While they are ex parte communications in the sense that the parties to the case are not present, they are not prohibited ex parte communications as they do not deal with substantive or evidentiary matters. Prohibited ex parte communications are those between the court and a party in the litigation where the adverse party has not been given notice and an opportunity to respond.

Background & Analysis:

Communication between the court and counsel (or other interested person) when opposing counsel has neither notice nor an opportunity to respond is a prohibited ex parte communication. The purpose behind prohibiting ex parte communications is to ensure that the litigants in a proceeding have a neutral forum and an impartial judge. “Ex parte communications with a judge, even when related to such matters as scheduling, can often damage the perception of fairness and should be avoided where at all possible.” Rose v. State, 601 So. 2d 1181, 1184 (Fla. 1992) (concurring opinion). Communications with other judges or court personnel (instead of parties in interest) for administrative purposes are specifically authorized by CJC Canon 3B(7)(c). CJC Canon 3C(1) provides that judges “should cooperate with other judges and court officials in the administration of court business.”

There are also exceptions when ex parte communications will be permitted. CJC Canon 3B(7)(a) reads:

- (a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:
 - (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
 - (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

Mere communication regarding scheduling does not rise to the level of a prohibited ex parte communications as long as a procedural or tactical advantage is not gained.

Giving Notice of Judicial Communications

Question:

- ? Are the judges required to give notice to parties/attorneys prior to conferring with another judge?

Answer:

- ✓ No, prior notice of communications between judges is not necessary when the communication is pertaining to case management or coordination. If the communication is for a substantive or evidentiary purpose, it is necessary to give notice and an opportunity to respond. Communications between a Florida judge and a judge of another state require prior notice so interested parties have an opportunity to be present.

Background & Analysis:

Communications about case management and coordination between judges do not require prior notice to the parties involved and is specifically authorized by CJC Canon 3B(7)(c). When the communication is between a Florida judge and a judge of another state, the judge must comply with the steps outlined in Chaddick v. Monopoli, *infra*. Although the parties will not participate in the conversation, the parties must be given an opportunity to be present. Id. at 1012. Therefore, prior notice to the communication is necessary.

“Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:

- (i) (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
- (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.” Canon 3 B(7)(a).

When a judge confers with a judge from another state regarding a pending case, the court in Chaddick v. Monopoli, 714 So. 2d 1007, 1012 (Fla. 1998) held:

- (1) the parties must be given the opportunity to be present during a Florida judge’s conversation with a judge of a sister [state] but the parties may not participate in the conversation; and
- (2) the Florida judge must explicitly set forth in the record the reasons for the judge’s finding that the sister state was or was not exercising its jurisdiction in substantial conformity with UCCJA.

Judicial Communications Across Circuit or County Lines

Question:

? What if the judges are in different circuits?

Answer:

- ✓ There are no special requirements for judges from different circuits to communicate about coordinating pending cases. CJC Canon 3B(7)(c) which says, “A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities” still applies.

Background & Analysis:

There are no special requirements for judges from different circuits to communicate about coordinating pending cases. CJC Canon 3B(7)(c) which says, “A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities” still applies. However, bringing the interested parties into the case management discussion may help to facilitate the case management process and allow for more meaningful scheduling of hearings while avoiding calendar conflicts.

Deciding Which Judge Will Hear a Case

Question:

- ? Do the family judges have to consider input from the parties before deciding which judge will hear the case?

Answer:

- ✓ No. Family judges should not consider input from the parties as to which judge should be assigned to a case. The judge should require the parties to inform the court of any related cases, and the judge may properly take this into consideration in assigning the case.

Background & Analysis:

“A judge shall uphold the integrity and independence of the judiciary.” Canon 1. Allowing the parties to “judge shop” gives the appearance that the parties or attorneys have some undue influence over the particular judge they are requesting. As a result, the impartiality of the court may be brought into question by the public which impinges on Canon 2 A, which says, “A judge shall ... act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

When parties or attorneys inform the judge that another action is already pending before another family judge, then the best practice is to assign the new case to the judge handling the case bearing the lowest docket number. This procedure, especially when a part of the local administrative order, will be both familiar to the attorneys and impartial to the parties.

Email Correspondence

Question:

? Are there any special requirements for email correspondence?

Answer:

- ✓ There are no special requirements for email correspondence that relate to administrative matters.

