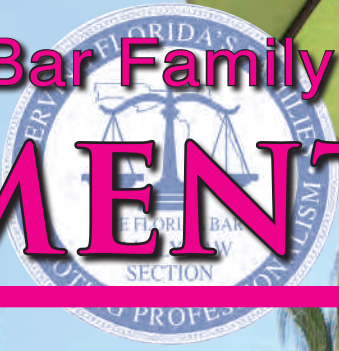


The Florida Bar Family Law Section

# COMMENTATOR



Volume XXVIII, No. 3

Amy Hamlin, Esq. and Sarah Sullivan, Esq., Co-Editors

Spring 2015

[www.familylawfla.org](http://www.familylawfla.org)





# Section calendar

Look for information on the Family Law Section's website: [www.familylawfla.org](http://www.familylawfla.org).

## 2015

### SAVE THE DATE!

June 24-25, 2015  
**Committee Meetings & Executive Council Meeting—Annual Convention**  
Boca Raton Resort & Club

August 6-9, 2015  
**2015 Trial Advocacy Seminar & Workshop**  
Ritz Key Biscayne

Details and registration at [www.familylawfla.org](http://www.familylawfla.org)



### COVER PHOTO

Cover photo taken by Amy Hamlin at the Hilton Bonnet Creek Hotel

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# Chair's Message

Greetings to the Spring edition of the "Commentator." As I move into the last few months of my time as Chair, I am proud of the work the Family Law Section has accomplished so far and look forward to successfully concluding all the tasks and projects we have undertaken throughout the year.

Benjamin Disraeli once wrote: "Change is inevitable" as so it is for the Family Law Section. Our program administrator, Diana Polston, accepted a new position within the Florida Bar with expanded responsibilities. We cannot thank Diana enough for all her hard work and dedication on behalf of the Family Law Section. I can tell you no Chair can succeed without the support of the program administrator and all our efforts during Diana's time with the Section have been successful, mainly due to her efforts. She will be missed but not forgotten. We welcome our new program administrator, Elizabeth Trombetta, who has picked up seamlessly where Diana left off. She brings many years of experience at the Florida Bar and has been instrumental in assisting me with numerous tasks requiring quick action all done with a friendly and positive attitude. We are blessed to have her. I also want to thank Dixie Teel of the Florida Bar who has assisted us in this time of transition.

As I write this, our Out of State Retreat is a few days away. We will be visiting Puerto Rico in what promises to be a relaxing, fun, and educational experience for all. My



**Norberto Katz**  
Section Chair

sincere appreciation to Jorge Cestero and Dr. Debbie Day for all their hard work in planning our retreat at the fabulous La Concha Renaissance Resort in San Juan. An informative CLE will be presented by Past Chair, Elisha Roy. We will also have an opportunity to experience some of the beautiful sights in Puerto Rico including a walking tour of San Juan, a tour of a bioluminescent bay and zip lining for the more adventurous of us (not to include your Chair!) as well as a sampling of the local sights and cuisines.

Kudos to our Certification Review Course committee, Chair Laura Davis Smith, Aimee Gross, and Phil Wartenberg for all their work in organizing the best course yet! All our presenters did a wonderful job in presenting their materials to approximately 1,500 attendees this year at the Hilton Bonnet Creek. The committee labored tirelessly to make this a great CLE and we

convey our sincerest appreciation to them. I also want to recognize and thank our partner in this effort, the Florida Chapter of Academy of Matrimonial Lawyers, especially Chapter President (and past Chair of the Section) Jorge Cestero and Executive Director Susan Stafford, whose dedication and assistance is invaluable to the success of the course.

Our legislative session is in full swing and the Family Law Section is fully engaged in its legislative efforts, mainly regarding the alimony bills pending in both the House of Representatives and in the Senate. Our Alimony Subcommittee, chaired by Thomas Sasser,

a leader in the Section, has been working tirelessly for the passing of a fair and equitable alimony statute for all of Florida's families. While alimony has consumed most of our time this year, our Legislation Committee, ably chaired by Abigail Beebe and Christopher Rumbold, still continues to aggressively monitor and provide input and technical assistance regarding other pending bills affecting Florida's families.

All our other committees continue to work hard under the leadership of their chairs and I want to recognize their efforts and look forward to hearing their accomplishments at our next committee meetings. With that in mind, I invite you, if your schedule permits, to join us for our Committee meetings and the next meeting of the Executive Council during the Florida Bar's Annual Convention, June 24 and 25, at the Boca Raton Resort and Club. I hope to see you there!



# Comments from the Co-Chairs of Publication Committee



Happy Spring, Everyone! We're finally done with the cold weather and can turn our attention to sunny, warm days. While this edition is being put together, some of you are preparing to attend the Spring Retreat in Puerto Rico – enjoy yourselves and please consider sending us some of your pictures to publish in the Summer edition. We'd love to show everyone how much fun Section Retreats can be! We're coming into the home stretch of our Bar year. Three editions down, one to go. Amy Cosentino and Cristina Fernandez-Parjus did a fabulous job as first time Guest Editors, and I'm sure you will enjoy the articles they put together for this Spring edition. Please don't hesitate to contact me, Amy Hamlin, [amy@aikinlaw.com](mailto:amy@aikinlaw.com) or Sarah Sullivan, [ssullivan@fcsl.edu](mailto:ssullivan@fcsl.edu), if you have any questions, comments, suggestions, or feedback.

## ANNOUNCEMENTS

The Winter edition of the *Commentator* published the newest Fellows of the American Academy of Matrimonial Lawyers. Unfortunately, we did not include Kenneth A. Gordon from Ft. Lauderdale. We regret the error and congratulate Ken on this great achievement.



The Publications Committee has big plans for the year – we are revitalizing FamSeg, the publication that has been emailed to all of you these last few years. Luis Insignares has done a tremendous job and is ready to pass the torch to Cash Eaton who has hit the ground running with great ideas to change things up a bit. You should have already received the latest publication via email. Please let us know what you think.



Sarah Sullivan, Esquire, Jacksonville, received the ABA Military Pro Bono Project Outstanding Services Award for her pro bono services in 2014. Thank you, Sarah, for volunteering your time to the community.



CO-GUEST

## Editors' Corner

Amy Cosentino, Esq., Miami and  
Cristina Fernandez-Parjus, Esq.,  
Coral Gables

Spring is here! Now that the weather is warming and the school year is almost over, we hope that you are all enjoying some time outside, and staying busy in your practices. Many family practitioners find this is their busiest time of year. Being involved in Family Law Section committees is another way to stay actively involved in family law work. Although, we both are active members of the Family Law Section, co-editing the *Commentator* is a great experience;

but, as anyone can imagine, it is a lot of work and takes dedication. A special thank you to Amy Hamlin who is an amazing resource to the Publications Committee, and a great guide to us first time editors. Another special thanks to Sarah Sullivan, Ronald Kauffman, and Julia Wyda who also assisted us in editing this edition.

We have an amazing line-up of articles for you in this edition. Leslie Schreiber is giving us an update on the citizenship law in reproductive technology, providing us with fresh material on an aspect of the law that many attorneys don't practice, but are interested in learning. Eddie Stephens and Cindy Crawford are going to take us to Iran "so to speak" and share their experience litigating a divorce matter against each other where the parties had to deal not only with their American divorce; but their Iranian divorce issues simultaneously. Speaking of far-away places, do you have a case where international relocation is an issue? Sam Troy is

going to give us some tips about litigating an international relocation case, and provide us some cases to consider if you have a client faced with this difficult type of case.

Relocation matters are not the only difficult cases you might encounter in your practice. Anyone who has a case in juvenile court will agree dependency and delinquency cases are among the most heart aching. General Magistrate Steven Lieberman presents us with an over

view of the juvenile court system; so if you are not familiar with these types of cases this is a great place to start. Robert Latham includes a perspective on the juvenile court system and its challenges as presently designed. Jessica Allen and Patricia Abaroa offer one potential light at the end of the tunnel in juvenile cases, the Guardian Ad Litem. These articles will inspire all of you to get involved in the juvenile courts and to make a difference in the life of a child. Finally, if dependency court isn't enough to give you a bit of anxiety; how do you feel when a client brings a third party into your meetings? Thomas Yardley brings us a new case in his article that might relieve the worrying that confidentiality will be breached if you allow a third party into your consult.

We are confident that this edition of the *Commentator* will not only take you to far-away places in your practice; but will inspire you to step outside of the box and take on our most important issues, our children.





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# Having Your Cake and Eating It Too: The Permissible Attendance of Third Parties at Confidential Attorney-Client Meetings

Thomas Yardley, Esquire, Cocoa



T. YARDLEY

Meeting a potential client for the first time is often a stressful experience for both the lawyer and the client. Many people are naturally shy, but the formal setting of an initial interview can heighten the level of anxiety. For the client, the prospect of speaking to a stranger about intimate family matters, the possibility of spending a large sum of money, and the intimidating aspect of being dragged into the law courts, all heighten the level of anxiety. For the lawyer, the initial interview is a job interview. The lawyer wants to appear competent and hireable and hopes the conversation will lead to a business relationship, followed by a retainer and a fee contract.

Every family lawyer has been the intake interviewer where a friend or family member comes with the prospective client and the client wants the third party to sit in on the interview. It puts the lawyer in an uncomfortable position; there is a conflict between salesmanship and ethics. Lawyers are engaged in business as well as practicing a profession; one wants to make the sale and sign up the client, but training in the evidence code tells us to exclude the third party and keep the interview a confidential exercise. The would-be client has another agenda—they bring their friend or family member to act as another set of eyes and ears, often

using a friend as a substitute for taking notes. They may have a family member prepared to pay the retainer and that person wants to evaluate the lawyer.

The instinct is to scrape off the third party like an unwanted barnacle on the hull of a ship. However, the third party likely has relevant information and could be a helpful participant in the analysis of the situation. The “confidential” communications the interviewing lawyer wants to protect have probably been made to the friend, over and over and over again. The presence of a hand-holder is more beneficial in family law cases than in other sorts of consultations because emotions are so much a part of the legal issues in a family case. A recent decision by a Florida District Court, *Whitte v. Whitte*, 126 So.3d 1076 (Fla. 4th DCA 2012), permits a third party to attend a meeting between a lawyer and a client without destroying the confidential nature of the session, provided that the third party in attendance is “reasonably necessary for the transmission of the communications.”

The lawyer still must warn the potential client, but the mere presence of third parties does not destroy the confidential nature of the conversation. Complicating the warning issue is the problem that the third party may not be as tight-lipped as the friend who brings him thinks he is. A prospective client may not know that the moral support waiting in the lobby is prone to gossip. Even worse is the possibility that the supportive

person may be rendering support to the adverse party. Sun Tzu teaches us that there are five kinds of spies.<sup>1</sup> Caution is always required to ensure that the moral supporter the prospective client brings into the meeting room is not one of them.

The lawyer in *Whitte* was confronted with the worst-case outcome the person brought into the conference room was going to become a witness, required to testify about what was said in a supposedly confidential setting. The District Court was confronted with the lawyer’s nightmare, a trial court judge finding that because a third party sat in on the lawyer’s meetings, the people who sat in would have to appear and testify about the communications between the lawyer and the client.

Carole and Robert Witte were undergoing a divorce late in their lifetimes.<sup>2</sup> Mrs. Witte, the wife, was 74 and suffered from a number of ailments, including short term memory loss and glaucoma.<sup>3</sup> To top that off, she was going deaf. The wife had been living in Israel for decades.<sup>4</sup> The wife’s financial documents were written in Hebrew, a language, the court noted, “she could neither read nor speak.”<sup>5</sup> The wife relied on her daughter and son-in-law to gather the documents for her.<sup>6</sup> Because the wife’s deafness made it difficult for counsel to communicate with the wife, conferences included the daughter, who would repeat to the wife what the lawyer had just said.<sup>7</sup>

It appears that the wife put her  
*continued, next page*



### Having Your Cake from preceding page

hands on some documents the husband would have preferred she not have in her possession. There was a hue and cry. "How did you get these papers?" the husband demanded. A deposition was set, and at that deposition, questions were asked of the wife about how she came to be in possession of the contested documents<sup>8</sup>. She refused to answer; her lawyer objected, relying on the attorney client privilege.<sup>9</sup> Then, the husband took the matter to the judge.

