

Courtroom answers for Florida family lawyers

Quickly find arguments and objections on the eve of trial, in court, or during a recess

When rapid access to family authority is needed, turn to Roberta Stanley's *Florida Family Law Trial Notebook*. You receive:

Summary of the law. A quick and easy reference to the law regarding every major substantive issue in marital and family law cases.

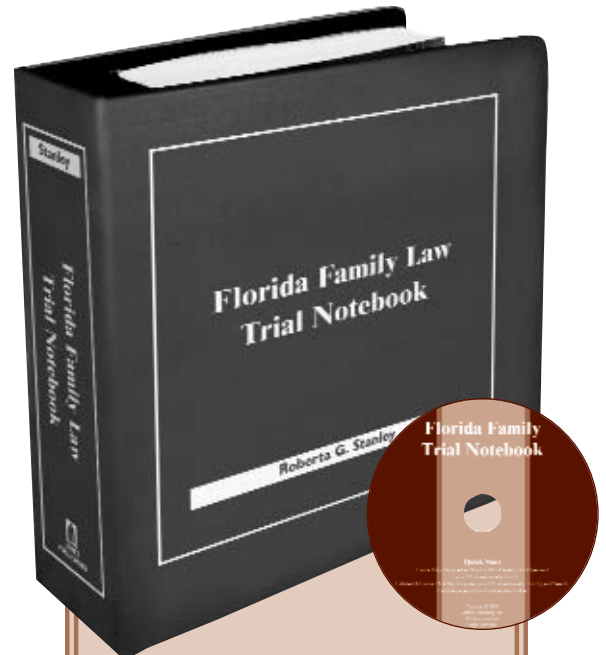
Florida Family Law Rules of Procedure. A complete, plain English summary of every rule, complete with case annotations.

Evidentiary issues highlighted. Separate chapters are devoted to evidentiary issues most commonly encountered in marital law cases, including documentary evidence, trial testimony (proffering testimony, privileges, and objections), witnesses (including expert witnesses), and the rules of hearsay.

Comprehensive coverage

This practice-proven trial book addresses the full range of issues likely to arise in the courtroom:

1. Pre-Trial
2. Course and Conduct of Trial
3. Documentary Evidence
4. Other Physical Proof
5. Witness Competence and Disqualification
6. Witness Examination Issues
7. Witness Questioning and Answering
8. Science, Opinion, and Experts
9. Alternatives to Physical and Testimonial Proof
10. Privileges
11. Hearsay
12. Hearsay Exceptions: Declarant Unavailable
13. Hearsay Exceptions: Declarant Available
14. Character and Habit
15. Relevance and Materiality
16. Other Rules Governing both Physical and Testimonial Proof
17. Substantive Family Law
18. Family Law Rules



625 pages of courtroom-ready law and guidance on evidentiary and procedural issues. With forms and CD. \$99

Includes forms

38 forms are provided in print and on CD to help speed your trial preparation. The collection contains:

- T** Task checklist
- T** Motions to produce
- T** Motion to compel
- T** Motions for evaluation and examination
- T** Motion in limine
- T** Expert witness interrogatories
- T** Proof chart
- T** Admissibility of expert witness testimony
- T** And more

Contents, forms, and sample pages inside...

Abbreviated Contents

1. Pre-Trial

Motions in Limine, Compelling Attendance, Production of Documents

2. Course and Conduct of Trial

Governing Law, Communication with Client and Witnesses, Opening Statement, Closing Argument

3. Documentary Evidence

Best-Evidence Rule, Summaries of Records, Introduction of Portion of Document or Deposition at Trial, Authenticating Documents, Affidavits, Depositions at Trial

4. Other Physical Proof

Demonstrative Evidence and Demonstrative Aids, Photographs

5. Witness Competence and Disqualification

Knowledge, Dead Man Statute, Persons Disqualified From Testifying

6. Witness Examination Issues

Court's Control of Trial and Questioning, Sequestration ("Invoking the Rule"), Interpreters and Translators, Impeachment, Impeaching Own Witness, Religious Beliefs of Witnesses

7. Witness Questioning and Answering

Ambiguous, Argumentative, Asked and Answered, Assuming Facts Not in Evidence, Beyond Scope, Compound Questions, Conclusion, Leading, Misquoting, Narrative, Non-responsive, Refreshing Memory of Witness, Self Serving, Speculative