Background & Analysis:

Email correspondence relating to administrative matters is not subject to any special requirements and is treated the same as if it was a writing. Emails sent within one court's jurisdiction will almost always fall under one of the public records exemptions in Florida Rule of Judicial Administration **2.420(c)**. However, the Commentary to this rule seems to anticipate that some of the available exemptions may not apply to emails that sent or received outside a court's jurisdiction. "Each court should develop a means to properly make a record of non-exempt official business e-mail by either electronically storing the mail or by making a hard copy." Commentary to Florida Rule of Judicial Administration 2.420.

Florida Rule of Judicial Administration **2.420(c)** provides in part:

The following records of the judicial branch shall be confidential:

- (1) Trial and appellate court memoranda, drafts of opinions and orders, court conference records, notes, and other written materials of a similar nature prepared by judges or court staff acting on behalf of or at the direction of the court ... unless filed as a part of the court record;
- (2) Memoranda or advisory opinions that relate to the administration of the court and that require confidentiality to protect a compelling governmental interest....

Question:

- ? When the press attends court hearings, will confidentiality mandates prevent coverage of the entire proceeding if multiple related cases are heard? Which cases are closed to the press?

Answer:

- ✓ Adoption, Parental Status, and Termination of Parental Rights cases are closed proceedings. There is a strong presumption of openness for all other court proceedings, and public access includes media access. Trial courts do have the power to close all, or part of a proceeding, in limited circumstances, and to take steps necessary to protect children.
- ✓ When the UFC judge presides over multiple related cases, and one or more is closed per Statute, the court must consider the factors set out in Barron, *infra*, and adopted by Rule of Judicial Administration 2.420, to determine whether to close all or part of the proceeding. Findings of fact are required for all closure orders, as well as findings regarding the consideration of alternatives to closure. It is clear that the UFC judge may close a proceeding, and order sealing of records, to protect the interests of minor children.

Background:

This is a complex issue and a complete background and comprehensive analysis is beyond the scope of the tool kit. The following is a sample of constitutional and statutory provisions pertinent to this issue:

Article I, Section 23 of the Florida Constitution recognizes a person’s right to be free from governmental intrusion into the person’s private life. When private matters are brought into court, a person’s right of privacy can compete with well established statutory and common law rights of access to court proceedings and records. In Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113, 118 (Fla. 1988), the Court reiterated that “a strong presumption of openness exists for all court proceedings.” However, the Court went on to “find that, under appropriate circumstances, the constitutional right of privacy established in Florida by the adoption of article I, section 23, could form a constitutional basis for closure....” Id.

Florida Statutes Section **63.162 (1)** provides that all adoption hearings “shall be held in closed court without admittance of any person other than essential officers of the court, the parties, witnesses, counsel, persons who have not consented to the adoption and are required to consent, and representatives of agencies who are present to perform their official duties.” The constitutionality of this statute was upheld by the Supreme Court in In re The Matter of the Adoption of H.Y.T., 458 So. 2d 1127 (Fla.1984). The Court noted that “the Florida Legislature has recognized an overriding public policy of protecting from harmful publicity parties to and the subject of adoption proceedings... [and] this policy recognizes that adoption proceedings are qualitatively different from other judicial proceedings.” Id. at 1128.

Florida Statutes Section **742.16 (5)** provides that all hearings in Expedited Affirmation of Parental Status for Gestational Surrogacy cases “shall be held in closed court without admittance of any person other than essential officers of the court, the parties, witnesses, and any persons who have received notice of the hearing.”

Florida Statutes Section **39.809 (4)** provides that “all hearings involving termination of parental rights are confidential and closed to the public.” The Supreme Court specifically found that this statute requiring the mandatory closure of TPR proceedings is valid under the United States and Florida constitutional provisions respecting access

of the public and media to judicial proceedings, in Natural Parents of J.B. v. Florida Dept. of Children and Family Services, 780 So.2d 6 (Fla. 2001).

Florida Statutes Section **742.031 (1)** gives the court discretion to restrict access in Paternity proceedings, and provides that “hearings for the purpose of establishing or refuting the allegations of the complaint and answer shall be held in the chambers and may be restricted to persons, in addition to the parties involved and their counsel, as the judge in his or her discretion may direct.” Additionally, Florida Statute Section **742.09** indicates that anyone who publishes or broadcasts “the name of any of the parties to any court proceeding instituted ... under this act ... shall be guilty of a misdemeanor of the first degree....”