At a non-evidentiary hearing on the husband's motion to compel, counsel for the husband argued that the wife's attorney-client privilege had been waived because much of her communications with counsel took place in the presence of unrepresented third

parties—the parties' daughter and, at times, their son-in-law.<sup>10</sup> The wife responded with a citation to the statute. The statute, argued the wife, provides that "[a] client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client."<sup>11</sup> The third parties in the conference with the lawyer were necessary to provide the legal services, said the wife.

At the end of the hearing, the trial court ruled for the husband:

The Court finds that there has been a voluntary waiver of the attorney client privilege by the Wife. It is uncontested that 60-65 percent of her communications with her counsel occurred in the presence of the Wife's daughter and some communications occurred in the presence of the Wife's son in law.

The waiver is not within the parameters of any exceptions to the attorney client privilege which would make the communications with her counsel confidential.<sup>12</sup>

The wife petitioned the District Court for a Writ of Certiorari. The *Witte* Court determined that having a third party in the conference with the lawyer did not necessarily result in a waiver of the attorney client privilege.<sup>13</sup> What matters is the intent of the parties to the communication. If the third party is in the room to assist the client in receiving legal services, and the parties all intend that their conversations remain confidential, the communication is privileged.<sup>14</sup> "The presence of a close family member does not, in and of itself, waive the attorney client privilege," held the *Witte* court.<sup>15</sup> The trial judge's decision was reversed and the case remanded with instructions for the trial judge to consider the intent of



## Family Law Section Save These Dates! 2015-2016

### June 24-25, 2015

Committee Meetings & Executive Council  
Meeting-Annual Convention  
Boca Raton Resort & Club  
Boca Raton, Florida

### August 6-9, 2015

2015 Family Law Section Trial Advocacy  
Seminar & Workshop  
Ritz Key Biscayne  
Key Biscayne, Florida

### September 24-27, 2015

2015 Fall Meetings  
Vinoy Renaissance St. Petersburg  
Resort & Golf Club  
St. Petersburg, Florida

### Oct. 31-November 4, 2015

Out of State Retreat  
Hyatt Regency Washington Capitol Hill  
Washington D.C.

### January 28, 2016

Midyear Committee Meetings (Thursday)  
Hilton Bonnet Creek  
Orlando, Florida

### January 29-30, 2016

2016 Marital & Family Law Review Course  
Hilton Bonnet Creek  
Orlando, Florida

### January 30, 2016

Executive Council Meeting (Saturday)  
Hilton Bonnet Creek  
Orlando, Florida





the parties in light of the clear language of the statute.<sup>16</sup>

The lesson of *Witte* is that if the communication is intended to be confidential, and the presence of the third party is necessary for the communication, the privilege remains intact. This comports with the plain language of the statute, which says:

A communication between lawyer and client is “confidential” if it is not intended to be disclosed to third persons other than:

1. Those to whom disclosure is in furtherance of the rendition of legal services to the client.

2. Those reasonably necessary for the transmission of the communication.<sup>17</sup>

Lawyers who confront this situation should consider including provisions on the intake paperwork that track the statute. The potential client could thus be warned, and the third party obligated, to keep confidential the communications delivered in the initial meeting. Lawyers in litigated cases can meet with clients and other persons, without waiving the privilege, if the other person is needed to deliver the legal advice or is needed to assist the client.

With *Witte* as a guide, a lawyer can confidently meet with a client and a third party. The lawyer should establish if the third party is “reasonably

necessary.” If the third party is necessary, then the lawyer should make it clear to all concerned that the meeting will be confidential. If a reasonable person would agree to the need for the third party, and confidentiality is established at the outset, one can be fairly confident that the communications will remain private. So long as the two prongs of 90.502(1)(c) Fla. Stat. (2014) are met, an attempt to defeat the privilege should fail.

A friend to help you in a time of emotional turmoil, someone with whom you have already shared your most private thoughts, may well be “reasonably necessary” to help you digest the complicated legal concepts discussed in an initial consultation. Thus, in limited circumstances, you can have your cake and eat it too; confidentially.

*Thomas H. Yardley, “Tom” to his friends, is a 1988 graduate of the University of Florida’s College of Law. He began his practice as an Assistant Public Defender, worked as an associate in a law firm, and opened his own practice in Cocoa, Florida, where he handles family law cases as well as bankruptcy and commercial litigation. Tom is a Navy veteran, a member of a local redevelopment agency, on the Board of Directors of the Central*

*Brevard Humane Society, and is a United States Soccer Association Referee. He has been married for thirty-four years to his wife, Paula, and is the proud father of five children, Joseph, Richard, Mary, John, and Robert. He rejects titles of nobility and is not an “Esquire.”*

### Endnotes

1 *The Art of War* Sun Tzu, 78 (Random House 1981).

2 *Whitte v. Whitte*, 126 So.3d 1076, 1077 (Fla. 4th DCA 2012).

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.* See, ‘90.502(2) Fla. Stat. (2014). Florida lawyers should always remember that the evidence code is not just a statute, but a Supreme Court approved Rule. Because the Florida Evidence Code is both substantive and procedural in nature, the Supreme Court is required to approve it, and has done so, repeatedly. See *In re Fla. Evidence Code*, 372 So.2d 1369 (Fla.1979), clarified, *In re Florida Evidence Code*, 376 So.2d 1161 (Fla.1979).

12 *Id.* at 1078.

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.*

17 ‘90.502(1)(c), Fla. Stat. (2014).

## SAVE THE DATE!

# 2015 Trial Advocacy Workshop

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*See brochure on page 33*



# A Child Welfare System That Lost Its Way

Robert Latham, Esquire, Coral Gables

The modern child welfare system is an imperfect system. Child abuse was elevated to national attention by the publishing of the, *"The Battered Child Syndrome"* in 1962, with a call for doctors to intervene in cases of parental injury of children.<sup>1</sup> By 1967, every state had mandatory reporting laws for professionals. Prior to that time, child welfare was handled predominately by local governments and charitable organizations. However, beginning in 1974, the Federal government stepped in by passing the Child Abuse Prevention and Treatment Act to incentivize the creation of organized child welfare systems in all 50 states. Over the following 40 years the national child welfare system has grown significantly, now averaging approximately 3.4 million referrals involving 6.3 million children per year.<sup>2</sup>

Over those 40 years, the system has been locked in a struggle between two main goals: protecting children and preserving families. The swing between these two poles has become such a predictable experience for people working in child welfare that it is known as "the pendulum."<sup>3</sup> Laws, which were created piecemeal and often in response to public tragedy or budgetary concerns, at times increase the investigative and intervention powers of the Department. At other times, they strengthen the requirements to offer help to families in need, much like pendulum.

The current iteration of Florida's child welfare statutes announces laudable goals, full of such conflicts. The system seeks "[t]o provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development"

(protection), but to "remov[e] the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal" (preservation). It recognizes "that most families desire to be competent caregivers and providers for their children" (preservation), but reminds itself that "the safety of the child or children [is] the paramount concern" (protection). The legislative purposes direct the state "to provide a child protection system that reflects a partnership between the department, other agencies, the courts, law enforcement agencies, service providers, and local communities."<sup>4</sup> Prevention and protection both should be "constructive, supportive, and non - adversarial," and should "intrude as little as possible into the life of the family."<sup>5</sup>

Despite the broad goals, the system accomplishes the promotion of children's wellbeing in a very specific way. From a functionalist perspective, the child welfare system is an outpatient commitment regime, similar to the Baker Act. Adults with behavioral and mental health disorders are eligible for involuntary commitment through their relationships to children.<sup>6</sup> In contrast to other commitment regimes which remove the person being committed from society for stabilization and treatment, the child welfare regime removes the child from the care of the identified adult, and the adult is left in his or her living environment.<sup>7</sup> The adult is then either incentivized or coerced to participate in mental health and behavioral modification services by their love of the child or their fear that the child will be harmed in foster care.<sup>8</sup> The adult is free to voluntarily end the commitment at any time by agreeing not to seek further control

of the child.<sup>9</sup> If the adult's condition does not respond to the offered treatment or the adult quits or opts out, the adult is quarantined from the child indefinitely.<sup>10</sup> The child is then advertised in a subsidized market,<sup>11</sup> with a right of first refusal offered to certain family members.<sup>12</sup>

The public health policy failings are hard to miss. Notably, the adult's mental health and behavioral disorders almost certainly predated the birth of the children. Adults without children do not receive the same level of services, unless they have the financial resources to seek it themselves or are brought into the Baker Act or criminal justice systems. Unlike the child welfare system, which will work with parents for approximately a year, other care systems are even more time and resource limited. Waiting until adults become parents to provide intervention places very young children at risk<sup>13</sup> and leaves adults without needed care for most of their lives. Basic biology tells us that an adult with no children can become an adult *with* children fairly quickly and unexpectedly. A parent who fails out of the child welfare system can still have other children and repeat the cycle. The parent versus non-parent distinction and the time limitations in proportioning services do not appear to be sound policy.

It is also easy to see the problems from the child's perspective. The child is removed from the home environment, akin to putting the victim of a mugging in jail to prevent future muggings. This sudden change of context for the child comes with severe effects. We can easily recognize and sympathize with the debilitating trauma of a child changing schools, moving to a new city, having a parent





die or parents go through a divorce, losing a best friend or sibling, or being displaced by social unrest or a natural disaster. We have more difficulty assessing whether the trauma of removal, which exposes a child to all of those experiences at once, outweighs the harm occurring in the home. The law does not specifically ask that balancing question. The hearings held prior to removing a child from a home require a finding of “substantial and immediate danger,” and that the removal of the child is in the child’s best interest.<sup>14</sup> There is usually little formal assessment of the impact of removal on the individual child, and instead, the question of risk tends to drive the best interests analysis. Most children in Florida do not receive attorneys to explore and argue the balance of harm in the child’s desired direction. Our risk calculations at the early stages of cases tend towards generalization and myth: the harm from abuse is bad harm, the harm from removal is good medicine.

Public perception of the child welfare system underpins that risk narrative. We have all been saddened by the reports of child deaths in the news lately.<sup>15</sup> To the extent the risk in those cases was able to be calculated (in some cases, the evidence of risk was very thin), the removal from the home would have been preferable without question. High profile deaths tend to obscure the actual composition of cases in the child welfare system, however: 78% of child welfare cases are in fact a result of neglect, not abuse.<sup>16</sup> And most of those neglect cases are related to poverty.<sup>17</sup> Neglect in Florida is broadly defined as depriving a child of “necessary food, clothing, shelter, or medical treatment.”<sup>18</sup> This definition seems incongruous, with other government programs supposedly providing the baseline subsistence required by poor families with children. In fact, a parent cannot be charged with neglect under child welfare law if “caused primarily by financial inability unless actual services for relief have

been offered to and rejected by such person.”<sup>19</sup> Why would a person reject assistance from a system that purports to help them provide for their child in a “constructive, supportive, and non-adversarial” manner?

One answer to that question may be found in how adults are selected and processed in the child welfare system. The system utilizes an investigation, seizure, and prosecution model. Anonymous callers to a 1-800 number trigger a chain of events resulting in a government employee, likely unknown to the family, coming to the home and investigating the allegations.<sup>20</sup> The source of the allegations cannot be revealed by law, so the family cannot respond to explain motive, history, or mistake.<sup>21</sup> Even the nature of the allegations is sometimes withheld as an investigative technique, so the family is left fearful and in the dark. The investigator has statutory authority to remove the child at any time he or she believes the child to be at risk.<sup>22</sup> A family is not entitled to an attorney or any advocate at this stage, and unlike in the criminal context failure to cooperate with an investigation is itself grounds to remove a child.<sup>23</sup> The power imbalance is huge. The main strategies that rational persons adopt in this situation are predictable: cooperate, but not so fully that you help the investigator take your child.

Good faith cooperation is risky. By way of example, take this paragraph from a recent appellate decision:

DCF determined that the father and E.B. were with the mother and A.R. at a hotel in Sebring. The father explained they went there to “start a family of our own, without the conflict” that the mother previously experienced with the grandparents. He testified that he sees a psychiatrist regularly for his prescription medication and was taking it during the incident. Officers were sent to perform a wellness check. One of the officers testified that the motel room was “clean and orderly,” with food, formula, diapers, two beds,

and a crib. He felt there was “no immediate danger to the children and [the parents] had money.” DCF informed the officer that the mother had outstanding warrants, and he arrested her and DCF took the children into custody.<sup>24</sup>

The Department’s investigator could have given the mother information on quashing the warrants. Instead, the investigator forced the removal of the children, who were otherwise well cared for. The case went through a trial and appeal before the wrong was righted. Families have learned to mistrust the system through experiences exactly like this one.

