

Supreme Court of Florida

No. 84,337

IN RE: FAMILY LAW RULES OF PROCEDURE.

[July 7, 1995]

OVERTON, J.

In accordance with our prior determination to have separate rules for family law cases, we have for adoption the Florida Family Law Rules of Procedure as proposed by the Family Law Rules Committee (the Committee). See In re Fla. R. Family Ct. P., 607 So. 2d 396 (Fla. 1992) (Family Law Rules I). We have jurisdiction. Art. V, § 2(a), Fla. Const. After the proposed rules were submitted to this Court by the Committee, the rules were published in The Florida Bar News for comment. A divided Board of Governors of The Florida Bar voted to approve the proposed rules in concept but recommended a number of changes. After

considering comments from the Board of Governors and others, we adopt a substantially modified version of the proposed rules. In this opinion, we discuss some of the significant modifications to the proposed rules and, in view of the major changes to the proposed rules, we again invite comments from all interested parties before our final adoption of the rules.

A great number of comments were received from interested parties regarding the initial rules proposed by the Committee. The primary concerns articulated in those comments involved: (1) the Committee's total incorporation of the Florida Rules of Civil Procedure into the proposed family law rules, along with numerous technical and substantive changes, rather than references in the family law rules to additions and exceptions to the civil rules; (2) the complexity of the proposed rules given the large amount of pro bono work and pro se litigants in this area; (3) the mandatory disclosure requirements; and (4) the requirements placed on psychologists in the evaluation of children.

We first address the concerns regarding the total incorporation of the civil rules. Essentially, the Committee lifted the text of the civil rules and placed it into the family rules. The Committee then made both substantive and stylistic changes to the rules. Although the Committee's approach was well-intended, the scheme of the rules as proposed would make it difficult for general practitioners to easily discern what differences existed between the civil rules and the family law

rules and what changes were in fact substantive and what changes were only stylistic. Notably, the Board of Governors of The Florida Bar voted unanimously to change the format of the proposed rules to allow for reference to the civil rules when necessary rather than to totally incorporate those rules. The Committee, however, rejected this proposal by a fourteen-to-nine vote.

After reviewing the proposed rules and the comments of the Board of Governors and others, we find that the rules should reference the civil rules where necessary rather than totally incorporate them with significant changes. Such a finding is consistent with our directives in Family Law Rules I, wherein we stated:

We request that The Florida Bar immediately appoint the Family Law Rules Committee and request that the initial set of rules for family law be submitted to this Court. . . . To avoid confusion among members of the Bar who practice in both family law and other civil areas, we request the committee to maintain as much uniformity as possible between its proposed Family Law Rules and the Rules of Civil Procedure.

607 So. 2d at 396 (emphasis added). Consequently, we have redrafted the rules to require that the civil rules apply to family law matters except as set forth in the family law rules. See Fla. Fam. L.R.P. 12.020.

We next address concerns regarding the complexity of the rules and the mandatory disclosure requirements. Many of the

comments received indicated that the proposed rules appeared to be fashioned for complex dissolution cases. Fears were expressed that the complicated nature of the rules and the mandatory disclosure requirements would discourage pro bono representation in this area and adversely affect the ever increasing number of pro se litigants in family law cases. After reviewing the proposed rules, we agree. Consequently, we have extensively redrafted the rules to eliminate as much complexity as possible. For example, we have altered the mandatory disclosure requirements by requiring less mandatory disclosure in cases involving smaller amounts of income, and we have eliminated a number of mandatory requirements in the proposed rules that are already within the inherent authority of a trial judge to require when the judge deems it appropriate to do so in a particular case. Additionally, in an effort to assist the many pro se litigants in family law cases, we have redrafted the rules to include Florida Supreme Court Approved Simplified Forms and instructional commentary and appendices. Many of the forms proposed by the Committee duplicated those contained in the simplified forms and in the civil rules of procedure. Thus, by including the simplified forms as part of the rules and by referencing the civil rules forms when appropriate, we have eliminated a great deal of duplication and, hopefully, have included commentary helpful to attorneys who perform work in this field on a pro bono basis and to pro se litigants.

We also decline at this time to adopt the Committee's proposed rules regarding the appointment of experts, evaluations of minor children, and the need for obtaining a court order to have a child testify. Based on the comments received, we believe that additional study is necessary before new rules on these issues are adopted. Of specific concern is the potentially negative impact on the manner in which psychological evaluations are performed and the requirements placed on psychologists in general. Likewise, we have eliminated the need for the "seasonable" supplementation of responses and the mandatory twenty-four-hour waiting period for proposed orders.

On our own motion, we have addressed three other major concerns: (1) confidentiality requirements; (2) domestic and repeat violence injunctions; and (3) mandatory trial and pretrial time periods and document exchange for pretrial conferences.

With regard to confidentiality, the Committee's proposed rules contained a number of changes mandating the confidentiality and sealing of certain family law cases. For instance, the proposed rules required that all financial documents or records obtained during the pendency of any action were to be considered confidential and could be disclosed to third parties only upon leave of court. We have previously determined, however, that a strong presumption of public access exists as to all court proceedings and records, including dissolution proceedings and records. Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d

113 (Fla. 1988). This presumption of public access is subject to only a few narrowly defined exceptions. Id. at 114.

Additionally, and equally as important, the standards regarding the confidentiality and sealing of records are now governed by Florida Rule of Judicial Administration 2.051. We have altered the proposed rules accordingly.

Next, domestic and repeat violence injunctions are an important and significant responsibility of family courts. After reviewing the proposed rules, we determined that the provisions regarding injunctions did not include or correspond to the legislative mandates regarding domestic and repeat violence injunctions. This is partly due to the fact that legislation regarding this issue has been in a state of flux. Because domestic and repeat violence are family law matters and are to be governed by the family law rules, we have modified the provisions and commentary regarding injunctions to include domestic and repeat violence. These new provisions track the new 1995 legislative law regarding domestic and repeat violence except where inconsistencies in that law exist.

We have also eliminated many of the mandated time periods and requirements for final hearings and disclosure at pretrial conferences, finding that these requirements are best left to the discretion of the trial judge. For example, some cases do not require the extensive exchange of documents mandated for pretrial conferences in the proposed rules.

Finally, in implementing the new family law rules, we find it necessary to amend the Florida Rules of Civil Procedure to eliminate references to family law matters. The amendments to the rules of civil procedure are attached to this opinion as appendix A.

Accordingly, the amendments to the Florida Rules of Civil Procedure (attached to this opinion as appendix A) and the new Florida Family Law Rules of Procedure, as redrafted by this Court (attached to this opinion as appendix B), are hereby adopted and shall take effect January 1, 1996. Because of the substantial changes to the rules made by this Court, we direct that the rules be readvertised in The Florida Bar News; we direct that the Family Law Rules Committee review the rules for comment; and we direct that all interested parties submit comments regarding the rules within sixty days of publication, which comments will be considered by this Court before the effective date of the rules.

It is so ordered.

GRIMES, C.J., and SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

Original Proceeding - Florida Family Law Rules of Procedure

John F. Harkness, Jr., Executive Director, The Florida Bar,
Tallahassee, Florida; and Miriam E. Mason, Chair, Family Law
Rules Committee, Sessums & Mason, P.A., Tampa, Florida;

for Petitioner

Deborah Marks, individually, North Miami, Florida;

in Opposition to a Portion of Proposed Rule 12.490

Honorable Frederick D. Smith, Circuit Judge, Eighth Judicial
Circuit, Gainesville, Florida; Renee K. Fehr of Cobb, Cole &
Bell, Daytona Beach, Florida, as Chairperson, Volusia County Bar
Association Pro Bono Committee, and on behalf of Horace Smith,
Esquire, Volusia County Bar, Richard Brown, Esquire, Chairman,
Volusia County Bar Association Family Law Committee and David
Jenks, Esquire, Pro Bono Developer, Volunteer Lawyers Project;
I. Bruce Frumkin, Ph.D., ABPP and Carolyn Stimel, Ph.D., ABPP, of
Forensic and Clinical Psychology Associates, P.A., South Miami,
Florida; John S. Morse of John S. Morse, P.A., Tampa, Florida;
Debra Katz, M.D., Chair, Child Adolescent Psychiatry
Subcommittee, South Florida Psychiatric Society, Miami, Florida;
James P. D'Angelo of James P. D'Angelo, P.A., Coral Springs,
Florida; Henry P. Trawick, Jr., Sarasota, Florida; Lawrence J.
Hamilton II, President, Young Lawyers Division, The Florida Bar,
Jacksonville, Florida; and Honorable Winifred J. Sharp, Chair,
Gender Bias Study Implementation Commission,

Objections and Comments regarding Family Law Rules

APPENDIX A

AMENDMENTS TO FLORIDA RULES OF CIVIL PROCEDURE

The Florida Rules of Civil Procedure are hereby amended as follows (additions are underlined; deletions are struck-through):

RULE 1.010. SCOPE AND TITLE OF RULES

These rules apply to all actions of a civil nature and all special statutory proceedings in the circuit courts and county courts except those to which the Florida Probate Rules, the Florida Family Law Rules of Procedure, or the Small Claims Rules apply. The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceeding unless these rules specifically provide to the contrary. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action. These rules shall be known as the Florida Rules of Civil Procedure and abbreviated as Fla. R. Civ. P.

. . . .

RULE 1.360. EXAMINATION OF PERSONS

(a) **Request; Scope.**

(1) A party may request any other party to submit to, or to produce a person in that other party's custody or legal control for, examination by a qualified expert when the condition that is the subject of the requested examination is in controversy.

(A) When the physical condition of a party or other person under subdivision (a)(1) is in controversy, the request may be served on the plaintiff without leave of court after commencement of the action, and on any other person with or after service of the process and initial pleading on that party. The request shall specify a reasonable time, place, manner, conditions, and scope of the examination and the person or persons by whom the examination is to be made. The party to whom the request is directed shall serve a response within 30 days after service of the request, except that a defendant need not serve a response until 45 days after service of the process and initial pleading on that defendant. The court may allow a shorter or longer time. The response shall state that the examination will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated.

