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Law Center Plus: The New Practice of Family Law in a Rapidly Changing Society

Renee Goldenberg
Seventeenth Judicial Circuit of Florida

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Law Center Plus: Continuing Your Legal Education

The New Practice of Family Law in a Rapidly Changing Society

**Friday, February 20, 2015
7:30 am – 9:30 am
3305 College Avenue
Ft. Lauderdale, FL 33314**

JUDGE RENEE GOLDENBERG
CIRCUIT COURT JUDGE
UNIFIED FAMILY COURT
SEVENTEENTH JUDICIAL CIRCUIT OF
FLORIDA

BROWARD COUNTY COURTHOUSE
201 S.E. 6TH STREET
FORT LAUDERDALE, FL 33301
(954) 831-7395
FAX (954) 831-5572

BIOGRAPHICAL STATEMENT

The Honorable Renee Goldenberg is a Circuit Judge in the Seventeenth Judicial Circuit, Broward County, serving in the Family Division since January 7, 1997. She serves as Chair of the Family Division.

Judge Goldenberg Is the Past Chair of the Family Law Section of the Conference of Circuit Judges, and served on the Executive Committee. She graduated summa cum laude from Nova-Southeastern Shepard Broad Law Center in 1984, where she served as Executive Editor of Law Review. She is a fellow of the American Academy of Matrimonial Lawyers, Florida Chapter; a Florida Bar Certified Marital and Family Lawyer, and a Supreme Court certified family mediator. As an attorney, Judge Goldenberg was awarded an AV rating, the highest rating available, by Martindale-Hubbell. She served as a member of the State Commission on Family Courts which recommended the institution of family divisions, the State Commission on Child Support Enforcement, which developed the preliminary draft of the child support guidelines, and has served as an adjunct professor of law. Judge Goldenberg was the Chair of the Family Law Section of the Florida Bar in 1995-6. She has written and lectured extensively on family law to law students, lawyers and judges.

Judge Goldenberg received the 2014 Nova Southeastern University Law Center Distinguished Alumni Achievement Award, which "is given to an alumnus or alumna who exhibits 'NSU's core values' and 'has an outstanding and notable record of distinction, success, accomplishment, leadership and service in his/her profession or community.'"

Judge Goldenberg received the 2010 Jurist of the Year Award from the American Academy of Matrimonial Lawyers, Florida Chapter, which "is presented for the most outstanding contribution to the field of matrimonial law by a member of the Judiciary."

Judge Goldenberg received the 2001 Outstanding Jurist Award from the Young Lawyers Division of The Florida Bar which "annually goes to a Judge with the finest credentials, finest demeanor, finest commitment to justice and the finest respect for young lawyers practicing in the State of Florida."

Judge Goldenberg is the author of a two volume book, Florida Family Law and Practice, published in 2005 by James Publishing, Inc. and updated each year since. In 2014, a new chapter on paternity is an addition to the book.

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Nova Southeastern University/Shepard Broad Law Center
Law Center Plus Seminar:

The New Practice of Family Law in a Rapidly Changing Society

3305 College Avenue, Fort Lauderdale

February 20, 2015

8:00 to 9:30am

Best Practices for Family Law Attorneys

- I. Changing Society and Changing Practice
 - a. Paternity: Expect 50% of your cases to be a paternity: 48% Florida children born out of wedlock
 - b. Same sex issues: partnerships and children
 - c. Adults over age 50: 25% to 50%
 - d. Rise of Women: 2/3 initiated by women
 - e. Lower Income and Self Represented: Expect a self-represented party on 50% of your cases
 - f. Social Media and Electronics: Impact on the practice and Impact on professionalism
- II. 17th Judicial Circuit
 - a. Unified Family Administrative Orders on website:
<http://www.17th.flcourts.org/index.php/rules-and-policies/unified-family-orders>
 - b. Local Rules on website: <http://www.17th.flcourts.org/index.php/rules-and-policies/localrules>
 - c. Division Practices on Website:
<http://www.17th.flcourts.org/index.php/judges/unifiedfamily>
 - d. Family Court as the Emergency Room: A.O. 2008-60-UFC Administrative Order Establishing Procedures for Family Division Emergency Matters on website:
http://www.17th.flcourts.org/images/stories/17th_pdf_files/2008-60-UFC.pdf
 - e. Family Law Forms www.flcourts.org/gen_public/family/forms_rules/
- III. Family Court:
 - a. "In Criminal Court we see bad people at their best and in Family Court we see good people at their worst."
 - b. Jurisdiction: dissolution of marriage, domestic violence, name change, adoption, paternity
 - c. Complex area of the law: involves contracts, immigration, tax, real property, corporations, agency, torts, and everything else you learn in law school: need at least three mentors

