


2011 Updates in Family Law



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## Overview



- Alimony
  - codification of case law
- Child Support / UIFSA
- Military Timesharing
- Temporary Custody vs. Concurrent Custody
- The Florida Power of Attorney Act
- Domestic Violence Injunctions
- "Sexting"

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## Alimony



- Fla. Stat. §61.08 (4) – **rebuttable presumption**
  - The 7-17 Rule
    - Less than 7 years: short term marriage
    - 7-17 years: moderate marriage
    - 17+ year: long term marriage
  - Measuring line: date of marriage to date of filing an action for dissolution of marriage

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## Alimony



- Fla. Stat. §61.08 (5) – **bridge the gap alimony**
  - Purpose: transition from marriage to single life
  - Factors: legitimate, identifiable short term needs
  - Length may not exceed 2 years
  - Terminates upon death of either party or remarriage of recipient spouse
  - NOT modifiable in amount or duration

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## Alimony



- Fla. Stat. §61.08 (6) – **rehabilitative alimony**
  - Purpose: assist a party in establishing the capacity for self-support through either:
    - Redevelopment of previous skills or credentials; OR
    - Acquisition of education, training, or work experience to develop appropriate employment or credentials
  - Factors: specific and defined rehabilitative plan
  - No length requirement
  - May be modified or terminated based on substantial change of circumstances, noncompliance w/rehabilitative plan, or upon completion of the plan

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## Alimony



- Fla. Stat. §61.08 (7) – **durational alimony** is now available in long term marriages if there is ongoing need on a permanent basis.
  - Awarded when permanent periodic alimony is inappropriate
  - Additional Factor: instead of just showing need, you must demonstrate "ongoing need".
    - Allows for judicial discretion
  - Modifiable in amount, NOT duration
  - Terminates upon death (either party) or remarriage (recipient spouse)

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## Alimony

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- Fla. Stat. §61.08 (8) – **permanent alimony** is for long-term marriages, generally.
  - Based on factors in §61.08 (2)(a) – (i)
    - Burden of proof
      - Moderate marriage: clear and convincing evidence
      - Short term marriage: written findings of exceptional circumstances
  - The court must make written findings that no other form of alimony is fair and reasonable under the circumstances of the parties
  - Terminates upon the death (either party) or remarriage (recipient spouse)
  - Modifiable: substantial change of circumstances OR existence of a supportive relationship in accordance w/61.14.

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## Alimony

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- Fla. Stat. §61.08 (9) – Alimony award may not leave the payor w/significantly less net income than the net income of the recipient, unless there are written findings of exceptional circumstances.

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## Alimony

For an in-depth discussion of the recent alimony changes, please view the ALIMONY webinar by Cynthia Stump Swanson, Esquire presented on August 25, 2011. You may access it from our homepage, [www.trls.org](http://www.trls.org).




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## Child Support / UIFSA

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- Uniform Interstate Family Support Act (UIFSA)
- Chapter 88, Florida Statutes
- Changes fully incorporate provisions of the Hague Convention
- Definitional changes
  - "foreign" now includes states AND countries
  - Comity now applies as to enforcing foreign support orders
  - Support orders are now clarified

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## Child Support / UIFSA

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- 88.2011(2) – bases for jurisdiction over a non-resident
  - Personally served w/in the state
  - Individual submits to jurisdiction (consent, enter general appearance or files responsive pleading)
  - Individual resided w/the child in this state
  - Child resides in the state because of the individual
  - Individual engages in sexual intercourse in the state and the child may have been conceived as a result of the intercourse
  - Individual asserted parentage in a tribunal or submitted to Florida Putative Father Registry

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## Child Support / UIFSA

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- Bases for jurisdiction over a non-resident; exceptions
  - If all parties and the child move out of state, FL no longer has jurisdiction for purposes of modifying the child support order
  - The parties may ORALLY consent to jurisdiction in FL (vs. written consent which was previously needed)
  - Both parties can also consent that FL no longer has jurisdiction for purposes of modifying the CS order.

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## Child Support / UIFSA



- 88.2051 – continuing exclusive jurisdiction
  - ▣ FL has continuing exclusive jurisdiction to modify support order throughout the existence of the support order.
  - ▣ FL cannot modify a foreign order where the foreign tribunal has continuing, exclusive jurisdiction of the support order

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## Child Support / UIFSA



- Other changes
  - ▣ 88.3041 – FL required to convert foreign currency to US currency
  - ▣ 88.3051 – FL court can require a party to disclose their email address (which may allow for effective service down the road)
  - ▣ 88.3121 – sealing of confidential information now allowed by the courts, but there are circumstances where information may be unsealed

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## Child Support / UIFSA



- Other changes
  - ▣ 88.3161 – there are special rules of evidence and procedure
    - ▣ Court may accept a voluntary acknowledgment of paternity to establish parentage of a child
  - ▣ 88.4011 – CS can be ordered by someone who lives outside of FL w/o a formal adjudication of paternity
  - ▣ 88.6111 – modification of the support order based on the laws of the issuing state (ex: in NY CS ends at 18; you cannot come to FL and ask for CS to end at 21)

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### Military Timesharing



- HB 621 / SB 1650 / Fla. Stat. 61.13002
- Effective: July 1, 2011
- Military member's activation, deployment, or temporary assignment AND the resulting temporary disruption to the child cannot be the sole basis for modification of timesharing or of parental responsibility.
- BOP for modification: clear and convincing + BIC