(B) In cases where the condition in controversy is not physical, ~~including domestic relations and bastardy cases when the blood group is in issue,~~ a party may move for an examination by a qualified expert as in subdivision (a)(1). The order for examination shall be made only after notice to the person to be examined and to all parties, and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(2) An examination under this rule is authorized only when the party submitting the request has good cause for the examination. At any hearing the party submitting the request shall have the burden of showing good cause.

(3) Upon request of either the party requesting the examination or the party or person to be examined, the court may establish protective rules governing such examination.

(b) Report of Examiner.

(1) If requested by the party to whom a request for examination or against whom an order is made under subdivision (a)(1)(A) or (a)(1)(B) or by the person examined, the party requesting the examination to be made shall deliver to the other party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnosis, and conclusions, with similar reports of all earlier examinations of the same condition. After delivery of the detailed written report, the party requesting the examination to be made shall be entitled upon request to receive from the party to whom the request for examination or against whom the order is made a similar report of any examination of the same condition previously or thereafter made, unless in the case of a report of examination of a person not a party the party shows the inability to obtain it. On motion, the court may order delivery of a report on such terms as are just; and if an examiner fails or refuses to make a report, the court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or requested or by taking the deposition of the examiner, the party examined waives any privilege that party may have in that action or any other involving the same controversy regarding the testimony of every other person who has examined or may thereafter examine that party concerning the same condition.

(3) This subdivision applies to examinations made by agreement of the parties unless the agreement provides otherwise. This subdivision does not preclude discovery of a report of an

examiner or taking the deposition of the examiner in accordance with any other rule.

(c) **Examiner as Witness.** The examiner may be called as a witness by any party to the action, but shall not be identified as appointed by the court.

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RULE 1.491. CHILD SUPPORT ENFORCEMENT is deleted in its entirety (See new Florida Family Law Rule of Procedure 1.492).

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RULE 1.540. RELIEF FROM JUDGMENT, DECREES, OR ORDERS

(a) **Clerical Mistakes.** Clerical mistakes in judgments, decrees, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the record on appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered or taken, ~~except that there shall be no time limit for motions based on fraudulent financial affidavits in marital cases.~~ A motion under this subdivision does not affect the finality of a judgment or decree or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a

judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court.

Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment or decree shall be by motion as prescribed in these rules or by an independent action.

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RULE 1.611. MARITAL AND POST-MARITAL PROCEEDINGS is deleted in its entirety (See new Florida Family Law Rules of Procedure 12.105, 12.285, and 12.611).

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RULE 1.740. FAMILY MEDIATION is deleted in its entirety (See new Florida Family Law Rule of Procedure 1.740).

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FORM 1.918. LIS PENDENS

NOTICE OF LIS PENDENS

TO DEFENDANT, AND ALL OTHERS WHOM IT MAY CONCERN:

YOU ARE NOTIFIED of the institution of this action by the plaintiff against you seeking ("to foreclose a mortgage on" or "to partition" or "to quiet title to" ~~or "a divorce and relief concerning"~~ or other type of action) the following property in County, Florida:

(legal description of property)

DATED on, 19.....

Attorney for

.....
.....
Address

Florida Bar No.

FORM 1.919. NOTICE OF ACTION; CONSTRUCTIVE SERVICE — NO PROPERTY

NOTICE OF ACTION

TO

YOU ARE NOTIFIED that an action for (~~"dissolution of marriage"~~ or "construction of a will" or "re-establishment of a lost deed" or other type of action) has been filed against you and you are required to serve a copy of your written defenses, if any, to it on, the plaintiff's attorney, whose address is, on or before, 19....., and file the original with the clerk of this court either before service on the plaintiff's attorney or immediately thereafter; otherwise a default will be entered against you for the relief demanded in the complaint or petition.

DATED on, 19.....

(Name of Clerk)
As Clerk of the Court

By
As Deputy Clerk

NOTE: This form must be modified to name the other defendants when there are multiple defendants and all are not served under the same notice. See section 49.08(1), Florida Statutes (1979).

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FORM 1.943. DISSOLUTION OF MARRIAGE is deleted in its entirety (See Family Law Forms).

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FORM 1.975. FINANCIAL STATEMENT FOR DISSOLUTION OF MARRIAGE (DIVORCE) is deleted in its entirety (see Family Law Forms).

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FORM 1.982. CONTEMPT NOTICE

MOTION AND NOTICE OF HEARING

TO: (name of attorney for party, or party if not represented)

YOU ARE NOTIFIED that plaintiff will apply to the Honorable
....., Circuit Judge, on, 19.....,
atm., in the County Courthouse at
....., Florida, for an order adjudging (defendant's
name) in contempt of court for violation of the terms of the order
or judgment entered by this court on, 19....., by
failing to,
and I certify that a copy hereof has been furnished to
..... by mail on, 19.....

NOTE: ~~if the violation is of another nature, t~~The particular
violation must be inserted ~~instead of failure to pay alimony in the~~
motion and notice. A separate motion is unnecessary.

. . . .

FORM 1.995. FINAL JUDGMENT DISSOLVING MARRIAGE is deleted in its
entirety (See Family Law Forms).

. . . .

FORM 7. MARRIAGE DISSOLUTION--INTERROGATORIES TO PARTY is
deleted in its entirety (See Family Law Forms).

APPENDIX B

NEW FLORIDA FAMILY LAW RULES OF PROCEDURE

RULE 12.000. PREFACE

These rules consist of two separate sections. Section I contains the procedural rules governing family law matters and their commentary. Section II contains forms, commentary, and appendices. The commentary and appendices to the forms are included to assist litigants unrepresented by counsel and do not, in and of themselves, constitute official rules or commentary of the Florida Supreme Court.

Commentary

1995 Adoption. These rules were adopted after the Florida Supreme Court determined that separate rules for family court procedure were necessary. See *In re Florida R. Fam. Ct. P.*, 607 So. 2d 396 (Fla. 1992). The Court recognized that family law cases are different from other civil matters, emphasizing that the 1993 creation of family divisions in the circuit courts underscored the differences between family law matters and other civil matters. In adopting the family law rules, the Court stressed the need for simplicity due to the large number of pro se litigants (parties without counsel) in family law matters. In an effort to assist the many pro se litigants in this field, the Court has included simplified forms and instructional commentary in these rules. See Section II, *infra*. The instructional commentary to the forms refers to these rules or the Florida Rules of Civil Procedure, where applicable.

The forms were adopted by the Court pursuant to *Family Law Rules of Procedure*, No. 84,337 (Fla. July 7, 1995); *In re Petition for Approval of Forms Pursuant to Rule 10-1.1(b) of the Rules Regulating the Florida Bar--Stepparent Adoption Forms*, 613 So. 2d 900 (Fla. 1992); *Rules Regulating the Florida Bar--Approval of Forms*, 581 So. 2d 902 (Fla. 1991).

SECTION I FAMILY LAW RULES OF PROCEDURE

RULE 12.005. TRANSITION RULE

These rules shall apply to all family law cases effective January 1, 1996. Any action taken in a family law case before January 1, 1996, that conformed to the then-effective rules or statutes governing family law cases, will be regarded as valid during the pendency of the litigation.

Commentary

1995 Adoption. This rule provides for an effective date of January 1, 1996, for these Florida Family Law Rules of Procedure. Under this rule, any action taken in a family law matter before January 1, 1996, will be regarded as valid during the pendency of the litigation so long as that action was taken in accordance with the then-effective rules or statutes governing family law cases. Any action taken after January 1, 1996, in new or pending family law cases will be governed by these rules.

RULE 12.010. SCOPE, PURPOSE, AND TITLE OF RULES

(a) Scope.

(1) These rules apply to all actions concerning family matters, including actions concerning domestic and repeat violence, except as otherwise provided by the Florida Rules of Juvenile Procedure or the Florida Probate Rules.

(2) The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceeding unless these rules or the Florida Rules of Civil Procedure, where applicable, specifically provide to the contrary. All actions governed by these rules shall also be governed by the Florida Evidence Code, which shall govern in cases where a conflict with these rules may occur.

(b) Purpose.

(1) These rules shall be construed to secure the just, speedy, and inexpensive determination of the procedures covered by them and shall be construed to secure simplicity in procedure and fairness in administration.

(2) Nothing shall prohibit any intake personnel in Family Law Divisions from assisting in the preparation of papers or forms to be filed in any action under these rules.

(c) **Title.** These rules shall be known as the Florida Family Law Rules of Procedure and abbreviated as Fla. Fam. L. R. P.

Commentary

1995 Adoption. "Family matters," "family law matters," or "family law cases" as used within these rules include, but are not limited to, matters arising from dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, custodial care of or access to children (except as otherwise provided by the Florida Rules of Juvenile Procedure), adoption, proceedings for emancipation of a minor, declaratory judgment actions related to premarital, marital, or post-marital agreements (except as otherwise provided, when applicable, by the Florida Probate Rules), injunctions for domestic and repeat violence, and all proceedings for modification, enforcement, and civil contempt of these actions.

RULE 12.020. APPLICABILITY OF FLORIDA RULES OF CIVIL PROCEDURE

The Florida Rules of Civil Procedure are applicable in all family law matters except as otherwise provided in these rules. These rules shall govern in cases where a conflict with the Florida Rules of Civil Procedure may occur. Whenever the Florida Rules of Civil Procedure apply to family matters, the use of the words plaintiff, defendant, and complaint within the context of the civil rules shall be interchangeable, where appropriate, with the words, petitioner, respondent, and petition, respectively.

Commentary

1995 Adoption. To avoid confusion among members of the Bar who practice in both family law and civil law areas, it is intended that as much uniformity as possible be maintained between the Florida Family Law Rules of Procedure and the Florida Rules of Civil Procedure. To assist in this effort, the Florida Supreme Court determined that the Florida Rules of Civil Procedure were to apply except as set forth herein. Exceptions and additions to the Florida Rules of Civil Procedure are contained in Florida Family Law Rules of Procedure that are numbered to correspond to their civil rule counterparts. For example, exceptions to Florida Rule of Civil Procedure 1.080 are contained in Florida Family Law Rule of Procedure 12.080.

RULE 12.030. NONVERIFICATION OF PLEADINGS

Verification of pleadings shall be governed by Florida Rule of Civil Procedure 1.030.