- d. Self-representation (*pro se*)
 - i. 65% self-represented both sides
 - ii. 15% lawyer on one side of the case
 - iii. 20% lawyer on both sides of the case
- e. KNOW YOUR JUDGE. "I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law"

IV. Lawyer as Counselor

- a. Rule 4-2.1 Advisor: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation."
- b. Emotional Dissolution of Marriage and Lawyer Selection
- c. Lawyer Assessment of Case: REALITY and cost/benefit analysis
- d. TRIAL IS A LAST RESORT-MEDIATION. No one wins: ONE POT

V. Procedure Before Substance

- a. Lawyer as Advocate; Attorney's Fees
- b. Emergencies and Triage: THEIR TRUTH / TRAUMA SKEWS PERSPECTIVE
- c. Domestic Violence
- d. Paternity: Many statutes public policy driven
- e. Statutes, Case law, Rules

VI. List of Attachments

- a. Reprint permission*
 - i. Emotional Stages of Divorce
 - ii. Administrative Order 2008-60-UFC (Establishing Procedures for Family Division Emergency Matters)
 - iii. Judge's Checklist for Child Emergencies
 - iv. Order Denying Verified Ex Parte Motion for Temporary Injunction to Prevent Removal of Minor Child Or Pick Up Order
 - v. Order Declining to Schedule Emergency/Urgent Hearing
 - vi. Judge's Checklist for Emergencies Not Involving a Child
 - vii. Domestic Violence Seminar Summary
 - viii. Domestic Violence Flow Chart
 - ix. Judge's Checklist for Domestic Violence
 - x. Uncontested Final Hearing Checklist
 - xi. Questions to Be Asked At Uncontested Final Hearing
 - xii. Default Final Judgment of Dissolution of Marriage (Imputation)
 - xiii. Paternity Top Ten (Now Eleven)

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DISSOLUTION OF MARRIAGE: EMOTIONAL STAGES

SHOCK

DENIAL
DISBELIEF
NO ACCEPTANCE OF LOSS

ANGER

OURSELVES
OUR PARTNERS
SOMEONE ELSE

SADNESS

LOW SELF ESTEEM
LOSS OF TRUST

MOVING FORWARD

ACCEPTANCE OF LOSS
COMING TO TERMS
REORGANIZING LIFE

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

Order Number 2008-60-UFC

**ADMINISTRATIVE ORDER ESTABLISHING
PROCEDURES FOR FAMILY DIVISION EMERGENCY MATTERS**

- a) Florida Rule of Judicial Administration 2.215(b)(3) states the chief judge shall "develop an administrative plan for the efficient and proper administration of all courts within that circuit."
- b) In accordance with the authority vested in the chief judge by Florida Rule of Judicial Administration 2.215, it is ordered:
 - 1) **CHILD EMERGENCIES.** A child emergency is a matter of imminent or impending abuse, neglect or abandonment affecting the health, safety, or welfare of a child. Florida Statute 39.201 mandates certain alleged abuses be reported. If the allegations fall within the statute, the matter shall be reported to the Abuse Hotline, 1 -800- 96- ABUSE. A written motion shall be filed and signed by the filing party. A copy shall be provided to the opposing party and the divisional judge. Visitation is not an emergency, see FL STAT 61.13(4). A UCCJEA affidavit shall be filed and a copy of the affidavit shall be provided to the divisional judge.
 - 2) **CHILD PICK UP ORDERS AND INJUNCTIONS RELATED TO CHILDREN.** The Florida Supreme Court Approved Family Law Forms in 12.941 shall be the exclusive forms to be used. Only those with standing by virtue of Florida law are entitled to relief. A UCCJEA affidavit shall be filed and a copy of the motion and affidavit shall be provided to the divisional judge. Four copies of proposed orders which comply with the rule shall accompany the copy of the motion to the judge.
 - 3) **EX PARTE EMERGENCIES AND INJUNCTIONS NOT RELATED TO CHILDREN.** An emergency that is not a child emergency is defined by F.R.C.P.1.610(a) (1) (A), a matter in which "immediate and irreparable injury, loss or damage will result" and for which there is no adequate remedy at law. A written verified motion, providing for ex-parte or relief with notice, shall be filed in which F.R.C.P. 1.610 is strictly followed, with a copy to the divisional judge. Four copies of a proposed order which complies with the rule shall accompany the copy of the motion to the judge.
 - 4) **PRIORITY.** The judge is required to determine if the facts demonstrate an emergency and whether a hearing should be set on an expedited basis. An emergency shall be given priority on the Court's calendar with short notice.

