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ON THE COVER: Members of the Florida Bar Family Law Section at the In-State Retreat
in Marco Island, FL, November 4-7 2021

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Commentator Chair's Message

By Amanda P. Tackenberg



As 2021 comes to a close, it seems like an appropriate time to reflect on the lessons we have learned and set new goals for the coming year. This issue of the Commentator contains articles that will hopefully broaden your horizons, introduce you to new legislation, a new area of law, or a new practice area, or perhaps a shift in your career. We are in the home stretch of 2021 (or perhaps the early stages of 2022), but it is never too late to start something new. I hope the coming year brings you health and peace, and an interest in contributing to the Commentator.

We gladly welcome submissions relating to the practice of family law. If you find yourself with a unique set of facts, a complex problem, or an issue you think needs to be addressed by our judiciary or legislature, please write and submit your article to the Commentator. For more information, please email us at publications@familylawfla.org.



Publications Co-Chairs' Message

Sarah Sullivan and Anya Cintron Stern

Hello 2022, it is nice to meet you! 2021—the legal edition--zoomed us through “I am not a cat” to the overuse of the word “remote,” making us excited, albeit, mildly hesitant, for all this new year has to bring! We are so thankful to our editors who brought our readers relevant, educational and informative legal analysis, news and events including Amanda Perez Tackenberg, Editor of the Family Law Commentator; Krystine Cardona, Editor of the family law submissions to the Florida Bar Journal; and Amber Kornreich and Bernice Bird, Co-editors of FAMSEG. We were also extremely lucky for our leadership guiding us through 2021: Doug Greenbaum, Immediate Past Chair and Heather Apicella, the Chair of the Family Law Section. Without their vision and leadership, the Section would not have been as responsive or flexible to meet the ever-evolving needs of Section members. Also, we must give major props to Section Administrator, Willie Mae Sheppard for the time and care she gives to the Family Law Section. She is one of the hardest working administrators at the Florida Bar! There are always opportunities for writing or advertising in Section publications, so, if you are interested, please inquire at publications@familylawfla.org. We hope that you, our readers, will continue to turn to the Section's publications to productively impact your practice in 2022 and beyond!

Guest Editor's Message

William K. Norvell, III Esq.

The past couple of years were some long and trying ones. As a Cleveland Browns fan, I like to compare 2021 to the Browns' recent season, both were highly anticipated and all signs pointed to it being better than the prior year, but reality had other plans. However, as we enter 2022, I have hope for the new year. The fact that the cover of the first issue of the new year contains a picture of the sand sculpture built by members of this Family Law Section provides us a very powerful visual display that, out of the mess and confusion of the blowing sands and crashing waves on a beach, together we can craft and create something meaningful. While, like this pandemic, the sand sculpture will not last forever, it serves as a reminder of the resilience and fortitude we, as family law practitioners, have displayed these past couple of years and into the new year; as each of us continues to move our profession forward, time and time again. I once again look forward to the better days ahead and continuing to work with such proficient and incredible professionals.

Business and Divorce – Dissolving the Marriage and the Family Business

By Marisol Cruz



Owning a family business is quite common and often times both spouses own and work their business together. So what happens to the business when the couple initiates a divorce?

The law is well established that a corporate entity is its own separate legal entity from its owners. However, in the realm of a family-owned business, that isn't always the case. Although a family-owned business may have the corporate formalities of being created as a business entity (an LLC or a Corporation), following the corporate formalities required by these entities is an entirely different matter, and something the family business owners often don't do.

Merely registering and creating the business with the Florida Division of Corporations (Sunbiz) is insufficient. The owners must also follow the formalities of the business entity in order for the corporate veil of protection to remain in place. One of the purposes of creating a separate business entity is for the corporate veil of protection to protect the owners (shareholders and/or LLC Members) from personal liabilities. This also means that the business entity has rights and duties separate from those of the individual owners. In the business law arena, when an owner or owners do not follow these formalities, disregard the corporate identity, and/or engage in improper conduct, then the corporate veil may be pierced in order for owners to be individually liable.¹

The same holds true when there is a family-owned business and there's a pending divorce action (or one about to be filed). When the rights

of a third party² (in this case, the family business) are affected, then the third party must be joined to the dissolution of marriage action in order for the Court to have jurisdiction over the business.³

In Florida, however, case law states that in order to join a corporation to dissolution proceedings, the spouse joining the corporation must be able to assert an independent cause of action against the entity and claim specific relief, in part by alleging that the business is the alter-ego of one spouse.⁴ Simply owning the business doesn't necessarily require the business be joined as a party to the dissolution action.

What does that mean? Mere conclusory allegations that one spouse is the alter-ego (i.e. the business and the spouse are inextricably intertwined) are insufficient and will likely not survive a Motion to Dismiss.⁵ In essence, when drafting a pleading to join a business entity in dissolution proceedings, think of it in the same way the Rules of Procedure require a pleading for fraud—with specificity and sufficient factual support to allege why one spouse believes the corporate formalities were ignored and now corporate assets should be distributed as part of Equitable Distribution.^{6, 7}

To ascertain whether or not joinder of the business is required, some of the questions we practitioners should be asking our clients are:

- (1) *Who is the owner of the Corporate Defendant?*;
- (2) If owned by one or both Spouses, then:
 - (a) *How is the business owned?*;
 - (b) *Is Spouse's ownership in business more than "mere ownership"?*;
 - (c) *Is there a blending of the business with the spouse aka "alter-ego"?*;

(d) Was the business used for non-business purposes? If the answers to these questions are yes, then joinder is likely proper.

(3) If the business is owned by a third party (whether wholly or as joint owner with Spouse(s)), then:

(a) How is the business owned?;

(b) What is the Spouse's involvement in third-party business?;

(c) Does the Spouse have access to financials/spending, etc.?

(d) Was the business used for non-business purposes and did it benefit the marriage (to make it a marital asset)? If the answers to these questions are yes, joinder is likely proper. Furthermore, pleading for a constructive trust may be necessary, if the facts support this cause of action.⁸

At the outset of the case, there may not be enough information to know whether or not a business needs to be joined as part of the dissolution action. However, during the discovery process and exchange of Mandatory Disclosures, the answer to the question may become clear, at which point leave to amend should be sought, in accordance with the Rules of Procedure. Put simply, if you want the Court to order the business to do something, that business must be made a party to the dissolution action. If the business is ultimately joined and the only two owners of the business are the spouses, then their ownership interests are competing, and independent counsel will be required to represent the business' interests.

As a final thought, a question that I hear often is, "do I have to join the business if I want the court to order shares transferred from one spouse to another?" The short answer is "No." Stocks represent an individual person's ownership interest in a corporation and those stocks belong to the individual, which means the Court can order one spouse to transfer stocks to another spouse.⁹

Marisol Cruz is a Florida licensed attorney with vast litigation experience in Business (Civil) Law and

Family Law, both inside and outside the courtroom. Additionally, Marisol serves as a Guardian Ad Litem when appointed by the Court in order to assess and determine the best interest of minor children involved in custody matters. Marisol helps clients with various family law matters as well as representing individuals and corporate entities in civil litigation matters in the areas of Business/Commercial Law and Litigation. Ms. Cruz received her law degree from Nova Southeastern University's Shepard Broad Law Center where she graduated in the top ten of her class. Marisol completed her undergraduate studies at the University of Massachusetts, Boston and earned a Master's degree in Italian Studies from Prescott College. Prior to becoming a lawyer and during her time in law school, Ms. Cruz worked as a paralegal and law clerk to criminal defense and civil litigation attorneys in all aspects of case and trial preparation.

Endnotes

¹ See *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So.2d 1114 (Fla. 1984).

² Third Parties are not just businesses but can also be an individual who owns real property together with one or both spouses, an LLC Holding Company, and/or a Trust.

³ *Ashourian v. Ashourian*, 483 So.2d 486 (Fla. 1st DCA 1986); see also *Mathes v. Mathes*, 91 So.3d 207 (Fla. 2d DCA 2012) (Without jurisdiction over corporation, of which the husband and wife were the owners, officers, and employees, the trial court, in divorce proceeding, had no authority to appoint any attorney for the corporation to take any action.); *Feldman v. Feldman*, 390 So. 2d 1231 (Fla. 3d DCA 1980) (The trial court lacks the power to order the transfer of corporate assets unless the corporation is joined as a party to the dissolution action.)

⁴ *Rosenberg v. N. Am. Biologicals, Inc.*, 413 So.2d 435 (Fla. 3d DCA 1982).

⁵ See *Sandstrom v. Sandstrom*, 617 So.2d 327 (Fla. 4th DCA 1986).

⁶ See *Hoecker v. Hoecker*, 426 So.2d 1191 (Fla. 4th DCA 1983) (Finding that joinder of the corporation is proper where a party's intimacy with the corporation makes the other party's action against them inextricably intertwined.); *Capote v. Capote*, 117 So. 3d 1153 (Fla. 2d DCA 2013); *Good v. Good*, 458 So.2d 839 (Fla. 2d DCA 1984).

⁷ There are numerous cases throughout the various Districts in Florida that stand for this proposition.

⁸ For in-depth discussions on Constructive Trusts, see *Saporta v. Saporta*, 766 So.2d 379 (Fla. 3d DCA 2000); *Steinhardt v. Steinhardt*, 445 So.2d 352 (Fla. 3d DCA 1984).

⁹ See *Goedmakers v. Goedmakers*, 520 So.2d 575, 577 at n.3 (Fla. 1988) (The trial court clearly has authority to order the wife to transfer stock owned by her to the husband).

The New Child Tax Credit Child: Potential Benefits for Some and Liabilities for Others

By Cindy S. Vova and Jaclyn A. Zackowitz

Just when we thought it was safe to give advice to clients on how to navigate the child tax credit in settlement agreements, this past March Congress passed and President Biden signed into law the American Rescue Plan Act ("ARP")¹ that made a number of changes to the prior legislation regarding the child tax credit.