RULE 12.050. WHEN ACTION COMMENCED

Commencement of actions shall be governed by Florida Rule of Civil Procedure 1.050.

RULE 12.060. TRANSFERS OF ACTIONS

Transfers of actions shall be governed by Florida Rule of Civil Procedure 1.060.

RULE 12.070. PROCESS

Service of process upon the commencement of all family law actions except domestic and repeat violence shall be as set forth in Florida Rule of Civil Procedure 1.070, except that summons, cross-claim summons, and third-party summons in family law matters shall be patterned after Florida Family Law Form 19 and shall specifically contain the following language:

WARNING: Rule 12.285, Florida Family Law Rules of Procedure, requires certain automatic disclosure of documents and information. Failure to comply can result in sanctions, including dismissal or striking of pleadings.

Service of process regarding domestic and repeat violence actions shall be governed by Florida Family Law Rule of Procedure 12.610.

RULE 12.080. SERVICE OF PLEADINGS AND PAPERS

(a) **Service; Generally.** Service of pleadings and papers after commencement of all family law actions except domestic and repeat violence shall be as set forth in Florida Rule of Civil Procedure 1.080, except that rule 1.080 shall be expanded as set forth below in sections (b) and (c) to include additional requirements for service of recommended orders and for service on defaulted parties. Service of pleadings and papers regarding

domestic and repeat violence actions shall be governed by Florida Family Law Rule of Procedure 12.610.

(b) **Service and Preparation of Orders and Judgments.** A copy of all orders or judgments involving family law matters except domestic and repeat violence shall be transmitted by the court or under its direction to all parties at the time of entry of the order or judgment. The court may require that recommended orders, orders, or judgments be prepared by a party. If the court requires that a party prepare the recommended order, order, or judgment, the party shall furnish the court with stamped, addressed envelopes to all parties for service of the recommended order, order, or judgment. The Court may also require that any proposed recommended order, order, or judgment, which is prepared by a party, be furnished to all parties no less than 24 hours before submission to the court of the recommended order, order, or judgment. Service and preparation of orders and judgments involving domestic and repeat violence shall be governed by Florida Family Law Rule of Procedure 12.610.

(c) **Defaulted Parties.** No service need be made on parties against whom a default has been entered, except that:

(1) pleadings asserting new or additional claims against defaulted parties shall be served in the manner provided for service of summons contained in Florida Rule of Civil Procedure 1.070;

(2) notice of final hearings or trials and court orders shall be served on defaulted parties in the manner provided for service of pleadings and papers contained in Florida Rule of Civil Procedure 1.080; and

(3) final judgments shall be served on defaulted parties as set forth in Florida Rule of Civil Procedure 1.080(h)(2).

Commentary

1995 Adoption. This rule provides that the procedure for service shall be as set forth in Florida Rule of Civil Procedure 1.080 but is to include the following exceptions or additions to that rule. First, subdivision (b) corresponds to and replaces subdivision (h)(1) of rule 1.080 and expands the rule to include recommended orders. Second, this rule expands items that must be served on defaulted parties to insure that defaulted parties are at least minimally advised of the progress of the proceedings. This rule is not intended to require the furnishing of a proposed recommended order, proposed order, or proposed final judgment to a defaulted party.

RULE 12.090. TIME

Time shall be governed by Florida Rule of Civil Procedure 1.090.

RULE 12.100. PLEADINGS AND MOTIONS

Pleadings and motions shall be governed by Florida Rule of Civil Procedure 1.100.

Commentary

1995 Adoption. This rule provides that pleadings and motions are to be governed by Florida Rule of Civil Procedure 1.100. The cover sheets and disposition forms described in that rule shall be the same cover sheets and disposition forms used in family law proceedings.

RULE 12.105. SIMPLIFIED DISSOLUTION PROCEDURE

(a) **Requirements for Use.** The parties to the dissolution may file a petition for simplified dissolution if they certify under oath that

(1) there are no minor or dependent children of the parties and the wife is not now pregnant;

(2) the parties have made a satisfactory division of their property and have agreed as to payment of their joint obligations; and

(3) the other facts set forth in Florida Family Law Form 1 (Petition for Simplified Dissolution of Marriage/Divorce) are true.

(b) **Consideration by Court.** The clerk shall submit the petition to the court. The court shall expeditiously consider the cause. The parties shall appear before the court in every case and, if the court so directs, testify. The court, after examination of the petition and personal appearance of the parties, shall enter a judgment granting the dissolution (Florida Family Law Form 1A) if the requirements of this subdivision have been established and there has been compliance with the waiting period required by statute.

(c) **Financial Affidavit and Settlement Agreement.** The parties must each file a financial affidavit (Family Law Form 3 or 4), and a marital settlement agreement (Family Law Form 5).

(d) **Final Judgment.** Upon the entry of the judgment, the clerk shall furnish to each party a certified copy of the final judgment of dissolution, which shall be in substantially the form provided in Family Law Form 1A.

(e) **Forms.** The clerk or family law intake personnel shall provide forms for the parties whose circumstances meet the requirements of this rule and shall assist in the preparation of the petition for dissolution and other papers to be filed in the action.

Commentary

1995 Adoption. This rule was previously contained in Florida Rule of Civil Procedure 1.611, which contained several unrelated issues. Those issues are now governed by separate family law rules for automatic disclosure, central governmental depository, and this rule for simplified dissolution procedure. Under this rule, the parties must file a financial affidavit (Family Law Form 3 or 4, depending on their income and expenses) and a marital settlement agreement (Family Law Form 5). Unless the parties agree otherwise in the settlement agreement, they will also be required to comply with the disclosure requirements of Florida Family Law Rule 12.285.

RULE 12.110. GENERAL RULES OF PLEADING

The general rules of pleading set forth in Florida Rule of Civil Procedure 1.110 shall apply to these proceedings with the following exception. Proceedings to modify a final judgment in a family law matter shall be initiated only pursuant to rule 1.110(h) and not by motion.

Commentary

1995 Adoption. This rule clarifies that final judgment modifications must be initiated pursuant to a supplemental petition as set forth in rule 1.110(h), rather than through a motion.

RULE 12.120. PLEADING SPECIAL MATTERS

The pleading of special matters shall be governed by Florida Rule of Civil Procedure 1.120.

RULE 12.130. DOCUMENTS SUPPORTING ACTION OR DEFENSE

The attachment of documents supporting an action or defense shall be governed by Florida Rule of Civil Procedure 1.130.

RULE 12.140. DEFENSES

Defenses shall be governed by Florida Rule of Civil Procedure 1.140.

RULE 12.150. SHAM PLEADINGS

Sham Pleadings shall be governed by Florida Rule of Civil Procedure 1.150.

RULE 12.160. MOTIONS

Motions shall be governed by Florida Rule of Civil Procedure 1.160.

RULE 12.170. CROSSCLAIMS

Crossclaims shall be governed by Florida Rule of Civil Procedure 1.170.

RULE 12.180. THIRD PARTY PRACTICE

Third party practice shall be governed by Florida Rule of Civil Procedure 1.180.

RULE 12.200. CASE MANAGEMENT AND PRETRIAL CONFERENCES

(a) **Case Management Conference.** A case management conference may be ordered by the court at any time on the court's initiative. A party may request a case management conference 30 days after service of a petition or complaint. At such a conference the court may:

(1) schedule or reschedule the service of motions, pleadings, and other papers;

(2) set or reset the time of trials, subject to rule 12.440;

(3) coordinate the progress of the action if complex litigation factors are present;

(4) limit, schedule, order, or expedite discovery;

(5) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts;

(6) schedule or hear motions related to admission or exclusion of evidence;

(7) pursue the possibilities of settlement;

(8) require filing of preliminary stipulations if issues can be narrowed;

(9) refer issues to a master for findings of fact, if consent is obtained as provided in rules 12.490 and 12.491 and if no allegations or history of domestic or repeat violence are involved in the case;

(10) refer the parties to mediation or counseling if no allegations or history of domestic or repeat violence are involved in the case and consider allocation of expenses related to the referral;

(11) coordinate voluntary binding arbitration if no allegations or history of domestic or repeat violence are involved in the case;

(12) appoint court experts and allocate the expenses for the appointments;

(13) refer the cause for a home study or psychological evaluation and allocate the initial expense for that study;

(14) appoint an attorney or guardian ad litem for a minor child or children if required and allocate the expense of the appointment; and

(15) schedule other conferences or determine other matters that may aid in the disposition of the action.

(b) **Pretrial Conference.** After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine:

(1) proposed stipulations and the simplification of the issues;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(4) the limitation of the number of expert witnesses; and

(5) any matters permitted under subdivision (a) of this rule.

(c) **Notice.** Reasonable notice shall be given for a case management conference, and 20 days' notice shall be given for a pretrial conference. On failure of a party to attend a conference, the court may dismiss the action, strike the pleadings, limit proof or witnesses, or take any other appropriate action. Any documents that the court requires for any conference shall be specified in the order. Orders setting pretrial conferences shall be uniform throughout the territorial jurisdiction of the court.

(d) **Case Management and Pretrial Order.** The court shall make an order reciting the action taken at a conference and any stipulations made. The order shall control the subsequent course of the action unless modified to prevent injustice.

Commentary

1995 Adoption. This rule addresses issues raised by decisions such as *Dralus v. Dralus*, 627 So. 2d 505 (Fla. 2d DCA 1993); *Wrona v. Wrona*, 592 So. 2d 694 (Fla. 2d DCA 1991); and *Katz v. Katz*, 505 So. 2d 25 (Fla. 4th DCA 1987), regarding the cost of marital litigation. This rule provides an orderly method for the just, speedy, and inexpensive determination of issues and promotes amicable resolution of disputes.

This rule replaces and substantially expands Florida Rule of Civil Procedure 1.200 as it pertained to family law matters. Under this rule, a court may convene a case management conference at any time and a party may request a case management conference

30 days after service of a petition or complaint. The court may consider the following additional items at the conference: motions related to admission or exclusion of evidence, referral of issues to a master if consent is obtained pursuant to the rules, referral of the parties to mediation or counseling, coordination of voluntary binding arbitration, appointment of court experts, referral of the cause for a home study psychological evaluation, and appointment of an attorney or guardian ad litem for a minor child.