- 5) CERTIFICATION AND SANCTIONS. All emergency motions shall be verified and shall include a certification by the lawyer or pro se litigant that the motion is an emergency and the lawyer or pro se litigant is acting in good faith in seeking such relief. Sanctions shall be considered by the divisional judge for the filing of emergency motions that do not comply with this administrative order.
- 6) ALTERNATE ASSIGNMENT. When the divisional judge is absent from the courthouse and an emergency matter has been filed in an assigned case, application may be made to the Court Administrator in Room 880 who will assign the matter to one of the judges of that division in accordance with a schedule of assignments made pursuant to instructions of the Chief Judge. The judge so assigned shall consider the matter after determining if it is an emergency.
- 7) This order supersedes Administrative Order I-88-A-1 number 9 as it relates to Domestic Relations cases.
- 8) This Administrative Order rescinds and supersedes Administrative Order 2008-57-UFC.
- 9) The Clerk of Courts shall provide a copy of this order along with the initial pleadings to the petitioning party or attorney for service on the respondent.

DONE AND ORDERED in chambers at Fort Lauderdale, Broward County, Florida on April 1, 2008.

/Victor Tobin
Victor Tobin, Chief Judge

JUDGE'S CHECKLIST FOR CHILD EMERGENCIES

*** IS THERE JURISDICTION?** Subject matter jurisdiction over the child does not require personal jurisdiction over the parents, but does require:

- a. Has a completed Uniform Child Custody Affidavit (1) been filed, (2) properly verified as true and correct, (3) include the full name of the child and (4) where the child has lived in the last six months?

Yes- continue to next question

No-request can be summarily denied.

- b. Is the child's full name and date of birth listed on the emergency motion or petition?

Yes- continue to next question

No-request can be summarily denied.

*** IS IT A defined CHILD EMERGENCY** as "a matter of (1) imminent or impending (2) abuse, neglect, or abandonment (3) affecting the health, safety, or welfare of a child" which (4) appears on the face of the motion? Delay is not an emergency. Timesharing is not an emergency.

Yes- continue to next question

No-request can be summarily denied.

*** IS IT A PATERNITY AND EMERGENCY RELIEF SOUGHT BY FATHER?**

If it is paternity action, the Mother is the sole custodian of a child. Section 744.301, FL ST. The Father MAY NOT be granted ex parte emergency relief unless there is an order in effect granting specific timesharing to him for which timesharing he is properly seeking emergency relief. In most initial paternity proceedings, no temporary relief may be granted, ex parte or with notice. NO pickup orders or temporary injunctions to prevent removal

Yes-- if it is a paternity, and relief is sought by FATHER request can be summarily denied.

No-if it is a dissolution of marriage OR relief sought by the Mother in a paternity, continue to next question

***HAS THE SUPREME COURT FORM BEEN USED FOR MOTION AND ORDER and properly sworn under oath?**

Yes- GRANT RELIEF

No-request can be summarily denied.

IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT IN AND FOR ____ COUNTY,
FLORIDA

Petitioner

CASE NO: FM () ()

And

Respondent

**ORDER DENYING VERIFIED EX PARTE MOTION FOR TEMPORARY
INJUNCTION TO PREVENT REMOVAL OF MINOR CHILD OR PICK UP
ORDER**

THIS CAUSE having come to be heard on Petitioner's Emergency Verified Motion, and the Court having ruled on the verified pleadings alone pursuant to the law, it is hereupon,

ORDERED AND ADJUDGED as follows:

- 1) There is a minor child that is the subject of the requested relief by petitioner:
- 2) The petitioner alleges in pertinent part that he is not married to the Mother and seeks to establish paternity.
- 3) The Administrative Order establishing procedures for family division Emergency Matters in (b)(2) requires that the Florida Supreme Court approved Family Law Forms in 12.941 shall be the exclusive forms used. The petitioner failed to use the approved form.
- 4) Pursuant to **Florida Statutes section 744.301(1), the mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.** See also, **Perez v. Gileles, 912 So. 2d 32 (Fla. 4th DCA 2005)**(Where there has been no adjudication of the putative father's paternity, but the putative father's paternal status appears on the birth certificate, "the fact that father has enforceable rights and obligations by virtue of his acknowledgment of paternity does not equate to his having a right to temporary custody superior to the mother's prior to a court declaration to that effect.")

A putative father does not have standing to seek the entry of an ex parte emergency order to prevent removal of the minor child OR a pick up order as the mother is the sole custodian and the guardian to make a decision as to the residence of the minor child without an order of custody stating otherwise.

- 5) Administrative order Establishing Procedures for Family Division Emergency Matters, A.O. 2008-60-UFC, provides that, "Florida Statutes 39.201 mandates certain alleged abuses be reported." If the allegations are of a matter of imminent or impending abuse,

neglect or abandonment affecting the health, safety, or welfare of a child, "the matter shall be reported to the Abuse Hotline, 1-800-96-ABUSE."