8. Science, Opinion, and Experts

Opinion, Qualification of Expert Witness, Impeachment of Expert Witness, Foundation or Basis for Opinion of Expert, Areas of Opinion, Authoritative Literature

9. Alternatives to Physical and Testimonial Proof

Judicial Notice, Evidentiary Presumptions, Presumptions in Family Law Cases, Stipulations

10. Privileges

General Privilege Requirements, Attorney-Client, Work-Product, Psychotherapist-Patient, Sexual Assault Counselor, Domestic Violence Advocate-Victim, Husband-Wife, Clerical, Accountant-Client Privilege, Trade Secrets

Settlement Negotiations, Mediation Privilege, Guardian ad Litem, Fifth Amendment, Right of Privacy, Journalist's, Waiver and Effect of Privilege

11. Hearsay

Definition, Hearsay Within Hearsay, Attacking or Supporting Credibility of Declarant

12. Hearsay Exceptions: Declarant Unavailable

Definition of "Unavailable," Former Testimony, Statement Under Belief of Impending Death, Statement Against Interest, Statement of Personal or Family History

13. Hearsay Exceptions: Declarant Available

Spontaneous Statement, Excited Utterance, Mental, Emotional or Physical Condition,

Medical Diagnosis or Treatment, Recorded Recollection, Business Records, Absence of Entry—Business Records, Public Records, Vital Statistics

Absence of Divorce Decree, Marriage Certificate, or School Records, Records of Religious Organizations, Marriage Certificates, Family Records, Real Property Records

Statements Regarding Interest in Property, Ancient Documents, Market Reports and Commercial Publications, Admissions, Reputation, Former Testimony, Child Victim, Elderly Person or Disabled Adult

14. Character and Habit

Character Evidence, Routine Practice

15. Relevance and Materiality

Immaterial, Irrelevant

16. Other Rules Governing both Physical and Testimonial Proof

Limited Admissibility, Proffering Testimony (Offer of Proof), Prejudicial

17. Substantive Family Law

Agreements, Alimony, Appeals, Attorney's Fees, Child Support, Contempt, Custody (Parental Responsibility), Equitable Distribution, Injunctions, Judges/Masters, Judgments, Marital Home, Paternity, Procedure, Special Equity, Tax Issues, Visitation (Contact and Access)

18. Family Law Rules

Pleading, Procedure, Specific Matters, Civil Procedure

About the Book and CD

Roberta Stanley's *Florida Family Law Trial Notebook* contains 625 letter-sized pages in a sturdy 3-ring binder. The book is designed for quick access, with key phrases and concepts bold-faced, concise summaries, recent cases emphasized, and chapter tabs. It is a detailed resource of evidentiary issues that arise in Florida marital cases.

Included at no extra charge is an intuitive, full-text CD which requires no installation before use. It may be searched by key word, case name, topic, or form. You may also open and modify any of the CD's 38 forms simply by using your favorite word processor; you need not work with the CD's search program.

\$99 buys the book and CD. The book is updated annually for \$69 with replacement pages and a new CD. Both the book and its update are sold on a 30-day trial basis, and may be returned if not to your liking. The update service may be cancelled at any time.

38 Forms

Family Law Case Checklist, Letter re Mediation and Pre-Mediation Conference, Verification, Motion to Appoint a Commissioner, Notice of Taking Deposition, Notice of Taking Video Deposition, Privilege Log, Motion for Extension of Time

Motion for Vocational Evaluation, Motion for Independent Medical Examination, Motion to Continue Trial

Notice to Produce at Deposition/Trial, Notice of Subpoena for Production of Documents from a Non-Party, Subpoena for Production of Documents from Non-Party, Subpoena Duces Tecum Without Deposition, Stipulation, Stipulation and Order Re-Setting Final Hearing,

Motion to Compel Production of Husband's Summaries, Notice of Intent to Use Summaries, Motion in Limine to Strike and/or Object to Husband's Summaries, Motion for Bifurcation

Notice of Non-Jury Trial, Notification of Non-Jury Trial, Pre-Trial and Order Setting Trial, Notice of Filing Request to Take Judicial Notice, Unilateral Pre-Trial Stipulation, Notice of Service of Witness and Expert Witness Interrogatories, Witness List for Trial, Notice of Filing (deposition transcript), Errata Sheet, Stipulation as to Authenticity, Stipulation as to Use of Duplicates, Admissibility of Expert Witness Testimony

Proof Chart, Trial Exhibit List, Final Judgment of Dissolution of Marriage, Testimony at Final Hearing, Order of Ratification of Addendum to Marital Settlement Agreement

About the Author



Roberta G. Stanley is the lead partner in the Family Law Department at Brinkley, McNerney, Morgan, Solomon & Tatum, LLP, in Fort Lauderdale, where she handles complex family law matters.