RULE 12.210. PARTIES

Florida Rule of Civil Procedure 1.210 shall govern parties to an action filed under the family law rules with the following exception. Rule 1.210 shall not be read to require that a child is an indispensable party for a dissolution of marriage or child custody proceeding.

RULE 12.230. INTERVENTIONS

Interventions shall be governed by Florida Rule of Civil Procedure 1.230.

RULE 12.240. INTERPLEADER

Interpleaders shall be governed by Florida Rule of Civil Procedure 1.240.

RULE 12.250. MISJOINDER AND NONJOINDER OF PARTIES

Misjoinder and nonjoinder of parties shall be governed by Florida Rule of Civil Procedure 1.250.

RULE 12.260. SURVIVOR; SUBSTITUTION OF PARTIES

Survivors and the substitution of parties shall be governed by Florida Rule of Civil Procedure 1.260.

RULE 12.270. CONSOLIDATION; SEPARATE TRIALS

The consolidation or separation of trials shall be governed by Florida Rule of Civil Procedure 1.270.

RULE 12.280. GENERAL PROVISIONS GOVERNING DISCOVERY

Florida Rule of Civil Procedure 1.280 shall govern general provisions concerning discovery in family law matters with the following exceptions.

(a) **Supplementing of Responses.** A party is under a duty to amend a prior response or disclosure if the party:

(1) obtains information or otherwise determines that the prior response or disclosure was incorrect when made;

(2) obtains information or otherwise determines that the prior response or disclosure, although correct when made, is no longer true or complete.

(b) **Time for Filing Supplemental Responses.** Any supplemental response filed pursuant to this rule shall be filed as soon as possible after discovery of the incorrect information or change, but in no case shall the supplemental response be filed later than 24 hours before any applicable hearing absent a showing of good cause.

(c) **Documents Considered Confidential.** A determination as to the confidentiality of a court record shall be made in accordance with Florida Rule of Judicial Administration 2.051.

(d) **Sealing of Records.** Records found to be confidential under Florida Rule of Judicial Administration 2.051 shall be sealed on request of a party.

Commentary

1995 Adoption. Florida Rule of Civil Procedure 1.280 is to govern the general discovery provisions in family law matters with the exceptions set forth above. Subdivision (a) of this rule alters rule 1.280(e) by placing a duty on parties in family law matters to supplement responses. Under rule 1.280(e), no supplemental response is required. Subdivisions (b), (c), and (d) of this rule are in addition to the general requirements of rule 1.280 and have no counterparts in the Rules of Civil Procedure. Subdivisions (c) and (d) have been implemented in

recognition of the fact that family law cases often involve sensitive information that should be deemed confidential under Florida Rule of Judicial Administration 2.051. For instance, financial records filed may contain information regarding a family business, which, if public, could provide competitors with an advantage and adversely affect the family business.

RULE 12.285. MANDATORY DISCLOSURE

(a) Application.

(1) **Scope.** This rule shall apply to all proceedings within the scope of these rules except proceedings involving simplified dissolution, enforcement, contempt, and injunctions for domestic or repeat violence. Additionally, no financial affidavit or other documents shall be required under this rule from a party seeking attorneys' fees, suit money, or costs, if the basis for the request is solely under section 57.105, Florida Statutes, or any successor statute. Except for the provisions as to financial affidavits, any portion of this rule may be modified by order of the court or agreement of the parties.

(2) **Original and Duplicate Copies.** Unless otherwise agreed by the parties or ordered by the court, copies of documents required under this rule may be produced in lieu of originals. Originals, when available, shall be produced for inspection upon request. Parties shall not be required to serve duplicates of documents previously served.

(b) Time for Production of Documents.

(1) **Temporary Financial Hearings.** Any document required under this rule, which is being served in any temporary financial relief proceeding, shall be delivered to the other party for inspection and copying as follows.

(A) The party seeking relief shall serve the required documents on the other party with the notice of temporary financial hearing.

(B) The responding party shall serve the required documents on the party seeking relief on or before 5:00 p.m., 2 business days before the day of the temporary financial hearing. A responding party shall be given no less than 20 days to serve the documents required under this rule, unless otherwise ordered by the court.

(2) **Initial and Supplemental Proceedings.** Any document required under this rule, which is being served in any initial or supplemental proceeding, shall be delivered to the other party for inspection and copying within 45 days of service of the initial pleading on the respondent.

(c) **Parties Whose Annual Income and Expenses Do Not Exceed \$50,000.** Any party whose gross annual income from all sources does not exceed \$50,000 and whose total annual expenses do not exceed \$50,000 shall be required to serve the following documents in ANY PROCEEDING FOR AN INITIAL OR SUPPLEMENTAL REQUEST FOR

TEMPORARY OR PERMANENT FINANCIAL RELIEF, including, but not limited to, a request for child support, alimony, equitable distribution of assets or debts, or attorneys' fees, suit money, or costs:

(1) a financial affidavit in substantial conformity with Family Law Form 3 (this requirement cannot be waived by the parties);

(2) all federal and state income tax returns, gift tax returns, and intangible personal property tax returns filed by you or on your behalf for the past three years;

(3) IRS forms W-2, 1099, and K-1 for the past year, if the income tax return for that year has not been prepared;

(4) pay stubs or other evidence of earned income for the 3 months prior to delivery of the financial affidavit.

(5) a statement by the producing party identifying the amount and source of all income received from any source during the 3 months preceding the delivery of the financial affidavit required by this rule if not reflected on the pay stubs produced.

(6) all loan applications and financial statements prepared or used within the 3 years preceding delivery of that party's financial affidavit required by this rule, whether for the purpose of obtaining or attempting to obtain credit or for any other purpose.

(d) Parties Whose Annual Income or Expenses Exceed \$50,000. Any party whose gross annual income from all sources exceeds \$50,000 or whose total annual expenses exceed \$50,000 shall be required to serve the documents on the other party in temporary and permanent initial and supplemental proceedings as outlined below.

(1) **Temporary Financial Relief.** In any proceeding for temporary financial relief, the following documents shall be served on the other party:

(A) a financial affidavit in substantial conformity with Family Law Form 4 (this requirement cannot be waived by the parties);

(B) all federal and state income tax returns, gift tax returns, and intangible personal property tax returns filed by you or on your behalf for the past three years;

(C) IRS forms W-2, 1099, and K-1 for the past year, if the income tax return for that year has not been prepared;

(D) pay stubs or other evidence of earned income for the 3 months prior to delivery of the financial affidavit;

(E) a statement by the producing party identifying the amount and source of all income received from any source during the 3 months preceding the delivery of the financial affidavit required by this rule if not reflected on the pay stubs produced;

(F) All loan applications and financial statements prepared or used within the 3 years preceding delivery of that party's financial affidavit required by this rule, whether for the purpose of obtaining or attempting to obtain credit or for any other purpose;

(G) Corporate, partnership, and trust tax returns for the last tax year, if the producing party has an interest in a corporation, partnership, or trust greater than or equal to 30%;

(2) **Initial Proceedings.** In any initial proceeding for permanent financial relief, including, but not limited to, a request for child support, alimony, equitable distribution of assets or debts, or attorneys' fees, suit money, or costs, the following documents shall be served on the other party:

(A) All documents listed above in rule 12.285(d)(1);

(B) The answers to interrogatories found in Family Law Form 30;

(C) All documents showing reimbursed expenses and in-kind payments that reduce your personal living expenses that were received by you or made available to you for the last 3 years;

(D) All deeds, mortgages, promissory notes, and closing statements pertaining to real estate in which you own or owned an interest within the last 3 years, whether held by you in your name individually, in your name jointly with any other person, in your name as trustee or guardian for any other person, or in someone else's name on your behalf;

(E) All periodic statements and passbooks from the last 3 years for all checking accounts, savings accounts, money market funds, certificates of deposit, and credit union

accounts (regardless of whether or not the account has been closed), including those held in your name individually, in your name jointly with any other person or entity, in your name as trustee or guardian for any other person, or in someone else's name on your behalf;

(F) All brokerage account statements in which either party to this action held within the last 3 years or holds an interest including those held in your name individually, in your name jointly with any person or entity, in your name as trustee or guardian for any other person, or in someone else's name on your behalf;

(G) All title certificates, lease agreements, and registration certificates for all motor vehicles, boats, airplanes, and any other vehicle requiring registration that you regularly use, own, or owned in the last 3 years;

(H) The most recent statement for any profit sharing, retirement, or pension plan in which you are a participant or alternate payee and the summary plan description for any retirement, profit sharing, or pension plan in which you are a participant or an alternate payee (The summary plan description must be furnished to you on request by the plan administrator as required by 29 U.S.C. § 1024(b)(4).);

(I) All documents pertaining to any money owed to you or your spouse;

(J) All life insurance policies insuring your life or the life of your spouse;

(K) Corporate, partnership, and trust tax returns if the party has an ownership or interest in a corporation, partnership, or trust greater than or equal to 30%;

(L) Periodic statements, amortization schedules, or other records showing your indebtedness as of the date of the filing of this action and for the last 3 years;

(M) All written premarital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage; and

(N) All documents and tangible evidence supporting the producing party's claim of special equity or nonmarital status of an asset or debt for the time period from the date of acquisition of the asset or debt to the date of production or from the date of marriage, if based on premarital acquisition.

(0) Any court orders directing a party to pay or receive spousal or child support.

(3) **Supplemental Proceedings.** In any temporary or permanent supplemental proceeding regarding financial relief, documents shall be produced as set forth in rule 12.285(d)(1) and 12.285(d)(2), respectively. Additionally, in any modification proceeding, the parties shall produce all written agreements entered into between them at any time since the order to be modified was entered.

(e) Duty to Supplement Disclosure; Amended Financial Affidavit.

(1) Parties have a continuing duty to supplement documents described in this rule, including financial affidavits, whenever a material change in their financial status occurs.

(2) If an amended financial affidavit or an amendment to a financial affidavit is served, the amending party also shall serve any subsequently discovered or acquired documents supporting the amendments to the financial affidavit if the party falls within the provisions of subdivision 12.285(d).