- 6) This motion is denied without prejudice. DONE AND ORDERED in Chambers, at Fort Lauderdale, Broward County, Florida this day of, 20.

CIRCUIT JUDGE

cc. Petitioner who shall serve the Mother with a copy of this order.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

Petitioner

CASE NO: FM () ()

And

Respondent

ORDER DECLINING TO SCHEDULE EMERGENCY/URGENT HEARING

THIS CAUSE having come to be considered on Petitioner/Respondent motion seeking an emergency or urgent hearing.

- 1) On, _____ 2013, Petitioner/Respondent filed a motion seeking an emergency hearing.
- 2) Administrative Order 2008-60-UFC established procedures for Family Division Emergency Matters. A copy of the AO is on the 17th Judicial Circuit website.
 - ___ There is compliance with AO 2008-60-UFC
 - ___ There is no compliance with AO 2008-60-UFC
 - ___ This matter is not an emergency.
 - ___ The motion is not sworn/UCCJEA insufficient
 - ___ The motion fails to attach the underlying orders/final judgments/agreements
 - ___ The subject matter of the motion may require that there be an action filed, i.e. a modification
- 3) Due Process requires notice and a reasonable opportunity to prepare and be heard. The Court may set an emergency hearing on shorter than normal notice, limiting the opportunity to prepare and present evidence, only in a true emergency.
- 4) As set forth in AO 2008-60 UFC, Florida Statute 39.201 mandates certain alleged abuses be reported. If the allegations fall within the statute, the matter shall be reported to the Abuse Hotline 1-800-96-ABUSE.

It is ORDERED that, for the reasons outlined above, the Court declines to schedule an emergency hearing on the motion. Either party may request a contested evidentiary hearing on the motion following the Court's procedures.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Broward County, Florida this day of, 2014.

CIRCUIT JUDGE

JUDGE'S CHECKLIST FOR EMERGENCIES NOT INVOLVING A CHILD

***IS THERE JURISDICTION?** Personal jurisdiction is required over all parties against whom ex parte emergency relief is sought. Note: corporations must be joined as parties for such relief sought against them.

Yes-continue to next question

No-request can be summarily denied

***IS IT A DEFINED EMERGENCY** as "a matter in which (1) immediate and irreparable injury, loss, or damage will result for which there is (2) no adequate remedy at law which appears on the face of the motion."

Yes-continue to next question

No-request can be summarily denied

***IF IT IS A FRCP 1.610 TEMPORARY INJUNCTION** has the Uniform motion and order in the 171h Judicial Circuit been submitted?

Yes-continue to next question

No-request can be summarily denied

***IF IT SEEKS EX PARTE EMERGENCY RELIEF**, is there also (in addition to the definitional compliance) further compliance with FRCP 1.610:

Is the motion SWORN to under oath?

Yes-continue to next question

No-request can be summarily denied

Is there a CERTIFICATION in the motion that the movant/counsel are acting in good faith?

Yes-continue to next question

No-request can be summarily denied

Does the REASON why prior notice should not be given appear in the motion and is the reason valid under the factual circumstances?

Yes-continue to next question

No-request can be summarily denied

Without reference to the motion, does the PROPOSED ORDER (1) define the injury and specify the reasons for entry, (2) state findings why the injury may be irreparable (3) describe in reasonable detail the act or acts restrained and (4) give the reasons why the order was granted without notice?

Yes-continue to next question

No-request can be summarily denied

BOND IS REQUIRED UNLESS THE TEMPORARY INJUNCTION IS ISSUED SOLELY TO PREVENT PHYSICAL INJURY OR ABUSE OF A NATURAL PERSON. Is a reasonable bond that complies with Florida law included in the proposed order?

Yes-continue to next question

No-request can be summarily denied

DOES the DATE AND TIME for entry of the temporary injunction appear on the face of the proposed order?

Yes-GRANT THE RELIEF

No-request can be summarily denied or the matter set for hearing with prior notice to the opposing party (ies)

Phillip M. Stahl, *One Size Does not Fit All: Psychological Issues in*

Domestic Violence, NAT'L JUDICIAL COLLEGE, (July 10, 2012, 4:00PM),
[http://www.judges.org/news/
news062812.html](http://www.judges.org/news/news062812.html).

Domestic violence may be considered in **three categories**:

Coercive-controlling violence (CCV)

In CCV, there will be a long standing history of increasingly severe
Incidents

Separation Instigated Violence (SIV)

In, SIV, the answers to the three questions (first, last, worst incident) will be the same incident

Situational Couple Violence (SVC)

In SVC, there will be a long standing history of mutual incidents, but not severe (couple's form
of "fighting" includes physical slapping, spitting, etc.).

