



FAMSEG

FAMSEG, the Family Law Section Email Group

Double Edition

November / December 2010



2011 Marital & Family Law Review Course

January 28-29, 2011

The Family Law Section of The Florida Bar and the AAML Florida Chapter present: 2011 Marital & Family Law Review Course.

January 28-29, 2011 at the Disney's Yacht and Beach Club Resort in Orlando, Florida.

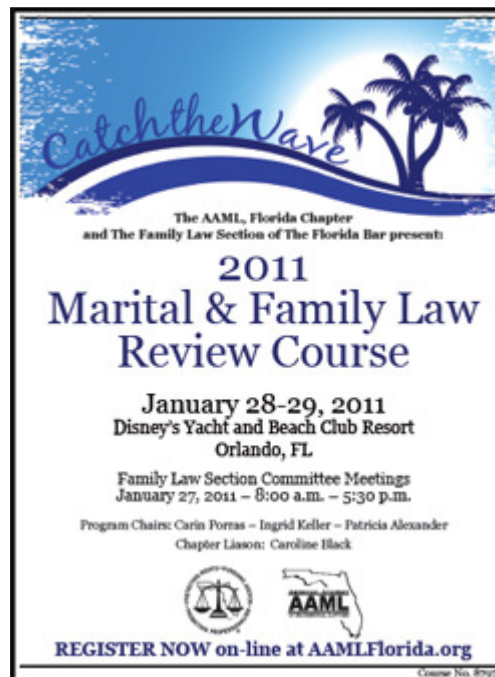
Family Law Section Committee Meetings
January 27, 2011 - 8:00 a.m. - 5:30 p.m.

Program Chairs: Carin Porras - Ingrid Keller - Patricia Alexander

Chapter Liaison: Caroline Black

Register online now, [click here](#).

[Click Here to Download the Event Brochure.](#)



Chair's Message

Dear Luis E,



SEASONS GREETINGS! This time of year is hectic for all of us. Along with the "normal" deadlines, emergencies and other stressors inherent in a family law practice it seems like time-sharing holiday generated "emergencies" arise with increasing regularity. Our usual "free" time is absorbed by religious worship, holiday decorating and cards,

shopping, as well as holiday celebrations with family, friends, co-workers and neighbors. Despite the increased demand on your time during this season, I hope you take a few moments stop, smell the poinsettias and read this particular edition of **FAMSEG**. This month we depart from



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[2011 Marital & Family Law Review Course](#)

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our traditional monthly publication for a consolidated (November and December, 2010) edition of **FAMSEG** .



As I write this message Hannukah is ongoing. Christmas, Kwanzaa and New Year's are right around the corner. It occurred to me that no matter which of these holidays are "yours" they all have common customs and traditions, particularly, that of gift giving as part of the holiday celebration.

This year I would suggest each and every one of you to embrace your holiday by giving the most important gift that we can bestow on another - the gift of time, uninterrupted by telephone calls, emails, texts or work distractions.

Try to carve out some time during the holiday season for your spouse, significant other, child, parent, friend or favorite pet and reconnect, focus on their needs/desires.

Additionally, please consider giving a gift to children currently in and/or who have spent time in Florida's foster care system by volunteering pro bono time for Florida's Children First's **Just For Foster Youth at LAST (Lawyers Assisting Successful Transition)** program . These children need your legal expertise. You can help by setting aside some time in 2011 to help Florida's Children First provide much needed *pro bono* legal services via the direct representation of 16 and 17 year olds who are currently in state care, who will soon be transitioning out of foster care through legal emancipation {these children are eligible for certain governmental benefits prior to the termination of dependency proceedings} and/or legal consultations with young adults aged 18 - 25 years who spent time in foster care to provide legal advice and ascertain unmet legal needs for this vulnerable population. Florida's Children First will provide you with the necessary training and assistance to guide you through the provision of any *pro bono* legal service you elect to furnish. The Family Law Section has almost 4,000 members. If just 1 out of every 10 of our members participates in this program over 400 youths can be served. Please review the informational flyer that follows in this edition of **FAMSEG** for additional information. During the 2011 Marital and Family Law Review Course Florida's Children First will have a booth where you can ask questions, obtain additional information and sign up to volunteer for this program.

Do you know about the obligations imposed upon you due to the recent amendment of the **Florida Rules Of Judicial Administration, Rule 2.420** which became effective October 1st, 2010? If not, you should. Go to the website referenced in **FAMSEG** and learn how to register for The Florida Bar's complimentary

[Commentator](#)

[Changes to Florida Alimony/Child Support Statutes](#)

[Florida Statutes & Constitution](#)



[Call For Articles](#)

FAMSEG is a monthly electronic newsletter.