The prosecution model continues throughout the dependency case. A trial can be held on the allegations, though most parents take a plea.<sup>25</sup> The court then enters a case plan, a document listing a series of tasks and therapies a parent must complete in order to be deemed fit to regain custody of the child.<sup>26</sup> The case manager’s main role then becomes collecting evidence on the parent’s compliance or non-compliance with the tasks.<sup>27</sup> That evidence is presented at least twice a year to the court.<sup>28</sup> If the parent is unable to produce evidence that he or she is participating or making progress in the required tasks and therapies, the court can hold another trial to terminate the parent’s rights to the child for failure to remedy the circumstances that brought the case in, even if the circumstances themselves would not have risen to the level of a termination.<sup>29</sup> A case that comes in on low-level allegations of marijuana usage can end with termination of parental rights if the parent does not participate in treatment to the court’s satisfaction.<sup>30</sup> A case that comes in related to poverty or homelessness can end with termination of parental rights where a parent does not accomplish tasks related to securing a job, finding stable housing, or participating in work programs.<sup>31</sup>

The contrast between who pays and  
*continued, next page*



## A Child Welfare System from preceding page

who benefits in this system is not lost on the families under the Department's supervision. The Department has made a "conservative estimate" that each abused or neglected child costs approximately \$72,709 per year in child welfare, hospitalization, special education, and juvenile justice services.<sup>32</sup> The private community base care agencies in the 2012-2013 fiscal year received approximately \$760,925,012 in contract money to provide services and case management alone.<sup>33</sup> Many of these agencies are owned by national health companies. Foster parents, often already of higher socioeconomic status than the families who have lost their children, receive a subsidy of up to \$515 per month per child.<sup>34</sup> Subsidies for adoptive parents begin at \$5,000 per year and can be negotiated higher based on the child's level of need.<sup>35</sup> A parent who was denied custody of their child because they cannot find a job to pay for housing or transportation to their services cannot help but notice this disparity.

Children and youth in the system also receive the message that their existence is a threat to private agencies' bottom lines. For example, in a case recently handled by our clinic, an agency terminated the extended foster care benefits of a developmentally disabled teenager who had just aged out of foster care. Not content with making the initial termination decision, the agency keeps an attorney on staff primarily for the purpose of prosecuting the children and youths' terminations on administrative appeal, where the Department is already represented by the Office of the Attorney General. The youth in these proceedings usually appear *pro se* against both attorneys, and they routinely lose.<sup>36</sup> When seeking to intervene into our client's appeal, the agency filed a statement declaring

that its "budget and other substantial interests will be affected by the outcome of this proceeding." If this particular youth could read the motion, the message of whose interests the agency is looking out for would be clear.

Youth in the system are fortunate to have an organized advocacy community (but one whose voice is unfortunately sometimes coopted by the very entities that need reform the most). The community based care agencies have lobbyists and interest groups that have proven very effective at pushing back against DCF reforms. Parents in the system, however, have little power to upend the imbalance against them. They do not sit on the boards of these organizations or hold stock in their parent companies. Compared to the strong foster parent advocacy community, there is no equally organized parents' union, parents' lobby, or visible efforts at collective action—a strike would result in the termination of their parental rights; they have no funds or time to donate to political action committees. When reports on the system are made and hearings are held, they are not invited to participate.<sup>37</sup> The levies of due process are also crumbling around them: parents are given overburdened attorneys and narrow legal arguments to demand better treatment. Courts have been unsympathetic to their requests systemic reform, with some courts going so far as to even hold that the Americans with Disabilities Act is inapplicable to child welfare cases.<sup>38</sup>

With the imbalance of power so stark and the stakes so high, another rational strategy for families emerges: pit power against power by exploiting the relationship between the courts and the Department. The law creates shared responsibility for dependent children between the executive and the judicial branches.<sup>39</sup> The level of mistrust between the two is frequently palpable.<sup>40</sup> Agencies spend hours working with families and experts on an issue or decision, only to

have a judge overrule the position in court without full consideration or knowledge of the circumstances. Judges order services for families and children that they believe are legally required or best, only to have agencies fail to execute the orders behind claims of financial inability or by obstinate bureaucratic inertia.<sup>41</sup> It is no wonder that a primary defense at termination of parental rights trials is case management misconduct and failure to make appropriate referrals.<sup>42</sup> The non-adversarial goals of the system highlighted at the beginning of this article wither in court, where the main antagonists are often the two entities charged with helping the families before them.

What may be most amazing about this system is that some families do navigate it successfully. Cases do close and stay closed. According to the Department's agency scorecards, a startling 95.5% of families whose children were reunified or never removed had no recurrence of maltreatment within 6 months of the case closing. That failure rate is 11.9% within 12 months of case closing.<sup>43</sup> The Department, tellingly, does not keep clear statistics in its scorecards on how many cases result in termination of parental rights or how many children age out of care without achieving permanency. While most cases that close stay closed, the outcomes for youth who age out of care are notoriously bad. The only metric measured in the scorecards is a proxy for how these youth fair: only 55.2% of 19-22 year old former foster youth are reported by the Department to even have a high school diploma or GED.<sup>44</sup>

It is hard to know what to make of the Department's statistics. They measure a lot of things, but not causation or efficacy of the services provided or models of care. If 88.1% of reunified families can go through basic counseling services and not need further intervention, then the question is open on whether they needed such a traumatic and expensive intervention at all. Further, if the





child welfare system's best efforts at parenting children can only get 55.2% of them through high school, do we want this system policing others?

The system we have is not inevitable. I can imagine a different child welfare system: one that is trustworthy, safe, and welcomed by the families it is supposed to serve. It would work with people long before their kids are even born, so that trust is there when trouble strikes. It would operate through organizations and people who already have relationships with communities, like churches, schools, and employers. It would build child centers within walking distance of any home, and create community liaisons to reach out when help is needed. Child welfare planning would invest in communities where its constituents live, and build care capacity right into neighborhoods, instead of funneling dollars to out of state corporations.

A good system would work to fight the economic causes of child neglect: eliminate homelessness, reduce crime, increase food stability, and expand transportation and work opportunities. The juvenile courts would stop prosecuting families and would instead become the venue for all legal matters involving an at-risk child. The judges would hear cases against the landlords who are seeking to evict their parents, appeals against the Medicaid agencies who are trying to terminate their benefits, or due process hearings against the school that is illegally suspending them due to untreated disabilities. The balance of power would shift to the families trying to raise their children, who otherwise would have to accept injustice as a normal part of life<sup>45</sup>.

This is not to presume a utopia. Risk to children will always be present and must be addressed. A good system, however, would declare a truce with families: no more violent removals of children; no more policing; and no more termination of parental rights, except for egregious abuse, surrenders, and abandonment.

In families with serious problems, a positive child welfare system would create an intervention model that stays in the control of the family and guarantees services and assistance to help the family grow stronger. No more case plans, monitoring, or compliance. The family would determine the best outcome for itself, using non-adversarial and proven family conference models. The state would then support the family's decision, as it does in almost every other matter.<sup>46</sup>

There would be benefits to the people working in the system, too. The drive to help is why many people entered the child welfare field, but the police-state nature of it is what runs too many of them out in tears. The system puts social workers, lawyers, and judges in the untenable position of trying to make decisions for people they do not know, under conditions that feel unbearably like hostage negotiations. Instead, a positive system would encourage collaboration between families and professionals to build a better world for the children in it.

We currently do not have a child welfare system that anyone would wish for. We lost our way through a lack of vision, slowly and at great cost. Thankfully we are only 40 years down the wrong path, and with good people and more time perhaps we can make a change.

*Robert Latham is a Supervising Attorney, Lecturer, and Practitioner-in-Residence at the University of Miami School of Law's Children and Youth Law Clinic, where he represents foster children and youth in mental health and medical services litigation. Mr. Latham is also the chair of the Florida Bar Foundation's LGBTQ Child Welfare Workgroup, working to create a safe and affirming child welfare system for all youth and families. He graduated from the University of Michigan Law School in 2007. Mr. Latham writes about the child welfare system at robertlatham.wordpress.com.*

## Endnotes

- 1 <http://www.kempe.org/missionhistory>
- 2 <https://www.childwelfare.gov/pubs/factsheets/canstats.pdf>
- 3 See Susan Orr, Child Protection at the Crossroads: Child Abuse, Child Protection, and Recommendations for Reform, Policy Study No. 262 (Los Angeles: Reason Public Policy Institute, October 1999), p. 4.
- 4 Section 39.001(1), Fla. Stat. (2014).
- 5 Section 39.001(1), Fla. Stat. (2014).
- 6 Section 39.01(50), Fla. Stat. (2014) (definition of "party").
- 7 Section 39.402, Fla. Stat. (2014) ("placement in shelter").
- 8 Section 39.521, Fla. Stat. (2012) ("disposition hearings; powers of disposition").
- 9 Section 39.806(1)(a), Fla. Stat. (2014) (surrendering parental rights).
- 10 Section 39.806, Fla. Stat. (2014) (grounds for termination of parental rights).
- 11 Fla. Admin. C. r. 65C-16.013 ("Determination of Maintenance Subsidy Payments").
- 12 See section 63.0425, Fla. Stat. (2008) ("Grandparent's right to notice").
- 13 In fact, children under the age of one have the highest rate of victimization. See, <https://www.flsenate.gov/Session/Bill/2014/1666/Analyses/2014s1666.ap.PDF> at 2.
- 14 § 39.402(8)(h)2., Fla. Stat. (2014).
- 15 <http://pubsys.miamiherald.com/projects/2014/innocents-lost/>
- 16 <https://www.flsenate.gov/Session/Bill/2014/1666/Analyses/2014s1666.ap.PDF>
- 17 See <https://www.childwelfare.gov/pubs/usermanuals/neglect/neglect.pdf> for a discussion of poverty and neglect.
- 18 § 39.01(44), Fla. Stat. (2014).
- 19 § 39.01(44), Fla. Stat. (2014).
- 20 See § 39.301, et seq., Fla. Stat. ("Protective Investigations").
- 21 § 39.202, Fla. Stat. (2010) ("Confidentiality of reports and records in cases of child abuse or neglect.>").
- 22 § 39.401, Fla. Stat. (2014) ("Taking a child alleged to be dependent into custody...").
- 23 § 39.01(30)(l), Fla. Stat. 2014 (defining "harm" to include a parent or custodian who "[m]akes the child unavailable for the purpose of impeding or avoiding a protective investigation.>").
- 24 E.R. v. Dep't of Children & Families, 143 So. 3d 1131, 1133 (Fla. 4th DCA 2014).
- 25 See § 39.501, et seq., Fla. Stat. ("Petition, Arraignment, Adjudication, and Disposition").
- 26 See § 39.6011, et seq., Fla. Stat. ("Case Plans").
- 27 § 39.701(2)(a), Fla. Stat. (2014) (duties of the social services agency prior to judicial review).
- 28 § 39.701, Fla. Stat. (2014) ("Judicial review").
- 29 § 39.806(1)(e), Fla. Stat. (2014).
- 30 See, e.g., L.J. v. Florida Dept. of Children & Families, 33 So. 3d 99 (Fla. 1st DCA 2010).

*continued, next page*



## A Child Welfare System from preceding page

31 See, e.g., *M.M. v. Dep't of Children & Family Services*, 867 So. 2d 573 (Fla. 3d DCA 2004).

32 See, <https://www.flsenate.gov/Session/Bill/2014/1666/Analyses/2014s1666.ap.PDF> at 2.

32 § 39.402(8)(h)2., Fla. Stat. (2014).

33 <http://centerforchildwelfare.fmhi.usf.edu/kb/FIPerformance/APSR-June2013.pdf> at 396.

34 § 409.145(4), Fla. Stat. (2014) ("Foster parent room and board rates.").

35 Fla. Admin. C. r. 65C-16.013.

36 See Independent Living Orders Index, found at <https://www.dropbox.com/sh/glf-88s30issvbq6/ovs30BVE-1>.

37 See, for example, the *Southern Region Peer Consultation Report*, an investigation into recent problems in the Miami-Dade area. The Committee sought input from and interviewed almost every identifiable stakeholder in the system, except the parents and families served by it. Not surprisingly, the identified problem areas tend to focus only on inter-agency battles.

38 See, e.g., *In re Antony B.*, 54 Conn. App. 463, 735 A. 2d 893 (1999); *In re Doe*, 100 Haw. 335, 60 P.3d 285 (2002); *In re Adoption of Gregory*, 434 Mass. 117, 747 N.E.2d 120 (2001).