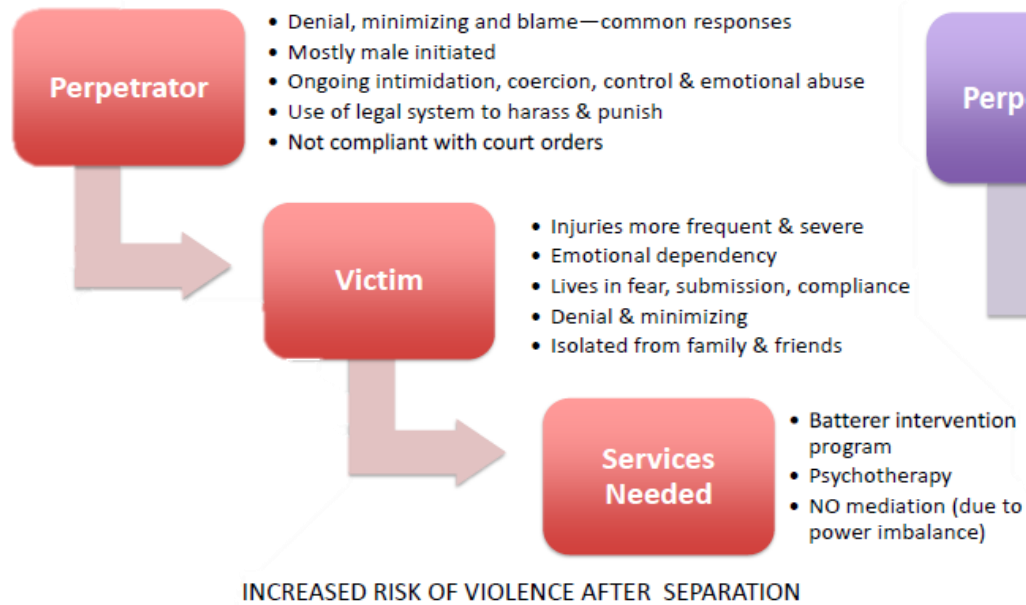
Identification is by asking three pertinent questions:

When was the first incident?

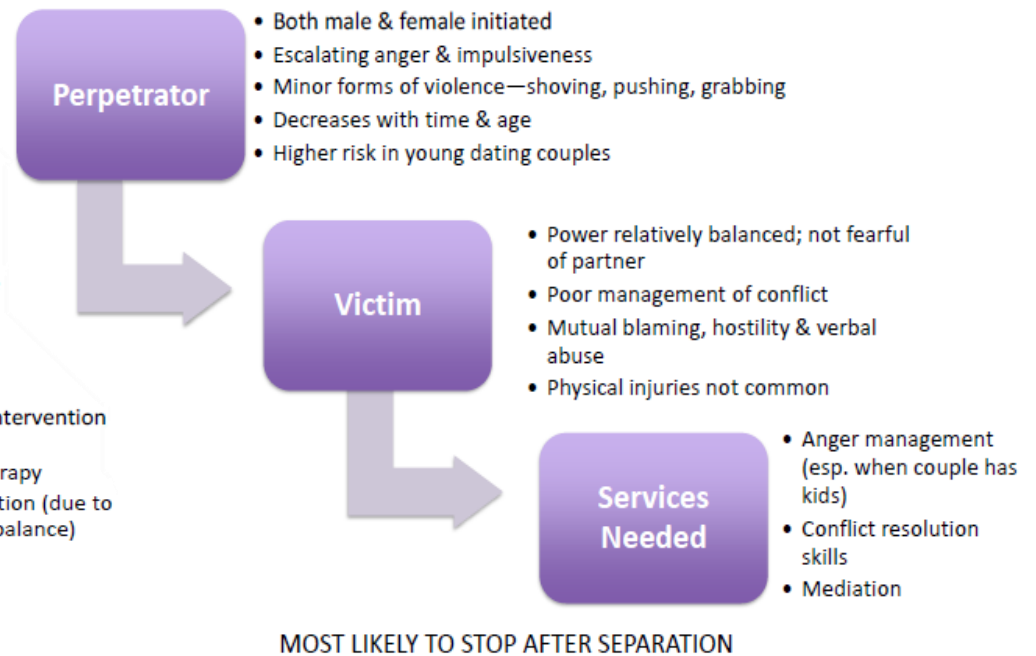
When was the last incident?

When was the worst incident?

Coercive-Controlling Violence (CCV)



Situational Couple Violence (SCV)



Separation Instigated Violence (SIV)



JUDGE'S CHECKLIST FOR DOMESTIC VIOLENCE

***ARE THERE PENDING MATTERS IN A FAMILY CASE?**

Ask for the Progress Docket in the family case. Read the family file on line and see the status of the family case. Insight as to whether to consider an order setting for hearing rather than a temporary injunction may appear by the circumstances in the family case.

