

INSIDE LOOK

Family Law Section • March 2019



Alimony Legislation

C. Vance Stricklin • Moore Taylor Law Firm, PA, W. Columbia, SC

House Bill 3787 has been introduced at the 123rd session (2019-2020) of the South Carolina General Assembly. The bill includes modifications to current alimony law. Specifically, the proposed legislation creates two new forms of alimony:

A. Transitional Alimony: The specific language for transitional alimony states, “Transitional alimony to be paid periodically or in a finite total sum, but terminating upon remarriage of the supported spouse, upon the continued cohabitation of the supported spouse, upon the death of either spouse, except as secured in subsection (D), or upon a date certain. Transitional alimony is modifiable, suspendable, or terminable based upon substantially changes circumstances occurring in the future. The purpose of this form of support is to assist with the transition of the supported spouse to new financial circumstances, a new adjusted lifestyle, a new location, or any other consequences of divorce when other forms of alimony

would not be appropriate.”

B. Fixed-Term Alimony: The specific language for fixed-term alimony states, “Fixed-term alimony to be paid periodically for a finite term to a supported spouse who is economically dependent, but terminating upon remarriage of the supported spouse, upon continued cohabitation of the support spouse, upon expiration of the fixed term, or upon the death of either spouse, except a secured in subsection (D). Fixed-term alimony is modifiable, suspendable, or terminable based upon substantially changed circumstances occurring in the future. The purpose of this form of support is to allow a finite award where the court finds it appropriate and desirable to make a current determination and requirement for a fixed term of support for a spouse.”

The bill also significantly alters the

continued cohabitation language. It removes the ninety (90) day requirement and includes a number of factors for the Court to consider and establishing continued cohabitation. The proposed factors are as follows:

- A. Intertwined finances;
- B. Sharing or joint responsibility for living expenses;
- C. Recognition of the relationship in the couple’s social circle, family circle, or community;
- D. Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship; and
- E. Such other factors the court considers relevant.

The legislation also details what constitutes a change in circumstance for purposes of modifying spousal support. Read the [entire bill here](#).

Recent Decisions & Current Issues in Family Law

- In *South Carolina Department of Social Services v. Wiseman*, Op. No. 5626 (S.C. Ct. App. filed February 13, 2019), the Court of Appeals held that a child’s adoptive parents did not abandon the child by refusing to allow her to return home immediately upon her release from a psychiatric hospital. The parents’ actions were “compelled by the force of circumstances and dire necessity” because they legitimately feared that the child would harm them.
- In *Brown v. Key*, Op. No. 5610 (S.C. Ct. App. filed January 4, 2019), the Court of Appeals held that permitting a grandparent visitation only with a supervisor present was not an unreasonable deprivation of the opportunity to visit for a period of ninety days as required by Code Section 63-3-530(33).
- In *Brown v. Odom*, Op. No. 5598 (S.C. Ct. App. refiled January 9, 2019), in addition to affirming the family court’s transmutation and constructive trust rulings, the Court of Appeals held that even though it was not owned on the date the action was filed, the parties’ house was properly included in the marital estate because the wife presented clear and convincing evidence that the husband fraudulently transferred it to his uncle in anticipation of divorce.
- In *Clark v. Clark*, Op. No. 5606 (S.C. Ct. App. filed November 28, 2018), the Court of Appeals applied *Moore v. Moore*, 414 S.C. 490, 779 S.E.2d 533 (2015), in ruling that a business valuation discount for lack of marketability is improper where a spouse-owner is retaining the business, even if the discount was based on a restriction that narrows the market for the business to a handful of people.

Teaching Old Laws New Tricks

Kelley Dupre Andrews-Edwards • Andrews Mediation & Law, P.A., Mt. Pleasant, SC

For the nerds among us, there is nothing better than being able to apply the fruits of our academic curiosity in our cases. When I have down time, you will find me with my head in the South Carolina Code. Don't ask me why. I read the dictionary as a teenager. I suppose the banal gives me comfort. But sometimes the banal pays off in surprising and unsuspecting ways.

A former client called me with a problem. He and his ex-wife were in conflict over their 16-year-old son. I will call the son Charlie. Charlie suffered from gender identity disorder and was desperate to begin hormone replacement therapy. His mother had primary decision-making authority over Charlie's healthcare and refused to let Charlie have the therapy on religious grounds. Charlie became severely depressed and was having suicidal ideations, and my client was afraid his son might kill himself if he was not allowed to begin the therapy. Though Charlie was only two years away from emancipation, my client felt two years was too long to wait. So he asked me whether he should file for a change in custody so he could get decision-making authority over Charlie's healthcare and allow him to begin the hormone replacement therapy. My answer was "No." Why, you ask? Because he did not need to.

