

Judge Frederick Smith and Judge William Davis came to the recent Family Law Section meeting, and shared some notes they had for members of the bar. We sincerely appreciate the willingness of both Judges to educate lawyers on some of their personal preferences, as well as to remind us of some “best practices.”

Judge Smith pointed out that if the parties have agreed to continue a hearing, generally he would go along with that. Further, if the parties can agree to a continuance, he would encourage them to also agree to a new hearing date and time, and to include the new date and time in a proposed order continuing the first hearing. This is efficient, and helpful to have the information all in one order. Judge Davis agreed with this.

The Judges also pointed out a few “etiquette” or “form” items: First, where you type the Judge’s name below a signature line for the Judge to sign an order, don’t type “Honorable” before the name. Judge Davis pointed out that we should not use the phrase “Ordered and Adjudged . . .” where the document is an order, but not a judgement. The judges also requested that we not fax courtesy copies of motions unless they are emergency motions. They consider that items which are faxed are a request for expedited or emergency treatment. If that is not the case, please don’t fax courtesy copies of motions to their chambers. On the other hand, if you are requesting emergency consideration, please fax a cover letter with your motion, explaining what exactly you are asking for – not the remedy so much as the length of time needed for a hearing, or requesting a hearing within X days, and so on.

Also, when you send a proposed order resulting from a hearing, please include a cover sheet, saying that the opposing attorney has reviewed and approved the order, or that you and the opposing attorney cannot agree upon an order and this is your version. Judge Smith also will be happy to accept and review proposed orders via email. Judge Davis will also accept proposed orders via email, and pointed out that you still need to send your postage paid envelopes, too.

On to “best practices:” Judge Smith wanted to remind us of the “PEACE” acronym for presenting evidence and for proposing rulings in dissolution of marriage matters. That is, that courts are to rule on dissolution topics in a certain order, because the resolution of each issue depends, in part, on the resolution of the earlier decided issue. “P” stand for parenting. Decisions about parenting plans and timesharing should be made first. Then, the court should consider issues regarding the “E”quitable distribution of assets and debts. This is because the distribution of assets, particularly income producing assets, will affect a party’s need for or ability to pay “A”limony. The amount of alimony which may be paid will then affect the calculations of “C”hild support. The final “E” stands for “everything else,” which most often includes attorney’s fees, but may include other matters.

The final acronym Judge Smith wanted to mention was “GIGO,” which stands for “Garbage In, Garbage Out.” If we attorneys do not provide good evidence on which Judges can base their decisions, then their decisions cannot be the best. If we don’t provide evidence of the present market value of the marital home or the parties’ vehicles, for example, then how can

the Judge make an appropriate equitable distribution award?

Both judges urged us to utilize the opportunity to present an opening statement. This really does allow the Judge to know what our motion is about, and to focus on the information the Judge needs to make a decision on the issue that everybody is there for. It goes without saying, of course, that you cannot make claims in an opening statement that you cannot prove. So, be careful, be concise, and stay on point.

It is so helpful to the bar when judges will come to section meetings to talk about procedures they prefer, and to discuss substantive law issues. Of course, we all realize that judges cannot and do not pre-judge an issue. But to be able to understand how judges view certain types of evidence, or how they understand a certain appellate case ruling to be applied – all these things help raise the level of practice in this area.

In March, another judge came to share his expertise with FLAG (Family Law Advisory Group). Ray McNeal, retired Circuit Judge from Ocala, talked about a recent conference on domestic violence. At this very well attended meeting here, Judge McNeal presented information on different theories regarding domestic violence. He pointed out that there are now several different models, which differentiate among types of perpetrators and victims. He mentioned “Situational Couples Violence,” which may be initiated equally by men and women and is a violent reaction to a specific disagreement. Usually, the partners have poor conflict resolution skills and they are not fearful of each other. With this type of violence, there are fewer incidents, and fewer and less severe injuries. The violence is very likely to stop after the parties separate.

This situational violence was contrasted with “coercive controlling violence,” which includes the following general characteristics: Primarily committed by men against women; for the purpose of power and control; violence is more severe and injuries more serious; separation increases the risk to the victim; victims often suffer Post Traumatic Stress Disorder, and depression. A newly identified subset of high risk populations for this type of violence include aggressive, delinquent, anti-social teenagers and young adults. In these groups, women initiate violence at higher rates than men.

Another type of domestic violence is a result of psychopathology, where one or both parties may have a diagnosed mental illness. When the violence is examined, it is often found that the batterer has a history of mental illness, of childhood exposure to violence, attachment deficits, extreme fluctuations in mood, suicidal ideations, alcohol abuse, low self-esteem, chronic hostility or anger, extreme anger or need for control, unassertiveness, physical abuse toward children, cognitive distortions of social cues, distortion in information processing and social skills deficits, strong sex stereotypes, and lack of verbal skills.

Judge McNeal then went on to point out that, while it may be helpful in treating the perpetrator to identify which type of violence was involved, there is a danger in differentiating the types of violence. These dangers include that this ignores the reality of the violence against women. Despite reports about females committing violence, women are more likely than men to

be killed or physically harmed by an intimate male partner. 30% of female murder victims were killed by an intimate partner, while only 5% of male murder victims were killed by an intimate partner. (FBI statistics 1976-2005). Women are seriously injured at rates roughly seven times the rate of men.

He also discussed the “power and control” wheel, which is familiar to those who work with domestic violence. He reported that this is an accepted method used by scholars and researchers around the world. He also mentioned that research now points out great concerns about male socialization today with the prevalence of violence and pornography in video games such as Grand Theft Auto IV. Are your kids playing that game?

Judge McNeal went on to discuss the implications of domestic violence in designing parenting plans. He pointed out that while accusations of violence may seem unbelievably high during custody disputes, in one California study, 74% of the accusations by mothers against fathers were substantiated, and 50% of father’s accusations against mothers were substantiated. Courts must consider when contact between the child and a parent should be supervised, suspended, or terminated. Judge McNeal stated that in doing this, courts must ask what is the impact of intimate partner violence on children in cases where neither partner is violent toward the children? And what is the likelihood that a parent who is violent toward his or partner will also be violent toward the children? Should a parent who has been violent have custody or unsupervised access to the children? And, when is a victim parent so ineffective that he or she cannot parent the children?

He suggested five guiding principles for a safety focused parenting plan:

- Protect children directly from violent, abusive, and neglectful environments;
- Provide for the safety and support the well-being of parents who are victims of abuse, with the assumption that they will then be better able to protect their children;
- Respect and empower victim parents to make their own decisions and direct their own lives (thereby recognizing the limitations of the state in the role of loco parentis);
- Hold perpetrators accountable for their past and future actions; have them acknowledge the problem and take action to correct their abusive behavior;
- Allow and promote the least restrictive plan for parent-child access that benefits the child.