***ARE PETITIONER AND RESPONDENT FAMILY MEMBERS who reside together or previously resided together OR HAVE A CHILD IN COMMON?**

Yes- continue to next question

No-request can be summarily denied or enter an order setting hearing

***IF FILED ON BEHALF OF A MINOR CHILD, DOES THE PETITIONER HAVE STANDING? Petitioner must be a parent. *IS IT A PATERNITY AND EMERGENCY RELIEF SOUGHT BY FATHER?**

If it is paternity action, the Mother is the sole custodian of a child. Section 744.301, FL ST. The Father MAY NOT be granted ex parte emergency relief unless there is an order in effect granting specific timesharing to him for which timesharing he is properly seeking emergency relief. In most initial paternity proceedings, no temporary relief may be granted, ex parte or with notice.

Who has custody? **Consider when determining placement of child if an order is to issue.**

No-- if it is a paternity, and relief is sought by FATHER request can be summarily denied or enter an order setting hearing.

Yes-if it is a dissolution of marriage OR relief sought by the Mother in a paternity, continue to next question

*** On behalf of minor child, IS IT A defined CHILD EMERGENCY** as "a matter of (1) imminent or impending (2) abuse, neglect, or abandonment (3) affecting the health, safety, or welfare of a child" which (4) appears on the face of the motion? Delay is not an emergency. Timesharing is not an emergency.

Yes- continue to next question

No-request can be summarily denied or set for hearing

***On behalf of minor child, is it post judgment in the family case? Who has custody? Consider when determining placement of child if an order is to issue.**

***IS IT A defined domestic violence? Petitioner must be (1) a victim of domestic violence (2) and/or has reasonable cause to believe he or she may become a victim**

Yes- continue to next question

No-request can be summarily denied or enter an order setting hearing

and (3) is in imminent danger. Compare the date of the most recent incident to the date of filing for "imminent" fear.

Yes- continue to next question

No-request can be summarily denied or enter an order setting hearing

Case Name _____ and _____

Case# _____

Date _____

Checklist of Documents- Uncontested Final Hearing

To be given to Deputy:

___ Driver's license (issued at least six months prior to filing) or Residency Witness Affidavit

___ Final Judgments (4 copies)

___ Original marital settlement agreement

If children:

___ original parenting plan

___ Child Support Guidelines Worksheet

Other, if desire Judge to sign at final hearing:

___ Four (4) copies of the income withholding order

Return this to the Deputy and check to confirm filed previously:

Financial Affidavits

___ Petitioner's financial affidavit: date filed _____

___ Respondent's financial affidavit: date filed _____

___ Default: Proof of respondent's income if seeking any financial relief

___ Simplified-- no financial affidavits

Certificates of Completion of Parenting Course

___ Petitioner's

___ Respondent's

Questions to Be Asked at Uncontested Final Hearing

IF CONSTRUCTIVE SERVICE:

- ☐ When was the last time you saw your spouse?
- ☐ What efforts did you make to locate your spouse prior to filing the affidavit of diligent search?

PRELIMINARY QUESTIONS:

(ask leading questions-)

- ☐ State your name.
- ☐ Do you live at _____
- ☐ Did you file a petition for dissolution of marriage on?

REVIEW DRIVER'S LICENSE TO VERIFY ISSUED 6 MONTHS PRIOR TO FILING

- ☐ Have you been a continuous resident of the state of Florida since _____?
- ☐ Do you intend to remain a resident of the state of Florida?
- ☐ Is your marriage irretrievably broken (completely over, without the ability to be repaired)?
- ☐ Is there anything the Court could order, such as marriage counseling that could assist in saving the marriage?

REGARDING AGREEMENTS/PARENTING PLANS (hand a copy to party):

- ☐ Is this a copy of the MSA/PP in which you and your spouse entered?
- ☐ I direct your attention to page _____. Is this your signature? Your spouse's?
- ☐ Are you satisfied that you and your spouse gave each other full and frank disclosure?
- ☐ Are you each aware of the other's earnings and assets?
- ☐ Did each of you freely and voluntarily enter into this agreement?
- ☐ Are you aware that these documents settle all of your rights with regard to your marriage, property (and children)?
- ☐ Do you believe that the MSA is fair, under the circumstances?
- ☐ Do you believe the Parenting Plan is in the children's best interest?

IF THERE ARE VARIATIONS / DEVIATIONS REGARDING CHILDREN:

- ☐ Does the agreement provide for sole parental responsibility?
- ☐ Why is shared parental responsibility detrimental to the children?
- ☐ Does the agreement provide for a deviation from the child support guidelines?
- ☐ Why is such a deviation appropriate and just?