[Article Headline Areas of Interest](#)

[The Florida Bar Career Center](#) - Your destination for exciting Legal job opportunities and the best resource for qualified candidates within the Legal Industry.

[The Florida Bar Online Directory](#) - The online directory provides links to court, state and federal Web sites and many other online resources attorneys use. This directory has the most current Florida Bar member information available with daily updates. *(In this section you will find: Members; Committees, Officers, & Sections; Court Admin. & Clerks; Courts; Courts - Federal; Judicial Associations; Legal Groups, Law Schools & Legal Aid; Rules; and State & Federal Government.)



seminar titled "**New Rule 2.420 Seminar**" which will educate you about the responsibility of attorneys to redact confidential information and the procedures connected therewith. The seminar is available to all Florida Bar members and is presented by The Florida Bar Law Office Management Assistance Service (LOMAS) and sponsored by the Florida Mutual Insurance Company (FLMIC) and the General Practice, Solo and Small Firm (GPSSF) Section. Under the **Rule** there are 19 automatic exemptions from public records disclosure that you must identify to the Clerk of Circuit Court when filing any document with the Court. If you believe that a portion of a document doesn't fall within 1 of the 19 automatic exemptions, the **Rule** establishes a procedure for filing a separate motion with the Court. Sanctions can be imposed on an attorney who is carelessly permits confidential information to be made public or conversely who seeks a designation of confidential without an actual good faith basis as to same.

Take the time to learn what another one of the Section's very busy committees, the *Ad Hoc Guardian Ad Litem* Committee, is doing in **Kim Nutter**, Esquire's article **What Training Has Your Family Law GAL Had?** You'll learn about the Committee's very ambitious project which is to make available a statewide training program on DVD to train *Guardian Ad Litem*s around the State. The goal is to have the DVD supplement and be used in conjunction with the training manual already created by the Committee last year. As you may already be aware, The Florida Bar's Legal Needs Of Children Committee has been wrestling with the rights of children to legal representation over the past few years. Section member **William R. Booth, Esquire**, an attorney specializing in the representation of juveniles through the Legal Aid Society of Palm Beach, Inc., innovative Juvenile Advocacy Program, gives you his perspective on why foster children should have legal representation in his article **What Foster Children Want**.

Don't forget to read the latest version of Eddie Stephen's monthly column called **Stephens' Squibs**.

On November 13th, 2010 Executive Council members **Heather Apicella, Kathryn Beamer, Douglas Greenbaum, Nicole Goetz, Laura Davis Smith**, myself, along with section member Nexcy Deimar De La Rosa-Monroe, had the privilege of attending the Seventh Annual Minority Mentoring Picnic at the Amelia Earhart Park in Hialeah, Florida. I'd

like to thank each of them for spending the afternoon meeting and greeting the over 2,000 law students, law professors, attorneys and judicial officers were in attendance. We had an opportunity to meet with and discuss the practice of marital and family law with dozens of bright, personable, inquisitive students, many who traveled a long distance, from various law schools within the State, including the Florida Coastal School of Law, Florida International



Announcement of New Firm



Asbell, Ho, Klaus & Doupé is pleased to announce that they have relocated their office and the firm will continue under the new name of Klaus Doupé PA.



Klaus Doupé, P.A.
365 5th Avenue South
Suite 202
Naples, Florida 34102
Tel: 239.403.9800
Fax: 239.403.9802

CLE Calendar 2010

Looking for additional CLE Credits? View other Available Family Law CLEs

February 24, 2011
12:00 - 2:00 pm
COLLABORATIVE LAW

with
Richard West, Esq.
Dr. Deborah O. Day
Adam Magill

Telephonic

Chairs:
Linda Braithwaite
Julia Wyda

Brochure
(forthcoming)

Online registration
not yet available.

University, Florida State University, University of Miami, Nova Southeastern University School of Law, the University of Florida and St. Thomas University School of Law who are seeking mentors. If you are interested in mentoring a law student, please contact the Section's *Ad Hoc* Mentoring Committee and they will try to match you up with a student in your area.

Finally, to each of you, I hope you have a Holiday Season filled with family, friends, love, food, fun and the health with which to enjoy the Season; and a very Happy and Prosperous New Year in 2011.

