

End of Term Report 2008 - 2010



Florida Supreme Court

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Florida Supreme Court

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FCC 2008-2010 End of Term Report

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

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

Committee accomplishments and recommendations

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

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

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

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

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

Recommendation

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

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

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

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

Recommendation

- OCI staff should monitor this issue.

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

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

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

Recommendation

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

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

Impediment 4 - Judicial Procedures for Handling Related Cases:

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

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

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

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

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

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

Recommendation

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

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

“While we recognize the interest in avoiding conflict with previously entered orders when there are related cases, we are concerned that the above language could lead a judge to the conclusion that an order in the injunction proceeding that conflicts with a previously entered order would not be appropriate, even when, based on the allegations in the petition for injunction, such an order is necessary to protect the safety of the petitioner and/or the children. Research demonstrates that violence often occurs or escalates when a victim of domestic violence is seeking to separate from the abuser. Therefore, it is quite possible that following a temporary order in a divorce, violence occurs or the petitioner is threatened with violence necessitating an injunction and possible temporary modification of a previous order (for example, suspending or altering the respondent’s contact with the minor children). If a petitioner is pro se, he or she may not understand how to go back to the family court to ask for a modification of the order in the divorce proceeding. Additionally, the family court may not be in the position to provide an emergency hearing to address the allegations of abuse. As an alternative, we suggested to the Committee insertion of the following sentence after the first sentence in (5)(b):

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

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

Impediment 5 - Parenting Coordination/Mediation:

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

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

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

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

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

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

Recommendation

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

Impediment 6 - Inconsistency of Definitions among Florida’s Family Law Statutes:

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

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

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

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

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

(a) Scope.

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

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

Recommendation

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

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

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

Recommendation

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

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

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

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

Recommendation

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

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

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

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

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

Recommendation

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

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

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

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

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

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

Recommendation

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

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

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

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

judges and magistrates. Each judicial workshop paired a national presenter with a Florida judge (and panel member) to cover a topic that addressed court-related strategies to improve outcomes, as indicated in the federal audit.

- Dependency issues at Florida Judicial College – Two committee judges developed curricula and delivered training for new judge’s college that emphasized dependency issues.

Subsequent Committee Charges

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

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

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