Background: What Is the Child Tax Credit and How Does It Differ From the Standard Deduction

The child tax credit allows a family to actually reduce its tax bill by a designated amount based on eligibility. The eligibility to utilize the credit is based on two factors, namely: 1) the age(s) of the child(ren); and 2) the modified adjusted gross income ("AGI") of the family. The child tax credit is different from the standard deduction a taxpayer may take on his/her taxes, as the standard deduction allows the taxpayer to reduce the *amount* of his/her adjusted gross income ("AGI") that is subject to taxation; whereas the child tax credit allows a *dollar-for-dollar reduction* of the taxpayer's tax liability. Beginning in the 2018 tax year, the Tax Cuts and Jobs Act of 2017² created a larger standard deduction than previously permitted for the taxpayer, thus eliminating, in most instances, any benefit for a taxpayer to itemize deductions. However, in so doing,



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the enhancement of the standard deduction also capped the amount of the deduction a taxpayer can take based on the taxpayer's filing status. For the tax year 2021, the standard deductions based on filing status are as follows:

- Married filing jointly \$25,100
- Single or Married filing separately: \$12,550
- Head of household \$18,800

Thus, if divorced parents have three children, and one parent is entitled to claim two of the children as dependents, and the other parent is entitled to claim the remaining one child as a dependent, both parents may file as head of household, but each would receive the standard deduction of \$18,800. So, if a client is able to claim head of household status, they get the benefit of deducting an additional \$6,330 from their AGI subject to taxation, than he/she would be entitled to deduct if they filed claiming single filer status with a standard deduction of \$12,550.00. In other words, claiming more children as dependents on one's tax return no longer provides an increase in deduction that the taxpayer may claim to his AGI.

On the other hand, for qualified filers, the child tax credit *reduces* the taxpayer's overall tax liability. Thus, this credit is far more beneficial to the taxpayer as the taxpayer receives a dollar-for-dollar reduction on his/her tax bill.

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As with the enhanced standard deduction, in order to claim the child tax credit, the children, generally, must live with the parent claiming the credit the majority of the year, must be claimed as a dependent on the taxpayer's return, must be United States citizens, nationals or, resident aliens and must have social security numbers.

Changes in the Child Tax Credit: The Old Versus the New and Who Can Claim the Child Tax Credit

Prior to 2021, the child tax credit was capped at a \$2,000 tax refund per qualifying child. However, the taxpayer claiming the credit was required to have at least \$2,500 of earned income to be eligible for the credit. Further, lower income families could only get a refund of up to \$1,400 per qualifying child, rather than the full \$2,000, if the child credit was greater than their tax liability.

However, the ARP made significant changes to the benefits of the child tax credit. Specifically, the credit increased from \$2,000 per qualifying child to \$3,000 per qualifying child age 6 to 17 years old and increased it to \$3,600 per qualifying child for any child born in 2021 up through age five. Additionally, taxpayers can receive a \$500 credit for each dependent they claim if the dependent is enrolled in college full time and between the ages of 18 and 21 as of 2021. Generally, the income levels and tax filing status that permit parents to fully benefit from the child tax credit are summarized as follows:

	Single & up to \$75k AGI	Married & up to \$150,000 AGI	HOH & up to \$112,500 AGI
0-5 years old	\$3,600 per child	\$3,600 per child	\$3,600 per child
6-17 years old	\$3,000 per child	\$3,000 per child	\$3,000 per child

As a result, the child tax credit becomes even more valuable for lower income families because the credit is now fully refundable even if a filer does not owe any income tax and even if the filer had no earned income. He will still get a full refund for each qualifying child tax credit claimed. For example, if a taxpayer has one child, age 8, has no federal tax liability, and claims the child as a dependent on his/her return, that taxpayer would receive a \$3,000 tax refund from the Internal Revenue Service (IRS). Similarly, if a parent has no earned income and declares two children, both under 6 as dependents, he would get a \$7,200 "refund" from the IRS.

Not all parents will benefit from the new legislation. As with many tax benefits, the more one earns the less valuable the benefit becomes. The child tax credit is no exception and there are several phase-outs that reduce the benefits as income increases. Any amount over the maximum AGI for the categories of tax filer above triggers the beginning of a phase out of the credit.

Phase One: The first phase out applies to the increase in the amount of the credit (i.e., the extra \$1,000 or \$1,600 over the previous \$2,000 limit, depending on the age of the children) provided under the new law. This increased credit is gradually reduced to the previous \$2,000 per child when joint filers have a modified AGI of \$150,000 or more, when head of household filers have a modified AGI of \$112,500 or more, and when all other taxpayers have a modified AGI of \$75,000 or more. Generally, the amount of the credit is reduced by \$50 for each \$1,000 (or fraction thereof) of modified AGI over the applicable threshold amount. Thus, to the extent a taxpayer files as head of household, claims one child, age 10, and his modified AGI is \$122,500, his child tax credit will be reduced by \$500 to \$2,500.00 (10 X 50).³

Phase Two: The additional credit of up to \$3,600 under the ARP reduces back to \$2,000 per child when joint filers have a modified AGI income of \$400,000 or more, and when any other category

of taxpayer's modified AGI is \$200,000 or more. At this point, the second phase out begins whereby the amount of the credit is reduced by \$50 for each \$1,000 (or fraction thereof) of modified AGI over the applicable threshold amount until it disappears.⁴ For example, a parent who files as head of household and whose AGI is \$240,000 or greater, would not be eligible to receive any child tax credit as the remaining \$2,000 credit per qualifying child would be fully phased out. (40X50).⁵

Advanced Payments: The most notable change to the child tax credit commenced in July when the IRS began paying monthly instalments of between \$250 and \$300 per qualifying child as an advance on the total tax credit.⁶ The IRS calculated the advanced payment based solely on the taxpayer's 2020 tax return. Thus, by December, 2021, a taxpayer who claimed the child tax credit in 2020, will have received from the IRS half of the child tax credit for 2021 before even filing his/her tax return. So, for example, in a divorce or paternity case, if a settlement agreement provided parents were to rotate the child tax credit for one child, the parent who was entitled to and took the credit in 2020 began receiving advanced payments for 2021 in July even though the other parent is entitled to the credit for the 2021 tax year. Moreover, the parent who claimed the credit in 2020 will continue to receive a total of half the amount of the child tax credit, \$1500 or \$1800, depending on the age of the child, he received in 2020, even if the other parent is entitled to receive the credit for 2021. Although parties filing married and jointly can claim each eligible child on their joint return, if the parties are separated, never married or divorced, IRS rules prohibit them from each claiming the same child on their separate returns and mandates that only one parent can claim a child on his return.⁷

Dealing With the Advanced Payment of Child Tax Credit

With 50/50 timesharing becoming far more

common, the advanced child tax credit payment presents issues for the practitioner to contemplate when crafting a parenting plan and settlement agreement. That still leaves the question of how to resolve this with cases that are already settled and a client seeks guidance on how to resolve this quagmire. At the time of publication, parents who received the child tax credit in 2020 will likely have received at least 4 of the 6 advanced payments for 2021. If a parent received the tax credit last year, receipt of the advanced payment was automatic unless the recipient took affirmative action to unenroll from the program. The IRS offered taxpayers an option to defer receipt of the credit until they filed their 2021 return or to unenroll in the advanced payment program. In a situation where a parent is not entitled to receive the child tax credit in 2021, then deferment or, more appropriately, unenrollment would be the solution to a parent receiving the credit when the other parent is entitled to the credit for this year.

In order to decline receipt of the advanced child tax credit payments a parent must access the IRS website Child Tax Credit Update Portal ("CTC UP")⁸ and select opting out of receiving the advanced payments. This portal allows parents to update their information to specify which parent is entitled to receive the advanced payments, eliminating the issue of a parent getting the credit for two successive years when the settlement agreement provides otherwise. The original opt-out date to eliminate receipt of any advanced credit payments was June 21, 2021, and according to the website the last time to make changes to "dependents, marital status and income" or re-enroll if one had previously unenrolled was "late summer." However, with a little perseverance in navigating the IRS website, it appears that a parent can still opt out of remaining payments by the 4th of the month that the payment is due.

This still leaves the problem of any advanced payments received in 2021 by the parent who, per the parties' agreement, was not entitled

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to the child tax credit as it is unlikely that the majority of single parents made this election before beginning to receive the July advanced payments nor will they make the election before the end of the year.

The Fix

This is where the creative lawyering comes in. Assuming that the parent did not initially opt out of receipt of advanced child tax credit payments, does not opt out or unenrolled for the remaining months of 2021, and is not entitled to receive the credit for 2021, then it is suggested that the non-qualifying parent check the portal and see if an option exists where the parent can still update his/her status to advise the IRS that he is not entitled to the credit in 2021. In prior years, Schedule 8812 in the 1040 tax form was used to calculate the child tax credit. As of writing, no update for 2021 had been published by the IRS. If the IRS does not publish a worksheet to allow the taxpayer, or his CPA, to calculate the potential overpayment. As this issue comes up during early 2022 as parties begin to prepare their returns, the IRS is likely to update the portal and provide more guidance to taxpayers.

Practitioner should be familiar with IRS Form 8332⁹, which allows a parent to release as well as revoke a release to claim the child as a dependent by the "custodial parent." Thus, when one parent has majority timesharing, this form, properly executed and filed with the IRS, permits the parent with less than 50 percent timesharing to claim the child as dependent and thus take advantage of the child tax credit. This form should also be executed by the parent declining the credit and the requirement to execute this form should be included as a provision in a settlement agreement and parenting plan where the parties' intent is to alternate claiming children as dependents to partake of the tax advantages.

Although this alone does not assist all those parents who already have settlement agreements and parenting plans in place, if drafting an agreement in the future, practitioners may contemplate adding a new clause to settlement agreements when parents agree to alternate the child tax credit. Suggested language for such a clause might be as follows:

Parent A shall be entitled to receive the IRS child tax credit in even years for the following child(ren)_____, and Parent B shall be entitled to receive the IRS child tax credit in odd years for the following child(ren)_____. In the event that the parents are alternating the tax credits for any of the children, and the current law permits the IRS to make advanced payments of the child tax credit for the following year, then the parent who is not entitled to receive the credit for that tax year shall forthwith "unenroll" from receiving said advanced payments of the child tax credit through the IRS portal and also update his/her tax information to specify the parent who should receive the advanced payment. The parent shall also fill out IRS Form 8332 and deliver same to the parent permitted to take the child tax credit for that year.