39 See, *Henry & Rilla White Found., Inc. v. Migdal*, 720 So. 2d 568, 573 (Fla. 4th DCA 1998).

40 See, e.g., the *Southern Region Peer Consultation Report*, at 15 ("A frustrated judiciary that has appeared to become more actively involved in the system of care due to their lack of confidence across the spectrum of the system").

41 See, e.g., *Dep't of Children & Families v. K.R.*, 946 So. 2d 106, 107 (Fla. 5th DCA 2007).

42 See, *K.J. v. Dep't of Children & Family Services*, 906 So. 2d 1183, 1186 (Fla. 4th DCA 2005).

43 <http://centerforchildwelfare.fmhi.usf.edu/kb/FIPerformance/APSR-June2013.pdf>

44 <http://centerforchildwelfare.fmhi.usf.edu/kb/FIPerformance/APSR-June2013.pdf>

45 As proof that this can work, see the *Detroit Center for Family Advocacy* at <https://www.law.umich.edu/centersandprograms/pcl/cfa/Pages/default.aspx>.

46 I owe this idea to Professor Clare Huntington and the many others working on positive family law systems. See Huntington, C. *Failure to Flourish* Oxford University Press (2014).



The Florida Bar  
FAMILY LAW  
SECTION

FAMSEG

My name is Cash A. Eaton, and I am proud to be your newly appointed FAMSEG editor.

Traditionally, FAMSEG has always been a fountain of information on an array of topics related to Florida Marital and Family Law and the Family Law Section of The Florida Bar. Everything from information on Family Law Section news, CLEs, events, and awards to academic debate, legislative agendas, case law development, and more. I hope to continue this proud tradition, while still developing and including new engaging content.

Some ideas I hope to incorporate include interactive polls, intriguing and/or "head scratching" cases, practice pointers, and the like. Of course, this new content will be something I, along with the publications committee, hope to develop over a period of time. However, we are dedicated to making FAMSEG the best that it can be.

With that said, I ask you to please feel free to contact me with suggestions, concerns, interesting case(s), or other like content that you would like to be considered for the next edition of FAMSEG. I want to hear from you, so that we can make FAMSEG the best that it can be.

Thank you,

Cash A. Eaton, Esq.  
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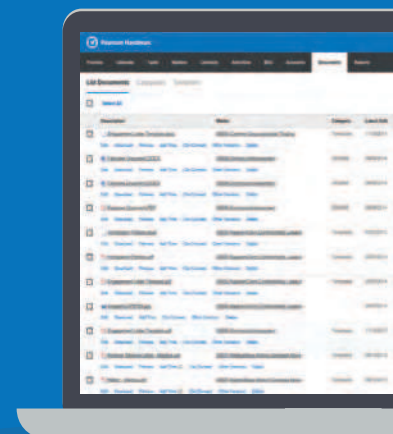
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# Time To Celebrate!

## The Department of State Updates Rules Regarding Transmission of Citizenship to Children Born Abroad to U.S. Citizens

Leslie J. Schreiber, Esquire, Coral Gables

It is time for Intended Parents utilizing assisted reproductive technologies (ART) abroad to celebrate. For United States citizens engaging in ART arrangements outside U.S. borders, the laws governing transmission of citizenship to those babies born abroad has finally kept pace with the science.

As always, the question of whether citizenship will transmit to children born abroad through ART must be carefully considered and a myriad of factors should be satisfied before advising your clients to travel abroad for ART procedures. Although the U.S. fosters a positive environment for ART arrangements, there is no federal law governing these arrangements so each state acts independently in drafting its statutes. ART practitioners must ensure their clients choose ART friendly jurisdictions. But even when the legal environment within our borders is friendly, Intended Parents may still elect to go abroad for financial reasons. The costs for surrogacy and egg donation within the U.S. can be crippling which definitely impacts decision making. A U.S. based surrogacy, for example, can cost upward of \$100,000.00. Fees include paying for the agency to facilitate the surrogacy, the surrogate's fee and professional fees for the lawyers, the doctors, psychologists, insurance and a host of incidentals which vary case by case. Egg donation, although more cost friendly, is not the only cost associated with that procedure so an Intended Parent may feel sticker shock choosing this alternative. Sadly, so many desperate parents flippantly choose affordable clinics abroad, failing to consider the final step in the journey which is how to get that child back home on U.S. soil.

### Will a Child Born Abroad Obtain U.S. Citizenship and Be Able to Travel Back to the Home Country

Both the U.S. Department of State (DOS) and the U.S. Citizenship and Immigration Service (USCIS) share authority to govern the transmission of U.S. citizenship. The old rules regulating ART and citizenship were archaic and did not contemplate the plethora of scientific advances in the ART arena. Consequently, the former rules required a genetic relationship with a U.S. citizen parent in order for the child born abroad to acquire U.S. citizenship. That policy had the effect of denying citizenship to babies born via egg donation or children born out of wedlock. It wreaked havoc on Intended Parents and there are many examples of families stuck overseas, unable to return to the U.S. with their newest family members. Because those rules caused so many snags with U.S. parents utilizing ART abroad, the DOS and the USCIS issued policy changes in October 2014. The amended rules, PA-2014-009, clarify the definition of a "mother" and "parent" under the Immigration and Nationality Act to include gestational mothers using ART regardless of whether there is a genetic connection.

The terms "mother" and "parent" under the INA includes any mother who:

- gave birth to the child, and
- was the child's legal mother at the time of birth under the law of the relevant jurisdiction.

The USCIS issued a policy alert detailing and highlighting the rationale for the rule change and clarifies the intention of the rule. The new

interpretation of the rules encompass a broader and more inclusive view of exactly who is considered a parent and precludes the requirement for a genetic connection. *See [www.uscis.gov/policymanual/Updates/20141028-ART.pdf](http://www.uscis.gov/policymanual/Updates/20141028-ART.pdf)*.

Based on the updates and once certain factors of proof are satisfied, parents can apply for citizenship by:

- petitioning for the child based on their relationship
- be eligible to have the child petition for her based on their relationship, and
- be able to transmit U.S. citizenship to the child if the birth mother is a U.S. citizen.

**See [www.uscis.gov/news/uscis-expands-definition-mother-and-parent-include-gestational-mothers-using-assisted-reproductive-technology-art](http://www.uscis.gov/news/uscis-expands-definition-mother-and-parent-include-gestational-mothers-using-assisted-reproductive-technology-art)**.

*Leslie Schreiber has been practicing law for over twenty years. She began her career in the appellate arena as a judicial clerk for the Honorable Judge Barkdull, Third District Court of Appeal in Florida. She transitioned to the Office of the Attorney General in the appellate division. Having been in private practice for several years, she is now devoted to the area of assisted reproductive technology and collaborative reproduction. She is an active member of the ABA's Family Law Section of Assisted Reproductive Technology attorneys and ASRM Legal and Mental Health Professional groups. She also engages in community outreach as Resolve's Legislative Advocate for Florida and is the local Miami contact for Single Mothers By Choice.*



# Line in the Sand: Iranian Divorce from the Perspective of the Trial Attorneys Involved

By Cindy Crawford, Esquire, West Palm Beach and  
Eddie Stephens, Esquire, West Palm Beach

Stephens: In my 18 years of practicing law, I have never tried an "at fault" divorce. I did not truly appreciate the cultural differences between our culture and the Islamic way of life. I certainly did not know what a "Mahr" was.

Crawford: Aside from taking some International Law courses in law school at George Washington University and occasionally indulging at restaurants featuring Middle Eastern fare, I had little to no knowledge of the legal system in Iran or the true meaning of "Sharia Law."

Stephens: The Wife was a 20 something year old young woman from Iran. At the beginning of their short term marriage, the Husband moved her to the United States away from her home. The Wife was very self-motivated, taught herself English, and obtained an entry level position working retail sales in the mall. I think my opposing counsel would agree this young lady had an exceptional work ethic. By the time the case was over, she was the assistant manager of a luxury retail store.

Crawford: The Husband did not initially appear any different than any other young banker in South Florida. He was attractive, well-dressed, and charming. It was clear that while he was of Middle Eastern descent, he was

very much "Americanized." He had an interesting background. His mother was a blonde-haired, blue-eyed American woman; his Father was 100% Iranian. As a child and young man, my client lived in Iran, Canada, and

decides he wants a divorce, he owes the wife a financial reward. In this case, a very large financial reward...

Stephens: When the Wife consulted with me she presented the Husband's petition for divorce and her "Mahr,"

a hand written religious document. Reading the translation of this document I learned that if the Husband ever filed for divorce, the Wife would have entitlement to a copy of the Koran, some livestock, and most interestingly 1,014 Bahar Azadi gold coins. While I am very familiar with litigating agreements, I was very concerned whether I could get an American judge to enforce such a seemingly archaic



Photo by Alissa Dragun

America. His English was flawless and he seemed completely immersed in the American lifestyle. He came in with what I thought was a relatively simple case – short term marriage, no children, little in the way of assets – Piece of cake, right? It was about that time that I first heard the word "Mahr," which at a basic level, can loosely be equated to a dowry or "bride price." Because men have the exclusive right to divorce under Iranian law, women are afforded the Mahr as a protective measure. In a nutshell, as long as the wife is "obedient," in "good humor," (yes, the marriage contract uses those exact words) and remains faithful, if the husband

document. The Mahr precluded the wife from seeking a divorce. If the husband filed for divorce and the wife had been "obedient," in "good humor," and never committed adultery during the marriage, the contract clearly provided she would receive these coins. Legal research revealed only one reported case in Florida concerning the enforceability of a Mahr. *Akileh v. Elchahal*, 666 So.2d 246 (Fla. 2nd DCA 1996). *Akileh* provides that Florida Courts will enforce the secular portions of a Mahr even if it was entered into as part of a religious ceremony. The Husband's petition for divorce did not mention or otherwise make the Mahr an issue. In response,





I made a demand for 1,014 Bahar Azadi gold coins.

Crawford: I was the second lawyer and became involved in the case well after the initial filings. As such, this unique litigation had already taken a lot of unexpected turns by the time I entered my appearance. The pleadings read like a novel, not the run of the mill dissolution that we know all too well. Knowing my friend Mr. Stephens was opposing counsel, I invited him to lunch to see if I could coerce the "real" story out of him. I was confident that he and I could find a way to resolve the legal issues. After all, Stephens and I had settled numerous cases in the past and I was still trying to believe that the case was relatively simple. At that time, I couldn't fully appreciate how wrong I was. I was met with an offer of settlement of 1,014 gold coins, which, by the way, is nearly a million dollars! My client was a middle-management banker earning approximately \$80,000 per year. He didn't have a million dollars lying around.

Stephens: The demand for gold coins was refused and the Husband's answer attacked the validity of the Mahr. Not only did the Husband make claims the Mahr was unenforceable due to public policy, he also made every traditional challenge to the agreement that one could make, including duress; he claimed he did not understand the agreement because it was written in a foreign language; he did not sleep before he signed it; and there was no financial disclosure. In addition to these claims, the Husband alleged the agreement was void because the Wife was guilty of "ill humor," "disobedience," and "infidelity." As if this case could not get any more complicated, the Husband's first lawyer pled "Lex Loci Contractus" as an affirmative defense and suggested that the law of the case must be governed by the law of the place where the contract was made, Iran.