Florida Statutes Section **984.20 (2) (c)** provides that Child-in-need-of-services “hearings shall be open to the public, and no person shall be excluded there from except on special order of the judge who, in his or her discretion, may close any hearing to the public when the public interest or the welfare of the child, in his or her opinion, is best served by so doing.”

Florida Statutes Section **985.035 (1)** provides that Delinquency hearings “must be open to the public, and no person may be excluded except on special order of the court. The court, in its discretion, may close any hearing to the public when the public interest and the welfare of the child are best served by so doing.”

Florida Statutes Section **39.507 (2)** provides that Dependency hearings (but not TPR hearings, pursuant to §39.809(4)) “shall be open to the public, and a person may not be excluded except on special order of the judge, who may close any hearing to the public upon determining that the public interest or the welfare of the child is best served by so doing.”

Florida Statutes Section **92.53 (1)** provides that a “witness who is under the age of 16 or who is a person with mental retardation...would suffer at least moderate emotional or mental harm if ...required to testify in open court, ... the trial court may order the videotaping of the victim or witness in a case, whether civil or criminal in nature, in which videotaped testimony is to be utilized at trial in lieu of trial testimony in open court.”

Florida Statutes Section **918.16 (1)** provides that “in the trial of any case, civil or criminal, when any person under the age of 16 or any person with mental retardation... is testifying concerning any sex offense, the court shall clear the courtroom of all

persons except the parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and at the request of the victim, victim or witness advocates...”

In Barron v. Florida Freedom Newspapers, Inc., 531 So.2d 113, 114 (Fla. 1988), the Supreme Court held “that *all* trials, civil and criminal, are public events and there is a strong presumption of public access to these proceedings and their records, subject to certain narrowly defined exceptions.” Those exceptions “fall into two categories: the first includes those necessary to ensure order and dignity in the courtroom and the second deals with the content of the information,” Id. at 117. The Court specifically found “no justification to give dissolution proceedings special consideration, ... (and) parties seeking a dissolution of their marriage are not entitled to a private court proceeding,” Id. at 119.

In re Petition of Post-Newsweek Stations, Florida, Inc., 370 So.2d 764 (Fla. 1979) established that electronic media are permitted to have access to courtrooms subject to standards adopted by the Supreme Court and the authority of the presiding judge to control the conduct of proceedings to ensure a fair trial.

Analysis:

Express statutory authority mandates the closure of Adoption, Parental Status, and TPR proceedings. All other UFC proceedings are statutorily open to the public and the press. However, pursuant to Florida Family Law Rule **12.400** and the related Rule **2.420(c)(9)**, the court has the discretion to close UFC proceedings or seal records where appropriate. It is helpful to note that the commentary to Rule **12.400** states that “Judicial proceedings and records should be public except when substantial compelling circumstances, especially the protection of children ... require otherwise. Family law matters frequently present such circumstances. It is intended that this rule be applied to protect the interests of minor children from offensive testimony and to protect children in a divorce proceeding.”

Where a statute requiring closure does not exist, the court must make findings to support a closure order, and find that there is no reasonable alternative. Guidance for making these findings and determining when closure of proceedings is appropriate, is found in Barron, at 118, where the Court sets out five factors that trial courts must consider when they exercise their power to close all or part of a civil proceeding:

1. A strong presumption of openness exists for all court proceedings. A trial is a public event, and the filed records of court proceedings are public records available for public examination.
2. Both the public and news media shall have standing to challenge any closure order. The burden of proof in these proceedings shall always be on the party seeking closure.
3. Closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.
4. Before entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and if

none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose.

5. The presumption of openness continues through the appellate review process, and the party seeking closure continues to have the burden to justify closure.

The court must balance the rights and interests of the parties to the litigation with those of the public and the press when determining what, if any, restrictions may be placed upon access to judicial proceedings. The constitutional right of privacy established in Florida under Article I, Section 23 may provide the basis to close proceedings in UFC cases. The court should generally focus on the *content* of the subject matter - rather than the status of the party seeking closure - to determine whether a sufficient privacy interest exists that would warrant closure of the proceedings. It is not enough to show that the parties are “famous” or are public figures to obtain a closed hearing.

It should be noted that media and public access to court proceedings differs from the right to have access to court records. Access to court records is strictly limited by statute in Adoption cases, per Section **63.162(2)**; in Child-in-need-of-services cases, per Section **984.06(3), (4)**; in Dependency cases, per Sections **39.0132(3), (4)(a)** and **39.202(1)**; and in TPR cases, per Section **39.814(3), (4)**. Court records in these cases are confidential and are to be maintained separately by the Clerk. The public is prohibited from inspecting them. Access to these records may be granted only upon order of the court, and then only to persons deemed to have a proper interest in them.