But what happens when the parent has not opted out and that parent ends up receiving half of the tax credit that the other parent is entitled to for this 2021 tax year? Again, it is suggested that the parent entitled to the credit obtain the Form 8332 from the other parent. The short answer is the parent who received the advanced payment will be liable to the IRS for these payments. That parents will have to reconcile any advanced payments he received to any actual tax credit he/she is entitled to, as the IRS will certainly be doing just that upon receipt of the respective parent's separate returns. In these cases, it is suggested that the taxpayer consult with a Certified Public Accountant ("CPA"), explain that he was not entitled to the credit in 2021, but received advanced payments, and then calculate this into the overall tax credit or liability the taxpayer will owe for 2021. For example, a

parent received an advanced \$1500 child tax credit in 2021, and that parent was not entitled to the credit for this year. The parent also owes \$2000 in income taxes without the credit. Since he received an advanced payment of \$1500, he will have to repay that \$1500, on top of his \$2000 tax liability, and thus his total tax liability will increase to \$3500.

Of course, there is one exception to the problem when a parent who is not entitled to receive the child tax credit receives the advanced payments. The law carved out a safe harbor provision for individuals with an adjusted gross income of under \$40,000 (and for jointly filed returns of \$60,000). In these cases, the overpayment will not have to be repaid nor will it be subject to IRS garnishment for wages. Those single taxpayers whose 2021 modified AGI ranges from \$40,000 to \$80,000, head of household filers whose AGI ranges from \$50,000 to \$100,000, and those joint files whose AGI ranges from \$60,000-\$120,000 will be required to repay a portion of any overpayment they received during 2021. However, as of this time, the IRS has not yet updated information on the procedures to return advanced credits received when the taxpayer is ineligible to receive same. It is anticipated that IRS will update its materials regarding this in advance of the April 15th filing deadline, as this is likely to be a significant issue in the coming year.

Duration of 2021 Provisions

As of writing there is still no solid determination as to how long the increased child tax credit and/or the advanced payments will last. However, unless the Senate extends the program, which was adopted by the House in November, it will expire on.¹⁰ This will be something for the family practitioner to be aware of and keep up on to properly advise clients.

Conclusion

There remain many unknowns as to how to deal with the advanced child tax payments for

the 2021 tax year to reconcile this with parents' settlement agreement regarding who receives the credit. However, the practitioner should keep up to date with any further IRS information and through the child tax credit portal in order to craft future settlement agreements that will provide for a viable resolution between parents and to answer the inevitable questions that current and former clients will pose as the tax deadline looms next April.

Cindy S. Vova is the founder and sole shareholder of *The Law Offices of Cindy S. Vova, P.A.*, with locations in Broward County and Boca Raton. She practices exclusively divorce and family law, concentrating on cases involving significant assets.

She is a Florida Supreme Court Certified Family Law Mediator since 1998 and she is also a Florida Supreme Court Certified Circuit Civil Mediator.

Ms. Vova is AV preeminent rated by Martindale-Hubbell and have been named by Florida Trend as one of the Legal Elite for the past five years and a Top Lawyer in Ft. Lauderdale Illustrated.

Jaclyn A. Zackowitz is an associate attorney at *Kleyman & Associates, P.C.* in New York City. She began her legal career in South Florida before relocating to New York, and has practiced matrimonial and family law exclusively since graduating from law school. She is admitted to the Florida and New York bars as well as the U.S. District Court, Southern District of Florida.

Endnotes

¹ Am. Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).

² An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

³ Am. Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9611, 135 Stat. 4 (2021).

⁴ INTERNAL REVENUE SERV., U.S. DEP'T OF TREASURY, ADVANCE CHILD TAX CREDIT PAYMENTS IN 2021, <https://www.irs.gov/credits-deductions/advance-child-tax-credit-payments-in-2021>. (Last visited Dec. 8, 2021).

⁵ Am. Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9661, 135 Stat. 4 (2021).

⁶ *Id.*

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⁷ INTERNAL REVENUE SERV., U.S. DEP'T OF TREASURY, DIVORCED OR SEPARATED INDIVIDUALS, PUBLICATION 504 (2021), <https://www.irs.gov/pub/irs-pdf/p504.pdf>.

⁸ INTERNAL REVENUE SERV., U.S. DEP'T OF TREASURY, CHILD TAX CREDIT UPDATE PORTAL, <https://www.irs.gov/credits-deductions/child-tax-credit-update-portal>. (Last visited Dec. 8, 2021).

⁹ INTERNAL REVENUE SERV., U.S. DEP'T OF TREASURY, FORM 8332, RELEASE/REVOCATION OF RELEASE OF CLAIM TO EXEMPTION FOR CHILD BY CUSTODIAL PARENT (2018).

¹⁰ Tony Romm, *Democrats Face Race Against the Clock to Expand Soon-Expiring Child Tax Credit Payments*, WASH. POST (Dec. 9, 2021), <https://www.washingtonpost.com/us-policy/2021/12/09/congress-child-tax-credit-expiring/>

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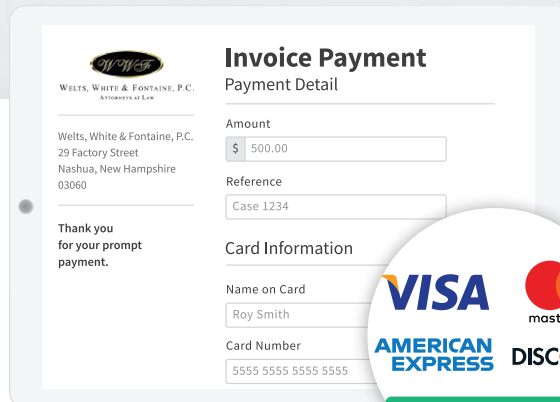
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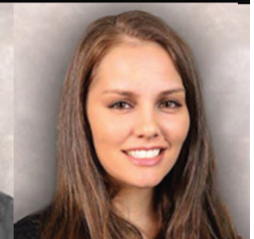
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– Eldercaring Coordination – An Introduction to the Newest Alternative Dispute Resolution Method in Florida

By Linda Fieldstone, Maria C. Gonzalez and Honorable Michelle Morley

I. Gray Divorces:

The divorce rate for those ages 55 to 64 is on the rise according to the U.S. Census Bureau.¹ The high-profile divorce of Bill Gates (age 65) and Melinda Gates

(age 56) after 27 years of marriage added to the statistic of gray divorces. Not surprisingly, the state of Florida ranks among the top 10 states with the highest gray divorce rates.² One explanation for the increase may be that life expectancy has increased. Why stay in an unhappy relationship when you have a significant number of years left to enjoy? A recurring topic in gray divorces is who handled the finances, investments and savings and if both parties are now able to adequately handle their respective finances. Gray divorces often present issues or decisions relating to retirement, social circles, where to reside, healthcare and social security, among others. It also brings with it decision-making minus the customary partner to consult with and the impact or role that adult children may now play in their single parents' lives.

II. Remove Emotions From the Process:

If "the devil is in the details" then the dollars are in the emotional and non-legal arguments that go



hand-in-hand with gray divorce cases. Sometimes parties to a dissolution of marriage are manipulated by the emotions inherent in the proceedings. For example, guilt

causing unnecessary concession; hope for reconciliation rousing extravagant generosity; jealousy driven unreasonable demands; fear precluding progress. When multiple non-parties and loved ones are fanning the flames of those emotions the chance that the case will be bogged down by non-legal issues increases, particularly if the non-parties are exerting influence over fragile aging persons. Regrettably, those emotions may serve to fuel a party's zeal to obtain a given result in court and some attorneys fail to recognize how to best counsel and advise their clients to consider alternative dispute resolution methods. Instead, deposition, mediation and the courtroom all offer opportunities to render emotions raw, intentionally or not. Everyone adopts a win-lose mentality. Alliances forge on both sides. Rather than focusing on outcomes that are fair and in the best interest of each party, the focus remains emotional, progress is delayed and costs of litigation mount.

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III. How is Eldercaring Coordination Different?:

Eldercaring coordination offers a different tactic.

- First, eldercaring coordination is private and confidential. What is discussed is not open to the public like a courtroom. This may serve to be extremely valuable to the family members involved.
- Second, it is forward-focused, helping the participants move on from past vendettas and personal interests to focus on the needs of their aging loved one. While concentrating everyone's attention on the needs and safety of the aging loved one, the Eldercaring Coordinator ("EC") also redirects the parties and non-party participants away from history and blame. The EC helps them capitalize on their respective strengths and abilities, what each can do to care for their aging loved one or persons who surround the older adult to keep them safe.
- Third, addressing matters in eldercaring coordination does not require a written motion, coordination of a hearing date and time, filing of a notice of hearing, waiting weeks for the hearing, subpoena and preparation of witnesses, eliciting of damaging testimony and development of adversarial argument; waiting for a ruling or drafting and circulating a proposed order. Instead, eldercaring coordination involves contacting the EC to advise of an issue; meeting with the EC; sometimes by phone, sometimes in person, sometimes virtually; sometimes immediately and other times within days; a discussion of the issue with all affected parties; pushing away hurt feelings, grudges, and other emotional baggage to focus the energy on a positive solution to the issue. Everyone learns to communicate and negotiate more effectively with one another

so that everyone feels that they have been heard. When legal issues remain, the parties return to court for a streamlined hearing that uses everyone's time most efficiently because the emotionality is removed from the courtroom.

- Fourth, the number of hearings and the length of hearings is reduced when eldercaring coordination is used to address the emotional and non-legal issues. The parties are better prepared for mediation because they can remain issue focused instead of conflict focused. Judicial effort may now focus on issues of law; and
- Fifth, the financial cost is significantly reduced for each party due to the reduced number and length of hearings, and the division of the EC's fees among the parties instead as compared to each party bearing their own litigation expenses. The older adults, to the extent possible, are making their own decisions rather than handing the decisions over to a judge.

From the Court's perspective, when a case is referred to eldercaring coordination, ideally the priority of family hostility and conflict has now significantly shifted. The work of the EC has enabled the family to become more cognizant of the needs and wishes of their aging loved one. They now recognize how the conflict historically interfered with those needs and wishes. There is less emotionality at hearings. Fewer hearings are needed. Emergencies are being dealt with outside of court. Hearings are shorter, are addressing strictly legal issues, and are streamlined.