Warmest wishes,
DIANE M. KIRIGIN, CHAIR
FAMILY LAW SECTION
THE FLORIDA BAR



Co-Editors: [Luis E Insignares](#) & [Eddie Stephens](#)

Redacting Confidential Information

Complimentary - Free CLE

Redacting Confidential Information:

The complimentary "New Rule 2.420 Seminar" regarding the responsibility of lawyers to redact confidential information in court filings is available from the [24/7 CLE Catalog](#). The 2 credit hour program is available under, "[Discounted or Reduced Priced CLE Programs](#)" and "[New Rule 2.420 Seminar](#)" categories. The free program is presented by The Florida Bar Law Office Management Assistance Service (LOMAS) and sponsored by Florida Lawyers Mutual Insurance Company (FLMIC) and the General Practice, Solo and Small Firm Section.

March 11, 2011
Half Day

OFFICE MANAGEMENT
LIVE 1/2 Day in Tampa,
FL

Brochure
(forthcoming)

Online registration
not yet available.

Chair:
Sheena Benjamin Wise

March 11, 2011
Half Day

**PROCEDURES FOR
PARALEGALS**
LIVE 1/2 Day in Tampa,
FL

Brochure
(forthcoming)

Online registration
not yet available.

Chair:
Sheena Benjamin Wise



ESCAPE TO WINE COUNTRY

Enjoy rolling hills, open vistas, vineyards, farms, luxurious accommodations and the world class restaurants of Napa and Sonoma Valleys during the Family Law Section's upcoming Spring Retreat beginning **Wednesday, April 6th, 2011** and **ending Sunday, April 11th, 2011**.

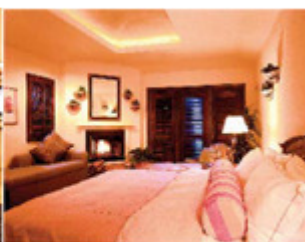


Join us at the beautiful Tuscan themed, destination resort, the 4 Diamond rated **Villagio Inn & Spa, 6481 Washington Street, Yountville, California 94599-1311**. While you indulge your senses, but you can earn 6 C.L.E. Credits by attending the Retreat seminar **"ADDICTION: ITS EFFECTS ON**

YOUR CLIENTS AND THEIR CASES." The resort is conveniently located within easy driving distance of over 270 of the world's finest wineries and tasting rooms.



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Guestroom

Don't Delay! MAKE YOUR RESERVATION NOW by calling

1-800-351-1133.



Entrance

Courtyard

Please indicate that you are making reservations as part of THE FLORIDA BAR, FAMILY LAW SECTION GROUP. Room rate is \$265.00 per night.

[Click to download brochure of event.](#)

What Training Has Your Family Law Guardian Ad Litem Had?

By Kim Nutter

For years cases involving the appointment of Guardian *Ad Litem*s for minor children in Florida family law proceedings have generally been made from a short list of attorneys that each family law judge throughout the State of Florida has developed. From there, the reputations of "good" Guardian *Ad Litem*s (GALs) are built and spread throughout their respective communities.



However the question remains for the judges and for attorneys seeking to use the services of a Guardian *Ad Litem*, what, if any, formal training has your Guardian *Ad Litem* had? The likely answer is **none**. If you are fortunate, the Guardian *Ad Litem* in your case is also a **Florida Statutes Chapter 39** Guardian *Ad Litem*. If so, he or she likely received some training in ethics, court room procedures, mental health and substance abuse issues; and who also may have learned minor child interview skills and techniques, as well as the protocol for writing a Guardian *Ad Litem* report.

Florida Statutes Section 61.402 as amended in 2009 requires that a Guardian *Ad Litem* be certified either by a G.A.L. Program in accordance with **Florida Statutes Chapter 39**, be certified by a not-for-profit legal aid organization, or alternatively, be an attorney in good standing. As part of the certification alternative for certification by a not-for-profit legal aid organization, the legal aid organization must provide training using a uniform objective statewide training program for Guardian *Ad Litem*s developed by The Florida Bar. The task of creating an objective statewide training program was given to the Family Law Section.

You may be wondering: **A comprehensive statewide training**

program, when did that happen? Where is the training program available? Yes, there is a statewide training program for family law Guardian *Ad Litem*s that is being created by the Section.

Through the efforts and hard work of the amazing members of the Section's *Ad Hoc Guardian Ad Litem* Committee, including attorneys and mental health professionals, a training manual for family law Guardian *Ad Litem*s has already been created. It is available in hard copy or on-line at the Section's website. However, that is only part of the overall family law Guardian *Ad Litem* educational plan being undertaken by the Section.