(f) **Sanctions.** Any document to be produced under this rule, which is served on the opposing party fewer than 24 hours before a nonfinal hearing or in violation of the court's pretrial order, shall not be admissible in evidence at that hearing unless the court finds good cause for the delay. In addition, the court may impose other sanctions authorized by rule 12.380 as may be equitable under the circumstances. The court may also impose sanctions upon the offending lawyer in lieu of imposing sanctions on a party.

(g) **Objections to Mandatory Automatic Disclosure.** Objections to the mandatory automatic disclosure required by this rule shall be served in writing at least 5 days prior to the due date for the disclosure or the objections shall be deemed waived. For good cause shown, the court may extend the time for the filing of an objection or permit the filing of an otherwise untimely objection.

(h) **Certificate of Compliance.** All parties subject to automatic mandatory disclosure shall file with the court a certificate of compliance identifying with particularity the documents which have been delivered and certifying the date of delivery of the financial affidavit and documents by that party.

(i) **Place of Production.**

(1) Unless otherwise agreed by the parties or ordered by the court, all production required by this rule shall take place in the county where the action is pending and in the office of the attorney for the party receiving production. Unless otherwise agreed by the parties or ordered by the court, if a party does not have an attorney or if the attorney does not have an office in the county where the action is pending, production shall take place in the county where the action is pending at a place designated in writing by the party receiving production, served at least 5 days before the due date for production.

(2) If venue is contested, on motion by a party the court shall designate the place where production will occur pending determination of the venue issue.

Commentary

1995 Adoption. This rule creates a procedure for automatic financial disclosure in family law cases. By requiring production at an early stage in the proceedings, it is hoped that the expense of litigation will be minimized. See *Dralus v. Dralus*, 627 So. 2d 505 (Fla. 2d DCA 1993); *Wrona v. Wrona*, 592 So. 2d 694 (Fla. 2d DCA 1991); and *Katz v. Katz*, 505 So. 2d 25 (Fla. 4th DCA 1987). A limited number of requirements have been placed upon parties making and spending less than \$50,000 annually unless otherwise ordered by the court. In cases where the income or expenses of a party exceed \$50,000 annually, the requirements are much greater. Any portion of this rule may be modified by agreement of the parties or by order of the court. For instance, upon the request of any party or on the court's own motion, the court may order that the parties to the proceeding comply with some or all of the automatic mandatory disclosure provisions of this rule even though the parties do not meet the income requirements set forth in subdivisions 12.285(d). Additionally, the court may, on the motion of a party or on its own motion, limit the disclosure requirements in this rule should it find good cause for doing so.

RULE 12.290. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

Depositions before an action or pending an appeal shall be governed by Florida Rule of Civil Procedure 1.290.

RULE 12.300. PERSON BEFORE WHOM DEPOSITIONS MAY BE TAKEN

Provisions regarding who may take depositions shall be governed by Florida Rule of Civil Procedure 1.300.

RULE 12.310. DEPOSITIONS UPON ORAL EXAMINATION

Depositions upon oral examination shall be governed by Florida Rule of Civil Procedure 1.310.

RULE 12.320. DEPOSITIONS UPON WRITTEN QUESTIONS

Depositions upon written questions shall be governed by Florida Rule of Civil Procedure 1.320.

RULE 12.330. USE OF DEPOSITIONS IN COURT PROCEEDINGS

The use of depositions in court proceedings shall be governed by Florida Rule of Civil Procedure 1.330.

RULE 12.340. INTERROGATORIES TO PARTIES

Interrogatories to parties shall be governed generally by the procedures set forth in Florida Rule of Civil Procedure 1.340, with the following exceptions.

(a) **Initial Interrogatories.** Initial interrogatories to parties shall be those set forth in Family Law Form 30. Parties governed by the mandatory disclosure requirements of rule 12.285(d) (income or expenses over \$50,000) shall automatically submit the answers to those interrogatories as provided in that rule. Parties governed by the mandatory disclosure requirements of rule 12.285(c) (income and expenses under \$50,000), may serve the interrogatories set forth in Family Law Form 30 as set forth in rule 1.340.

(b) **Additional Interrogatories.** Ten interrogatories, including subparts, may be sent to a party in addition to the standard interrogatories contained in Family Law Form 30. A party must obtain permission of the court to send more than ten additional interrogatories.

Commentary

1995 Adoption. For parties governed under the disclosure requirements of rule 12.285(d) (income or expenses over \$50,000), the answers to the interrogatories contained in Form 30 must be automatically served on the other party. For parties governed under the disclosure requirements of rule 12.285(c) (income and expenses under \$50,000), the service of the interrogatories contained in Form 30 is optional as provided in Florida Rule of Civil Procedure 1.340. Additionally, under this rule, 10 additional interrogatories, including subparts, may be submitted beyond those contained in Family Law Form 30. Leave of court is required to exceed 10 additional interrogatories. The provisions of Florida Rule of Civil Procedure 1.340 are to govern the procedures and scope of the additional interrogatories.

RULE 12.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

Production of documents and things and entry upon land for inspection and other purposes shall be governed by Florida Rule of Civil Procedure 1.350.

RULE 12.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION

Production of documents and things without deposition shall be governed by Florida Rule of Civil Procedure 1.351.

RULE 12.360. EXAMINATION OF PERSONS

Florida Rule of Civil Procedure 1.360 shall govern general provisions concerning the examination of persons in family law matters, with the following exceptions.

Scope. Examinations permitted under rule 1.360(a)(1) may include, but are not limited to, examinations involving physical

or mental condition, employability or vocational testing, genetic testing, or any other type of examination related to a matter in controversy.

Commentary

1995 Adoption. This rule expands Florida Rule of Civil Procedure 1.360 to specify common examinations in family law matters, but this rule is not intended to be an exclusive list of allowable examinations. Rule 1.360 should be interpreted to discourage subjecting children to multiple interviews, testing, and evaluations.

RULE 12.370. REQUESTS FOR ADMISSION

Requests for admission shall be governed by Florida Rule of Civil Procedure 1.370.

RULE 12.380. FAILURE TO MAKE DISCOVERY; SANCTIONS

Florida Rule of Civil Procedure 1.380 shall govern the failure to make discovery in family law matters and related sanctions, with the following addition. A party may apply for an order compelling discovery in the manner set forth in rule 1.380 for the failure of any person to comply with any discovery request or requirement under the family law rules, including, but not limited to, the failure to comply with Family Law Rule of Procedure 12.285.

RULE 12.390. DEPOSITIONS OF EXPERT WITNESSES

Depositions of expert witnesses shall be governed by Florida Rule of Civil Procedure 1.390.

RULE 12.400 CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

(a) **Closure of Proceedings or Records.** Closure of court proceedings or sealing of records may only be ordered by the court whenever confidentiality is required as provided by Rule of Judicial Administration 2.051.

(b) **In Camera Inspection.** The court shall conduct an in camera inspection of any records sought to be sealed and consider

the contents of the records in determining whether they should be sealed.

Commentary

1995 Adoption. Judicial proceedings and records should be public except when substantial compelling circumstances, especially the protection of children or of business trade secrets, require otherwise. Family law matters frequently present such circumstances. It is intended that this rule be applied to protect the interests of minor children from offensive testimony and to protect children in a divorce proceeding.

RULE 12.410. SUBPOENA

Subpoenas shall be governed by Florida Rule of Civil Procedure 1.410.

RULE 12.420. DISMISSAL OF ACTIONS.

Dismissal of actions shall be governed by Florida Rule of Civil Procedure 1.420, with the following two exceptions.

(a) Unless otherwise specified in a notice or stipulation, a voluntary dismissal shall be without prejudice and shall not operate as an adjudication on the merits.

(b) Costs shall be assessed as provided in rule 1.420(d), except that the court shall not require the payment of costs of a previously dismissed claim, which was based upon or included the same claim against the same adverse party as the current action.

Commentary

1995 Adoption. Subdivision (a), which amends Florida Rule of Civil Procedure 1.420(a)(1), was added to eliminate the language of that subdivision which reads: "except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim" and to specifically provide to the contrary. Subdivision (b), which amends rule 1.420(d), was added to prevent the discouragement of reconciliation.

RULE 12.430. DEMAND FOR JURY TRIAL; WAIVER

Demands for and waivers of jury trial shall be governed by Florida Rule of Civil Procedure 1.430.

RULE 12.431. TRIAL JURY

Trials by jury shall be governed by Florida Rule of Civil Procedure 1.431.

RULE 12.440. SETTING ACTION FOR TRIAL

Florida Rule of Civil Procedure 1.440 shall govern general provisions concerning setting an action for trial in family law matters, with the following exceptions and additions.

(a) **Setting for Trial.** If the court finds the action ready to be set for trial, it shall enter an order setting the action for trial, fixing a date for trial, and setting a pretrial conference, if necessary. In the event a default has been entered, reasonable notice of not less than 10 days shall be given unless otherwise required by law. Trial shall be set within a reasonable time from the service of the notice for trial. At the pretrial conference, the parties should be prepared, consistent with Florida Family Law Rule of Procedure 12.200, to present any matter that will prepare the parties for trial and that can expedite the resolution of the case. The trial court may also direct the parties to reciprocally exchange and file with the court all documents relative to the outcome of the case; a list of all witnesses, all issues to be tried, and all undisposed motions; an estimate of the time needed to try the case; and any other information the court deems appropriate. This information should be served and filed no later than 72 hours before the pretrial conference or 30 days before the trial.

(b) **Sanctions.** The failure to comply with requirements of the order setting the action for trial shall subject the party or attorney to appropriate court sanctions.

Commentary

1995 Adoption. This rule amends Florida Rule of Civil Procedure 1.440(c), Setting for Trial, and creates a procedure to facilitate setting an action for trial. Proper pretrial compliance will foster knowledgeable settlement discussion and expedite an orderly trial. It also adds a provision for sanctions.

RULE 12.450. EVIDENCE

Adverse witnesses, the record of excluded evidence, and the filing of evidence shall be governed by Florida Rule of Civil Procedure 1.450.

RULE 12.460. CONTINUANCES

Continuances shall be governed by Florida Rule of Civil Procedure 1.460.