IV. How Does Eldercaring Coordination Work?:

The EC is appointed typically for a period of two years. The first few months enable a relationship to develop between the family members and the EC. The family becomes more familiar with the process and the EC helps them identify issues as they relate to their aging loved one(s). They

work together to develop a dynamic “eldercaring plan” to provide for the aging person’s changing needs, care and well-being, and also serves to chart their progress. Perhaps one of the greatest tools in the eldercaring coordination toolbox is the use of an “eldercaring plan,” “a continually reassessed plan for the items, tasks, or responsibilities needed to provide for the care and safety of an aging person which is modified throughout eldercaring coordination to meet the changing needs of the beloved senior and which takes into consideration the preferences and wishes of the aging person. The plan is not a legally enforceable document, but is meant for use by the parties and participants.”³ As the family assesses what has been accomplished since their last meeting and what needs to be achieved until their next meeting, the eldercaring plan provides a constantly changing roadmap to provide for the older adult’s changing needs, as well as a chart of the progress the family has made within the eldercaring coordination process.

When services are needed to assist the older adult and family members, the EC can refer them to resources that will meet those needs, including financial planners, accountants, therapists, faith-based support, Veterans Administration, mediators, or lawyers, although typically the parties are already represented when they first appear in court.

After some transparent and positive conversation within the confidentiality of the eldercaring coordination process, families might realize that dissolution of the aging person’s marriage is not the best outcome for the aging person. They may begin to appreciate the daily efforts of the spouse, who has the most exposure to the difficult transitions and challenges of aging experienced on a daily basis. Or, the arrangement might be to maintain the couple separately, but not dissolve the marriage so that such marital benefits as continuing health care coverage, or pension benefits, remain in place. If dissolution of the marriage is the best outcome, and everyone

has had the chance to acquire the skill to put aside emotions, the dissolution process becomes simpler. Throughout the dissolution process and following, the family may have more time to respond to the transitions of their aging loved one.

The eldercaring plan will gradually and responsively lay out the steps of those transitions. If there are unanticipated circumstances associated with those transitions, the family can save money and obtain results more rapidly by returning to eldercaring coordination instead of court to sort things out. Compliance with a solution that family members worked out themselves is more likely. The Court is not having to find time for emergency hearings. The family is not destroying itself or the marriage of their aging loved one with accusations and reproach. The older adult is not at the center of family conflict anymore. The needs, wishes and safety of the aging person have become the priority rather than vendettas and grudges. If the EC is needed for more than two years, the appointment may be extended by the court.

V. Some History:

Eldercaring coordination has been studied since its inception by Virginia Tech University through pre- and post-surveys⁴ of initial eldercaring coordination cases which revealed the following:

- 100% of the judges reporting described eldercaring coordination as “a very effective intervention for high conflict families”; 82% of magistrates and eldercaring coordination program administrators described it as “very effective”, with the rest responding “somewhat effective.”
- 81% of the judges reported that court appearances were reduced as a result of eldercaring coordination.
- Risks to elders were reduced as ECs identified: abuse/neglect; coercion; exploitation; vulnerability/deception/

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coercion; isolation; unsafe environment; physical challenges; caregiver capacity; and substance abuse/mismedication.

Eight circuits in Florida (5th, 7th, 9th, 12th, 13th, 15th, 17th, 18th) served as pilot project sites for eldercaring coordination between 2015 and 2021. During this period, other conflict resolution processes, such as elder mediation have gained momentum. However, just as with parents in conflict regarding their minor aged children, mediation and court processes appear to augment the discord when family dynamics are overwrought with conflict. Similar to parents of younger families who require a different process (i.e., parenting coordination) to meet the challenges of their animosity, older families in conflict need a similar process suited to them as well.

With one in four adults over the age of 50 likely to divorce⁵, eldercaring coordination is a promising option for older families to address issues regarding the care and safety of their aging loved ones outside of a contentious courtroom. Eldercaring coordination was specifically developed to meet the unique needs and characteristics of older families in conflict

regarding the care and safety of an older adult. Guidelines for Eldercaring Coordination⁶ were created in 2014 by twenty Florida statewide entities and twenty U.S. and Canadian organizations⁷ who worked collaboratively in Task Forces convened by the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) and the Association for Conflict Resolution (ACR).

In addition to older adults and their families, these esteemed collaborating organizations were highly aware of the implications of the growing number of aging persons entering the court system, already beset as Baby Boomers hit the “elder” age. According to the Population Reference Bureau (PRB), 2018 Census Bureau’s projects that, next to California, Florida has the greatest number of Americans 65 or older⁸, with one of every four Floridians over 65 by 2030 according to the Florida Health Care Association⁹. The expanding caseload of the court, that is already limited financially, is likely to result in greater delays in court actions which could keep elders in already precarious positions where family members are at odds over the control of their care. StayWell/WellCare, a Medicare/Medicaid provider in Florida, formally recognized that family conflict is a health issue for elders.

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Traditional court processes, based on a win-lose mentality, often exacerbate conflict. Eldercaring coordination safeguards older adults from family conflict by providing them a private forum, in a timely manner, to address non-legal care issues outside of court actions.

VI. Florida's § 44.407, Florida Statute:

Florida is the first state to enact a statute on eldercaring coordination, spearheaded by the Florida Chapter of the Association of Family and Conciliation Courts (FLAFCC) with sponsorship by Senator Dennis Baxley and Representative Brett Hage. Florida's Legislators confirmed their endorsement of the process through their unanimous votes throughout the legislative process including the floor of both Houses. Effective July 2021, § 44.407 F.S.¹⁰, Florida judges now have specific legislative authority to refer older adults and their families to an eldercaring coordinator (EC), an extensively trained and experienced high conflict resolution specialist, who:

- Enables more effective communication, negotiation and problem-solving skills;
- Offers education about eldercare resources;
- Facilitates the creation, modification or implementation of an eldercaring plan;
- Recommends how to resolve non-legal conflict; and
- Makes procedural decisions within the scope of a court order or with the parties' prior approval.¹¹

Similar to parenting coordinators, ECs are qualified by each Florida circuit they serve. According to § 44.407 4(5)(a), Florida Statute, ECs have at least a master's degree and are licensed or certified in Florida in specific fields of practice such as psychologists, physicians, nurses, family mediators, attorneys or professional guardians. In addition, as highly trained conflict resolution specialists, ECs have completed training in a family mediation program certified by the Florida Supreme Court, a 16-hour elder mediation course and 28-hour

eldercaring coordination training; the latter two components will eventually be combined to form a total 44-hour course that is certified by the Florida Supreme Court¹². The Florida Alternative Dispute Resolution Rules and Policy Committee is working on the rules, procedures and forms to provide the Court's framework for eldercaring coordination in the state.

Because eldercaring coordinators are appointed for a period of up to two years, they are able to assist the older adult and family throughout the transitions of the aging process. This gives the EC the opportunity to identify patterns that pose risks for the aging person, including possible abuse and exploitation. Since ECs have the time to establish relationships with the families, it is not unusual for past transgressions to be exposed while current motivations of the family members surface over time. When combating members of blended families are a component of a gray divorce, that may include old and new spouses, biological and step-children, in-laws and grandchildren all competing for control. When the multitude of those involved, including non-parties, are intensifying emotions and strengthening allegiances rather than promoting cooperation for the sake of the aging person, the case may be overwhelmed by non-legal issues that may further threaten the care, safety, happiness and autonomy of the aging person.

The 2-year term of the EC provides the time needed to reinforce collaboration even when connections between blended family members may be permanently ruptured. ECs are mandated reporters to the Florida Child and Adult Abuse Hotline. According to the World Health Organization¹³, while one of 6 older adults is likely to experience abuse, only 1 in 24 cases are reported. In Florida, 75% of verified reports include family members as perpetrators.¹⁴ While an investigator is exploring allegations of abuse, the EC continues to shield the elder and keep the

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family conflict at bay.

VII. Is it Multigenerational?:

Family conflict regarding an aging person affects all generations. Sibling arguments may threaten their own marriages and romantic relationships due to the heightened emotional stress involved as well as depleted resources – time and money – now spent on legal actions including experts hired to prove their cases in court. Family alliances threaten long-term relationships that include the youngest in the family. Sometimes children are no longer permitted to see their beloved grandparent or great-grandparent, aunt, uncle or cousin. ECs are constantly emphasizing the adverse effects of family discord and helping the family discover options to move from blame and the past toward healing in the future where children have better modeling for resolving conflict. As stress decreases for everyone, the children are learning how to build on strengths rather than building walls as their social capital broadens once again.

VIII. Conclusion:

ECs help families develop a support system, starting with the strengths each family member brings to the process. By learning to collaborate more effectively, the older adult and family are more cooperative when working with essential service providers whether obtaining legal and financial advice, mental health support, professional care or medical treatment. As the older adult's voice is elevated over personal agendas of family members, resources are no longer duplicated, but are optimized to provide for the elder's best interests and preferences, without competing impositions and distractions. Mediation becomes more effective when the parties are able to focus on the issues, having vented the conflict and the blame, and learned

in eldercaring coordination how to put that aside. In every location interested in eldercaring coordination, there has been a heightened awareness and use of elder mediation, which will be especially useful if issues regarding wills and estates resurface after the older adult's death. Not only is the aging person protected from the family conflict throughout the process, but the family has the opportunity to create a legacy that would make their aging loved one proud.

Linda Fieldstone, M.Ed., *Co-Chair of the Association for Conflict Resolution Elder Justice Initiative on Eldercaring Coordination, is former president of Association of Family and Conciliation Courts and its Florida Chapter. She was instrumental in the development of parenting coordination in Florida and internationally, while serving as Supervisor of Family Court Services in the 11th Judicial Circuit, Florida, providing services to families in conflict for 26 years. In 2018, Ms. Fieldstone presented on eldercaring coordination to the United Nations and was honored with the Sharon Press Excellence in ADR Award from the Florida Supreme Court for her "visionary leadership, professional integrity, and unwavering devotion to ADR" and the "Dispute Resolution Center Award of Appreciation in recognition of her work with Judge Michelle Morley in "institutionalizing eldercaring coordination with the Florida Court System."*

Maria C. Gonzalez, Esq. *is managing partner at the law firm of Maria C. Gonzalez, P.A. in South Florida and practices exclusively in marital and family law. She is Board Certified in Marital and Family Law (1997) and is past-Chair of The Family Law Section of the Florida Bar. She is a Fellow of the American Academy of Matrimonial Lawyers and past-Chair of The Florida Bar Marital and Family Law Certification Committee. Ms. Gonzalez is current President of the Florida Chapter of The Association of Family and Conciliation Courts (FLAFCC) and achieved Board Certification in Family Law by the National Board of Trial Advocacy (NBTA). She is on the Board of Directors of The Florida Bar Foundation. In 2018, Ms.*

Gonzalez was appointed to the Ad Hoc Committee tasked with updating the **Bounds of Advocacy** which establishes aspirational ethical goals for family law attorneys. She was appointed and also served on the Florida Supreme Court's Commission on Professionalism and Civility.