Ms. Stanley is Board Certified by the Florida Bar in the area of Marital and Family Law and is a Fellow of the American Academy of Matrimonial Lawyers (AAML). She is on several committees with the Florida

Bar and AAML, and has published and lectured extensively.

She received her JD from Nova Southeastern University cum laude in 1983, where she was a member and editor of the *Nova Law Review*. Ms. Stanley may be reached at Roberta.Stanley@brinkleymcnerney.com or 954-522-2200. If you wish to order her book, please contact the publisher at 800-440-4780 or www.jamespublishing.com.

The prior edition was written by **Cynthia L. Greene**, a former chair of the Family Law Section of the Florida Bar. She is Board Certified, and is a Fellow of AAML. She has been listed in every edition of *Best Lawyers in America* since 1983.

(800) 440-4780

WWW.JAMESPUBLISHING.COM

We give 1% of revenues to needy youth

17.1 AGREEMENTS

ABANDONMENT:

- Parties can abandon the terms of an agreement by their acts and conduct. *Maruri v. Maruri*, 582 So.2d 116 (Fla. 3d DCA 1991)
- When both parties engaged in contact that was inconsistent with the existence of the settlement agreement, and the other party acquiesced to that act, it was properly determined that the parties had abandoned their prior settlement agreement. *Painter v. Painter*, 823 So.2d 268 (Fla. 2d DCA 2002)

ATTORNEY'S FEES:

- Waiver of fees in settlement agreement, or clause in settlement agreement that provides that each party shall be responsible for his or her own attorney's fees, does not apply to subsequent modification proceedings. *Tinker v. Greenberg*, 674 So.2d 807 (Fla. 5th DCA 1996)
- In determining attorney's fees, the courts must specify in an award, the amount of fees related to contempt and the amount which is awarded pursuant to the prevailing party provisions in a marital settlement agreement. *Ross v. Rotho*, 867 So.2d 567 (Fla. 4th DCA 2004)
- Wife was not entitled to attorney's fees for attempting to set aside a mediation settlement agreement where agreement provided for a specific amount to be paid by husband and mediation agreement was enforced by the court; policy regarding non-waiver of right to attorney's fees during intact marriage does not apply where agreement between the parties is reached at mediation. *Trowbridge v. Trowbridge*, 674 So.2d 928 (Fla. 4th DCA 1996)
- Marital settlement agreements are interpreted like contracts and construed as a matter of law; court has no discretion to refuse attorney's fees provided for by the terms of a settlement agreement. *Coe v. Abdo*, 790 So.2d 1276 (Fla. 4th DCA 2001)
- Where the marital settlement agreement provides for fees to be awarded to the prevailing party, the trial court is without discretion to decline to enforce that provision. Even if the husband is successful on his modification, if the wife were successful on her enforcement, she is entitled to fees under the prevailing party provision. *Matt v. Matt*, 800 So.2d 331 (Fla. 2d DCA 2001)
- In upholding the prenuptial agreement, the husband's request for attorney's fees was denied. The court certified the question, "May the Parties, by an express provision in a prenuptial agreement contract away a future obligation to pay attorney's fees and costs by providing for a prevailing party provision action seeking to enforce or prevent the breach of a prenuptial agreement." *Simmons v. Simmons*, 851 So.2d 778 (Fla. 2d DCA 2003)
- The husband cannot be awarded attorney's fees under prevailing party provision of a prenuptial agreement because a provision purporting to waive the husband's obligation to pay attorney's fees and costs during the marriage is unenforceable. The court certified the issue to the Florida Supreme Court. *Loshkajon v. Loshkajon*, 855 So.2d 87 (Fla. 2d DCA 2003)

Find controlling law on the fly with 120 pages of tightly-written case summaries

5.1 KNOWLEDGE

5.1.1 GENERAL RULES OF COMPETENCY

F.S. §90.601

Every person is qualified or competent to be a witness in a case unless he or she is subject to exclusion pursuant to a specific provision of the Evidence Code. F.S. §90.601.