Here is where being a bookworm paid off. Buried in the S.C. Code, under Article 3, the "Legal Capacity of Minors," is Code section 63-5-340. It was passed by the legislature in 2008 for

the purpose of granting teenage girls the legal right to access birth control without parental consent.

The statute states:

Any minor who has reached the age of sixteen years may consent to any health services from a person authorized by law to render the particular health service for himself and the consent of no other person shall be necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.

While the statute's purpose was to facilitate teenage girls' access to birth control, the language is not constrained by gender or type of treatment. It applies to any health service not involving surgery, which includes hormone replacement therapy. Charlie, by statute, had the right to undergo hormone

replacement therapy regardless of his mother's opinion.

Wielding this provision, we were able to get Charlie's mother to sign a consent order referencing section 63-5-340 and acknowledging that Charlie had the right to undergo hormone replacement therapy without his parents' consent. While the mother was in no way pleased, neither she nor a judge had the authority to override or disregard Charlie's statutory rights. Charlie began the hormone replacement therapy, and my client avoided an ugly and thankfully unnecessary custody battle.

While the focus is of this article is not hormone replacement therapy or gender identity disorder, these are growing and important issues in family law that are worth attention. The larger and much simpler lesson from this is that the code matters. Old laws can have "new tricks." And as we practitioners of family law are made to evolve with the changing needs of modern families, it may take some creativity to pull the code with us.

Disclaimer

This is a newsletter for the South Carolina Bar's Family Law Section. The South Carolina Bar and the Section council members reserve the right to refuse to publish any submission which is not consistent with their goals and standards. Articles that are published reflect only the opinions of their authors; they do not represent or reflect any positions held by the South Carolina Bar or the Section officers and council members. It is the policy of this newsletter that on all submissions of original articles, the authors assign their copyright in the work to the South Carolina Bar. Publisher may reprint, or authorize other entities to reprint, the material as deemed appropriate. The publisher has the right to authorize the reproduction, adaptation, public distribution and public display of the article as a contribution to this newsletter in electronic media, computerized retrieval systems and similar forms; such authorization includes use of the article anywhere in the world by means of public display, conversion to machine readable form and reproduction and distribution of copies. The South Carolina Bar is not required to secure the consent of the author before exercising the above-named rights. In addition, the Bar has no duty or responsibility to negotiate, collect or distribute any royalties in connection therewith.

Mission

The mission of the Family Law Section shall be to work to improve family law practitioners' ability to meet with distinction the demands and expectations of their clients, the courts, the legal profession, and their communities. The Section shall seek to fulfill its mission by: promoting the ethical and efficient practice of law by this constituency; seeking to develop or otherwise provide educational and practice resources oriented toward this constituency; establishing and maintaining relationships with other Bar entities and other organizations; monitoring legislative, judicial, and other developments of interest to this constituency; and promoting and advocating the interests of this constituency within the Bar.

Articles Needed

Articles are needed for future issues of the Family Law Section newsletter. If you are interested in submitting an article, please see the Newsletter Guidelines and forward your submission to: tcaine@scbar.org.

Section Committees

Below is a list of the Section Committees. Please let [Tara G. Caine](#) know if you are interested in serving on a committee(s).

Alimony: The Committee will monitor legislative and case law changes and modifications that occur throughout the year. When Alimony legislation is proposed, the Committee will examine the legislation and prepare position papers. When those legislative changes are discussed in the legislature, one or more members of the Committee will typically attend the hearings and from time-to-time offer testimony to assist the legislature when formulating Alimony legislation. The Committee also attempts to coordinate efforts with the South Carolina Chapter of the American Academy of Matrimonial Lawyers and the South Carolina Association for Justice. When legislation is to be formally proposed, the Committee assists in presenting those matters to the Board of Governors for approval. Chair: James "Jim" T. McLaren: jmclar-en@mclarenandlee.com

By-laws: The Committee will maintain and propose potential amendments as needed to the Section bylaws. Chair: Marie-Louise Ramsdale: ml@ramsdale-law.com

Lay Guardian Ad Litem: The Committee will investigate issues and concerns with lay Guardians ad Litem in private custody/visitation cases and pursue possible solutions. Chair: Nancy Jo Thomason: nancyjo@tandplegal.com

Newsletter: The Committee will produce a periodic newsletter containing information on legislative issues relevant to family law, upcoming educational programs, committee sign-up, and articles of interest to the membership. Co-Chair: Chris Paton: chris@chrispatonllc.com and Co-Chair: Allison P. Dunham: adunham@spartanlaw.com

Continuing Legal Education: The CLE Committees will research potential

speakers and topics to conduct educational programs related to family law issues as listed below.