Ms. Gonzalez co-authored the electronic communication statute, Section 61.13003, Florida Statutes, which took effect in 2007. She is past-President of the First Family Law American Inn of Court. She was the recipient of The Honorable Raymond T. McNeal Professionalism Award and of The Honorable Hugh Stearns Community Service Award. She has been featured in Florida SuperLawyers and selected as one of the top 5% Marital and Family lawyers in Florida (2006 to 2021) and recognized as "Top Lawyers in South Florida" by South Florida Legal Guide. She has an "AV" rating by Martindale-Hubbell and is listed in the Bar Register of Preeminent Women Lawyers. Ms. Gonzalez is a Florida Supreme Court Certified Family Law Mediator and a Certified Marital Law Arbitrator by the American Academy of Matrimonial Lawyers. She frequently lectures and publishes on a variety of family law topics and is a strong advocate to promote Board Certification.

Judge Michelle Morley has been a Circuit Court Judge, Fifth Judicial Circuit, Sumter County, assigned to family, probate, guardianship and mental health Divisions as well as other civil matters since 2007. She is an inaugural winner of the FLAFCC 2021 Trailblazers Award and received a 2021 Florida Dispute Resolution Center Award of Appreciation. She was inducted into the Stetson University College of Law Hall of Fame in 2019. She is the recipient of the 2019 William E. Gladstone Award for her judicial leadership and service to Florida's children. She is Co-Chair of the Florida Eldercaring Coordination Initiative. She is served as a Special Advisor to the Clerks & Comptrollers' Guardianship Task Force. She is a member of the U. S. Department of Justice Elder Abuse Intervention Model Advisory Board. She was both

a Stakeholder and an Advisor to the Florida W.I. N.G. S. program and served on the Florida Supreme Court's Guardianship Workgroup. She serves on the Florida Court Education Council. She is Chair of the Florida Judicial Qualifications Commission. She has presented at the United Nations, the U. S. Department of Justice, the International Federation on Ageing Global Conference on Ageing, Florida Judicial College, the Florida Conference of Circuit Court Judges Annual Conference, the College of Advanced Judicial Studies, the AFCC Annual National Conference, the FLAFCC Annual State Conference, the State of Florida Department of Children and Families Annual Summit, the Australia National Mediation Conference, National Council of Juvenile and Family Court Judges Annual Conference, the National College of Probate Judges, the Ohio Supreme Court, the Idaho Magistrate Judges Conference and the Michigan Probate Judges Conference.

Endnotes

¹ U.S. Census Bureau, <https://www.census.gov/library/visualizations/interactive/marriage-divorce-rates-by-state.html>. "Amongst adults aged 50+, the national divorce rate has roughly doubled since 1990. For those aged 65+, it has actually tripled, from 2 in 1,000 married persons to 6 in 1,000." Divorce Rate in America [35 stunning stats for 2021], Jan., 28, 2021. (<https://legaljobs.io/blog/divorce-rate-in-america/>).

² Allred, C. (2019). Gray divorce rate in the U.S.: Geographic variation, 2017. Family Profiles, FP-19-20. Bowling Green, OH: National Center for Family & Marriage Research. <https://doi.org/10.25035/ncfmr/fp-19-20>.

³ § 44.407 F.S. (1)(5)(g).

⁴ Reported at The National Guardianship Association Conference, November 15, 2019, "The Local and National Implementation and Evaluation of Eldercaring Coordination," and the Gerontological Society of America Conference, November 16, 2019, "The Use of Eldercaring Coordination for Resolving Cases Involving Older Adults and High-Conflict Family Dynamics."

⁵ Report: Senior divorces have doubled in frequency, <https://www.heinrichlaw.com/blog/2019/06/report-senior-divorces-have-doubled-in-frequency/>, June 7, 2019.

⁶ Association for Conflict Resolution Guidelines for Eldercaring Coordinators (2015). Family Court Review, Vol. 53 No. 4, October 2015 545-564; ©2015 Association of Family and Conciliation Courts.

⁷ List of ACR and FLAFCC Task Force Organization: <https://www.eldercaringcoordination.com/-task-forces>.

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⁸ Population Reference Bureau; retrieved 10/17/21: <https://www.prb.org/resources/which-us-states-are-the-oldest/>

⁹ Florida Health Care Association; retrieved 10/17/21: <https://www.fhca.org/advocacy/silversolutions>.

¹⁰ § 44.407 F.S.: http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=44.407&URL=0000-0099/0044/Sections/0044.407.html

¹¹ § 44.407 F.S. (2)(d).

¹² OSCA Memo 7/1/2021

¹³ World Health Organization. Elder Abuse, https://www.who.int/health-topics/elder-abuse#tab=tab_1

¹⁴ Robert Anderson, former Florida Department of Adult Protective Services.

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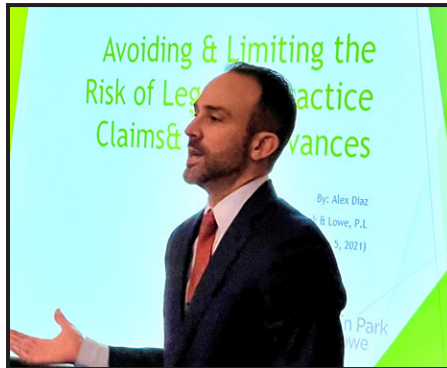


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“What Are My Benefits?” Primer on Former Spouse Medical Benefits

By Mark E. Sullivan



Introduction

The most common question asked by a non-military spouse in a military divorce case is “What Are My Benefits?” While this may sometimes refer to a share of the military pension, allocation of the

Survivor Benefit Plan or division of accrued leave, the usual meaning is “What health care benefits can I receive?” A summary of the answers is found below.

First of all, review the facts with the client. For example, does “Jane Doe” need medical

benefits? Perhaps she already has an excellent health care insurance policy. If not, then go over the military and marital dates with her - when were the parties married, when did “John Doe” enter military service, and what number of years represents the overlap between the two?

Next, check your resources. The Code of Federal Regulations is also an excellent source for information. You’ll find “Benefits for former spouses” at 32 CFR § 161.19, and the tables there show what spouses and former spouses may obtain, depending on the number of marital years, the years of military service and the overlap between the two.¹

Here is an example:

Table 24, Subpart C of 32 C.F.R. Part 161 - Benefits for 20/20/20 Former Spouses of Active Duty, Regular Retired, and Non-Regular Retired Members at Age 60^{2 3}

<u>Benefit</u> → <u>Category</u> ↓	CHC	DC	C	MWR	E
Former Spouse:					
Unremarried	1,2	1	Yes	Yes	Yes
Remarried	No	No	No	No	No
Unmarried	No	No	Yes	Yes	Yes

Notes:

1. Yes, if the former spouse certifies in writing that the former spouse has no medical coverage under an employer-sponsored health plan.
2. Yes, if:
 - a. Not entitled to Medicare Part A hospital insurance through the Social Security Administration (“SSA”).
 - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance with the exception of those individuals who qualify in accordance with section 706 of Pub. Law 111-84.⁴

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What are My Benefits?

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TRICARE and Former Military Spouses

Continuing with our example, while Jane Doe is married to John, an active duty servicemember (“SM”) or retiree, she is eligible for TRICARE (the military equivalent of medical insurance), which is used for civilian health care. Military treatment facilities (“MTFs”) are more limited, however. In February 2020, the Defense Department issued a list of such facilities which will be used only for active duty personnel, as part of a shift in focus to supporting active-duty readiness.⁵ This will have an impact on military retirees and the families of active-duty personnel. Jane will need to check with the nearest MTF to find out if she can be seen there.

Most of the time, Jane will lose access to MTFs and to TRICARE effective one minute after midnight on the day following the entry of a final decree of divorce, dissolution, or annulment. However, if she meets certain criteria as a “20/20/20 spouse,” she can retain full eligibility for TRICARE.⁶

The statutory criteria are the following:

1. She must not have remarried,
2. She must not be covered under an employer-provided health insurance program,
3. She must have been married to her former husband, John Doe, for at least 20 years,

4. The member or retiree, John Doe, must have at least 20 creditable years of service for retirement, and
5. At least 20 years of the marriage was concurrent with at least 20 of the years of the creditable service used to determine the military spouse's retirement.

There is also a 20/20/15 rule for unremarried former spouses who otherwise satisfy all of the criteria as the 20/20/20 former spouse except that they have at least 15 years of concurrent time of the marriage with the military sponsor's 20 years of creditable service that occurred during a 20-year marriage.⁷ However, for the 20/20/15 rule, unremarried former spouses will have only one year of TRICARE eligibility after the divorce.

In applying the 20/20/20 and 20/20/15 tests, the rules become complex as to what periods of the military spouse's service were “creditable” for retirement. These rules vary depending on the branch of the uniform services in which the SM serves and whether the member is active duty or is a Reserve Component (“RC”, i.e., Guard or Reserve) member. There is a Former Spouse Determination Program through which Jane can formally request the SM's branch of service to advise her of the number of years and months their marriage was concurrent with the creditable time used to determine the military spouse's retirement.