Noteworthy Cases

Martuccio v. Department of Prof'l Regulation

Persons having a pecuniary or proprietary interest in the outcome of the litigation are not disqualified from testifying. Interest merely goes to the credibility of the testimony. *Martuccio v. Department of Prof'l Regulation*, 622 So.2d 607 (Fla. 1st DCA 1993).

Martuccio v. Department of Prof'l Regulation

A party to the litigation is a competent witness, irrespective of his or her interest in the litigation. "It would be an anomalous situation indeed if the testimony of one against whom a complaint is lodged could never form the basis for competent, substantial evidence." *Martuccio v. Department of Prof'l Regulation*, 622 So.2d 607 (1st DCA 1993).

Rutherford v. Moore

A witness is presumed competent to testify until the contrary is established. *Rutherford v. Moore*, 774 So.2d 637 (Fla. 2000)

5.1.2 PERSONAL KNOWLEDGE

F.S. §90.604

Except where the witness is qualified as an expert witness, a witness may not testify as to a matter unless evidence is introduced which is sufficient to support a finding that the witness has personal knowledge of the matter. A witness cannot guess, speculate, or make assumptions in testimony. F.S. §90.604.

The evidentiary foundation required (proof that the witness has some personal knowledge of the matter) may be supplied through questioning of the witness.

Where the witness has made a personal observation but does not have a specific or definite impression about that which he or she observed (such as, "I saw a man and thought it was the defendant"), such defect in knowledge does not prevent the witness's testimony but, rather, goes to the weight of his or her testimony.

Noteworthy Cases

Airborne Freight Corp. v. Fleming Int'l Airways, Inc.

Witness who was not privy to what parties intended was not competent to testify as to the parties' understanding because of lack of personal knowledge. *Airborne Freight Corp. v. Fleming Int'l Airways, Inc.*, 423 So.2d 921 (Fla. 3d DCA 1983).

Be prepared for witness examination with testimony rules and strategies

Courtroom-Friendly Family Law

Yes, send me one copy of Roberta Stanley's *Florida Family Law Trial Notebook* and its CD with an invoice for \$99 plus shipping. If not satisfied, I may return the book and CD within 30 days. Send the annual supplements on the same 30-day review basis. I may cancel the update service at any time.

Copyright © 2006 James Publishing

Four Easy Ways to Order...

FFTN3a

MAIL: James Publishing, Inc. / P.O. Box 25202 / Santa Ana, CA 92799-5202 PHONE: 800-440-4780 FAX: 714-751-2709 INTERNET: www.jamespublishing.com

Prepay and save \$7.98 shipping

“ Check enclosed for \$99

(Make check payable to James Publishing / U.S. funds only)

“ Charge \$99 to my credit card: “ Visa “ Mastercard “ AMEX



Invoice option

(I do not wish to take advantage of the free shipping offer)

“ Bill firm \$106.98 (shipping included)

“ Bill me the same

Card #: _____ Exp. Date: _____ 3(or4)-digit security code: _____

Please complete all blanks, providing a street address for your office.

Printed Name: _____

Firm Name: _____

Office Address: _____ Suite: _____
(not residence)

City, State, Zip: _____

Telephone: (____) _____ Fax: (____) _____

Bar #: _____ E-mail: _____

Signature: _____

Quick access to Florida family law



Statutes are broken down into their plain English elements, and each interpretive case is summarized in one or two sentences.

Roberta G. Stanley has revised, updated, expanded, and added forms to Cynthia Greene's popular *Florida Family Law Trial Notebook*.

Designed for courtroom use, the *Notebook* focuses on evidentiary and procedural issues likely to arise at trial. The 625-page Stanley edition provides summaries and citations of key cases for:

- T** Trial procedure
- T** Documentary evidence
- T** Testimony
- T** Privileges
- T** Objections
- T** Witnesses
- T** Hearsay
- T** Substantive family law
- T** Family law rules

Details and sample pages inside...