RULE 12.470. EXCEPTIONS UNNECESSARY

Florida Rule of Civil Procedure 1.470 shall govern exceptions in family law matters, except that no exception shall be necessary to an adverse ruling other than as provided in rule 12.491.

Commentary

1995 Adoption. This rule amends subdivision (a) of rule 1.470 as it applies to family law matters to eliminate possible confusion between common law exceptions and exceptions to recommendations of a special master under rule 12.491.

RULE 12.480. MOTION FOR A DIRECTED VERDICT

Motions for directed verdict shall be governed by Florida Rule of Civil Procedure 1.480.

RULE 12.481. VERDICTS

Verdicts shall be governed by Florida Rule of Civil Procedure 1.481.

RULE 12.490. GENERAL MASTERS

(a) **General Masters.** Judges of the circuit court may appoint as many general masters from among the members of The Florida Bar in the circuit as the judges find necessary, and the general masters shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general master shall take the oath required of officers by the Constitution and the oath shall be recorded before the master discharges any duties of that office.

(b) **Reference.**

(1) No matter shall be heard by a general master without an appropriate order of reference and the consent to the referral of all parties. Consent, as defined in this rule, to a specific referral, once given, cannot be withdrawn without good cause shown before the hearing on the merits of the matter referred. Consent may be express or may be implied in accordance with the requirements of this rule.

(A) A written objection to the referral to a general master must be filed within 10 days of the service of the order of referral.

(B) If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing.

(C) If the order of referral is served within the first 20 days after the service of the initial process, the time to file an objection is extended to the time within which to file a responsive pleading.

(D) Failure to file a written objection within the applicable time period is deemed to be consent to the order of referral.

(2) The order of referral shall be in substantial conformity with Family Law Form 41, and shall contain the following language in bold type:

**A REFERRAL TO A GENERAL MASTER REQUIRES THE
CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO
HAVE THIS MATTER HEARD BEFORE A JUDGE. IF
YOU DO NOT WANT TO HAVE THIS MATTER HEARD
BEFORE THE GENERAL MASTER, YOU MUST FILE A
WRITTEN OBJECTION TO THE REFERRAL WITHIN 10
DAYS OF THE TIME OF SERVICE OF THIS ORDER.
IF THE TIME SET FOR THE HEARING IS LESS THAN**

10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. IF THIS ORDER IS SERVED WITHIN THE FIRST 20 DAYS AFTER SERVICE OF PROCESS, THE TIME TO FILE AN OBJECTION IS EXTENDED TO THE TIME WITHIN WHICH A RESPONSIVE PLEADING IS DUE. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE A CONSENT TO THE REFERRAL.

REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MASTER SHALL BE BY EXCEPTIONS AS PROVIDED IN RULE 12.490(f), FLA. FAM. L. R. P. A RECORD, WHICH INCLUDES A TRANSCRIPT OR STIPULATED STATEMENT OF PROCEEDINGS, MAY BE REQUIRED TO SUPPORT THE EXCEPTIONS.

(3) The order of referral shall state with specificity the matter or matters being referred and the name of the general master to whom the matter is referred. The order of referral also shall state whether electronic recording or a court reporter is provided by the court, or whether a court reporter, if desired, must be provided by the litigants.

(4) When a reference is made to a general master, any party or the general master may set the action for hearing.

(c) **General Powers and Duties.** Every general master shall perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court except those related to domestic and repeat violence and contempt. A general master shall be empowered to administer oaths and conduct hearings, which may include the taking of evidence. All grounds for disqualification of a judge shall apply to general masters.

(d) **Hearings.**

(1) The general master shall assign a time and place for proceedings as soon as reasonably possible after the reference is made and give notice to each of the parties either directly or by directing counsel to file and serve a notice of hearing. If any party fails to appear, the general master may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. The general master shall proceed with reasonable diligence in every reference and with the least delay practicable. Any party may apply to the court for an order to the general master to speed the proceedings and to make the report and to certify to the court the reason for any delay.

(2) The evidence at the hearing shall be taken in writing by the master or by some other person under the master's authority in the master's presence and shall be filed with the master's report. The parties may not waive this requirement.

(3) The general master shall have authority to examine under oath the parties and all witnesses upon all matters contained in the reference to require production of all books, papers, writings, vouchers, and other documents applicable to it, and to examine on oath orally all witnesses produced by the parties. The general master may take all actions concerning evidence that can be taken by the circuit court and in the same manner. The general master shall have the same powers as a circuit judge to utilize communications equipment as defined and regulated by rule 2.071, Fla. R. Jud. Admin.

(4) The notice or order setting the cause for hearing shall be in substantial conformity with Family Law Form 41A and shall contain the following language in bold type:

SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATION MADE BY THE GENERAL MASTER, YOU MUST FILE EXCEPTIONS IN ACCORDANCE WITH RULE 12.490(f), FLA. FAM. L. R. P. YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS OR A STIPULATED STATEMENT OF PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT OR STATEMENT PREPARED IF NECESSARY FOR THE COURT'S REVIEW.

(5) The notice or order setting a matter for hearing shall state whether electronic recording or a court reporter is provided by the court, or whether a court reporter, if desired, must be provided by the litigants.

(e) **General Master's Report.** The general master shall file a report that includes findings of fact and conclusions of law, together with recommendations. If a court reporter was present, the report shall contain the name and address of the reporter.

(f) **Filing Report; Notice; Exceptions.** The general master shall file the report and recommendations and serve copies on all parties. The parties may serve exceptions to the report within 10 days from the time it is served on them. Any party may file cross-exceptions within 5 days from the service of the exceptions, provided, however, that the filing of cross-exceptions shall not delay the hearing on the exceptions unless

good cause is shown. If no exceptions are filed within that period, the court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party.

(g) **Record.** For the purpose of the hearing on exceptions, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review if necessary for the court's review.

(1) The record shall consist of the court file, including the writing of the general master in which evidence has been taken or a transcript of the proceedings before the general master, if filed, and all depositions and evidence presented.

(2) The transcript of all relevant proceedings, if any, shall be delivered to the judge and provided to opposing counsel not less than 48 hours before the hearing on exceptions. If less than a full transcript of the proceedings taken before the general master is ordered prepared by the moving party, that party shall promptly file a notice setting forth the portions of the transcript that have been ordered. The responding party shall be permitted to designate any additional portions of the transcript necessary to the adjudication of the issues raised in the exceptions or cross-exceptions.

(3) The cost of the original and all copies of the transcript of the proceedings shall be borne initially by the party seeking review, subject to appropriate assessment of suit monies. Should any portion of the transcript be required as a result of a designation filed by the responding party, the party making the designation shall bear the initial cost of the additional transcript.

Commentary

1995 Adoption. This rule is a modification of Florida Rule of Civil Procedure 1.490. That rule governed the appointment of both general and special masters. The appointment of special masters is now governed by Family Law Rule 12.491. This rule is intended to clarify procedures that were required under rule 1.490, and it creates additional procedures. The use of general masters should only be implemented when such use will reduce costs and expedite cases in accordance with *Dralus v. Dralus*, 627 So. 2d 505 (Fla. 2d DCA 1993), *Wrona v. Wrona*, 592 So. 2d 694 (Fla. 2d DCA 1991), and *Katz v. Katz*, 505 So. 2d 25 (Fla. 4th DCA 1987).

RULE 12.491. SPECIAL MASTERS

(a) **Special Masters.** The court may appoint members of The Florida Bar as special masters for any particular service required by the court in a family law matter other than those involving domestic and repeat violence and contempt. The special masters shall be governed by all the provisions of law and rules relating to special masters except they shall not be required to make oath or give bond unless specifically required by the order appointing them. Upon a showing that the appointment is advisable, a person other than a member of The Florida Bar may be appointed.

(b) **Reference.** No reference shall be to a special master without the express prior consent of the parties, except that the court upon good cause shown and without consent of the parties may appoint an attorney as a special master to preside over depositions and rule upon objections.

(c) **General Powers and Duties.** Every special master shall perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court. Hearings before any special master shall be held in the county where the action is pending, but hearings may be held at any place by order of the court within or without the state to meet the convenience of the witnesses or the parties. All grounds for disqualification of a judge shall apply to special masters.

(d) **Bond.** When not otherwise provided by law, the court may require special masters who are appointed to dispose of real or personal property to give bond and surety conditioned for the proper payment of all moneys that may come into their hands and for the due performance of their duties as the court may direct. The bond shall be made payable to the State of Florida and shall be for the benefit of all persons aggrieved by any act of the special master.

(e) **Hearings.** When a reference is made to a special master, any party or the special master may set the action for hearing. The special master shall assign a time and place for proceedings as soon as reasonably possible after the reference is made and give notice to each of the parties either directly or by requiring counsel to file and serve a notice of hearing. If any party fails to appear, the special master may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. The special master shall proceed with reasonable diligence in every reference and with the least delay practicable. Any party may apply to the court for an order to the special master to speed the proceedings and to make the report and to certify to the court the reason for any delay.

Unless otherwise ordered by the court, or agreed to by all parties, all parties shall equally share the cost of the presence of a court reporter at a special master's proceedings. If all parties waive the presence of a court reporter, they must do so in writing. The special master shall have authority to examine the parties and all witnesses under oath upon all matters contained in the reference and to require production of all books, papers, writings, vouchers, and other documents applicable to it. The special master shall admit evidence by deposition or that is otherwise admissible in court. The special master may take all actions concerning evidence that can be taken by the court and in the same manner. All parties accounting before a special master shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the account may examine the accounting party orally or by interrogatories or deposition as the special master directs. All depositions and documents that have been taken or used previously in the action may be used before the special master.

(f) **Special Master's Report.** The special master shall file a report that includes findings of fact and conclusions of law, together with recommendations. In the report made by the special master no part of any statement of facts, account, charge, deposition, examination, or answer used before the special master need be recited. The matters shall be identified to inform the court what items were used. The report shall include the name and address of the court reporter present, if any.

(g) **Filing Report; Notice; Exceptions.** The special master shall file the report and recommendations and serve copies on the parties. The parties may serve exceptions to the report within 10 days from the time it is served on them. If no exceptions are filed within that period, the court shall take appropriate action on the report. Any party may file cross-exceptions within 5 days from the service of the exceptions, provided, however, that the filing of cross-exceptions shall not delay the hearing on the exceptions unless good cause is shown. If exceptions are filed, they shall be heard on reasonable notice by either party. The party seeking to have exceptions heard shall be responsible for the preparation of the transcript of proceedings before the special master.