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### Temporary Custody v. Concurrent Custody



- Temporary Custody of Minor Children By Extended Family (Fla. Stat. Chapter 751)
  - Concurrent custody means an eligible extended family member is awarded custodial rights to care for a child concurrent with the child's parent or parents.
  - See 751.001(1)

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### Temporary Custody v. Concurrent Custody



- Temporary Custody of Minor Children By Extended Family (Fla. Stat. Chapter 751)
  - Factors for Temporary Custody
    - Consent by parents
    - Caring full time for the child in the role of a parent
  - Factors for Concurrent Custody
    - Consent by parents,
    - Caring full time for the child in the role of a parent AND
    - Have / had physical custody of the child for at least 10 days in any 30 day period within the last 12 months
    - Not have signed documentation from the parents to adequately care for the child

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### Temporary Custody v. Concurrent Custody

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- Orders for Temporary Custody
  - BOP: clear and convincing evidence
  - Factors: Child's parents are unfit (must find that the parent has abused, abandoned, or neglected the child, as defined in chapter 39.
- Orders for Concurrent Custody
  - If one (1) parent objects, in writing, the court may not grant the petition, EVEN IF THE OTHER PARENT CONSENTS.
    - Convert to a Petition For Temporary Custody and set the matter for further hearing OR
    - Dismiss the Petition For Concurrent Custody Without Prejudice
- See Fla. Stat. 751.05

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### Temporary Custody v. Concurrent Custody

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- Terminating Temporary Custody
  - At any time, either or both of the child's parents may petition to modify or terminate the order
  - Court SHALL terminate if it finds that the parent is fit, or by consent of the parties
  - BIC
  - See 751.05(6)
- Terminating Concurrent Custody
  - At any time, either or both of the child's parents may move the court to terminate the order
  - Court SHALL terminate the order upon a finding that either or both of the child's parents object to the order. (If terminated, the petitioner can still seek Temporary Custody via another Petition)
  - See Fla. Stat. 751.05 (7)

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### Temporary Custody vs. Concurrent Custody

Pro se forms for both temporary and concurrent custody (+ proposed orders and waiver / consents) available at [www.flcourts.org](http://www.flcourts.org) → family law forms

• See forms 12.970 – 12.979




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## The Florida Power of Attorney Act

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- HB 815 / SB 670 / Fla. Stat. 709
- **The filing of a DOM Petition terminates the authority of an agent married to the principal unless the POA states otherwise.**
  - No longer need to do a separate revocation with divorcing spouses
- Effective Date: October 1, 2011
  
- There are **EXTENSIVE** changes to the laws governing POAs (durable and non-durable)
- Please watch "The Top 10 Things You Need To Know About The Florida Power of Attorney Act of 2011" webinar presented by Sam W. Boone, Jr., Esq. on August 22, 2011. [www.flris.org](http://www.flris.org)
- The Real Property section of the Florida Bar has a white paper, "The Florida Power of Attorney Act – More Durable Than Ever" which details the changes.

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## Domestic Violence Injunctions

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- SB 240
- Effective: July 1, 2011
- §784.047 – amends and expands penalties imposed upon violation of protective injunctions against RV, SV, and dating violence (now identical to violation of DV)
- Court can restrict Respondent from "going or being within 500 feet of Petitioner's residence, school, employment, or specified place regularly frequented by Petitioner, named family or household member." (emphasis added)
  - Ex: places of worship, gyms, etc.

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## Domestic Violence Injunctions

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- **Additional Violations**
  - Knowingly and intentionally going within 100 feet of Petitioner's vehicle (**occupied or unoccupied**)
  - Defacing / destroying Petitioner's personalty (including motor vehicle)
  - Refusing the surrender firearms or ammunition if ordered to do so by court

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## “Sexting”



- HB 75 / SB 888
- New criminal act that applies to minors only
- Effective date: October 1, 2011
- If a minor uses an electronic device to send to another minor nudity or they possess photos sent by another minor – they are in violation of the statute. Exceptions:
  - Material was not solicited by the minor who rec'd it
  - Minor reported it to legal guardian or school / law official AND
  - Minor did not forward it to a third party
- Violation
  - 1<sup>st</sup> violation: non-criminal, 8 hours community service, fine
  - 2d violation: 1<sup>st</sup> degree misdemeanor
  - 3d violation: 3d degree felony

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## Conclusion



- Alimony
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- Temporary Custody vs. Concurrent Custody
- The Florida Power of Attorney Act
- Domestic Violence Injunctions
- “Sexting”

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## Questions and Discussion



Thank you for your time.  
Please enjoy your day.

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## Najah N. Adams, Esquire

- Staff Attorney at Three Rivers Legal Services, Inc. (2008 – present)
- B.S. Telecommunications (University of Florida, 2001)
- Masters in Family Youth and Community Science (University of Florida, 2005)
- J.D., w/ family law certificate (Levin College of Law, University of Florida, 2005)
- Vice-Chair, Suwannee Valley Victim Assistance Coalition
- Treasurer, Josiah T. Walls Bar Association
- Secretary, Third Judicial Circuit Bar Association
- Board Member, Gainesville Home Instruction For Parents of Preschool Youngsters



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