The contact information for the individual offices of the uniformed services is as follows:

<p>Air Force Randolph Personnel Center Total Force Service Centers—San Antonio & Denver 800-525-0102 DSN 665-0102 afpc.pa.task@us.af.mil</p>	<p>Army Human Resource Center of Excellence Fort Knox 1-888-276-9472 usarmy.knox.hrc.mbx.tagd-ask-hrc@mail.mil</p>	<p>Army National Guard Field Systems Operations Arlington 800-810-9183 Fax: 703-607-8448</p>
<p>Navy Navy Personnel Command Millington 901-874-3362 Fax: 901-874-2766</p>	<p>Marine Corps HQ U.S. Marine Corps Quantico Manpower & Reserve Affairs 703-784-9529 Coast Guard</p>	<p>Coast Guard Coast Guard Pay & Personnel Center Topeka Retiree & Annuitant Services 785-339-3441</p>

Public Health Service Division of Commissioned Corp Officer Support Rockville, Md. 240-453-6131 phsdeers@hhs.gov	National Oceanic and Atmospheric Administration Commissioned Personnel Center Silver Springs 301-713-0850	
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The rules on issuing military identification cards for military dependents and for former spouses are in a joint service regulation. The Air Force serves as the agency with primary responsibility for its development and publication.⁸

Continued Health Care Benefit Program (CHCBP)

If the servicemember's spouse for some reason loses eligibility to medical care (such as the entry of a judgment of divorce), the spouse may purchase a conversion health policy under the Department of Defense's ("DoD") Continued Health Care Benefit Program ("CHCBP").⁹ The CHCBP is not part of TRICARE; it is a health insurance plan negotiated between the secretary of defense and a private insurer. The spouse must apply for coverage within 60 days of losing TRICARE eligibility. The DoD sets the premiums for the CHCBP, and they must be promptly paid, either through a credit card on file with the agency or in quarterly advance payments. It is essential that the CHCBP premiums be paid on time and coverage does not lapse because reenrollment will not be permitted otherwise.

On purchase of the CHCBP policy, the former spouse is entitled, on request, to medical care until a date that is 36 months after (1) the date on which the final decree of divorce, dissolution, or annulment occurs; or (2) the date the one year extension of dependency (for 20/20/15 spouses with divorce decrees on or after April 1, 1985¹⁰) expires, whichever is later.¹¹

Certain unremarried former spouses who cannot satisfy the 20/20/20 or 20/20/15 rules may nevertheless be eligible for indefinite

medical coverage through the CHCBP.¹² The criteria the DoD uses at this time is that the former spouse must

- not have remarried before age 55,
- not be covered under a TRICARE program (20/20/20 and 20/20/15 former spouses), and
- receive a portion of military retired pay or receive a survivor annuity (i.e., the SBP) (Note: It is strongly recommended that both of these be involved, not just "either/or"), or
- have a court order for military pension division or a written agreement (whether voluntary or pursuant to a court order) providing for an election by John Doe, the member/retiree, to provide SBP coverage for her.

The current DoD contractor for the CHCBP is Humana Military Healthcare Services. The cost as of 2020 for former spouse coverage is about \$520 per month, and it rises every year or two.¹³ Note that the rules and premiums may change. Be sure to verify information with the contract administrator.

For further information regarding CHCBP coverage and benefits, one can use a search engine to look for "CHCBP," contact a military medical treatment facility health benefits advisor, or contact the CHCBP Administrator, P.O. Box 740072, Louisville, KY 40201-7472 (800-444-5445).¹⁴

"Legal Separation" and Military Medical Benefits

Additionally, a spouse occasionally will want to know about medical benefits after a decree of legal separation is entered by the court, or the

What are My Benefits?

CONTINUED, FROM PAGE 29

parties have executed a separation agreement. The question is usually, "Does a legal separation defeat my entitlement to military medical care?"

The answer lies in the statute. A spouse is defined as being a dependent of a member or former member of the uniformed services.¹⁵ If the court's order does not terminate the marital relationship, making the inquiring party an ex-spouse, then the usually military medical benefits are still available to him or her, including the dependent's military ID card.

Mr. Sullivan is a retired Army Reserve JAG colonel. He practices family law in Raleigh, North Carolina, and is the author of THE MILITARY DIVORCE HANDBOOK (Am. Bar Assn., 3rd Ed. 2019) and many internet resources on military family law issues. A Fellow of the American Academy of Matrimonial Lawyers, Mr. Sullivan has been a board-certified specialist in family law since 1989. He works with attorneys nationwide as a consultant on military divorce issues in drafting military pension division orders. He can be reached at 919-832-8507 and at mark.sullivan@ncfamilylaw.com.

Endnotes

- ¹ 32 C.F.R. § 161.19 (2016).
- ² NATIONAL DEFENSE, 32 C.F.R. § 161(c) Table 24, (2016).
- ³ Here are the meanings for the benefit abbreviations shown above: CHC - civilian health care; DC - direct care at MTFs (military treatment facilities); C - commissary privileges; MWR - morale, welfare, and recreation; E - exchange privileges. *Unremarried* means a former spouse who has never remarried since the divorce from the servicemember/retiree. *Unmarried* means one who has remarried, and that marriage ended through death or divorce.
- ⁴ Nat'l Def. Authorization Act for Fiscal Year 2010, PL 111-84 § 706 (2009).
- ⁵ *List of 703(d) 50 MTFs*, REP. TO THE CONG. DEF. COMM. SEC. 703, <https://www.military.com/sites/default/files/2020-02/List%20of%20703%28d%29%2050%20MTFs%20--%20Section%20703%20Report%20to%20the%20Congressional%20Defense%20Committees.pdf>.
- ⁶ 10 U.S.C. § 1072(2)(f) (2010).
- ⁷ 10 U.S.C. § 1072(2)(g) (2010); 10 U.S.C. § 1072(2)(h) (2010).
- ⁸ See U.S.A.F., Instruction 36-3026_IP (2017).
- ⁹ 10 U.S.C. § 1086(a) (2010).

- ¹⁰ 10 U.S.C. § 1072(2)(h) (2010).
- ¹¹ 10 U.S.C. § 1078a(g)(1)(c) (2011).
- ¹² 10 U.S.C. § 1078a; 32 C.F.R. § 199.20 (2016).
- ¹³ HUMANA MIL., <https://www.humanamilitary.com/>. (Last visited Dec. 8, 2021).
- ¹⁴ *Continued Health Care Benefits Program (CHCBP)*, HUMANA MIL., <https://www.humanamilitary.com/beneficiary/benefit-guidance/special-programs/chcbp/>. (Last visited Dec. 8, 2021).
- ¹⁵ 10 U.S.C. § 1072(2)(a) (2010).

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In Memoriam: Melinda Penney Gamot

By C. Debra Welch, Esq., The Law Firm of C. Debra Welch, P.A.

Family Law Trailblazer Melinda Ellen Penney Gamot passed away on October 15, 2021, after a decade-long battle with cancer. She leaves an enormous void in the legal community and in the lives of her family and friends. However, she also leaves behind an enormous legacy of advocacy, mentorship, and professionalism in the practice of Marital and Family Law.



Born on February 22, 1954 in West Palm Beach, Florida to Raymond “Ray” Emberly Penney and Marion “Mel” Ellen Penney, Melinda grew up in South Florida with her younger brother, Bill, competing in the Quarter Horse Arena and winning many championships well into adulthood. She remained an avid horsewoman throughout her life.

On November 15, 1981, she married the love of her life, Albert J. Gamot, Jr. Together, Melinda and Albert established the Gamot Law Firm, travelled the world, cheered on their favorite sports teams, and established an 800+ acre working ranch, the 2 Bar G.

Melinda loved a good drink, a good legal argument, a good win, a good laugh with a good friend, and a good horse. She was extraordinarily optimistic and believed that what you focus on is precisely what you attract. She focused on good – on better tomorrows – and that is probably why she defied every doctor’s prediction about her life expectancy throughout her fight against cancer. Simply put, she was a living testament to the power of a positive mental attitude. She hated

the words “I can’t” and banished them from her vocabulary. If someone told her she could not do something, she did not argue – instead, she just showed that she could. She was fiercely competitive but also the fiercest friend.

Melinda began practicing law in 1978 after graduating with high honors from the Levin School of Law at the University of Florida. During her legal career for over 40 years as both a lawyer and mediator, Melinda earned the

respect of lawyers and judges, men and women alike. She was always prepared, knew what she was doing in and out of a courtroom, zealously represented and protected her clients, settled cases because they deserved to be settled, and tried cases because they had to be tried. When she walked into a courtroom, she was there for one reason and one reason only: to win. Even though she took no prisoners, Melinda always maintained and promoted integrity and professionalism in the practice of law.

Melinda’s professional engagements and achievements were extensive and far too numerous to enumerate in full. Here is just a sampling. She was board certified in both Civil Trial and Marital and Family Law. She was a member of the Executive Council of the Family Law Section of The Florida Bar for 12 years. She chaired the Board Certification Committee and Co-chaired the Board Certification Review Seminar. She was a frequent lecturer on numerous topics and at

continued, next page

In Memoriam: Melinda Penney Gamot

CONTINUED, FROM PAGE 31

multiple Board Certification Review Seminars and other continuing legal education programs. She served on the Grievance Committee for the Fifteenth Judicial Circuit. She was a longtime supporter of the Palm Beach Legal Aid Society where she served as a Trustee and on the Board of Directors. Melinda was also a Past President of the American Academy of Matrimonial Lawyers, served in the International Academy of Matrimonial Lawyers, and was a member of the Susan Greenberg Family Law American Inn of Court of the Palm Beaches from its inception.

Perhaps, one of Melinda's proudest achievements was her service on the original committee that compiled *The Bounds of Advocacy* in 2004, and as co-chair of the revised *Bounds*, re-written and re-published in 2018. In 2019 Melinda was awarded the Family Law Section of The Florida Bar's Visionary Award for outstanding service and invaluable contributions to the advancement of Family Law in Florida, and her vision and drive to push for, and implement change for the betterment of lawyers and the practice of law.

While it is true that Melinda was a trailblazer, that is still an understatement. Anyone who ever had a case with Melinda knew that her legal advocacy skills were second to none. However, it was Melinda's mentorship in legal practice and professionalism that truly made her so invaluable to the Family Law Community. Throughout her career, Melinda worked hard to teach and mentor lawyers of all levels and experience. She knew what it was like to be the only woman in a room full of men, and she pushed female lawyers to seek their unlimited potential. Many of the women Melinda mentored have gone on to become exceptional lawyers and leaders – some own their own firm, some have risen to the rank of partner in other firms, some are board certified, and some have been (or are right now)

in leadership positions in local bar associations or in the state bar, including the Executive Council of the Family Law Section of The Florida Bar, the Florida Academy of Matrimonial Lawyers, and the International Academy of Matrimonial Lawyers. While these women were certainly talented in their own right, there is no doubt that Melinda's mentorship helped shape and channel their talents through the trail she blazed for herself as much as for them. Melinda's mentorship is her true legacy, and through her dedication to the profession she changed the face of Florida Family Law for the better.