Access to court records that are not made confidential per statute may nonetheless be limited or denied if the content of those records is of such a personal and private nature as to outweigh the public’s right to access the records. “The Supreme Court of Florida has clearly held that the Public’s interest in the disclosure of public records pursuant to statute is to be balanced against the privacy rights of the subjects of those records.” State v. Rolling, 1994 WL 722891 at 3 (Fla. Cir. Ct.); 22 Med. L. Rep. 2264. In that criminal case, the court allowed photographs of murdered victims to be viewed by the media and the public but prohibited the photographs from being removed or reproduced so that the surviving family members would not be confronted by the photographs in a public forum. Id. at 6.

Likewise, in Earnhardt ex rel. Estate of Earnhardt v. Volusia Co., 2001 WL 992068 (Fla. Cir. Ct.); 29 Med. L. Rep. 2173, where various media outlets sought to obtain autopsy photographs of Dale Earnhardt, the court found that the deeply personal nature of the photographs and the unnecessary public inspection of the photographs would cause personal distress and trauma to the surviving family members and held that the

photographs were not to be disclosed in any way. Part of the rationale for the decision was that there were numerous other ways for the media and the public to obtain any relevant information regarding the autopsy that were less intrusive on the surviving family members' privacy interests than viewing the photographs. Id. at 2.

The Guardian ad Litem has been found to have the authority to waive the benefit of statutory provisions of confidentiality on behalf of minors, and the media was allowed full access to both the proceedings and records after the court determined that disclosure was in the best interests of the children in Department of Health and Rehabilitative Services v. A.N., 604 So. 2d 11 (Fla. App. 3 Dist. 1992).

Question:

- ? What are the respective responsibilities of the court and the attorneys to advise litigants or parties of matters outside the scope of the attorneys' representation or appointment in coordinated cases?

Answer:

- ✓ **The Court's Responsibility:**

In those situations where a court appointed attorney is present in court on a coordinated case that is beyond the scope of the attorney's appointment, the court may verbally reference the order of appointment that limits the attorney's obligations so it is clear in the record. Also, the court should be mindful of confidential matters and ensure that only the correct parties are present unless confidentiality is properly waived.

- ✓ **The Attorney's Responsibility:**

The lawyer's obligation is to clearly explain the scope of his or her representation to the client, and to operate in accordance with the order of appointment and the Rules Regulating the Florida Bar. It is also the attorney's responsibility to determine if there are any other cases that may affect their representation. An attorney should also inform the court if he or she has a limited obligation so the court will not treat an appearance as a general appearance for all purposes.

Background & Analysis:

The number of attorneys offering “unbundled legal services” has grown greatly in recent years. Often, unbundled legal services encompass many types of family cases. Family cases may also have attorneys appointed by the court for specific limited purposes. In unified family court, dealing with attorneys who have limited obligations with respect to a party or a case may present additional challenges. Florida Family Law Rule of Procedure **12.040** (effective January 1, 2004) was created to deal with issues related to limited representation and unbundled legal services.

The court may limit the obligations of court appointed counsel through appointment on a particular type of case, or aspect of a case. For example, a child charged with a delinquent act may be appointed legal counsel pursuant to sections **27.52** and **985.203**, Florida Statutes. Pursuant to such an appointment the attorney is obligated to represent the child only in the proceedings for which he or she was appointed. If that same child also has a dependency case, the attorney appointed for the child in the delinquency case would not be authorized to represent the child in the dependency matter under the original appointment.

Another situation involving limited representation may arise during the course of dependency proceedings if a determination is made that the child should be placed in a residential treatment center. If the child objects to the placement determination, either on his or her own if of an appropriate age or through a guardian ad litem, then pursuant to Florida Rule of Juvenile Procedure **8.350** the court must appoint an attorney to represent the child and oppose the Department’s motion to place the child in a residential treatment center. Here, the court appointed lawyer has a limited obligation to represent the child with regard to a particular aspect of the dependency case, namely the issue of placement in a residential treatment center. The attorney may be appointed for subsequent hearings addressing that placement if the child does not agree with the continued placement, but may not be authorized to represent the child in other aspects of the dependency case.

