

**THIS BOOKLET CONTAINS THE
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Florida Family Law

Publication 513 Release 31

April 2003

HIGHLIGHTS

New “Interstate Child Custody” Chapter 74

- Alerting attorneys to changes in practice from the UCCJA and coordinating compliance with the federal Parental Kidnapping Prevention Act (PKPA), this new chapter completely covers the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) effective October 1, 2002.

Tax Treatment of “Alimony”: Florida Supreme Court Quotes *Abrams, Florida Family Law*

- Conflict between districts resolved: Nothing in the internal revenue code provisions prevents a trial court from ordering that alimony payments were to be excluded from the gross income of the payee and not deducted by the payor.

Complimentary Florida Family Law Litigation Handbook

- Florida Family Law subscribers also receive this reorganized and

updated 2003 edition that gathers all the statutes and rules you’ll need, plus a new Analysis of Major Florida Family Law Legislation feature, in a handy desk reference and portable format.

Thirty-two New Forms

- This release includes all Florida Family Law Forms revised or added since our last release.

Update of Alimony Coverages

- Chapter 31 is revised in part and updated throughout to ensure that we fully track the evolution of the law.

Recent Legislative and Judicial Developments Added

- Our analysis of all relevant judicial decisions and legislative enactments since the last release is incorporated throughout the set.

Trial Court May Order Tax-Free “Alimony”: *Rykiel v. Rykiel*

The Florida Supreme Court quashed the decision of the Fifth District Court of Appeal in *Rykiel v. Rykiel*, 795 So. 2d 90 (Fla. 5th

DCA 2000), which had erroneously interpreted IRC § 71 as empowering only the divorcing spouses to agree in a written instrument that alimony payments were to be nondeductible by the payor and excludible from the gross income of the payee. Quoting from *Abrams, Florida Family Law*, the Court noted that, while the usual treatment of alimony is to make the alimony taxable to the recipient:

If the trial court wanted to avoid burdening the former wife with the tax consequences of the alimony payments the court has the discretion to provide that “the payor [former husband] will not deduct the alimony payments so that the payee [former wife] may then exclude the payments from gross income.” Brenda M. Abrams, *Family Law* § 38.23(2)(d) (1999), citing Temp. Treas. Reg. § 1.71-1T(b), Q&A 8.

Rykiel v. Rykiel, 28 Fla. L. Weekly S43, 2003 Fla. LEXIS 39, *4 (Fla. Jan. 16, 2003), quoting from *Almodovar v. Almodovar* 754 So. 2d 861, 862 (Fla. 3rd DCA 2000). See Ch. 38, §38.23[2][d].

Interstate Child Custody, Chapter 74

This new chapter addresses courts’ jurisdiction to decide child custody and visitation issues pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as enacted in Florida. Included in the chapter is coverage of Florida courts’ jurisdiction to modify other states’ custody and visitation orders under the UCCJEA, which applies in Florida to actions filed on or after October 1, 2002. The chapter also discusses Florida courts’ enforcement of other states’ custody and visitation orders pursuant to the UCCJEA.

In addition to coverage of the UCCJEA, this chapter covers the Uniform Child Custody and Jurisdiction Act (UCCJA), which has been repealed in Florida but still applies

to actions filed before October 1, 2002. Finally, this chapter covers the federal Parental Kidnapping Prevention Act (PKPA).

To introduce you to new Chapter 74, here is a listing of the main sections:

A. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

§ 74.01 Purposes of UCCJEA

§ 74.02 Proceedings and Orders to Which UCCJEA Is Applicable

§ 74.03 Definitions of Terms Used in UCCJEA

§ 74.04 Subject Matter Jurisdiction

§ 74.05 Personal Jurisdiction

§ 74.06 Joinder and Intervention

§ 74.07 Refusal to Exercise Jurisdiction

§ 74.08 Interstate Cooperation Between Courts

§ 74.09 Appearance of Persons at Hearing

§ 74.10 Binding Effect of Order on Properly Served Parties

§ 74.11 Exclusive, Continuing Jurisdiction

§ 74.12 Enforcement Proceedings

B. Uniform Child Custody and Jurisdiction Act (UCCJA)

§ 74.20 Development, Purposes, and Nature

§ 74.21 Subject Matter Jurisdiction

§ 74.22 Enforcement of Foreign Custody Decree

§ 74.23 Modification of Foreign Decree

§ 74.24 Attorneys’ Fees and Costs

§ 74.25 Defenses to Enforcement of Foreign Decree

C. Parental Kidnapping Prevention Act (PKPA)

§ 74.40 Purpose and Application

§ 74.41 Procedure

§ 74.42 Subject Matter Jurisdiction

APPENDIX Uniform Child Custody Jurisdiction and Enforcement Act

New Florida Family Law Forms

This release includes all the standard family law forms that were revised or added in 2002. Included, among others, are the following:

- An amended child support guidelines worksheet that expands the provisions regarding expenses of the parties and addresses requests for child support amounts that deviate from the guidelines [Fla. Fam. L. R. P. Form 12.902(e)], *see* Ch. 33;
- A revised UCCJA affidavit that reflects in its terminology and citations to authority the enactment of the UCCJEA to replace the UCCJA [Fla. Fam. L. R. P. Form 12.902(d)], *see* Ch. 32;
- Amendments to the stepparent adoption forms and a new stepparent adoption form—an Indian Child Welfare Act Affidavit [Fla. Fam. L. R. P. Forms 12.981(a)(2) etc.], *see* Ch. 91; and
- Domestic violence forms amended to reflect 2002 legislation prohibiting filing fees in domestic violence actions [Fla. Fam. L. R. P. Forms 12.980(b) etc.], *see* Ch. 11.

