

COMMENTATOR

Volume XXV, No. 2

December 1998

Jane Estreicher, Chair - David L. Manz & John S. Morse, Editors



SPECIAL POINTS OF INTEREST INSIDE THIS ISSUE:

- How to Beat Holiday Stress and the Blues by Deborah O. Day
- Information about the March 18-21, 1999 Section Retreat at Howey-in-the-Hills
- Resolution of Residency Requirements by Christopher A. Tiso



Comparing a Lawyer's and a Judge's Thoughts on Proving a Parenting Case

By Judge R. Thomas Corbin, Ft. Myers



Recently a lawyer provided me with an outline of what he thought should be proven under the factors in Florida's "shared parenting" statute (§ 61.13(3) Florida Statutes 1997). When I read over the lawyer's outline, I was struck by how differently I look at a parenting case from the way the lawyer looked at it.

In general, the lawyer's ideas about the proof relevant to a parenting case focused on two questions: (1) which parent was closer to the children emotionally, and (2) which parent had spent more time taking direct care of the children before separation? This focus assumes the standard for deciding a parenting case is: "Which parent is emotionally closer to the children and which parent possesses superior skills and knowledge derived from taking care of the children?" But this is not the standard. The standard is the "best interests of the children" considering all of the factors in § 61.13 (3), not just the emotional closeness of the parent to the children and the skills and knowledge of a

parent derived from taking care of the children. This evidence is relevant to some of the factors in the statute, but the law requires the judge to consider all of the factors.

The lawyer's proof needs to include a focus on the best interests of the children as defined by the Florida Statute. Every judge with whom I have talked concerning a parenting case either has a copy of § 61.13(3) taped to his or her bench or has a highlighted and underlined copy in a notebook on the bench. The judges are waiting to hear proof under all of the factors in the statute. A lawyer who ignores the statute will fall short. The lawyer should also prove that his or her client can carry out the public policy of the state: "It is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing."

Continued on page 27

Chair's Comments

Examining the Threat Posed to the Profession by Ancillary Business Operation

By Jane Estreicher, St. Petersburg



At the Leadership Conference that the Section Officers attended in Tallahassee in July, I became familiar with one of the most significant issues that will confront the entire Bar - **ANCILLARY BUSINESSES**. Florida's position will dramatically impact the way we all practice in the future, or rather whether we

survive as self-employed professionals or whether we will have a profession at all.

The United States Constitution provides for a separation of powers and the federal government thus functions within a system of checks and balances. The Judiciary operates independently of the other branches of government, and we, as lawyers, are under the control of the judi-

cial branch. This is also the very reason why lawyers maintain their independence free from interference from ownership by other businesses or professions.

Other countries do not embody the same separation of powers, however, and lawyers are often controlled by other business entities, such as accounting firms. Accounting firms have been the main employer of lawyers. Notwithstanding, with the expansion of financial services now provided by banks, other financial institutions and companies, such as American Express, will take over and become providers of legal services outside of the United States.

Continued on page 4