Melinda will be greatly missed by all who had the opportunity to know her. Most certainly, her reputation in the legal community and beyond will live on in those whose lives she touched. We are all grateful for her trailblazing work and her generosity of spirit.

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Immigration Form I-864 (Affidavit of Support) and Its Effect on Alimony

By Fritznie Jarbath and Melissa Pena

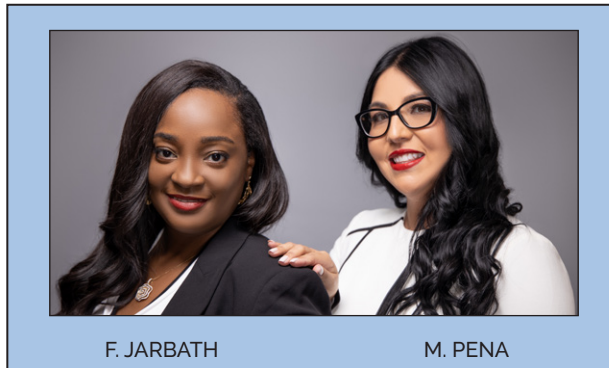
Florida has always been a melting point of different cultures. If someone were to take a poll, it is likely that Florida will come out to be one of the leading states with marriages and divorces between US citizens and foreign nationals. Why should marriage or divorces between these two types of people have an effect on dissolution proceedings? Well, an I-864¹ or “affidavit of support” can throw a monkey wrench into a divorce case if alimony is at issue.

What is an Affidavit of Support?

An affidavit of support is a contract that a United States Citizen (USC) Spouse or Permanent Resident (PR) spouse signs promising to provide support to an immigrant spouse as a condition of that immigrant spouse being allowed to adjust their status to that of a permanent resident. The contract essentially states that the USC spouse will not allow the immigrant spouse to become a financial burden to the United States. More specifically, the USC spouse or PR spouse agrees to support the immigrant spouse at 125% of the poverty guidelines.² Since the poverty guidelines changes each year, the amount of the promised support is a moving target.

Why would a person file such a document?

Well, if the foreign national does not already have permanent status in the United States, then the USC or PR spouse will likely need to file immigration paperwork to change the status of the immigrant spouse to that of a permanent resident. Otherwise, that spouse may be subject to removal



(a/k/a deportation) if their immigration status lapses or has already lapsed.

One of the many requirements for Immigration to change that individual's status, is for the USC or PR spouse to guarantee that the foreign national will not be a burden to the United

States government. This contract was put in place to ensure that the immigrant would not likely become a public charge. Therefore, to ensure that does not happen, the USC or PR spouse will sign an Affidavit of Support. The contract is between the Citizen/Permanent Resident and the United States Government, and the immigrant spouse is a third-party beneficiary to the contract. It is therefore an enforceable contract.

An affidavit of support is usually required to be filed when a party is petitioning his or her fiancé(e), or when a USC spouse or PR spouse is petitioning his or her husband/wife. This can be a two-part process, which includes petitioning first, then filing an adjustment of status next, or it can be done through something called a one-step adjustment process, where everything is filed together.

How does this affect alimony?

According to Fla. Stat. § 61.08(j), the Court may consider “any other factor necessary to do equity and justice between the parties.”³ Some may argue that this affidavit will fall into this category.⁴ Should the parties get divorced, then the third party beneficiary spouse can bring this contract to the attention of the Court. Since the contract states

continued, next page

that the petitioning spouse agrees to support the immigrant spouse at 125% of the poverty guidelines, the Court can take the contract into consideration, the same way it would a prenuptial or postnuptial agreement. The poverty guidelines can be found with the Office of the Assistant Secretary for Planning and Evaluation (ASPE).⁵

Taking the contract into consideration or electing to enforce the contract, does not remove any of the other factors necessary under Fla. Stat. § 61.08, including that the requesting party must demonstrate that they have a need for alimony, or that the other spouse must have the ability to pay.⁶ However, once those two factors are met, the Court can essentially enforce the contract. It is important to note that when the USC or PR executed the contract along with the immigration application package, they had to demonstrate that they had the ability to pay support. If they did not have the ability to pay the support, they were required to obtain co-sponsors, who also promised to support the immigrant at 125% of the poverty guidelines.

Why am I just hearing about this now?

Enforcing the I-864 for the purposes of support is not a new concept. It has been over two decades since the Affidavit of Support (also known as the I-84) was first established, and the federal courts in 25 states and/or territories have had cases brought before it for enforcement. While the first case to litigate support payments under the I-864 failed, in the eastern district of New York, the numerous cases filed thereafter have overwhelmingly won.⁷ Since immigration law is federal law, majority of these cases are litigated in federal court, however judges all over the United States may have to address this same issue, in either state court or federal court.

How long can this last?

Pursuant to 8 C.F.R. § 213a.2(e)(1) & (2), the obligations under the Affidavit of Support begins upon the immigrant obtaining residency and ends upon the following taking place.⁸

- 1) When the sponsored immigrant becomes a United States citizen; or
- 2) When the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work under Title II of the Social Security Act⁹ (i.e. essentially 10 years of work); or
- 3) When the sponsored immigrant is no longer a Permanent Resident and departs the United States (i.e. via deportation, n/k/a removal, or voluntarily abandons his/her residency and leaves the U.S.); or
- 4) When the sponsored immigrant is granted a new adjustment of status, as part of their relief from removal proceedings; or
- 5) Death of either party.

How can I get a copy of this Affidavit of Support?

If you represent the immigrant, they should have already have a copy of the document that was filed in immigration on their behalf. In the event they cannot find their copy, they can request a full copy of their file from the attorney or notary that filed the paperwork. Be weary however, that some immigration attorneys may not provide the document, or only provide a redacted copy of the form, since the form was submitted as part of the USC or PR's petition, and the documents belong to the USC or PR spouse, not the immigrant.

If you are unable to obtain it from these sources, then the immigrant spouse may also file a request directly to U.S. Citizen and Immigration Services, utilizing a Freedom of Information Act Request. While it states that they will produce the document in 20-day timeframe, the waiting times are usually months, rather than the few days listed on the website.¹⁰

Can I utilize a nuptial agreement to avoid liability under the I-864?

There is no reason you should not attempt to make that argument; however, the Courts may

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disagree with you. When the federal courts have decided this matter, they have utilized the public policy argument to disregard the alimony provision within the nuptial agreement. Congress stated that the public policy intent of the affidavit of support was to ensure that the immigrant would not be a public charge. If the immigrant spouse becomes a public charge or is at risk of becoming a public charge, that usually triggers the common law doctrine and most recently codified statute of unconscionability, allowing the Court to remove or disregard any agreement or any provision of an agreement that is unconscionable.¹¹ Additionally, in *Golipour v. Moghaddam*, the Court observed that the Affidavit clearly outlines the “Terminating Events” that end a sponsor’s support obligation, and that divorce is not one of those events.¹²

What are some of the Affirmative Defenses to the Affidavit of Support?

Since this is a contract, it is generally enforceable using basic contract law. Some defenses that have been utilized against this are Lack of Jurisdiction, Fraud in the Inducement, Failure to Mitigate, Set Off, Res Judicata, Statute of Limitations, Waiver in Prenuptial Agreements/Post Nuptial Agreements, Unconscionability to name a few. However, they almost always overwhelmingly fail.

Conclusion:

Alimony as you know is an important factor in a number of cases. Despite the Affidavit’s existence for more than twenty years, it still remains an enigma to most. When speaking to Judge Scott Bernstein in the Eleventh Judicial Circuit, he indicated that he wished more practitioners would utilize this tool when advocating of their clients. It is often misunderstood and therefore underutilized. It will likely require the use of an immigration attorney as an expert witness to educate the Court regarding its implication, and the use of experts to an already destitute client, may not seem like much, considering that the annual poverty guidelines for 2021 is \$12,880¹³ for one person, knowing, understanding, and using this affidavit

could be the difference between \$0 in alimony per month for your client or \$1,073.33 for an indefinite number of years.

***Fritznie Jarbath** manages the family law division at Jarbath Peña Law Group. She has handled hundreds of family cases from simplified dissolution matters to in-depth negotiated settlement agreements and complex family trials, including appeals. She received her juris doctor from Florida International University. She serves on the board of Legal Services of Greater Miami, and is a fellow of the Florida Bar’s Leadership Academy, Class 1.*

***Melisa Peña** is an attorney of Peruvian descent admitted to practice law in Florida and the Southern District of Florida. She received her bachelor of science and juris doctor from Florida International University. She practices in the area of family law, immigration law and civil litigation. She volunteers frequently for families facing immigration issues such as Temporary Protective Status or Deferred Action for Childhood Arrivals. Attorney Peña has been named a Super Lawyer by Thomson Reuters each year since 2016.*

Endnotes

- ¹ Form I-684, Affidavit of Support Under Sec. 213A of the INA, Dep’t of Homeland Sec., U.S. Citizenship, and Immigr. Serv.
- ² Part 8. Sponsor’s Cont., Statement, Contact Info., Declaration, Certification, and Signature, Form I-684, Affidavit of Support Under Sec. 213A of the INA, Dep’t of Homeland Sec., U.S. Citizenship, and Immigr. Serv.
- ³ Fla. Stat. § 61.08(j) (2011).
- ⁴ CITE
- ⁵ *Poverty Guidelines*, Off. of the Assistant Sec’y for Plan. and Evaluation, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. (last visited Dec. 12, 2021).
- ⁶ Fla. Stat. § 61.08 (2011).
- ⁷ See *Tornheim v. Kohn*, 00 CV 5084 (SJ), 2002 WL 482534 (E.D.N.Y. Mar. 26, 2002).
- ⁸ 8 C.F.R. § 213a.2(e)(1) - (2) (1997).
- ⁹ Soc. Sec. Act, 42 U.S.C. §§ 401-433 (2019).
- ¹⁰ Request Rec. through the Freedom of Info. Act or Priv. Act, U.S. Citizenship and Immigr. Serv., <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act>. (last visited Dec. 12, 2021).
- ¹¹ See Fla. Stat. § 61.079(7)(a)(3) (2007).
- ¹² *Golipour v. Moghaddam*, 438 F. Supp. 3d 1290 (D. Utah 2020).
- ¹³ *Poverty Guidelines*, Off. of the Assistant Sec’y for Plan. and Evaluation, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. (last visited Dec. 12, 2021).



