

The State of Florida, Department of Health and Rehabilitative Services, Office of Child Support Enforcement comments on the proposed amendments to Rules 1.490 and 1.611, Fla.R.Civ.P., as follows:

PROPOSED AMENDMENT TO RULE 1.490, FLA.R.CIV.P.

Section 409.2557, Fla. Stat. (1985), designates the Florida Department of Health and Rehabilitative Services (the Department) "as the state agency responsible for the administration of the Florida child support enforcement program, Title IV-D of the Social Security Act, 42 U.S.C. s. 1302." The proposed amendment to Rule 1.490 is a response to the federally imposed time standards requiring Florida to establish an expedited process for matters involving the establishment and enforcement of child support under Title IV-D of the Social Security Act. See 45 C.F.R. Section 303.101(b)(1),(2) (1985); hereinafter referred to as the IV-D program. As the sole state agency statutorily responsible for administering the Florida IV-D program in a statewide uniform manner, the Department is compelled to respond to the proposed amendment to Rule 1.490.

The Department does not oppose the creation of support establishment and enforcement masters. However, in order to ensure statewide uniformity in the establishment and

enforcement of support, the Department suggests the amendment to Rule 1.490 state that the Chief Justice of the Florida Supreme Court shall appoint or otherwise authorize on a statewide uniform basis the appointment of support masters.

The Department further suggests amendment of Rule 1.490 to authorize support enforcement masters to accept voluntary acknowledgment of paternity under Rule 1.490 (c)(iii). Voluntary acknowledgment of support liability is tantamount to an acknowledgment of paternity. Such a change in the rule would significantly expedite the paternity determination process.

PROPOSED AMENDMENTS TO RULE 1.611, FLA.R.CIV.P.

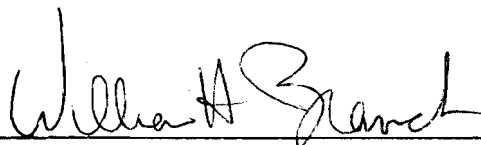
Section 61.181, Fla. Stat. (1985), was substantially amended by Chapter 86-220, Section 126, Laws of Florida. The office of the clerk of the court is statutorily required to operate a depository for receiving, recording, reporting, monitoring, and disbursing support payments "unless the depository is otherwise created by special act of the legislature or unless prior to June 1, 1985, a different entity was established to perform such functions." Section 61.181(1), Fla. Stat. (1986). The statute removes the authority of each judicial circuit's chief judge to establish a central depository by administrative order.

Accordingly, the Department submits that the existing language of Rule 1.611(b)(1) should be amended to read that the office of the clerk of the court shall operate a depository unless another entity is operating a depository in accordance with Florida law. Such a change would make the rule substantially similar to section 61.181.

Section 61.181, Fla. Stat. (1986), limits the functions of the depository to receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments. The statute does not authorize the depository to engage in support enforcement functions, such authority having been removed by the statute. In accordance with the procedure set forth by the legislature regarding support enforcement, and to ensure uniformity throughout Florida's judicial circuits, the Department submits that Rule 1.611(b)(2) should be amended to delete the language authorizing the depository to issue a motion for enforcement and a notice of hearing for the motion.

The Department's suggested changes to proposed Rule 1.611 will permit the Department, as the Florida IV-D agency, to serve its clients without infringing upon the Court's rule-making authority. In most cases, the persons served by the Department in its IV-D capacity are mothers of minor children either receiving Aid to Families with Dependent

Children or who have contracted with the Department for its services. Equally served by the rule as proposed by the Department would be mothers who obtain the services of private counsel. In its present form, the Rule may jeopardize federal funding of the Florida IV-D program which serves IV-D obligees.



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Rule 1.490. Masters

(c) Support Enforcement Masters. The chief justice of the supreme court shall appoint, or otherwise authorize on a uniform basis the appointment of support enforcement masters for each circuit or for each county within the circuit as are necessary to expeditiously perform the duties prescribed for them under this rule. Upon the filing of a cause of action for the establishment or enforcement of child support or the support or maintenance of a parent with whom the child is living, the clerk of the court shall refer the action to a support enforcement master. The support enforcement shall:

(i) Take testimony and establish a record;

(ii) Evaluate the evidence and promptly make a recommended order to the court for the establishment and enforcement of support;

(iii) Accept voluntary acknowledgment of paternity, support liability and stipulated agreements setting the amount of support to be paid; and

(iv) Prepare default orders if the obligor does not respond as required by law. Upon receiving the recommendation of the master, the court shall promptly enter an order. In the cases involving issues other than the establishment and enforcement of support, the support enforcement master shall recommend a temporary support

obligation under this expedited process then refer the unresolved issues to the court.

(d) Reference. No reference shall be to a master, either general or special, without the consent of the parties. Consent is not required for the referral of cases to support enforcement masters. When a reference is made to a master, the master, on his own motion, or on application of either party shall either party may set the action for hearing before him.

Rule 1.611. Dissolution of Marriage (Divorce)

(b) Payment to Public Officer.

(1) If the chief judge of the circuit by administrative order authorizes the creation of a central depository for the circuit or county within the circuit to receive, record and disburse all support alimony or maintenance payments, as provided in Fla. Stat. (1982) Section 61.181, the court may direct the payment be made to the officer designated in the administrative order. A central depository handling all support, alimony or maintenance payments shall be operated pursuant to Florida Statutes. The depository shall impose and collect a fee directly from the obligor for receiving, reporting, disbursing, monitoring, or handling alimony or child support payments. With respect to any order requiring

the payment of alimony or child support, the court shall direct in the order that the payments shall be made through the appropriate depository. The court need not order that payments be made through the depository where there is no minor child involved or where both parties request that the payments not be made through the depository. However, if either party requests that alimony payments be directed through the depository, such payments shall be so directed.

(2) If the court so directs, the payments shall be made to the depository officer designated. The officer person in charge of the depository shall keep complete and accurate accounts of all payments received. As part of its collection and distribution functions, the depository shall maintain records listing:

(i) The name, address, social security number, place of employment, and any other sources of income of the party obligated to pay alimony or child support in accordance with the terms of the court or administrative order.

(ii) The name, address, and social security number of the party entitled to receive alimony or child support payments in accordance with the terms of the court or administrative order.

(iii) The amount of alimony or child support due as provided in the court or administrative order.

(iv) The schedule of payment as provided in the court or administrative order.

(v) The actual amount of each alimony or child support payment received, the date or receipt, and the amount and recipient of disbursement.

(vi) The unpaid balance of any arrearage payable pursuant to order of alimony or child support.

Payments shall be made by cash, money order, cashier's, personal or certified check. The ~~officer depository~~ shall promptly disburse the proceeds to the party entitled to receive them under the judgment or order. Payment may be enforced by the party entitled to it ~~or the court may~~ establish a system under which the officer issues by issuing a motion for enforcement and a notice of hearing in the form approved by the Supreme Court. The motion and notice shall be served on the defaulting party in person or by mail. At the hearing the court shall enter an appropriate order based on the testimony presented to it.