IF THERE IS A RESIDENCY WITNESS (not needed if valid driver's license issued 6 months before filing):

- ☐ Please state your name and address.
- ☐ How do you know the Petitioner? How long have you known the Petitioner?
- ☐ To the best of your knowledge, how long has the Petitioner been a continuous Resident of the state of Florida?
- ☐ To the best of your knowledge, does the Petitioner intend to remain a resident?

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, COURTHOUSE

IN RE: THE MARRJAGE OF:

Case No. : FMCE XX-XXXX (36/90)

Petitioner,
and
Respondent.

DEFAULT FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

This cause came before this court on a final hearing on Petition for Dissolution of Marriage. The court, having reviewed the file and heard the testimony, makes these findings of fact and reaches these conclusions law:

1. The Court has jurisdiction over the subject matter and the parties.
2. At least one party has been a resident of the State of Florida for more than six (6) months immediately before filing the Petition for Dissolution of Marriage.
3. A default was entered on _____, against the Respondent, who failed to respond to the petition.
4. The marriage between the parties is irretrievably broken. Therefore, the marriage between the parties is dissolved, and the parties are restored to the status of being single.
5. There was 1 minor child born to the marriage. The parties shall have shared parental responsibility. The court reserves jurisdiction on time-sharing issues. The court finds that the parties have the present ability to pay support. The child support schedule is as follows: the husband shall pay the wife ****\$748.05** per month for support of the parties' minor child commencing on the date of this final judgment and due monthly thereafter on the 1st day of each month. Said payments shall continue until the minor child reaches 18 years of age, enters the military service, marries or is otherwise emancipated. Unless modified by subsequent court order, child support shall be automatically terminated on **October 4, 2027.**
6. There is no marital property or marital debts to divide, as the parties have previously divided all of the personal property.
7. (____)Yes. (____)No. The wife's former name of _____ is restored.
8. The Court reserves jurisdiction to modify and enforce this final judgment.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, on the _____ day of _____, 2014.

CIRCUIT JUDGE

Cc: **Petitioner Respondent**

****Imputation or Income.** Florida Statutes section 6 1.30(I)(b) was amended in 2010 to include: if the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income shall be automatically imputed to the parent and there is a rebuttable presumption that the parent has income equivalent to the median income of year round full time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census. **Therefore, for 2012, child support orders shall include imputation to such n Father of \$50,316 and to n Mother of \$38,685.** The Court may refuse to impute income to a parent if the court finds it necessary for that parent to stay home with the child who is the subject of a child support calculation.

JUDGE'S PATERNITY TOP TEN (NOW ELEVEN)

1. The MOTHER OF A CHILD BORN OUT OF WEDLOCK IS THE NATURAL GUARDIAN OF THE CHILD and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.
Fla.Stat. § 744.301(1)
 - MOTHER IS THE SOLE CUSTODIAN OF A CHILD BORN OUT OF WEDLOCK, THEREFORE:
 - ✓ SHE MAY LEAVE THE STATE BEFORE A PATERNITY ORDER IS ENTERED; AND,
 - ✓ CANNOT BE ORDERED TO RETURN BEFORE A PATERNITY ORDER IS ENTERED.
 - PUTATIVE FATHER HAS NO STANDING, THEREFORE:
 - ✓ NO PICK UP ORDERS TO PUTATIVE FATHERS!
 - ✓ NO INJUNCTIONS TO PREVENT REMOVAL TO PUTATIVE FATHERS!
 - ✓ NO CUSTODY OR VISITATION CAN BE ORDERED IN ANY EX PARTE PROCEEDING BROUGHT BY PUTATIVE FATHER, INCLUDING DOMESTIC VIOLENCE.
 - ✓ PATERNITY SHOULD NOT BE ESTABLISHED IN A DOMESTIC VIOLENCE PROCEEDING. A SEPARATE ACTION IS REQUIRED. IF GRANTING VISITATION IN A DOMESTIC VIOLENCE AFTER HEARING, LIMIT IT TO 6 WEEKS TO AFFORD TIME TO BRING A PATERNITY ACTION.
 - INTACT MARRIAGE, PUTATIVE FATHER HAS NO STANDING:
 - ✓ A putative father does not have standing to seek to establish the paternity of a child where the child was born into an intact marriage and where the married woman and her husband object to the paternity action.
2. CHECK RETURN OF SERVICE
 - To see if respondent served outside the state of Florida. If so:
 - ✓ CHECK TO SEE IF LONG ARM ALLEGATIONS ARE MADE IN THE PETITION: "the petitioner and respondent engaged in an act of sexual intercourse within the state of Florida with respect to the conception of the child: name of child, date of birth."
 - ✓ IF THIS DOES NOT APPEAR IN THE PETITION, PETITION MUST BE AMENDED AND SERVICE OF PROCESS MUST BE REPEATED!
3. JURISDICTION OVER THE PATERNITY ACTION COMES FIRST, NOT UCCJEA; THEREFORE:
 - EVEN IF FLORIDA IS HOME STATE, IF PATERNITY HAS NOT BEEN ESTABLISHED, AND THE SEX ACT OCCURRED IN ANOTHER STATE, YOU DO NOT HAVE PERSONAL JURISDICTION OVER THE RESPONDENT.
 - THEREFORE, UNLESS THERE IS AN EMERGENCY MATTER FOR TEMPORARY UCCJEA JURISDICTION ONLY, JURISDICTION OVER PATERNITY GOVERNS FIRST, YOU MUST:

- ✓ NOT TAKE JURISDICTION UNDER UCCJA IF THERE IS NO PATERNITY JUDGMENT
 - ✓ DISMISS FOR LACK OF JURISDICTION.
 - ✓ REMEMBER UNWED MOTHER IS SOLE CUSTODIAN OF CHILD.
4. THERE IS NO CONSTRUCTIVE SERVICE ALLOWED IN PATERNITY.
 5. IF A PETITION ONLY SEEKS CUSTODY AND VISITATION AND IT INVOLVES UNWED PARTIES, IT IS A PATERNITY ACTION.
 - If the allegation says that paternity is established in a DOR case that may not be so.
 - ✓ IF IT SAYS PATERNITY IS ESTABLISHED BY AN ACKNOWLEDGEMENT, AN ORDER OF PATERNITY IS STILL NEEDED.
 - ✓ IF IT IS A PATERNITY ACTION PETITION MUST BE AMENDED AS A PATERNITY ACTION.
 - ✓ HOLD A CASE MANAGEMENT CONFERENCE AND ASK THE QUESTIONS TO SEE IF AMENDMENT NECESSARY.
 - ✓ AT A CASE MANAGEMENT CONFERENCE, ASK THE PARTIES TO CONFIRM PATERNITY AND DO A SIMPLE ORDER: "the parties agree that the petitioner/respondent is the father of the minor child: name of child, date of birth."
 6. SHARED PARENTAL RESPONSIBILITY UNDER CHAPTER 61 DOES NOT APPLY UNTIL AN ORDER IS ENTERED BY THE COURT ESTABLISHING PATERNITY and A PARENTING PLAN ENTERED PROVIDING FOR THIS.
 7. IF THERE IS A QUESTION OF PATERNITY:
 - ORDER A PATERNITY TEST:
 - ✓ THE TESTING ORDER MUST CONTAIN THE LANGUAGE in Fla. Stat. § 742.12(2): "any objection to the test results must be made in writing and must be filed with the court at least 10 days prior to the hearing. If no objection is filed, the test results shall be admitted into evidence without the need for predicate to be laid or third party foundation testimony to be presented."
 - ✓ HOWEVER IF THERE IS AN ACKNOWLEDGMENT OF PATERNITY NOT RESCINDED WITHIN 60 DAYS, THEN JUDGE CANNOT ORDER PATERNITY TEST.
 8. CUSTODY AND VISITATION DO NOT HAVE TO BE ADDRESSED IN A PATERNITY FINAL JUDGMENT, ONLY CHILD SUPPORT
 9. LEGAL FATHERS ARE INDISPENSABLE PARTIES.
 10. ADMINISTRATIVE ORDERS AND LOCAL RULES/LOCAL PROCEDURES:
 - A request for custody or visitation MAY NOT be filed in a DOR action. Fl stat. 409.2564
 - ✓ The petitioner in a DOR action is DOR. Fl stat. 409.2567
 - ✓ There is no identity of parties.
 - ✓ DOR is not a parent of the child.
 - ✓ A separate action must be filed. (This is not necessarily the same practice in other circuits.) .

- If a DOR action is filed first and a paternity action is filed second or vice versa, they are NOT consolidated or transferred into one another. They are assigned by the clerk's office to the same division. If it is not done at the time of filing, then the clerk should be directed to reassign the case to the same division.
 - Some DOR judgments do not make a finding of paternity and therefore there is no adjudication of paternity for the filing of a petition for custody and visitation.
 - ✓ These subsequent petitions will be dismissed due to lack of standing.
 - ✓ A paternity action needs to be filed.
 - When DOR is a party, the style of the case does not change to leave DOR out.
 - ✓ If DOR comes into a paternity case, they are NOT added to the style.
 - ✓ The style does not change.
11. "A paternity action filed under Chapter 742 is not to be utilized by formerly cohabiting individuals to determine issues relating to the division or ownership of property.



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