Essentials "Beginners" CLE: The Family Law Essentials is a full day program held in the fall. It will provide attendees with the tools and practical information needed to build and maintain a basic family law practice. Chair: Mary Fran Quindlen: maryfran@quindelen-law.com

Family Law Intensive CLE: The Family Law Intensive is an advanced level workshop limited to approximately 60 attendees and is held in the fall. Chair: Ernie J. Jarrett: ernie@jenkinsonlaw.com

Hot Tips CLE - Hot Tips from the Coolest Domestic Practitioners: is a full day intermediate to advance level program held in the fall. Chair: C. Vance Stricklin: vance@mttlaw.com

Bar Convention: The Section will conduct a 3-hour mandatory JCLE seminar in conjunction with the annual Bar Convention in January. Chair: Melissa M. Frazier: info@thefrazierlawfirm.com

SCRCP Rule 41.2 (Sealing Family Court Records): The Committee will monitor the process of Court Administration's intent to move to e-filing in Family Court; and seek an amendment to Rule 41.2, to delete the redaction requirements from family court documents. Chair: Nancy Jo Thomason: nancyjo@tandplegal.com

Networking Opportunities: The Committee will host a variety of statewide networking opportunities for members of the Family Law Section. Chair: Ashlin B. Potterfield: apotterfield@bellsouth.net

Specialization: The Committee will

explore the application process of establishing Family Law certification through the S.C. Supreme Court on the Commission on CLE & Specialization. Chair: Ashlin B. Potterfield: apotterfield@bellsouth.net

Toolkit: A practical handbook designed by and for the busy practitioner containing quick references on the most important issues in a family law practice and trial. The toolkit addresses both procedural and substantive issues. Chair: C. Vance Stricklin: vance@mttlaw.com



CLE Highlights

Approximately 225 people participated in the Hot Tips from the Coolest Domestic Law Practitioners program that was held on September 21, 2018 in Columbia.

The program featured 19 speakers comprised of judges and lawyers focusing their attention on Family Law. The turnout was fantastic! The CLE continues to one of the most well attended seminars offered by the SC Bar. The fast-paced seminar will be back again in the fall and looks to build on the success of 2018.

Up to 60 people attended the Family Law Intensive that was held November 2-4 in NC. To view pictures, please visit: www.scb.org/lawyers/sections-committees-divisions/sections/family-law-section.

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Opt-In Forum

The Family Law Section has created an opt-in listserv which will allow members of the Family Law Section to exchange information and ideas related to Family Law. This opt-in listserv is designed specifically for Section members. If you would like to be added, please contact Tara G. Caine at tcaine@schar.org.

What to Look For...

2019 Family Law Essentials, July 26, SC Bar Conference Center, Columbia

2019 Hot Tips from the Coolest Domestic Law Practitioners, September 20, SC Bar Conference Center, Columbia

Of Interest...

[On-Demand CLEs Relevant to Children & Family Law Issues](#)

[Publications Relevant to Children & Family Law Issues](#)

Online legislation and regulations are available at www.scstatehouse.gov.

The South Carolina Code of Laws is also available at this site.

FY2018-2019 Section Goals

1. Continue to monitor proposed legislation involving the Family Court system, draft proposed legislation as the Council deems appropriate, assist any task force charged with reviewing/formulating such proposals, and work with SC American Academy of Matrimonial Lawyers Chapter and SC Association for Justice Family Law Section to address such legislation whenever feasible.
2. Continue to provide assistance to the Rules Revisions Committee of the South Carolina Conference of Family Court Judges, monitor proposed rule changes, and advocate the Council's position on any proposals.
3. Strive for Council member attendance at all meetings and Council-sponsored functions. Increase participation by all Council members and attempt to include Family Law Section members in Council's Subcommittees.
4. Continue to coordinate, sponsor, and conduct the following Continuing Legal Education Programs: (a) Family Law Essentials CLE; (b) Family Law Intensive CLE; (c) Hot Tips CLE; and (d) Family Law Seminar at the annual SC Bar Convention.
5. Continue to sponsor attendance at a regional or national Family Law Conference for those who serve/served as chair of the Family Law Council.
6. Distribute a newsletter every three to six months to Family Law Section members via e-mail, updating the Section on what Council is doing, advising of the opportunity to participate on Council Subcommittees, promoting upcoming CLE opportunities, and addressing relevant pending legislative issues.
7. Update a searchable pdf of topics presented in past Cool Tips and Hot Tips CLE's as a service to Section members.
8. Determine feasibility of establishing a Family Law specialization in South Carolina.
9. Investigate issues and problems with lay Guardians ad Litem in private custody/visitation cases and pursue possible solutions to address same.
10. Establish a dialogue with the South Carolina Supreme Court to discuss pressing family law issues.