(h) **Expenses of Special Master.** The costs of a special master may be assessed as any other suit money in family proceedings and all or part of it may be ordered prepaid by order of the court.

Commentary

1995 Adoption. Originally, both general and special masters were governed under Florida Rule of Civil Procedure 1.490. General and special masters are now governed under Family Law Rules 12.490 and 12.491, respectively. The requirements for appointing special masters are essentially the same as under the previous rule; but this rule eliminates the need for consent for the court to appoint an attorney/special master to preside over depositions and rule on objections. It also provides for the assessment of suit monies and allows for the filing of cross-exceptions.

RULE 12.492. CHILD SUPPORT ENFORCEMENT

(a) **Limited Application.** This rule shall be effective only when specifically invoked by administrative order of the chief justice for use in a particular county or circuit.

(b) **Scope.** This rule shall apply to proceedings for the establishment, enforcement, or modification of child support wherein the party seeking support is receiving services pursuant to Title IV-D of the Social Security Act (42 U.S.C. §§ 651 et seq.) and to non-Title IV-D proceedings upon administrative order of the chief justice.

(c) **Support Enforcement Hearing Officers.** The chief judge of each judicial circuit shall appoint such number of support enforcement hearing officers for the circuit or any county within the circuit as are necessary to expeditiously perform the duties prescribed by this rule. A hearing officer shall be a member of The Florida Bar unless waived by the chief justice and shall serve at the pleasure of the chief judge and a majority of the circuit judges in the circuit.

(d) **Referral.** Upon the filing of a cause of action or other proceeding for the establishment, enforcement, or modification of support to which this rule applies, the court or clerk of the circuit court shall refer such proceedings to a support enforcement hearing officer, pursuant to procedures to be established by administrative order of the chief judge.

(e) **General Powers and Duties.** The support enforcement hearing officer shall be empowered to issue process, administer oaths, require the production of documents, and conduct hearings for the purpose of taking evidence. Upon the receipt of a support proceeding, the support enforcement hearing officer shall:

(1) assign a time and place for an appropriate hearing and give notice to each of the parties as may be required by law;

(2) take testimony and establish a record, which record may be by electronic means as provided by Florida Rule of Judicial Administration 2.070(c);

(3) accept voluntary acknowledgment of paternity and support liability and stipulated agreements setting the amount of support to be paid; and

(4) evaluate the evidence and promptly make a recommended order to the court. Such order shall set forth findings of fact.

(f) **Entry of Order and Relief from Order.** Upon receipt of a recommended order, the court shall review the recommended order and shall enter an order promptly unless good cause appears to amend the order, conduct further proceedings, or refer the matter back to the hearing officer to conduct further proceedings. Any party affected by the order may move to vacate the order by filing a motion to vacate within 10 days from the date of entry. Any party may file a cross-motion to vacate within 10 days from the date of rendition; an additional 5 days shall be allowed if the order was served by mail. Any party may file a cross-motion to vacate within 5 days of service of a motion to vacate, provided, however, that the filing of a cross-motion to vacate shall not delay the hearing on the motion to vacate unless good cause is shown. A motion to vacate the order shall be heard within 10 days after the movant applies for hearing on the motion.

(g) **Modification of Order.** Any party affected by the order may move to modify the order at any time.

(h) **Record.** For the purpose of hearing on a motion to vacate, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review.

(1) The record shall consist of the court file, including the transcript of the proceedings before the hearing officer, if filed, and all depositions and evidence presented to the hearing officer.

(2) The transcript of all relevant proceedings shall be delivered to the judge and provided to opposing counsel not less than 48 hours before the hearing on the motion to vacate. If less than a full transcript of the proceedings taken before the hearing officer is ordered prepared by the moving party, that party shall promptly file a notice setting forth the portions of the transcript that have been ordered. The responding party shall be permitted to designate any additional adjudication of the issues raised in the motion to vacate or crossmotion to vacate.

(3) The cost of the original and all copies of the transcript of the proceedings shall be borne initially by the party seeking review, subject to appropriate assessment of suit monies. Should any portion of the transcript be required as a result of a designation filed by the responding party, the party making the designation shall bear the initial cost of the additional transcript.

Commentary

1995 Adoption. Previously, this rule was contained in Florida Rule of Civil Procedure 1.491. The new rule is substantially the same as previous rule 1.491. Subdivision (f) has been amended to make the procedure for motions to vacate consistent with Family Law Rule 12.490, general masters. Subdivision (h) has been added to provide requirements for a record.

The following notes and commentary have been carried forward from rule 1.491.

1988 Adoption. Title: The terminology "hearing officer" is used rather than "master" to avoid confusion or conflict with rule 1.490.

Subdivision (a): The rule is intended as a fall back mechanism to be used by the chief justice as the need may arise.

Subdivision (b): The expedited process provisions of the applicable federal regulations apply only to matters which fall within the purview of Title IV-D. The committee recognizes, however, that the use of hearing officers could provide a useful case flow management tool in non-Title IV-D support proceedings.

It is contemplated that a circuit could make application to the chief justice for expansion of the scope of the rule upon a showing of necessity and good cause. It is the position of the representative of the Family Law Section of The Florida Bar that reference of non-Title IV-D proceedings should require the consent of the parties as is required by rule 1.490(c).

Subdivision (c): It is the position of the committee that hearing officers should be members of the Bar in that jurisdictional and other legal issues are likely to arise in proceedings of this nature. The waiver provision is directed to small counties in which it may be difficult or impossible to find a lawyer willing to serve and to such other special circumstances as may be determined by the chief justice.

Subdivision (d): This paragraph recognizes that the mechanics of reference and operation of a program are best determined at the local level.

Subdivision (e): This paragraph is intended to empower the hearing officer to fully carry out his or her responsibilities without becoming overly complicated. The authority to enter defaults which is referred to in the federal regulations is omitted, the committee feeling that the subject matter is fully and adequately covered by rule 1.500.

The authority to accept voluntary acknowledgments of paternity is included at the request of the Department of Health and Rehabilitative Services. Findings of fact are included in the recommended order to provide the judge to whom the order is referred basic information relating to the subject matter.

Subdivision (f): Expedited process is intended to eliminate or minimize delays which are perceived to exist in the normal processing of cases. This paragraph is intended to require the prompt entry of an order and to guarantee due process to the obligee.

General Note: This proposed rule, in substantially the same form, was circulated to each of the chief judges for comment. Five responses were received. Two responding endorsed the procedure, and 3 responding felt that any rule of this kind would be inappropriate. The committee did not address the question of funding, which included not only salaries of hearing officers and support personnel, but also capital outlay for furniture, fixtures, equipment and space, and normal operating costs. The committee recognizes that the operational costs of such programs may be substantial and recommends that this matter be addressed by an appropriate body.

RULE 12.500. DEFAULTS AND FINAL JUDGMENTS THEREON

Defaults and final judgments thereon shall be governed by Florida Rule of Civil Procedure 1.500.

RULE 12.510. SUMMARY JUDGMENT

Summary judgment shall be governed by Florida Rule of Civil Procedure 1.510.

RULE 12.520. VIEW

Upon motion of either party or on the court's own motion, the trier of fact may view the premises or place in question or any property, matter, or thing relating to the controversy between the parties when it appears that view is necessary to a just decision.

Commentary

1995 Adoption. This rule replaces Florida Rule of Civil Procedure 1.520 and eliminates the advancement of costs imposed by rule 1.520.

**RULE 12.530. MOTIONS FOR NEW TRIAL AND REHEARING;
AMENDMENTS OF JUDGMENTS**

Motions for new trial and rehearing and amendments of judgments shall be governed by Florida Rule of Civil Procedure 1.530.

RULE 12.540. RELIEF FROM JUDGMENT, DECREES, OR ORDERS

Florida Rule of Civil Procedure 1.540 shall govern general provisions concerning relief from judgment, decrees, or orders, with the following exception: There shall be no time limit for motions based on fraudulent financial affidavits in marital or paternity cases.

Commentary

1995 Adoption. Under this provision, Florida Rule of Civil Procedure applies to all family law issues involving relief from judgment, decrees, or orders, except that there shall be no time limit for motions filed under 1.540(b) based on fraudulent

financial affidavits in marital or paternity cases. Florida Rule of Civil Procedure 1.540 was expanded to include marital cases through the rule making procedure subsequent to the Florida Supreme Court's decision in *DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984).

RULE 12.550. EXECUTIONS AND FINAL PROCESS

Executions and final process shall be governed by Florida Rule of Civil Procedure 1.550.

RULE 12.560. DISCOVERY IN AID OF EXECUTION

Discovery in aid of execution shall be governed by Florida Rule of Civil Procedure 1.560.

RULE 12.570. ENFORCEMENT OF JUDGMENTS

Enforcement of judgments shall be governed by Florida Rule of Civil Procedure 1.570. Money judgments, as governed by rule 1.570(a) shall include, but not be limited to, judgments for alimony, child support, attorneys' fees, suit money and costs, and equitable distribution.

Commentary

1995 Adoption. Nothing in this rule or Florida Rule of Civil Procedure 1.570 should be read to preclude the use of other remedies to enforce judgments.

RULE 12.580. WRIT OF POSSESSION

Writs of possession shall be governed by Florida Rule of Civil Procedure 1.580.

RULE 12.590. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

Process in behalf of and against persons not parties shall be governed by Florida Rule of Civil Procedure 1.590.

RULE 12.600. DEPOSITS IN COURT

Deposits in court shall be governed by Florida Rule of Civil Procedure 1.600, with the following addition. The party depositing money or depositing the thing capable of delivery shall pay any fee imposed by the clerk of the court, unless the court orders otherwise.

Commentary

1995 Adoption. The addition to Florida Rule of Civil Procedure 1.600 included in this rule is intended to clarify responsibility for the payment of clerk's fees.