The target date for the unveiling and debut of an eight (8) hour training program on DVD {and also hopefully on-line} is June, 2011. The training program is designed to create uniformity in the qualifications for family law Guardian *Ad Litem*s across the State of Florida. It is designed to take a Guardian *Ad Litem* through a dissolution of marriage, modification and/or other family law proceeding, specifically, the myriad of issues that arise all too frequently both pre and post-judgment in family court proceedings. The training program will also expose the student Guardian *Ad Litem* to the range of ethical dilemmas frequently faced by Guardian *Ad Litem*; and teach the Guardian *Ad Litem* how to identify positive and negative family dynamics and the affect on children; how to identify and understand the ramifications of of mental health, substance abuse and domestic violence issues that may occur individually or concurrently in their cases. The training program shall also provide direction on how to conduct a child interview, an overview of the court process and the role of the Guardian *Ad Litem* within same; and the role of a Guardian *Ad Litem* in contested proceedings, along with the barrage of criticism that a Guardian *Ad Litem* may face when attorneys, parties, etc. disagree with the recommendations contained in the *Guardian Ad Litem's* report during hotly contested parental disputes.

Hopefully this training program will stimulate and expand the pool of quality Guardian *Ad Litem*s in the State of Florida who are available to assist children whose parents are embroiled in family law disputes. Thanks to this training program, in the near future, the Guardian *Ad Litem* appointed in your case will more than likely be an individual who is either an active attorney, a retired attorney in a different area of the law, a grandparent or some other layperson in your community who has taken the time to be educated and is hopefully therefore well qualified to serve the children they are appointed to help.

Stephens' Squibs - Family Law Case Updates

By **Eddie Stephens**

[Click here](#) to read a summary of Florida Marital and family law case updates from **November, 2010**.



Squib of the Month:

Chamberlin v. Miller, 35 FLW D2529 (Fla. 1st DCA 2010). Name change of minor child reversed. Father's testimony of his desire for son to carry on family name, his belief child should have father's surname, father's fear child would be teased were conclusionary assertions and are insufficient to demonstrate the change is in the best interest of child.

Justice For Foster Youth at LAST **(Lawyers Assisting Successful Transition)**

Pro Bono Opportunities

What is it?

Legal Health Check Up: It's a free legal consultation for young adults 18-25 who spent time in foster care. It is designed to provide legal advice and ascertain unmet legal needs for this vulnerable population.



Dependency Representation: Direct representation of 16 and 17 year olds who are currently in state care and in their dependency and related proceedings.

How will I know what to do?

Legal Health Check Up: FCF provides a detailed questionnaire, instructions, training (available on the web) and attorney support.

Dependency Representation: FCF will provide training and mentoring tailored to your needs.

How much time will it take and what am I getting in to?

Legal Health Check Up: The total time for training and performing a Legal Health Check Up will take less than 5 hours. You decide whether you will provide any additional advice or representation after the initial meeting.

What if I want to help but don't know what I am doing - or if I can't help?

Legal Health Check Up: FCF will provide support to attorneys who are willing to take on representation after the Check Up. We will also endeavor to find other attorneys to undertake representation if need be.

Dependency Representation: We will do our best to connect you with mentors and experts who can help you every step of the way. We encourage you to partner with a colleague to share the workload.

Malpractice Insurance?

We've got you covered. (FYI - all Legal Aid Programs have coverage for pro bono lawyers)

Can I just offer my expertise?

Absolutely - just tell us the areas in which you are willing to consult or take cases and we will call on you when the need arises.

How Do I Sign Up?

Email: JFFY@floridaschildrenfirst.org



What Foster Children Want

by **William Booth, Esq.**

"We can't solve problems by using the same kind of thinking we used when we created them."

-Albert Einstein

Imagine being a child who has been removed from her parents' custody and placed into foster care. Her mom and dad are the only parents she has ever known. The pain of being removed from them is present even though she may have been abused, abandoned, or neglected.



Children in foster care want a family as quickly as possible—either reunification with a parent or placement with a relative or other person willing to provide them a loving home in a family setting. These children want to visit their parents when appropriate, live with their siblings, remain in contact with their friends and extended family, and lead a normal life. They do not want to be moved from one foster home to another without consideration of their desires and personal affiliations. Nor do they want to be pulled from their school and have their education suffer.