Similar scenarios arise with attorneys who are privately retained to represent a client in a specific aspect of a case or for a specific proceeding. For example, The Comments to the Rules Regulating the Florida Bar **4-1.2**, under Services limited in objectives, scope or means, state, “The objectives or scope of services provided by a lawyer may be limited

by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles."

On November 13, 2003, the Supreme Court issued its opinion on the Amendments To The Rules Regulating The Florida Bar And The Florida Family Law Rules of Procedure (Unbundled Legal Services), 860 So. 2d 394 (Fla. 2003). This opinion may provide the court with further guidance and direction on this issue of counsel with limited obligations. Justice Pariente indicated in the Court's opinion that "[t]he litigant's understanding of the scope of the limited representation is important in preventing unrealistic expectations on the part of the litigant, especially in connection with the extent of the attorney's role during in-court proceedings. An attorney who decides to offer limited in-court representation in a family law matter must ensure that the pro se litigant understands the attorney's obligations to the litigant." *Id.* at 400. While the Court was specifically speaking about an attorney and client contracting for limited services in a family case, the situation is analogous to other court appointed counsel with limited obligations. Accordingly, it should be incumbent upon both retained and appointed counsel to explain to the client the scope and obligations of their legal representation. In addition, the court issuing the order of appointment should state for the record the limited obligations for which the attorney is being appointed.

In Practice:

The public defender is appointed to represent a child charged with a lewd and lascivious act on a neighborhood child. Simultaneously, the parent of the child victim files for an ex parte injunction against sexual violence.

The UFC judge becomes aware of the pending delinquency case when the ex parte injunction is issued, and at the return hearing explains the parallel cases. To avoid questioning the child witnesses multiple times, the court may schedule the return hearing on the injunction at the same time as the adjudicatory hearing in the delinquency case. Before the trial begins, the court should identify both proceedings, explain the differing burdens of proof, clarify the roles of the attorneys, and explain the process that will be followed.

The prosecutor and public defender do their “usual” jobs in the hearing. Their closing arguments in the criminal matter *do not* address the injunction. At the conclusion, the court announces the outcome of each case.

Notifying Parties and Attorneys That Related Cases Will Be Coordinated

Question:

- ? When related cases are identified, should the court notify parties and attorneys that the cases will be coordinated, and should the notification be in writing?

Answer:

- ✓ Yes. Courts must notify the parties, attorneys and participants in writing that related cases have been identified and will be coordinated. This notification should not be confused with legal notice.

Notifying Parties and Attorneys That Related Cases Will Be Coordinated

Background & Analysis:

Notifying parties and attorneys that related cases have been identified and will be coordinated is an essential initial step to effectively managing UFC cases. Requiring this notification to be in writing is both good practice and practical in that there will be a record that parties have been notified of what cases have been coordinated, the division to which the cases are being assigned or reassigned, and the procedures for filing subsequent notices of hearing. See the form used in the Sixth Judicial Circuit (appendix) for an example of one way to do this.

Providing the initial notification of case coordination to parties is similar to the regular requirements of notice for hearings and other proceedings. For example, Florida Rule of Juvenile Procedure **8.225(c)(3)** indicates, “All participants and parties whose identity and address are known must be notified of all proceedings and hearings subsequent to the initial hearing, unless otherwise provided by law.” Section **39.502(1)**, Florida Statutes provides that “all parents must be notified of all proceedings or hearings involving the child” in dependency cases. Both the rule and statute are specific to notice of hearings, but it is clear that written notice from the court about case coordination is also warranted. The principles of clearly identifying the matters before the court and providing parties an opportunity to prepare in a meaningful way for those matters are very much the same in either instance.

Likewise, Florida Rule of Civil Procedure **1.080** provides that every pleading subsequent to the initial pleading and every other paper filed in a case must be served on each party. This rule is directly related to Family Law Rule of Procedure **12.080(a)(1)** which states that service of pleadings and papers after commencement of all family law actions - with certain specific exceptions in domestic and repeat violence cases - shall be as set forth in Florida Rule of Civil Procedure 1.080, with certain specific additional requirements in the family law rules. Again, providing notice in writing of matters before the court is always a best practice.

Lastly, Family Law Rule of Procedure **12.080(b)** requires that service of all orders or judgments involving family law matters (with some exceptions for domestic violence cases) must be transmitted by the court or under its direction to all parties at the time of entry. It could be argued that the initial notification by the court that cases will be

coordinated is really an “order” of coordination and therefore, must be in writing and transmitted to all parties.