Crawford: It seemed so completely inequitable for a woman in a short-term marriage to make a claim for nearly a million dollars, particularly where the parties had modest

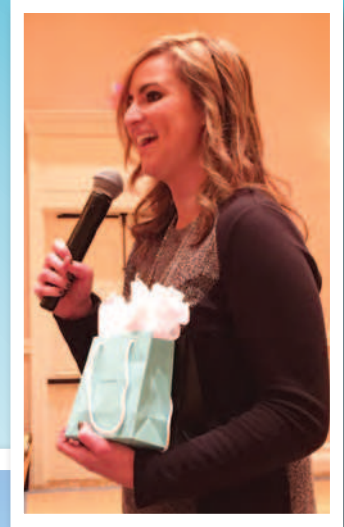
means and few assets. My client was adamant that he was unaware of the contract he signed on the night of his wedding. In fact, he claimed that he didn't even know that he was entering into a marriage until the ceremony was halfway done. He absolutely did not understand that he had signed a contract that required him to pay the equivalent of a million dollars until Mr. Stephens demanded that the coins be delivered to him. My client understood only that he was signing a marriage certificate. At first blush, I figured I could get my client out of this mess by asserting the typical arguments to set a prenuptial agreement aside. The agreement was signed in the middle of the marriage ceremony (seriously!), duress, lack of capacity, no meeting of the minds, absolutely no financial disclosure whatsoever, no negotiation to speak of, unconscionable on its face, etc. Pretty quickly, I understood that those weren't the kinds of arguments that won cases under Iranian Law, which was exactly the law that we found ourselves arguing. I tried everything I could think of. I argued that the new Foreign Law Statute controlled because this contract clearly violated Florida's public policy. I argued the constitutional issues. I argued that Mahr stems from a jurisdiction that does not separate church and State and discriminates through religious doctrine. After all, Mahr is a concept that is rooted in the Koran and the contract itself was administered by an Islamic religious figure. I argued basic contract construction – that the contract itself is vague and unenforceable. Parol evidence was required in order for judges sitting in our American justice system to even begin to make any sense of it. However, the most compelling argument I had was adultery. Yes, adultery. At the crux of this case was the deeply-rooted concept that Mahr is completely void if the husband can prove that the wife has been unfaithful. So, here I was smack dab in the middle of a dissolution action where proving adultery was my best shot. We had just enough evidence

that it was possible. Enter the private investigator...

Stephens: My client did not have a small fortune to spend on a private investigator as the Husband did. We could not afford the type of experts the Husband engaged and flew in for testimony. We did have a decent fact pattern and a very smart trial judge. The Husband committed himself to a fact pattern with his first attorney and some of it just did not add up. Crawford did an incredible job presenting what she had, but her client took hits on credibility that could not be undone. For example, the Husband's claims that he could not read Farsi were absurd. He also committed himself to the testimony that he did not understand the contract. Even more absurd was his claim that he did not know he was getting married. His testimony was directly contradicted by the wedding video where the agreement was clearly explained to the Husband provision by provision. The wedding video showed clearly that the Husband's arguments were untrue. He was seen participating in the wedding ceremony. He was seen speaking in Farsi conversationally, clearly understanding what was said. He was seen as the Mahr was explained to him, provision by provision, while he was obviously under no duress.

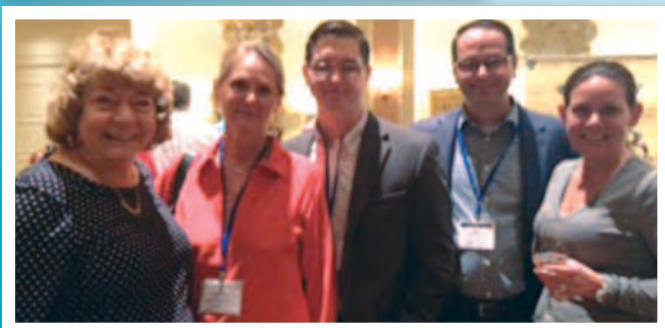
Crawford: With some real credibility issues, I had to attempt to have the judge see the inequity of this situation. We were very lucky to have an incredible expert witness on our side, an Iranian female attorney and Judge from Tehran, who now resided in Detroit, Michigan of all places. She was able to explain the role of religion in the Islamic legal system, the Mahr, the male-dominated society, etc. It was from her that I learned that we were dealing with a culture that allowed polygamy and overtly discriminated against women. For example, women are required to cover their entire bodies in public, they are unable to pursue certain areas of study or hold certain occupations, their testimony in court is not equivalent

*continued, page 20*



# Family Law Section Meeting

January 29, 2015  
Hilton Bonnet Creek Hotel  
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## Line in the Sand

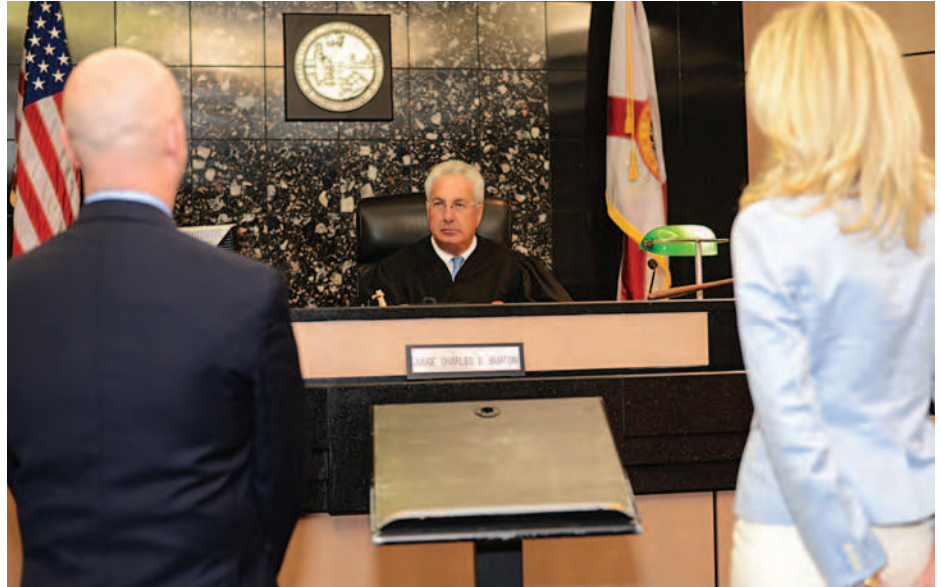
*continued from page 17*

to that of a man, nor or they able to inherit in equivalent shares as men. To say the least, as a woman, it put me in an interesting position representing a man in this case.

Stephens: I learned in Iran there are consequences of certain behaviors that simply do not exist in America. In our case, the Wife made allegations the Husband refused to honor the Mahr. The Husband made allegations the Wife was a disobedient, ill-humored adulteress. While the consequences for these behaviors may not seem severe in the United States, in Iran the penalties can include physical punishment. So, regardless of the outcome of the litigation in the United States, both the Husband and Wife initiated proceedings against each other which would have to be resolved before either party returned to Iran. The stakes of the case escalated quickly.

Crawford: It was truly humbling to find myself in a situation where we had to ignore what we knew about Florida (or even United States) laws and norms and put ourselves in the shoes of Iranian attorneys and try to convince the judge to do the same. While attempting to navigate our way through the Palm Beach County case, we were also trying to deal with reciprocal criminal cases and the respective attorneys in Iran (the Husband accusing the Wife of adultery, which carries the punishment of lashing or even, in extreme cases, stoning; the Wife accusing the Husband of drinking alcohol, which carries the punishment of lashing). This was definitely uncharted territory.

Stephens: This trial was fascinating. It was a challenge. I had to be on top of my game and couldn't miss a word. My opponent is a former prosecutor and speaks with authority and has a masterful command of the courtroom. What surprised me most was how she was able to humanize her side of the case. It was also a



*Photo by Alissa Dragun*

pleasure that we let each other present our respective cases. Not only did I have this incredible mix of legal and factual issues, I was litigating with a top notch family attorney who shares a similar respect for our rules of ethics and practicing with professionalism.

Crawford: Trying this case, while exhausting, was truly an incredible experience. The stakes were extremely high and the clients were both wound pretty tight. The case had the potential to be a complete blood bath. Stephens was a true professional at every stage of the game. Much to my dismay, he was able to effectively call my client's credibility into question. He didn't care for my client one bit, and I wasn't the biggest fan of his; however, we managed to remain civil and even have a little (ok, a lot of) fun along the way. It didn't hurt that we had a judge that was able to beautifully bring judicial professionalism and levity to a tense situation.

Stephens: The Court found the Wife was obedient and in good humor. The Court found the Wife had not committed adultery. However, we had some real problems. While the Court bought Crawford's legal argument

and reduced the amount of gold coins owed, the award would have to take the form of a money judgment which did not seem collectible. The only source for payment was the Husband's family. Under Florida law, I could not force his family to make the payment.

We were also faced with a second, more unusual problem: despite the findings by the American judge, the Iranian divorce was still pending and my client faced 99 lashes if her Husband prevailed. The parties could not be on equal footing in Iran, as the country is male-dominated. This was certainly something new for me. I've never had to factor my client's potential physical punishment into case strategy. Seemed like it was time to make a deal.

Crawford: The judge made some rulings in our favor and some against us. Much to our relief, the Judge reduced the amount of coins that were due from my client to the wife substantially. However, my client was still faced with the reality of having a judgment against him in an amount that exceeded his ability. While we all knew that a judgment against this guy was only as good as the paper



it was written on, my client was absolutely adamant that he could not have a judgment for both personal and professional reasons. He wanted to work “something else out” with his now former wife. Despite an exhaustive 3-day trial, many peripheral issues remained unresolved. Yep, it was time to make a deal.

Stephens: Crawford and I were able to shift from trial mode to negotiation mode impressively fast. By the evening after trial, we were working on resolving all pending cases in Iran without any loss of flesh, and cooperating to obtain a legal dissolution in Iran while Crawford was able to negotiate a reduced payment. The Wife received a payment the Husband’s family was willing to make. Both parties left slightly unhappy, which means it was a good resolution.

Crawford: Stephens and I found ourselves taking on roles we never expected – we were making telephone calls to embassies all over the world, speaking to dignitaries about expediting foreign documents, and facilitating the international transfer of gold coins. At the end of it all, I believe

that both clients were satisfied with the results. They both compromised on some issues and prevailed on others. The experience was one that I will never forget. It certainly makes the rest of what we do on a daily basis seem mundane. As for Stephens, I have nothing but the utmost respect for him.



E. STEPHENS

**Eddie Stephens** is a partner in Ward Damon located in West Palm Beach, FL. Mr. Stephens was admitted to the Florida Bar in 1997 and is Board Certified in Family and Marital Law.

After starting his career as an attorney for the Palm Beach County Property Appraiser’s Office, Stephens has developed a successful family law practice focused on highly disputed divorces. Through hundreds of hearings and dozens of trials, Stephens has honed his practice by making straightforward arguments that

bring opposing sides closer together in order to find a successful resolution. Most importantly to Stephens, he litigates in a manner that minimizes the impact of divorce on children.



**Cindy Crawford** is Senior Counsel in Greenspoon Marder’s West Palm Beach office. She graduated from the George Washington University School of Law and began her legal career at

C. CRAWFORD prestigious law firm in Washington, D.C., before relocating to Florida. In furtherance of her dream to be a prosecutor, Crawford served as an Assistant State Attorney in the 15th Judicial Circuit where she had the opportunity to litigate over 50 jury trials during her tenure. For the last 10 years, she has focused her practice on all areas of marital and family law. She finds serving the needs of Florida’s families both challenging and fulfilling.

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# Guardians ad Litem: Powerful Voices for Children

By Jessica Allen, Esquire, Miami and Patricia Abaroa, Miami

Eight-year old Jose and his siblings came into the Florida Dependency system when the Department of Children and Families sheltered them because they were malnourished and living in a filthy environment. He was placed in two different foster homes over a one month period, separated from his siblings and about to be moved to a third placement when his Guardian ad Litem went to court and successfully advocated that the children be placed together. This example shows how volunteers can impact the life of an abused, neglected, and abandoned child.

The Florida Guardian ad Litem Program, a volunteer based organization, works to advocate for the best interests of our communities' most vulnerable population, children who have been abused, abandoned, and neglected. These children, through no fault of their own, become part of an overburdened dependency and foster care system. Guardians ad Litem ensure that the children they passionately advocate for are never left unseen or unheard, and that their best interests are always front and center in the courtroom.

The Department of Children and Families reports that in Miami-Dade County there are over 3,500 children involved in dependency court proceedings. These children are the unfortunate victims of sexual abuse, physical abuse, neglect, abandonment, drug-addicted parents or domestic violence. While the Miami-Dade Guardian ad Litem Program strives to represent 100% of the children in care, the program is able to only represent about 66% of these children at this time.<sup>1</sup> More volunteers would help meet this goal to provide all children a compassionate

adult to stand by their side during a difficult time in their young lives. Florida Statute section 39.822 requires the appointment of a Guardian ad Litem "at the earliest possible time" for all children who are alleged to be abused, abandoned and neglected. Florida Statute section 39.820 defines a Guardian Ad Litem as "...a responsible adult who is appointed by the Court to represent the best interests of a child in a proceeding as provided by law...who shall be a party to any judicial proceeding as a representative of the child and who shall serve until discharged by the court." Guardians ad Litem are responsible for visiting their appointed children on a minimum monthly basis. Through these visits, a Guardian ad Litem develops a relationship with the child, is able to ensure that the child's needs are being met, and is able to ensure appropriate services are in place for the child. From doctors' visits to educational stability and advocating for that child's forever home, he strives to make an enormous difference in that child's life. Guardians ad Litem are also responsible for communicating with all parties involved in the child's life and attending court hearings in order to make recommendations concerning the child's social, physical, emotional and educational needs.

