

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

FILED

DEC 21 1986

CLERK SUPREME COURT

By [Signature]
Deputy Clerk

IN RE:
PROPOSED AMENDMENT TO
RULES 1.490 AND 1.611,
FLORIDA RULES OF CIVIL
PROCEDURE

69,676

_____ /
This Honorable Court has invited comment on the proposed amendments to Rules 1.490 and 1.611, Florida Rules of Civil Procedure from members of The Bar at large. The Family Law Section of The Florida Bar and its Rules Committee respectfully submit the following comments on the amendments proposed by the Circuit Court Judges Conference:

I.

1. The Family Law Section recognizes the necessity, desirability and public policy, both nationally and locally of providing for the expeditious establishment and enforcement of child support and spousal support. This policy is inherent in Public Law 98-378 enacted by Congress in August of 1984, and in Chapter 86-220, Laws of Florida, effective July 1, 1986. These laws were enacted primarily in response to the alarming rise in welfare costs resulting from increasing non-marital birth rates and parental desertion of families and to growing demand upon Congress to relieve taxpayers of the financial burden of supporting these families.

2. In an effort to comply with the Federal Mandate this Honorable Court promulgated Rule 2.050, Rules of Judicial Administration, effective July 1, 1986, which provides that a hearing for the establishment or enforcement of support must be held within 14 days from the day of request. Likewise, the State Legislature in Florida Statutes Section 61.13015 has provided an expedited process for enforcement of income deduction orders in

the case of child or spousal support delinquencies.

3. The new Federal Regulations (45 CFR 30311) include administrative or non-judicial processes for establishing and enforcing child support obligations. The Federal Regulation however balances the need for expeditious handling against the equally important need to afford due process rights to the parties. Therefore, adequate notice of the proceedings must be given to the payor, he must be provided with a copy of the application for the establishment or enforcement of support, must have the opportunity to appear and challenge the evidence against him and present defenses, and he must be provided a copy of the order.

4. There has been considerable discussion and debate amongst the judiciary, the Bar and family law practitioners in the State of Florida concerning the use of masters. Primarily those objections are as follows:

A. A non-consensual reference to a master deprives litigants of their constitutional right of access to the courts.

B. Master's proceedings are time consuming and add another level to the litigation, with its attendant expense.

C. Presently it is the responsibility of the individual counties to fund the general masters. The overwhelming majority of the counties in the State of Florida have not sought or obtained 70% federal financing as authorized by Title IV-D of the Social Security Act and even if they had applied, cases must be designated Title IV-D cases as a condition for federal funding assistance. Child support enforcement cases may be processed under Title IV-D only if the Department of Health and Rehabilitative Services or its designee provides child support enforcement assistance.

5. In view of the foregoing objections, comparatively few counties in the State of Florida utilize the master system. More readily available funding and a larger case load per judge have resulted in the creation of a master system in some of the larger

counties. However, even where such a system is utilized, the consent of both parties is presently required for a referral of a matter to a master. (Rule 1.490(c), Fla.R.C.P.) In some instances consent has been held to have been given by acquiescence. See, e.g. Cox v. Cox, 490 So. 2d 1051 (Fla. 4th DCA 1986).

II.

ANALYSIS OF PROPOSED AMENDMENT TO RULE 1.490

6. The Circuit Court Judge's Conference proposal (a) would completely eliminate consent for referral of cases to support enforcement masters; (b) does not provide protection to a spouse in need of alimony when no dependent children reside with the recipient spouse; (c) does not apply to support modification proceedings; (d) requires that the master accept stipulated agreements setting the amount of support, without regard to the reasonableness of the amount (i.e.: the master has no discretion in the matter); (e) contains no specific time deadlines for the hearing before the support enforcement master to take place.

The adoption of the proposed rule would frustrate the purposes of Rule 2.050, Rules of Judicial Administration in that a party would have 10 days for filing exceptions to the master's report, even assuming that a hearing was scheduled promptly before the master. It is most unlikely that the Court would schedule a hearing on the exceptions within 14 days from the day of initial request. Furthermore, the proposed rule does not provide a time deadline for the scheduling of a hearing and rendition of an order on the exceptions which may be filed to the master's report.

III.

PROPOSED AMENDMENT TO RULE 1.611

7. The proposed amendments to Rule 1.611(b)(1) and (2) duplicate nearly identical provisions presently contained in Sections 61.08 and 61.13, Florida Statutes. It is respectfully suggested that the rule contain a provision merely incorporating those statutes by reference and directing that any orders which

require the payment of spousal or child support be drafted in conformance with those statutory provisions.

IV.

CONCLUSIONS AND RECOMMENDATIONS

8. Except in Title IV-D cases, the consent of the parties to a reference to a support enforcement master should be required. The reference of Title IV-D cases to a master should not be subject to a consent requirement. Such amendment would not discriminate against non-welfare recipients because they could make a IV-D application, if they chose, through HRS rather than through their private counsel.

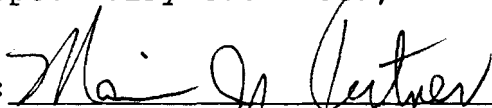
9. Circuit Judges ought to be required to give high priority to support enforcement matters even if other civil cases have to take lower priority.

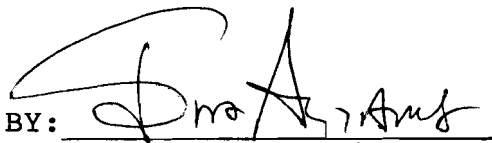
10. If a statewide master system is to be employed on a mandatory basis, the State Legislature should first provide for adequate state funding from general revenues for its creation and continued existence.

11. Any mandatory reference to a support enforcement master should include modification proceedings in order to give payor spouses the benefit of equal protection of the law.

12. Rule 1.490 (c) should be amended to provide that if a party does not object to a reference within seven (7) days from the service of the Order of Referral, then his consent shall be deemed to have been given to the reference.

Respectfully submitted,

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