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Transition from Litigation to Mediation: Accidentally Stumbling onto a Path Less Traveled

By Amber Boles



Like most lawyers, I idealistically entered the legal profession with big hopes and ideals of making a difference in the world. Originally, I started my career practicing insurance defense and quickly realized I would never feel

I have accomplished my goal if I were to remain in that practice area. Over time, I transitioned into family law and never looked back.

I know you are probably thinking, "Insurance defense sounds like heaven compared to family law!" While family law isn't for everyone, it became my passion. I get to connect with people, help leave families in a better position than how I found them, and actually make a difference in their lives.

In January 2011, I opened my own law firm and, like most family law attorneys, focused on litigation. I had a successful firm with a heavy caseload, accompanied by heart palpitations and insomnia. I thought to myself, "There has to be another way." But supplementing my practice with a less stressful component to litigation and injecting another revenue stream sounded like a fantasy.

The concept of being a neutral has always resonated with me. In late 2015, I took the first step toward my goal, and became a Florida Supreme Court Certified Mediator.¹ At that time, I envisioned adding a mediation component to my practice that might realistically garner four or five mediations per month. To my surprise and great joy, I found that my mediation schedule

was competing with my litigation caseload. I had no availability to schedule consultations, meet with clients or prepare for hearings and trials. I began to transition my litigation practice to my partner at the time, and by the end of 2016 my mediation practice organically eradicated my litigation practice entirely.

To quantify this shift, I conducted sixty-nine mediations during my first year mediating. Fast forward to present day, the volume has increased to an annual average of between 260 and 300 mediations; mediating between five and ten mediations per week, depending upon whether half or full days are booked.

I began mediating in the greater Tampa Bay area, but, because of the normalization of virtual mediations, have since expanded throughout the State of Florida. Most of these mediations were booked through counsel; however, I also mediate between fifteen and twenty bilateral, pro se cases per year.

The "shift to neutral" has been life-changing, both professionally and personally. I have always endeavored to lead a life of service to others, and the mediation role certainly fits that bill. Instead of representing one client's interests and focusing on the negative aspects of the other party during family law litigation, I can help both parties reach amicable resolutions for their family, enabling them to open a new chapter of their lives. Although the mediation process can be extremely heated and tense for everyone involved, I often receive words of gratitude at the end of the day from the parties, as well as from their counsel, which is very fulfilling. I have

also found that I am able to work with my fellow attorneys constructively, rather than adversely.

I am often asked by attorneys if they should shift to mediation. Like everything else in law, the answer is, "It depends." One of the greatest challenges of shifting from family law litigator to family law mediator is the intense mental gymnastics and stamina needed to negotiate the case, and balance the emotional triage required to bring the parties to settlement. To be successful, a family law mediator must simultaneously walk into a meeting and immediately understand the nuanced issues of the case, while managing the emotions of the parties and their counsel. A successful mediator must also be able to develop a rapport with the participants, gain their trust, and play devil's advocate to inspire the participants (both the parties and attorneys alike) to think outside of the box. It is not uncommon for emotions to be at a "level ten" throughout the mediation and it is imperative to find ways to concurrently diffuse the conflict, give the parties a voice, and develop solutions. This process is exhausting and is the emotional and adrenaline equivalent of being in trial daily.

From a practice management perspective, mediation proceedings are transactional. The mediator facilitates the negotiation and, regardless of outcome, receives payment the same day. Occasionally, a mediation participant is unprepared to render payment for their portion of the fee but, most of the time, their attorney satisfies the payment on their client's behalf and seeks reimbursement directly. Therefore, the mediator has minimal accounts receivable, and no need to maintain and manage a trust account. Moreover, there is no on-going contact by the parties after the mediation. Consequently, the staffing and expenses associated with a traditional litigation practice are greatly reduced.

A full-time mediation practice, especially in family law, can be less lucrative than a traditional litigation practice. The mediator's hourly rate is often substantially lower than that of a litigator,

and there are only so many hours in a week available for conducting mediations. Conversely, a litigator can work on cases at all hours of the day and night. The earning potential of a mediator is further lessened by cancellations. Recently, I was on a call with two of my most respected colleagues and we determined our average mediation cancellation rate is approximately 26%. While many cancellations are received in sufficient time to re-book the date, the overwhelming majority occur with little to no notice. Mediations cancelled with short notice yield no earnings for the day.

In my personal life, my mediation practice has allowed me to dedicate time for myself and my family. My weekends and weekday mornings are stress-free, and I can solely focus on my family during non-working hours. I can go on vacation, to the doctor, to my daughter's extra-curricular and other events without fear of an impending crisis in a case, an emergency hearing, or being flooded with emails and telephone calls from a client or an opposing counsel during my absence. However, as my practice has grown, personal time must be blocked off on my calendar at least three months in advance. While scheduling days off is easier with enough notice, it is nearly impossible for last-minute time off. Coordinating dates is difficult enough for mediation participants, and there is a reasonable expectation that the date will not be cancelled or rescheduled by the mediator. As a mediator, you are at the service of the attorneys and parties once they book their mediation. The casualties are the last-minute lunches with colleagues, bar association functions, board meetings, volunteer work, or anything else that is not scheduled well in advance. Thus, while time off is truly "time off," there is little to no flexibility during work hours.

I would be remiss if I did not acknowledge that Covid-19 has changed the landscape of mediation. A large component of being a successful mediator is the ability to connect with the parties, and I

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Transition from Litigation to Mediation

CONTINUED, FROM PAGE 39

worried that virtual mediation would not allow this to occur. However, as of writing this article, I have conducted 461 virtual mediations and have discovered the opposite. I have found that most mediation participants have easily adapted to a virtual environment. My settlement rate has increased rather than decreased, and I find that I am able to connect just as well on a virtual platform with most participants. Parties typically arrive timelier and appear to be relaxed and less anxious in the comfort of their own environments. Document exchange is more efficient as most participants have access to their records and attorneys have access to their computers and staff. The mediations move much more efficiently, as I can begin crafting an agreement far earlier in the process than in-person. Like anything, there have been a few disadvantages to virtual mediations. I have had the “pleasure” of hearing someone use the restroom and had a pro se party ride their Peloton in between caucuses. There are parties and attorneys that would likely be easier to manage in person, but by and large, virtual mediation is a viable substitute. While I hope that we continue to make strides toward a return to face-to-face meetings, virtual mediations are here to stay.

Despite the minor downfalls, for me, having a full-time mediation practice is extremely rewarding. The pros far outweigh the cons for work-life balance, and the ability to provide a

service to all participants is rewarding on an existential level.

For those of you looking in to becoming a mediator, I wish I could say that there is a four-step, canned approach to building a successful mediation practice, but I have not found that to be true. Ultimately, becoming a successful family law mediator and growing a mediation practice is rooted in hard work, perseverance, and a true desire to help people and families. If you possess those qualities and have a desire to mediate, go for it!

Attorney Amber Boles is the founder of The Law Office of Amber Boles. She is a licensed attorney in the State of Florida, as well as being a Florida Supreme Court Certified Family Law Mediator. Amber transitioned her focus to Family Law Mediation in 2016 and takes great pride in assisting people to resolve their family law matters through the alternative dispute resolution process.

Amber was elected by her peers to serve on the Executive Council for the Family Law Section of the Hillsborough County Bar Association. In 2015/2016 Amber served as the Secretary for the Section, and for the 2017/2018 term she served as the Chair of the Section. Amber is also actively involved in the Stann Givens Family Law Inn of Court, and received the Theodore Millison Professionalism Award in 2020 in recognition of exceptional professionalism in the practice of family law.

Endnote

¹ Florida Dispute Resolution Center, Florida Rules for Certified and Court Appointed Mediators (2021).



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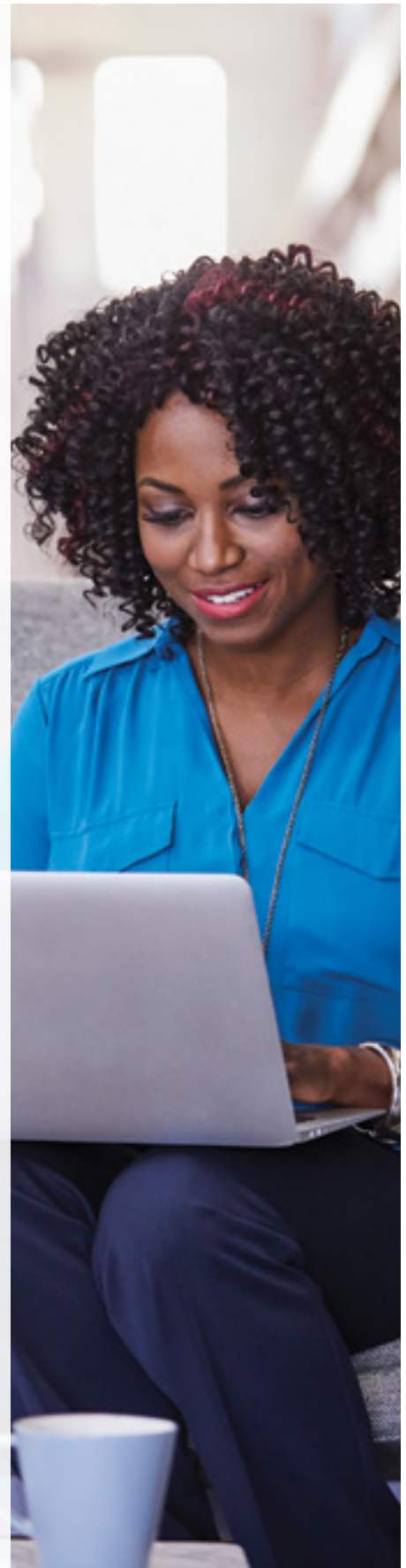
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