Our volunteers are independent fact-finders who represent the best interests of children who are placed under court supervision by the Department of Children and Families and are often described as squeaky wheels, watchdogs, expeditors and most important, advocate voices for children who need them most. As more children are being removed from their homes and placed under

court supervision, the need for volunteer Guardians has never been greater.

Guardian ad Litem volunteers come from all walks of life and offer their own insight and experiences into each case. Volunteers must pass a background screening and complete a training course that includes courses in dependency law, communicating with children and families, and cultural competency, among others. With the help of a Child Advocacy Manager (a staff member who oversees the case and guides the volunteer) and a Child's Best Interest Attorney, the volunteer becomes part of a team that shares one belief: the child's best interest is our only interest. "A lot of kids don't feel deserving of love, attention, or time. We want them to know that's simply not true," says Attorney Paul Nemiroff, a long-time Guardian ad Litem volunteer.

On April 11, 2013, the Quality Parenting for Children in Foster Care Act, also known as the "Let Kids Be Kids" law, was signed into law by Governor Rick Scott, creating Florida Statute section 39.4091, with the intention of bringing normalcy the lives of children in foster care. Before enactment of this law, many rules and procedures prevented these children from participating in normal childhood activities due to fear of civil liability. The Let Kids Be Kids Law gives foster parents and caregivers the legal authority to allow children in their care to participate in normal, age-appropriate activities using the "reasonable and prudent parent" standard. In one instance, twelve year old Margaret, a long time foster child who had been abandoned by her drug addicted mother, asked her group home parent if she could

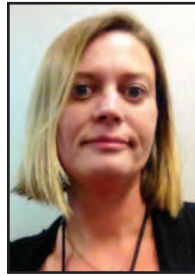




stay the night at a girlfriend's house, she was told that finger prints and a home study would have to be done on her friend's parents before she could go. Margaret's Guardian ad Litem argued for Margaret's right to lead a normal life like that of any other twelve year old, and the judge allowed Margaret to stay the night with her friend.

Guardians profoundly impact the lives of the children they serve, and vice versa; moreover, they are actively putting breaks in the cycle of abuse. The Guardian ad Litem Program is looking for dedicated adults willing to make a difference in the life a child in need. Prospective volunteers do not need to have a law degree, but attorneys with dependency court ex-

perience may be eligible for abbreviated training. For more information on becoming a Guardian ad Litem for dependent children, visit [www.guardianadlitem.org](http://www.guardianadlitem.org). In Miami-Dade County call 786-469-3864 to speak directly with a member of the recruitment team.



J. ALLEN

**Jessica Allen** is a graduate of the University Of Miami School Of Law. She began working with the Florida Guardian ad Litem Program in 2007 as a staff attorney and now serves as Circuit Director for

the 11th Circuit Guardian ad Litem Program.



P. ABAROA

**Patricia Abaroa** began working with the Guardian ad Litem Program in 2004. Since then, she has served in different capacities. In her latest role, she serves as the

Volunteer and Recruitment Coordinator.

**Endnote**

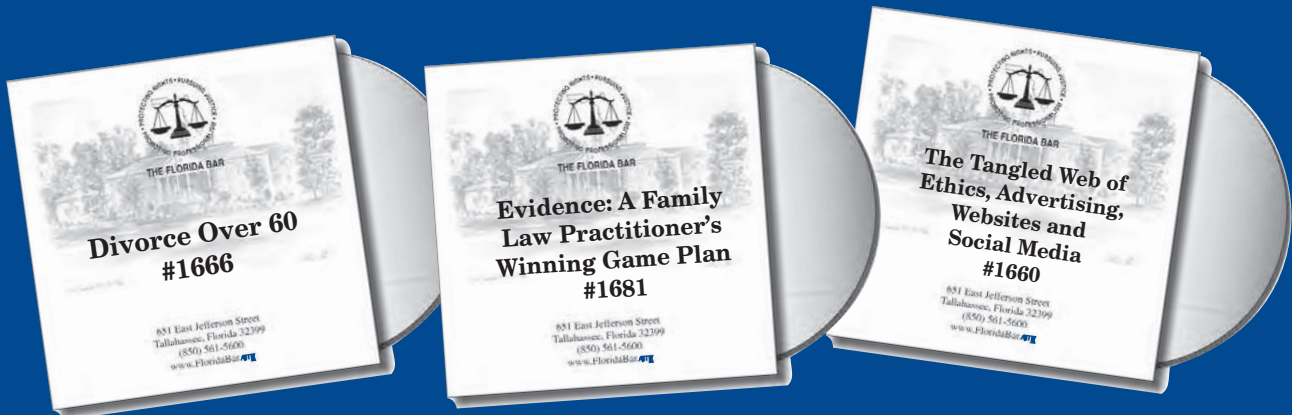
1 [http://guardianadlitem.org/wp-content/uploads/2014/08/GAL-SnapShot-February-2015\\_revised.pdf](http://guardianadlitem.org/wp-content/uploads/2014/08/GAL-SnapShot-February-2015_revised.pdf)

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# Challenges and Obstacles to an International Relocation Case

By Samuel R. Troy, Esquire, Boca Raton



S. TROY

One of the most difficult matters to handle for any family law practitioner is a Florida Statute §61.13001 relocation case. These cases are rarely settled and are almost always extremely contentious. Even if we are able to succeed in having a client relocate, one party is often left devastated with the thought of the child living far away. As family law practitioners, if we fail, our client's life may be turned upside down. The reality is, there truly are no winners in these cases and the pressure for the lawyer on either side of the case is enormous.

Relocation is difficult enough when a party is looking to move out of state, but the challenges increase exponentially when a client is looking to move internationally.

I was confronted with this issue when I represented an individual who wanted to relocate with her child to the Middle East, specifically the country of Qatar. The first hurdle was convincing an American Court that Qatar would be a safe place for an American Citizen...but the challenges did not end there.

Of course the best interests of the child are always the judge's paramount concern in any relocation case. In international relocation cases however, certain factors are magnified that might not be as important in a domestic relocation. It is commonly considered that three factors of unique importance to an international relocation case are: Culture, Jurisdiction, and Distance. Based

on the case law in Florida and many other states, I contend that family or lack thereof is inextricably intertwined with these issues no matter what side the lawyer is on.

## I. Culture/ Family

It is rare for culture to be a factor in a domestic relocation case. There may be cultural differences between Miami and other more rural parts of the country, for example, but culture is rarely the determining factor when the proposed move is within the United States.

However, depending on the country or region, cultural changes may be a significant issue when a parent seeks to relocate abroad. Case law is admittedly light on international relocation issues. As a result, states are often forced to look outside their own jurisdiction for guidance. The cases discussed herein involve the relocation of American children to the Middle East, Australia, the United Kingdom, and even Bosnia.

As in most cases, when trying an international relocation case, it is important to understand the judge and his or her own background before deciding if culture is an issue worth exploring. Is this judge familiar with the country to which your client seeks to relocate? Would this judge know this country's laws and cultural norms? If culture is an issue, the practitioner must educate the judge by calling experts, as well as witnesses who reside or have previously resided in the region, including natives of the country and/or Americans residing in the country. If these witnesses are not available in Florida, they can be called to testify using Skype. Be sure to review the case law and rules for

swearing in a witness who is not present in the courtroom.

Depending on what side you find yourself, you are either tasked with dispelling stereotypes and misconceptions of a certain culture or perpetuating them. It is a difficult balance and may very well dominate the course of the proceedings. Be careful not to go overboard. There is always a risk of distracting the judge from the more important issues or worse yet, offending the judge with a portrayal of a certain culture or region.

## Case Study: Saudi Arabia

In a case out of New York, a Mother requested the relocation of her son to Saudi Arabia. See, *Lazarevic v. Fogelquist*, 175 MISC.2D 343, 668 N.Y.S.2D 320 (1997). The mother requested to relocate with her new Husband, who was a contract worker for a company in Saudi Arabia. Testimony revealed that the minor child would be living in a compound with other Americans and attending American schools while living in the Middle East. *Id.* The court was torn as it heard testimony about the country's culture as well as the dangers of terrorism and anti-American sentiment in Saudi Arabia.

"The court is deeply troubled by the prospect of sending Adrian to an area which might be a target for terrorism. Unfortunately, the court is also aware that there is no place in the world where a person is absolutely safe from a terrorist attack or, indeed, where a person is safe from an attack of random violence. After the recent assaults on American institutions, The World Trade Center, the Federal Building in Oklahoma City, and the nightly barrage of reports of children



assaulted or killed by parents or by strangers, the court must conclude that it cannot insure Adrian's absolute safety anywhere in this turbulent world." *Id.* at 326.

The court cited cultural considerations as well as the fact that the child would not have the same freedoms or be exposed to the same cultural norms that he would in the United States.

"There is no doubt that in exchange for a physically 'safe' environment in the Dhahran compound, as Petitioner urges, Adrian may sacrifice the more expansive freedom of speech, freedom of assembly and freedom of dress which would otherwise be afforded to him here in America. Petitioner and the Law Guardian also predict that Adrian will suffer from deprivation of intellectual stimulation. Both the Petitioner and the Law Guardian point to the fact that the compound does not have museums (apart from one museum on oil production), art galleries, theater companies, professional symphonies and other cultural outlets which Adrian presently enjoys as a young person growing up in New York City." *Id.*

The court took note of the cultural problems after hearing testimony of experts, as well as the testimony of residents of Saudi Arabia, presented to give the court an understanding of life in this region. Ultimately the court found that notwithstanding these cultural differences, the child would be permitted to relocate. The child's family would be in Saudi Arabia, he would receive a top notch education, and after weighing the testimony the court believed the child would be cared for and well protected. *Id.*

### Case Study: Bosnia and the Condon Case

A court in Vermont was confronted with the unenviable task of deciding whether a child should move to Bosnia with his mother. In the case of *Osmangic v. Osmangic*, 187 Vt. 538 (1998), the court permitted the relo-

cation of a minor child to Bosnia. This case had a unique set of facts, as parenting styles and domestic violence became issues of great importance. However, the primary reason the court permitted the relocation was because the Mother's family was in Bosnia and the minor child had spent some time there early on in life. *Id.*

The Father argued on appeal that the court failed to consider cultural factors, which were noted by his counsel as an essential factor in any international relocation matter. Ultimately, this was a losing argument. The court believed family trumped the difficulties a child may have in assimilating to a new culture.

Interestingly, the Husband in the *Osmangic* case cited to the California case *Condon v. Cooper*, 62 Cal.App. 4TH 533 (1998) when he made the cultural argument. The *Condon* case is an important international relocation case referenced by judges across the country. In *Condon*, a mother in California requested to relocate to Australia with her minor child. The court in *Condon* considered that one of the main issues with any international relocation is culture. *Id.*

The California court remarked:

... the cultural problem. In some cases, to move a child from this country to another is to subject him or her to cultural conditions and practices far different from those experienced by American citizens or to deprive the child of important protections and advantages not available in the other country. To pose an extreme example, who could dispute a proposed relocation of a female child to a country practicing genital mutilation represents a "changed condition" requiring an inquiry whether this move is in the "best interests" of that child? Similarly, how about a move to a country where females were not offered the opportunity for higher education or the freedom to pursue careers? Or a move of any pre-teen or teenager to a country where the language is one unfamiliar to that child. Or, consider a proposed relocation of any child to a nation

governed by a dictator or any nation which denies its citizens the freedoms and rights guaranteed in the United States and other democracies. *Id.* at. 548

The court in *Osmangic* found the Husband's reference to the *Condon* case unremarkable. The court believed that the minor child had significant exposure to the Bosnian culture early in life and would be surrounded by family in Bosnia which would assist the child with assimilation back into the culture. *Id.*

There are international relocation matters where culture is not an issue. These cases do not address culture due to family or the similarities between the United States and that foreign nation.