For UFC proceedings to truly be coordinated, all of the necessary parties and attorneys need to be aware of the scope of the proceedings and who will be involved. With the court taking the lead by informing the parties that related cases will be coordinated, the parties will be aware of the full nature of the legal matters to be heard, will be able to determine the proper scope of their representation, and should be in a position to resolve as many matters as possible in the shortest amount of time.

In Practice...

When cases are identified in the Sixth Circuit as Unified Family Court matters, a letter notifying all parties of this identification is sent out. The letter indicates that the cases have been designated as companion cases in Unified Family Court, and it also informs parties as to which division the cases are now assigned. A notice of hearing, if applicable, is also sent to all parties. Further, in dissolution of marriage cases, an Order of Reassignment is prepared and then signed by the administrative judge. That order is also sent to all parties.

This is merely one example of a process that may be used to notify parties that related cases are being coordinated. Other circuits may develop different methods to accomplish the same goal.

Stipulations to Hear Related Matters Together

Question:

- ? Can the parties and counsel stipulate that at the evidentiary hearing on reunification in a dependency case, the court may also hear the former non-custodial parent's petition to modify custody?

Answer:

- ✓ Yes, but a stipulation is not required to do this. These matters can be heard together at the judge's discretion.

Background & Analysis:

The question presented presupposes the existence of a related domestic relations case that has already made a determination as to custody. Clearly, if there is no other case, the dependency court would naturally deal with any issue related to child custody that would arise as a result of the dependency proceedings. If a custody determination was made in a domestic relations case (before a different judge), its custody order would be superseded by a custody order in the dependency case pursuant to Florida Rule of Juvenile Procedure **8.260(d)** and sections **39.013(4)**, Florida Statutes. There is no requirement that the dependency judge, after determining reunification, send the case back to the domestic relations judge to modify custody. In fact, it is the dependency court that has exclusive jurisdiction over these issues. The Court has said there is “no justification to have situations [where] families were required to appear before one judge in a dissolution proceeding that included determination of custody of the children and at the same time to have a hearing before another judge concerning the juvenile dependency of one of the children including the determination of the custody of that child.” In re Report of the Family Court Steering Committee, 794 So. 2d 518, 526 (Fla. 2001).

If all matters related to one family are before one judge, clearly there will be fewer questions as to jurisdiction or the correct forum. The promulgation of administrative orders to implement UFC practices is the main tool currently being used to address these issues. Legislative action, however, would go a long way toward furthering the goals of unified family court by clarifying many of the legal issues a restructuring like this presents. A unified code of rules for UFC cases would also be a tremendous advancement to the cause of providing better legal services to Florida’s families and children through the unified family court.

Stipulation to Adopt the Order of a Related Case

Question:

- ? Can the court, with the agreement of all parties and their counsel, adopt a custody and visitation order developed in a dependency case and incorporate that order into a final judgment in a dissolution or paternity case?

Answer:

- ✓ Yes, but the judgment should reflect that the dependency court's order as to these issues takes precedence pursuant to section **39.013(4)**, Florida Statutes. Additionally, a custody and visitation order of the dependency court is automatically filed in a dissolution or other custody matter pursuant to section **39.013(4)**, Florida Statutes.

Background & Analysis:

Pursuant to Florida Rule of Juvenile Procedure **8.260(d)** and section **39.013(4)**, Florida Statutes, the custody and/or visitation orders of the circuit court hearing dependency cases *shall* be filed by the clerk of court in any dissolution or other custody matter and *shall* take precedence over any other custody or visitation orders.

Custody and visitation issues are also inherent in paternity, dissolution of marriage cases. However, when these cases have a related dependency case, the order of the dependency court takes precedence. The final judgment of dissolution or paternity may incorporate the terms of the custody and visitation order of the dependency court.

In the context of creating a unified family court that has broad jurisdiction to handle numerous related cases many have found this to be a rigid interpretation of the statute. This is particularly true when the dependency jurisdiction has terminated and where custody and visitation could be addressed in another circuit court case that would ordinarily modify these matters anyway. Legislation to clarify this statute has already been sought, however, no changes have yet been made to the statute.

The model family court is a vision. The challenge we face is how to implement that vision. Our challenge more than ever is to be visionary realists – our need is to collaborate.

*– Barbara J. Pariente, Florida Supreme Court
Former Chair of the Steering Committee on
Families and Children in the Court*