The Publication Table of Forms, also updated this release, lists the current version of every form in *Abrams, Florida Family Law*.

Alimony, Chapter 31

In addition to the recent developments analyzed this release and added to our topical

coverage, we have completely reviewed and confirmed the authority cited in Ch. 31, Alimony, supplementing and revising our coverage as necessary to ensure that we track the evolution of the law in this area and provide you with all the relevant citations..

A Few of the New Statutes and Court Decisions Analyzed and Added this Release:

- **Written Appellate Opinions.** New Florida Rule of Appellate Procedure 9.330(a) establishes a procedure for requesting district courts to issue written opinions. The Florida Supreme Court decision in *Stallworth v. Moore* expressly holds that it does not have jurisdiction to review unwritten district court opinions. *See* Ch. 32.
- **Equitable Distribution of Non-marital Interest in Marital Property.** A Third District Court of Appeal opinion resolves the issue of whether a spouse's personal services remain a basis for a special equity after enactment of the equitable distribution statute in 1988. The district court held that pursuant to the terms of the equitable distribution statute, a spouse's contribution of labor to the other spouse's nonmarital property during marriage cannot give rise to a special equity and ownership of the property by the contributor-spouse. Instead, labor performed by a spouse in connection with the other spouse's nonmarital property constitutes marital appreciation of non-marital property, which renders the marital portion of the nonmarital property subject to equitable distribution [*Cisneros v. Cisneros*, 27 Fla. L. Weekly D 2573, — So. 2d — (Fla. 3d DCA November 27, 2002)]. See the updated discussion in Ch. 34.

- **Unvested Stock Option.** Revisions to Chapter 34 this release also add discussion of a First District Court of Appeal decision regarding whether an unvested stock option received by a spouse from his or her employer prior to the filing of a petition for dissolution of marriage may be identified as a marital asset. The question, which had not been previously decided in Florida, was answered by the First District in the affirmative [*Jensen v. Jensen*, 824 So. 2d 315 (Fla. 1st DCA 2002)].
- **Restrictions on Custodial Parent Relocation.** Chapter 32 discusses a conflict between the Third and Fourth Districts regarding whether a trial court may include a restriction on relocation in a final judgment of dissolution without evidence that the custodial parent intends to move. Included in the court's discussion in *Leeds v. Adamse*, 27 Fla. L. Weekly D1939, D1940, — So. 2d — (Fla. 4th DCA August 28, 2002), is the Fourth District's description of the "catch-22" confronting noncustodial parents who must petition for modification of custody after the custodial parents have already relocated with the parties' children.
- **Psychotherapist-Patient Privilege.** Chapter 32 also contains a discussion of *O'Neill v. O'Neill*, 823 So. 2d 837 (Fla. 5th DCA 2002), in which the court describes how a parent places his or her own mental or emotional condition at issue in a child custody case by engaging in conduct that constitutes a "calamitous event" during the proceedings, so that the psychotherapist-patient privilege is vitiated and the other parent may obtain discovery of his or her mental health records.
- **Tax: Transfers Incident to Divorce.** Chapter 38 describes a Revenue Ruling in which the I.R.S. has expanded the protections of I.R.C. Section 1041 (regarding transfers incident to divorce) to transfers of rights to receive accrued income at later dates (i.e. transfers of stock options or deferred compensation).
- **Alimony.** In *Broome v. Broome*, 821 So. 2d 406 (Fla. 2d DCA 2002), the court indicated possible ground for imputing income to obligor who owns business: his or her opportunity to save money by reducing business staff. The court went on to further indicate that the trial court need not ensure alimony obligee's standard of living at expense of parties' children. In *Bacon v. Bacon*, the trial court abused its discretion in denying alimony to wife of 27-year marriage. The trial court has discretion to not impute income that requires spouse to immediately obtain employment, and the trial judge erred in failing to consider expenses of employment in determining wife's needs. Judge Farmer's lengthy concurring opinion suggests that more statutory guidance and less judicial discretion should be employed in determining alimony awards. See Ch. 31.
- **Shared Parental Responsibility.** Ch. 32 has been revised to incorporate a recent child custody case clarifying that if one parent is named primary residential custodian of the parties' child, that parent is entitled to spend more time with the child than the noncustodial parent spends with the child, *Johnson v. Johnson*,

821 So. 2d 1275 (Fla. 2d DCA 2002), and *Goldman v. Link* regarding (un)friendly (noncustodial) parent and permissible conditions allowed in resulting supervised visitation order.

- **Attorneys' Fees.** *Guerin v. DiRoma* holds that *Rosen v. Rosen* is applicable to awards of attorneys' fees in paternity actions, because of identical nature of § 742.045 to § 61.16.

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