### Case Study: Israel

In *Tamari v. Turko-Tamari*, a Florida court permitted the relocation of a minor child to Israel, 599 So.2d 680 (Fla. 3d DCA 1992). In this case, the Wife was permitted to relocate largely because her entire family resided in Israel, and the Husband resided in New York. Culture did not appear to be a major factor in this case. *Id.*

### Case Study: United Kingdom

In the case of *Wraight v. Wraight*, 71 So.3d 139 (Fla. 5th DCA 2011), the Mother was permitted to relocate to the United Kingdom from Florida. The courts found that the children had family in the United Kingdom, they were performing well in school and generally thriving in their home overseas. Culture was not an issue in the case both because the presence of the child's family in the United Kingdom and likely because there are similarities between the cultures in the United Kingdom and the United States. *Id.*

The court discussed the issue of culture in *Condon*; however, the relocation was to Australia. The court stated, "Courts do not have to hear expert testimony to conclude the United States and Australia share

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## International Relocation Case from preceding page

common cultural values and the move to Australia is unlikely to expose the Condon children to any threatening cultural practices or deny them fundamental civil and political rights.” *Id.* at 548. These cases reveal that culture is a factor which must be taken seriously by the family law practitioner in any international relocation case. The attorney must determine if the cultural differences between the United States and the foreign country are substantial enough to be relevant in the case. If culture is relevant, the attorney must decide how it can be used to support your client’s position. If disregarded, this subject could be the difference between success and failure, no matter what side of the case you are on.

## II. Jurisdiction

Another critical issue to address in any international relocation matter is jurisdiction. What rights will the non-relocating parent have in this foreign country? What powers, if any, do United States court orders have in the foreign county?

In any international relocation matter, the practitioner must consider how the laws of the foreign nation will respect the rights of American citizens and uphold court orders. Often times the laws of foreign nations, particularly those related to child custody and timesharing, differ greatly from the United States. A judge in the United States will need to be educated on the conflicts of law and the enforceability of their orders.

For international relocation cases, the Hague Convention may be the elephant in the courtroom. There are approximately 77 countries<sup>1</sup> which are presently members of the Hague Convention. Countries that have signed the Hague Convention have agreed that they will promptly return a child who was habitually the resident in a signatory country and who was re-

moved or retained in another signatory country in violation of a parent’s custodial rights and orders of the court (*Hague Convention, Articles 1, 3, 4*).

We all know that the Hague Convention is not perfect, and oftentimes if a party needs to utilize the Hague Convention, the process can be very long and expensive. Even if the Hague Convention is used to force the return of the child, the holding in *Wraight v. Wraight*, out of Florida, reveals that courts may still permit the relocation. *Id.*

In the *Wraight* case, the Mother fled the United States to the United Kingdom with the parties’ children. *Id.* The mother was eventually forced back to the United States after several months, through use of the Hague Convention. *Id.* Despite the unilateral actions taken by the Mother, ultimately she was still permitted to relocate to the United Kingdom with the minor children. *Id.* As stated earlier, the court found that the presence of family and the home the kids had established in the United Kingdom trumped the Mother’s bad behavior. *Id.*

Although the Hague Convention is not perfect, rest assured that a judge will want to be secure in the thought that if there is an issue with timesharing, the child will be better protected in a country who is a signatory of the Hague Convention than in a country that is not. For the country in question, the courts will have concerns over not only the enforceability of United States orders, but how our citizens will be treated in that country. If one parent is a citizen of the nation to which they seek to relocate, how will that impact the rights of the non-relocating parent? Will the courts of both countries communicate effectively if there are any problems between the parties?

The Middle East is a prime example of how complicated this issue may be. As an example, certain regions in the Middle East still employ the use of Sharia law. Of all legal systems in the world today, Islam’s Sharia law

is the most intrusive and strict. See, <http://www.billionbibles.org/sharia/sharia-law.html>. For a judge in the United States to be comfortable sending a child to a region that employs Sharia law, the judge must understand how the law will impact those involved, and whether that country will respect the laws and orders of the United States. Often Sharia law is applied differently to citizens of that country versus outside parties. Further, with Sharia law, the father is favored in child matters. However, under Sharia law, the courts are not available to American Citizens. It is important to understand how the laws of the country to which the petitioner seeks to relocate applies to citizens and non-citizens, so as to not get blind-sided by inaccurate information or miss a critical argument that could be used to defend against a proposed relocation.

Although the Hague Convention is critical, it is not impossible to relocate to a non-Hague Convention country.

## Case Study: Japan

In 2007, a New Jersey court permitted a relocation to Japan, which at the time was not a member of the Hague Convention.<sup>2</sup> See, *Mackinnon v. Mackinnon*, 191 N.J. 240 (2007). The Husband argued that he would have no remedy at law if the Wife elected to refuse the Husband visitation with his child in Japan. The court held: “Although the trial court acknowledged that because of Japan’s Status as a non-party to the Hague Convention, Mr. Mackinnon may have limited remedies if Mrs. Mackinnon violated the courts order, the court rejected the argument that such a predicament should per se bar international removal of children to a non-party nation like Japan. . . . although the trial court found Mr. Mackinnon “sincere,” the court found his fear that he would “lose his daughter” to be unfounded. Observing that Mrs. MacKinnon obeyed all previous court orders, the court considered the possibility that Mrs.



MacKinnon would abscond with the child “an acceptable risk under the circumstances.” *Id.*

Not surprisingly, the court also reasoned that family, culture, and familiarity with the nation would trump any danger that the lack of jurisdiction may pose to the Father. “The trial court found that [the child] could receive a comparable education, quality health care, and considerable leisure opportunities in Japan. The court also observed, in accordance with Dr. Most's opinion, that [the child] can readily adapt to living in Japan due, in part, to her familiarity with the country, her relatives there, and her knowledge of the language.” *Id.* at 256.

This case may have turned had there been evidence of contemptible behavior by the mother including but not limited to withholding visitation/timesharing from the father. Past behavior by a client will certainly be determinative of whether the court will permit relocation, particularly a relocation to a non-Hague convention country.

**Case Study: Lebanon**

In New Jersey, the courts had a difficult decision regarding timesharing in the country of Lebanon, another non-Hague convention country. Although this case is not specifically a relocation case, the findings are interesting and analogous to the discussions herein.

In *Abouzahr v. Matera-Abiuzhar*, 361 N.J 135 (2003), the Father sought substantial extended timesharing in Lebanon with his minor child. This case again combines the issues of culture, family, and jurisdiction. The Court held that simply because a country is not a member of the Hague, this fact should not act to deprive an otherwise law abiding citizen from seeing their child or allowing the child to share in the culture of one of their parents. *Id.*

The court made a powerful statement addressing the issue of culture and jurisdiction:

We do not doubt that Cristina's [Mother] fear is genuine, but fear alone is not enough to deprive a non-custodial parent of previously agreed upon visitation. We decline to adopt a bright-line rule prohibiting out-of-country visitation by a parent whose country has not adopted the Hague Convention or executed an extradition treaty with the United States. Such a rule would unnecessarily penalize a law-abiding parent and could conflict with a child's best interest by depriving the child of an opportunity to share his or her family heritage with a parent. Moreover, it would mistakenly change the focus from the parent to whether his or her native country's laws, policies,

religion or values conflict with our own. Such an inflexible rule would border on xenophobia, a long word with a long and sinister past.” *Id.* at 281.

The Hague Convention will not determine jurisdiction in all cases. Often, foreign nations will respect judgments of American courts but some will not. Under Fla. Statute §61.506 of the UCCJEA , the courts in the United States are to respect the jurisdiction of foreign nations as it relates to custody orders. Other countries do not apply the same rule of law. This distinction must be researched and discussed in any international relocation case.

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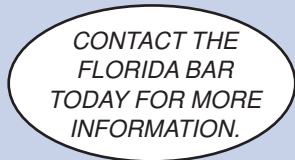


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## International Relocation Case from preceding page

### Case Study: Qatar

In the country of Qatar, for example, the State Department of the United States warns that foreign judgments may not be enforceable if they conflict with their local laws.<sup>3</sup> The laws of Qatar are very different than the laws of the United States. In addition, if one parent is of Qatari decent, they may have greater rights than a parent from the United States.<sup>4</sup> In Qatar, religion and nationality may dictate the enforceability of court orders, jurisdiction of foreign courts and rights of the parties.<sup>5</sup> This information is critical for any judge to make an informed decision.

Jurisdiction and the Hague Convention are essential elements in any international relocation matter. In theory, American courts will have confidence that their custody/timesharing orders will be upheld by a country that is a signatory of the Hague Convention. If the Hague Convention is not in play, the practitioner must provide the judge with a blueprint as to how their orders will be enforced in a non-Hague Convention country and ensure the judge that the relocating parent can be trusted. The family law practitioner would be wise to offer security such as a bond, if that is an option for the petitioner. Most judges will have no desire to send a child overseas unless they are assured their orders will be respected. If these issues are not properly addressed, relocation will be nearly impossible.

### III. Distance

It is not surprising that distance is also a significant factor in most international relocation matters. The court must weigh the age of the child, the frequency of timesharing as well as the expense and time of travel. Of the factors discussed herein, this one is probably the most common factor

to cross over into domestic relocation cases.

In the case of *Rossman v. Profera*, 67 So.3d 363 (Fla. 4th DCA 2011), the court found that travel time between Texas and Florida is too much for a child of that age and would cut into the Father's timesharing. As a result, the court denied the request for relocation. *Id.* at 366.

However, in *BTG v. MG*, 993 So.2d 1140 (Fla. 2d DCA 2008), the court permitted a relocation from Florida to Seattle despite the extended travel time. The court believed that the Father would be able to maintain a consistent and meaningful relationship with the child despite the distance. *Id.*

An extreme example of international relocation regarding travel is the *Condon* case. In *Condon*, the Mother requested to relocate to Australia with the minor child. The court addressed the fact that travel to a foreign nation other than Canada or Mexico may create significant problems tantamount to terminating the non-relocating parent's visitation rights. *Id.* "Except for Mexico or Canada, foreign relocation cases in this state inevitably involve a move to a different continent-typically 8,000 miles or further and 8 or more time zones away from California. With those great distances come problems of expense, jet lag, and the like. For a person of average income or below, an order relocating his or her child to a far-away foreign country is ordinarily tantamount to an order terminating that parent's custody and visitation rights." *Id.* at 546-547.

It is extremely difficult to persuade a court to relocate a child thousands of miles away based on the sheer expense and travel time. Travel time to foreign countries all but eliminates weekend or long weekend timesharing and limits the non-relocating parent to summers and longer vacations. Now suppose the flight is 18-24 hours, can the child be forced to make that flight 5 times in a year? Should the child make the flight for five days over Thanksgiving? Does the court

consider the difference between a five-year-old child and a fifteen-year-old child? Distance is a significant issue and must be addressed right from the start. Consider the child's age, who will travel with the child and how often the child will travel? Without establishing a proper travel plan including the expense and logistics, the case may be lost before it even begins.

### Conclusion

It goes without saying that the primary issue in any relocation case, international or domestic, will always be the best interests of the child. How a practitioner is able to prove the best interests of the child will differ when the move is overseas. Before taking on any relocation case, the family law practitioner must vet the client, know the judge, and understand the relevance of family, culture, jurisdiction, and distance. These critical factors could make all the difference in any international relocation case and should be thoughtfully considered by a family law practitioner when preparing to advocate for or against an international relocation.

*Samuel R. Troy is the principle at Troy Legal, P.A. with offices in Boca Raton and Miami. He has been practicing family law for over 10 years, 5 of which have been with his own firm. Mr. Troy has been repeatedly recognized by Super Lawyers Magazine and Legal Elite as one of the top young lawyers in Florida. This is the second article by Mr. Troy that has been published in the Commentator, the first being: "The Spying Spouse in the Computer Age: The Blurred Line Between Criminal Activity and Good Discovery."*

### Endnotes

- 1 [www.hcch.net](http://www.hcch.net)
- 2 Japan became a member of the Hague Convention in April of 2014 ([www.travel.state.gov](http://www.travel.state.gov))
- 3 [Travel.state.gov/abduction/country/country\\_516.html](http://Travel.state.gov/abduction/country/country_516.html)
- 4 [Travel.state.gov/abduction/country/country\\_516.html](http://Travel.state.gov/abduction/country/country_516.html)
- 5 [Travel.state.gov/abduction/country/country\\_516.html](http://Travel.state.gov/abduction/country/country_516.html)





# An Overview of Juvenile Court

By General Magistrate Steven Lieberman, Miami



S. LIEBERMAN

The purpose of this article is to give the reader a general overview of the juvenile justice system. Most family lawyers exclude this area of family law from their practice for one reason or another. Whether you're a new or seasoned attorney, this article will provide enough general information in case you find yourself outside your comfort zone.