Even though foster children are parties in dependency proceedings, they do not have legal representation, with the exception of those children in Palm Beach County. While these children have a Guardian ad Litem (GAL), if resources allow, the GAL represents the child's best interests, not the child's actual

wishes. Additionally, foster children are not even required to attend their dependency court hearings. For those foster children who are fortunate to attend their hearings, they remain unrepresented in probably the most important event of their lives to that point. As a result, foster children do not actively and effectively participate in the exact process that affects everything about them, including living arrangements, schooling, stability, well-being, and even their perception of the world.

In Palm Beach County, Legal Aid Society of Palm Beach County's Foster Children's Project represents children in foster care ages 0-12 with a goal of expeditiously advancing the child's permanency and removal from the foster care system. Chapin Hall studied this Project.

www.chapinhall.org/research/report/expediting-permanency.

The Report shows that children represented by Legal Aid Society attorneys achieved permanency quicker than children not represented by the Project. It is the attorney's expertise and use of legal strategies on behalf of these children that shortened the children's time in foster care and had them placed quickly into welcoming arms. In addition, Legal Aid Society's Juvenile Advocacy Project represents children who are developmentally disabled and/or mentally ill, abuse substances, and have other deep end issues. Although not studied, this Project has met success in representing children through the dependency and delinquency systems by connecting them with appropriate services, through litigation, to assist them to become productive adults. Both projects incorporate advocating for the foster child's legal interests.

Florida law provides foster children with rights while in

State care. Children removed from their parents by the State are to be reunified with their parent(s), placed with a relative, or adopted within one year of being removed. §§ 39.001(1)(h), 39.0136, Fla. Stat. (2010). These children may object to taking psychotropic medication, § 39.407(3), Fla. Stat. (2010), and to being placed into a locked residential mental health treatment facility. § 39.407(6), Fla. Stat. (2010). Further, a Legislative goal is that these children have monthly visits with their parents and weekly visits with siblings. § 39.4085(15), (16), Fla. Stat. (2010). Special education children in foster care have a right to a free, appropriate public education. 20 U.S.C. §§ 1414, 1415 (2010). Foster children also have the right to remain in their school of origin after being removed from their parents and placed in the custody of the Department of Children and Families. 42 U.S.C. § 11431-11434 (2010); 42 U.S.C. § 675 (2010). This includes requiring the Department to consider the location of the child's school in order to maximize the child's chances of maintaining school stability in the face of being moved from one foster home to another.

There has been an evolution in the rights of children. While in feudal times, children were considered chattel; today, they have the right to free speech, Tinker v. Des Moines School District, 393 U.S. 503 (1969), religious freedom in school, Board of Education v. Mergers, 496 U.S. 226 (1990), and an attorney, notice, confrontation, cross-examination, and freedom of self-incrimination in delinquency matters. In re Gault, 387 U.S. 1 (1967). Minor females may make medical or surgical healthcare decisions for themselves and children born to them, § 743.065, Fla. Stat. (2010), and both sexes have the ability to make healthcare decisions for themselves in an emergency. § 743.064, Fla. Stat. (2010). Children

may acquire property or be the grantee of a deed, Watkins v. Watkins, 166 So. 577 (Fla. 1936), may act as trustees, Persons v. Pflum, 135 So. 878 (Fla. 1931), and may enter into binding contracts for necessities. Lee v. Thompson, 168 So. 848 (1936).

Children may also invoke or waive their constitutional and statutory rights, see Attorney Ad Litem for D.K. v. The Parents of D.K., 780 So.2d 301 (Fla. 4th DCA 2001), may execute valid consents to adoption, Pugh v. Barwick, 56 So.2d 124 (Fla. 1952), and sign consents terminating their parental rights to their children. E.L. v. Department of Health and Rehabilitative Services, 700 So.2d 3 (Fla. 1st DCA 1997). Children possess a constitutional right to access the courts as provided by Article 1, section 21 of the Florida Constitution and the constitutional right to privacy. S.C. v. Guardian Ad Litem, 845 So.2d 953, 958 (Fla. 4th DCA 2003).

Further, children may sue their parents for negligence, Ard v. Ard, 414 So.2d 1066 (Fla. 1982), and are not bound by a pre-injury release signed by a parent on their behalf. Kirton v. Fields, 997 So.2d 349 (Fla. 2008). Importantly, they have the right to be free from harm while in State care, Taylor v. Ledbetter, 818 F.2d 791 (11th Cir. 1987), and to sue the State for damages when injured by a child welfare agency's failure to protect them or failure to provide them necessary care. Doe v. New York City Dept. of Social Services, 649 F.2d 134 (2d Cir. 1981).