I work in the juvenile courthouse in Miami. This year, the courthouse is moving to a new, state of the art building named after two judicial giants in the juvenile world, William Gladstone and Seymour Gelber. The new courthouse has 18 courtrooms and enough room to house the Clerk's office, Public Defender, State Attorney, Guardian ad Litem office, Administrative offices, Corrections, and the Miami-Dade police court liaison unit.

Every attorney should know there are two separate legal matters within the juvenile division; juvenile delinquency (children who have been arrested) and dependency (parents or caregivers accused of child abuse, abandonment, or neglect). In Miami, there are 11 judicial officers hearing juvenile matters five days a week. The dependency division may increase its caseload due to an influx of "special immigrant visa" cases which involve children from different countries asserting allegations of abuse, abandonment, and neglect. Children are allowed to remain in the country to resolve their immigration issues if the State proves these allegations.

Many attorneys think that delinquency and dependency are the same and, therefore, use the terms interchangeably. You need to know the

difference between the two if you walk into juvenile court. Delinquency cases are governed by Chapter 985, Florida Statutes. In these cases, children are arrested for violating a criminal statute and are charged with committing a delinquent act. In addition to the criminal statute, the case is also governed by the rules of juvenile procedure. A common misconception in juvenile cases is that a different set of laws apply for minors, but children are subject to the same laws as adults. Once arrested, the child is assessed by probation officer at JAC (Juvenile Assessment Center) to determine if some kind of detention is required by completing an RAI (Risk Assessment Instrument). For example, secure detention may be in order for protection if the child is at risk for severe physical injury or the child may be released to a parent or guardian if only a minor offense is committed.

You should also know there are three types of detention; secure, non-secure, and home. A discussion of the three types is beyond the scope of this article, but the most desirable type of detention, of course, is at home. DJJ (Department of Juvenile Justice) supervises the child to ensure he or she complies with the rules, which may include following all laws, appearing at all appointments, and cooperating with parents and other caregivers. At a later hearing, the judge determines if home detention should be revoked and replaced with secure detention if the child does not comply with all the rules. Within 24 hours of detention, the child appears before a judge who then determines if there is probable cause that the child committed a delinquent act and whether further detention is necessary.

The next step is for the State Attorney to file a delinquency petition

if he proceeds with the case. The child is otherwise placed into a diversion program and upon completion, the State Attorney dismisses the charges or, if the child fails to complete the program, the State Attorney can bring the case back to the judge and request further action. If the case moves forward, the child is entitled to counsel. He can receive a Public Defender, an attorney from the Regional Counsel's Office, or appointed a private attorney also called a "wheel attorney" because the attorney's name is next on a list of qualified counsel to handle such cases. In cases with multiple defendants, each child has his own attorney. The next step is the arraignment hearing; the child either takes a plea or chooses to have a trial to defend the charge of a delinquent act or law violation. You need to know there is no right to a jury trial in delinquency matters. The burden of proof for trial is beyond a reasonable doubt and the rules of evidence are the same as used in criminal court. Co-defendants must be tried together unless the Judge orders otherwise. Discovery is permitted and is reciprocal in nature.

During the dispositional hearing, DJJ recommends an appropriate sentence. The Judge may deviate from the recommendation but, if so, must make sufficient findings of fact to support the deviation.

The State Attorney can decide to "Direct File" the child if the charges are very serious or the child has a lengthy arrest record, meaning that the child can be tried as an adult. Before that decision is made, there is a meeting with the State Attorney, Public Defender, DJJ, the child, and the child's parents or caregivers. The child has a right to post bond and a trial by jury if the State Attorney opts

*continued, next page*



## An Overview of Juvenile Court *from preceding page*

to Direct File. Here's something most people don't know; the Judge can still impose juvenile sanctions even if the child is convicted by a jury. You also need to know that the Judge may seal or expunge the record, if any, after a review of the facts which is important so the child doesn't have a hard time securing housing, employment, or an education.

There are two main types of cases within the dependency system; dependency and termination of parental rights. Dependency cases involve children removed from their homes due to allegations of abuse, abandonment or neglect. Parents have an opportunity to be reunified with their children if they complete services and the judiciary believes the children can be safely returned. After reunification, the families are monitored for at least six months.

Termination of parental rights occurs when parents do not complete the services within a reasonable amount of time or the judiciary believes the children cannot be safely returned to their parents and the children may be adopted or taught independent living skills. In very serious cases, the Department may file an "expedited termination of parental rights" petition which means the parents do not have the opportunity to complete any services. A dependency case begins with someone making a call to the Abuse Hotline. Most people don't know that everyone is mandated to report even suspected abuse, abandonment or neglect and failure to do so is a crime.

The Department sends an investigator to the home or other location of the abuse upon receipt of a report. An investigation includes a review of any previous dependency records as well as any criminal records. Once completed, an attorney for the Department reviews the results and a

decision is made whether to bring the case to court or put services in the home in an effort to leave the children in the care and custody of the parents or caregiver.

A shelter hearing is conducted if the case comes to court. During that hearing, the Court decides to remove the children from their parents or caregivers and put them into foster care, or remove the children and place them with other caregivers, or deny the shelter petition and leave the children where they are. The court must find probable cause that a child has been abused, abandoned, or neglected or is in imminent danger of illness or injury as a result of abuse, abandonment, or neglect. The court must also find that reasonable efforts have been made not to remove the children.

The next hearing in the process is the arraignment. If the parents do not consent to some form of abuse, abandonment or neglect, the case is set for trial.

The standard of proof required for a dependency case is "preponderance of the evidence" or "clear and convincing evidence." The Court must dismiss the petition if the Department cannot prove their case. If, however, the Department does prove dependency, the Court then must decide to adjudicate the child to be dependent or withhold adjudication.

During a disposition hearing, the court must review the pre-dispositional report and determine if the child can be safely returned to the parents. If a return is not possible, the court then has to determine where the child will live, establish time sharing for the parents, specifying if the time spent with the child is therapeutic, supervised, or unsupervised. The court must also determine child support and what kind of services, if any, are appropriate for the parents and child.

A case plan hearing reviews the services the parents must complete before reunification with their child. It is important to understand that completion of a service does not guarantee reunification, but it is a requirement. No reunification will occur if the parent does not change the behavior that caused them to be part of this process.

Judicial review hearings are conducted at least every six months to determine if the parent or caregiver is in compliance with the terms of the case plan and to determine if the initial goal should remain the same or needs to be changed.

The purpose of a permanency hearing is to determine if the child will reach a permanency goal which may include reunification, adoption, or some other option. This hearing must be held within a year of the date the

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child was removed from the home or within 30 days after the court determines that reasonable efforts to return the child to the home is not required.

The Department will file a termination of parental rights petition if reunification is an inappropriate goal. The petition lists the factual and legal reasons why the parents' rights should be terminated. The parents are served with the petition and are noticed to be present for an "advisory hearing." The Judge must find that it is in the manifest best interests of the children to terminate their parents' rights. To do this, the Judge must find both sufficient factual and legal grounds.

I have been a General Magistrate in the Dependency Division for approximately seven years and have some insight to share; you owe it to yourself to see juvenile court in action. Initially, the process seems confusing and dramatic. Think about a day in the life of a child in foster care; lack of parental involvement, lack of motivation by the parents, incarcerated parents, domestic violence, substance abuse, sexual abuse, human trafficking, mental health issues, hopelessness, and despair. The children do not understand why they are not with their families and often blame themselves for what has occurred. Many children in foster

care show delays in their educational and social development. Many will not graduate from high school. Some will attend a local college. Fewer will graduate from college. Only the exceptional will go to an out of state school. As of July 1, 2014, the Florida Legislature approved funding for hiring private attorneys for children with certain issues.

Look at the dependency system from the parents' point of view; there are so many people involved in each case that the parents do not know who they can trust. There are lawyers for the Department, lawyers for the GAL, lawyers for each parent, caseworkers, supervisors, therapists, and the judiciary. In many cases, there are concurrent criminal cases, domestic violence injunctions or dissolution of marriage actions with all the lawyers advising the parents in a different manner.

To practice effectively and efficiently as an attorney in juvenile court, you must, at the very least, have a basic understanding of dependency, juvenile and adult criminal law, domestic violence, family law, immigration, privacy issues and some understanding of non-legal concepts such as normal child development, psychology, social service issues that include housing, employment, disability, mental health, substance abuse, and general medical issues.

How can you make the system bet-

ter? Start by taking a moment and think about your own childhood. Who inspired you? Who encouraged you? How would your life be different if those people were not part of your life? Use the legal skills you developed to advocate for a child either in delinquency or dependency. Or, advocate for a parent. When you come to juvenile court, stop in and say hello to the judges and magistrates. Ask them how you can help. Be prepared to follow through and be a strong legal advocate.

***Steven Lieberman** graduated from Nova Law in 1983. He clerked for the Fourth District Court of Appeals followed by, insurance defense work. In 1985 he opened up his own general litigation practice. In the early 90's Steven Lieberman began to represent parents involved in the Juvenile Dependency system. He was a member of the Juvenile Courts Defense Parents Association. In addition to working in the dependency system, he served as a Guardian Ad Litem. In 2008, Steven Lieberman was appointed as General Magistrate. He hears matters involving juvenile dependency, unified family, and Marchman petitions. He assists Guardian Ad Litem's in letting them actively participate in ongoing cases. Steven Lieberman is also a big supporter of the Florida State University Seminoles!*

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## Schedule of Events

### THURSDAY, August 6, 2015

6:30 p.m. **Check In**  
 7:00 p.m.  
**Welcome Reception and Orientation**  
 7:15 p.m. – 8:15 p.m.  
**Opening Statement (Lecture)**  
*General Magistrate Diane Kirigin, Delray Beach and  
 Yueh-Mei Kim Nutter, Boca Raton*

### FRIDAY, August 7, 2015

7:00 a.m. – 7:50 a.m. **Continental Breakfast**  
 8:00 a.m. – 9:00 a.m.  
**Case Analysis: Issue Spotting with Workshop Leaders**  
 9:00 a.m. – 9:15 a.m. **Break**  
 9:15 a.m. – 11:00 a.m.  
**Workshop 1: Opening Statement**  
 11:00 a.m. – 11:15 a.m. **Break**  
 11:15 a.m. – 12:15 p.m.  
**Direct/Cross Examination: Lecture and Demonstration**  
*Terry Fogel, Miami and Scott Rubin, Miami (Lecture)*  
 12:15 p.m. – 2:45 p.m. **Lunch** (Boxed lunch provided)  
 2:45 p.m. – 6:00 p.m.  
**Workshop 2: Direct and Cross Examination of the parties**  
 6:00 p.m. – 6:10 p.m. **Break**  
 6:10 p.m. – 7:05 p.m.  
**Evidence: Lecture and Demonstration**  
*Melinda Gamot, West Palm Beach and Carmen Gillett,  
 Sarasota (Lecture)*  
 7:05 p.m. – 8:35 p.m.  
**Professional Ethics: Dinner and Lecture**  
*Justice R. Polston, Tallahassee*

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7:00 a.m. – 7:50 a.m. **Continental Breakfast**  
 8:00 a.m. – 8:45 a.m.  
**Trial Tips and Demonstrative Evidence**  
 9:00 a.m. – 11:30 a.m.  
**Workshop 3: Examination of Parties**  
 11:45 a.m. – 12:45 p.m.  
**Examination of Experts: Lecture and Demonstration**  
*Charles Fox Miller, Fort Lauderdale*  
 12:45 p.m. – 1:45 p.m. **Lunch** (Boxed lunch provided)  
 1:45 p.m. – 4:45 p.m.  
**Workshop 4: Examination of Expert**  
 5:00 p.m. – 5:30 p.m.  
**Judicial Perspective on Closing Arguments**  
*Hon. Sandy Karlan, Miami and Susan Greenhawt,  
 Fort Lauderdale (Lecture)*  
 5:30 p.m. – 6:00 p.m.  
**Closing Arguments (Lecture)**  
*Jorge Cestero, West Palm Beach*  
 6:30 p.m. – 8:00 p.m. **Reception**

### SUNDAY, August 9, 2015

8:00 a.m. – 8:50 a.m. **Continental Breakfast**  
 9:00 a.m. – 9:45 a.m.  
**Preparation of Orders and Preservation of Errors**  
*Cynthia L. Greene, Coral Gables*  
 9:45 a.m. – 10:00 a.m. **Break**  
 10:00 a.m. – 1:00 p.m.  
**Workshop 5: Final Arguments** (Boxed lunch provided)

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