Without legal representation in dependency proceedings, foster children have no voice in determining their future path. The Supreme Court acknowledged the importance of a child having "a meaningful opportunity to be heard" in dependency proceedings and has called for the judicial system to "recognize the individuality and

dignity of children who find themselves inside the courtroom solely as a result of their parents' abuse or neglect." M.W. v. Davis, 756 So.2d 90, 108 (Fla. 2000). Most juveniles involved in the delinquency or criminal justice system were once victims in dependency proceedings. In comparison to their peers, children who age out of foster care are less prepared for the future, more likely to suffer from homelessness and incarceration, and more likely to experience poverty and a lack of access to health care, education, and independent living skills. See Melinda Atkinson, Aging Out of Foster Care: Towards a Universal Safety Net for Former Foster Care Youth, 43 Harv. C.R.-C.L. L. Rev. 183 (2008).

We cannot guarantee the life success of these children without considering their input. Giving foster children a voice, at a minimum, ensures they are empowered to create a life for themselves. Consequently, we must confront, and resolve, the fact that foster children are not now given the opportunity to be heard through legal representation.

A version of this article originally appeared in the Fall 2010 Family Law Bar Section Commentator. The article has been modified since its original publication in the Commentator.

Wanted: Your Submissions Articles

Have you just finished a case or appeal where you had to become well-versed in a particular family-law issue? Well, how about sharing your genius with the rest of us?!



We are accepting submissions for upcoming issues of The Florida Bar Journal, The Family Law Commentator, and even FAMSEG.

The Journal

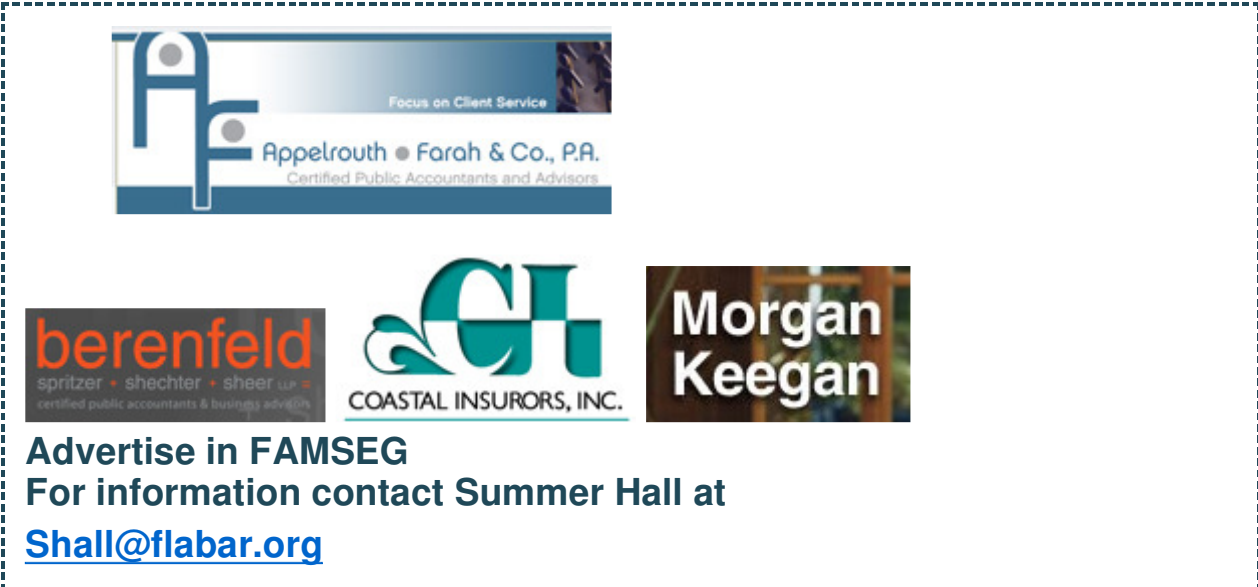
To be considered for publication in The Florida Bar Journal, the article should be scholarly and relate in some manner to family law. It should be twelve to fifteen pages in length, complete with endnotes.

Contact co-editor: **Sarah Sullivan** at ssullivan@fcsf.edu Or co-editor:
Amy Hamlin at ahamlin@helpisontheway.cc

The Commentator

Commentator articles are theme-specific. Upcoming theme issues include:
Children's Issues, Tax Issues, Hot Tips, Alimony, and Agreements.

Send your Commentator submissions to **Laura Davis Smith** to
lds@greenesmithlaw.com.



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