RULE 12.610 INJUNCTIONS FOR DOMESTIC AND REPEAT VIOLENCE

(a) **Application.** This rule shall apply only to temporary and permanent injunctions for protection against domestic violence and temporary and permanent injunctions for protection against repeat violence. All other injunctive relief sought in cases to which the Family Law Rules apply shall be governed by Florida Rule of Civil Procedure 1.610.

(b) **Petitions.**

(1) **Requirements for Use.**

(A) **Domestic Violence.** Any person may file a petition for an injunction for protection against domestic violence if they certify under oath that

1. The party filing the injunction and the party against whom the injunction is sought are spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, or persons who have a child in common regardless of whether they have been married or have resided together at any time;

2. The party filing the petition was the victim of, or has reasonable cause to believe he or she is about to become the victim of an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, or any criminal offense resulting in physical injury or death perpetrated by the party against whom the injunction is sought; and

3. The specific facts and circumstances upon the basis of which relief is sought are true.

(B) **Repeat Violence.** Any person may file a petition for an injunction for protection against repeat violence if they certify under oath that

1. Two incidents of violence, defined as any assault, battery, sexual battery or stalking, one of which must have occurred within 6 months of the filing of the petition, have been committed by the person against whom the injunction is sought against the petitioner or the petitioner's immediate family member; and

2. The specific facts and circumstances upon the basis of which relief is sought are true.

(2) **Service of Petitions.**

(A) **Domestic Violence.** Personal service by a law enforcement agency is required. The clerk of the court shall furnish a copy of the petition for an injunction for protection against domestic violence, financial affidavit (if support is sought), Uniform Child Custody Jurisdiction Act affidavit (if custody is sought), and notice of hearing to the appropriate sheriff or law enforcement agency of the county where the respondent resides or can be found for expeditious service of process.

(B) **Repeat Violence.** Personal service by a law enforcement agency is required. The clerk of the court shall furnish a copy of the petition for an injunction for protection against repeat violence and notice of hearing to the appropriate sheriff or law enforcement agency of the county where the respondent resides or can be found for expeditious service of process.

(C) **Additional documents.** Service of pleadings in cases of domestic or repeat violence other than the petition and orders granting injunctions shall be governed by Family Law Rules of Procedure 12.070 and 12.080.

(3) **Consideration by Court.** Upon the filing of a petition, the court shall set a hearing to be held at the earliest possible time. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with these Family Law Rules of Procedure.

(4) **Forms.** The clerk of the court or family or domestic/repeat violence intake personnel shall provide simplified forms, including instructions for completion, for any person whose circumstances meet the requirements of this rule and shall assist in the preparation of the petition for an injunction for protection against domestic or repeat violence.

(c) **Orders of Injunction.**

(1) **Consideration by Court.**

(A) **Temporary injunction.** For the injunction for protection to be issued ex parte, it must appear to the court that an immediate and present danger of domestic or repeat violence exists. In an ex parte hearing for the purpose of

obtaining an ex parte temporary injunction, the court may limit the evidence to the verified pleadings or affidavits or may receive additional testimony under oath if necessary for a determination of whether an immediate and present danger of domestic or repeat violence exists. If the respondent appears at the hearing or has received reasonable notice of the hearing, the Court may hold a hearing on the petition.

(B) **Permanent Injunction.** A full evidentiary hearing shall be conducted.

(2) **Injunction Issued.** No bond shall be required by the court for the entry of an injunction for protection against domestic or repeat violence. The clerk of the court shall provide the parties with sufficient certified copies of the order of injunction for service.

(3) **Service of Injunctions.**

(A) **Temporary injunction.** A temporary injunction for protection against domestic or repeat violence must be personally served. When the respondent has been served previously with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent pleadings seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law enforcement officer. If the temporary injunction was issued after a hearing because the respondent was present at the hearing or had reasonable notice of the hearing, the injunction may be served in the manner provided for a permanent injunction.

(B) **Permanent Injunction.**

1. **Party present at hearing.** The parties may acknowledge receipt of the permanent injunction for protection against domestic or repeat violence in writing on the face of the original order. If a party is present at the hearing and that party fails or refuses to acknowledge the receipt of a certified copy of the injunction, the clerk shall cause the order to be served by mailing certified copies of the injunction to the parties who were present at hearing at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and within 24 hours shall forward a copy of the injunction and the clerk's affidavit of service to the sheriff with jurisdiction over the residence of the petitioner. This procedure applies to service of orders to modify or vacate injunctions for protection against domestic or repeat violence.

2. **Party not present at hearing.** Within 24 hours after the court issues, continues, modifies, or vacates an injunction for protection against domestic or repeat violence, the clerk shall forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner for service.

(4) **Duration.**

(A) **Temporary injunction.** Any temporary injunction shall be effective for a fixed period not to exceed 15 days. A full hearing shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the temporary injunction and of the full hearing for good cause shown by any party, or upon its own motion for good cause, including failure to obtain service.

(B) **Permanent injunction.** Any relief granted by an injunction for protection against domestic or repeat violence shall be granted for a fixed period not to exceed 1 year. Such relief may be granted in addition to other civil and criminal remedies. Upon petition of the victim, the court may extend the injunction for successive fixed periods not to exceed 1 year. Broad discretion resides with the court to grant an extension after considering the circumstances. No specific allegations are required.

(5) **Enforcement.** The court may enforce violations of an injunction for protection against domestic or repeat violence in civil contempt proceedings, which are governed by Florida Family Law Rule 12.570 or in criminal contempt proceedings, which are governed by Florida Rule of Criminal Procedure 3.840, or, if the violation meets the statutory criteria, it may be prosecuted as a crime under Florida Statutes.

(6) **Modify or Vacate.** The petitioner or respondent may make a motion to the court to modify or vacate an injunction at any time. Motions to modify or vacate an injunction shall be governed by the Florida Rules of Civil Procedure.

(7) **Forms.** The clerk of the court or family or domestic/repeat violence intake personnel shall provide simplified forms including instructions for completion, for the persons whose circumstances meet the requirements of this rule and shall assist in the preparation of the affidavit in support of the violation of an order of injunction for protection against domestic or repeat violence.

Commentary

1995 Adoption. A cause of action for an injunction for protection against domestic violence and repeat violence has been

created by section 741.30, Florida Statutes (Supp. 1994) (modified by chapter 95-195, Laws of Florida), and section 784.046, Florida Statutes (Supp. 1994), respectively. This rule implements those provisions and is intended to be consistent with the procedures set out in those provisions except as indicated in this commentary. To the extent a domestic or repeat violence matter becomes criminal or is to be enforced by direct or indirect criminal contempt, the appropriate Florida Rules of Criminal Procedure will apply.

The facts and circumstances to be alleged under subdivision 12.610(b)(1)(A) include those set forth in Florida Family Law Form 14. An injunction for protection against domestic or repeat violence may be sought whether or not any other cause of action is currently pending between the parties. However, the pendency of any such cause of action must be alleged in the petition. The relief the court may grant in a temporary or permanent injunction against domestic violence is set forth in section 741.30(6).

The facts and circumstances to be alleged under subdivision 12.610(b)(1)(B) include those set forth in Florida Family Law Form 18. The relief the court may grant in a temporary or permanent injunction against repeat violence is set forth in section 784.046(7).

Subdivision 12.610(b)(4) expands sections 741.30(2)(c)1 and 2 to provide that the responsibility to assist the petitioner may be assigned not only to the clerk of court but also to the appropriate intake unit of the court. Family Law Form 14 provides the form for a petition for injunction against domestic violence. If the custody of a child is at issue, a Uniform Child Custody Jurisdiction Act affidavit must be provided and completed in conformity with Family Law Form 56. If alimony or child support is sought a Financial Affidavit must be provided and completed in conformity with Family Law Form 3 or 4.

Subdivision 12.610(c)(1)(A) expands chapter 95-195 and section 784.046(6)(a) to make the limitation of evidence presented at an ex parte hearing permissive rather than mandatory.

Unlike traditional injunctions, under subdivision 12.610(c)(2), no bond will be required for the issuance of injunctions for protection against domestic or repeat violence. This provision is consistent with the statutes except that, unlike the statutes, it does not set a precise number of copies to be provided for service.

Subdivision 12.610(c)(3)(A) makes the procedure for service of a temporary order of injunction for protection against domestic violence and repeat violence consistent. This is intended to replace the differing requirements contained in sections 741.30(7)(b)3 and (7)(c)1 and section 784.046(8)(a)1.

Subdivision 12.610(c)(3)(B) makes the procedure for service of a permanent order of injunction for protection against domestic violence and repeat violence consistent. This is intended to replace the differing requirements contained in sections 741.30(7)(a)3 and (7)(c)1 and section 784.046(8)(c)1 and

to specifically clarify that service of the permanent injunction by mail is only effective upon a party who is present at the hearing which resulted in the issuance of the injunction.

Subdivision 12.610(c)(4)(A) restates sections 741.30(5)(c) and 784.046(6)(c) with some expansion. This subdivision allows the court upon its own motion to extend the protection of the temporary injunction for protection against domestic or repeat violence for good cause shown, which shall include, but not be limited to, failure to obtain service. This subdivision also makes the procedures in cases of domestic and repeat violence identical, resolving the inconsistencies in the statutes.

Subdivision 12.610(c)(4)(B) makes the procedures in cases of domestic and repeat violence identical, resolving inconsistencies in the statutes. As stated in section 741.30(1)(c), in the event a subsequent cause of action is filed under chapter 61, any orders entered therein shall take precedence over any inconsistent provisions of an injunction for protection against domestic violence which addresses matters governed by chapter 61.

Subdivision 12.610(c)(5) implements a number of statutes governing enforcement of injunctions against domestic or repeat violence. It is intended by these rules that procedures in cases of domestic and repeat violence be identical to resolve inconsistencies in the statutes. As such, the procedures set out in section 741.31(1) are to be followed for violations of injunctions for protection of both domestic and repeat violence. Pursuant to that statute, the petitioner may contact the clerk of the court of the circuit court of the county in which the violation is alleged to have occurred to obtain information regarding enforcement.

Subdivision 12.610(c)(7) expands sections 741.30 (2)(c)1 and 2 to provide that the responsibility to assist a petitioner may not only be assigned to the clerk of court but also to the appropriate intake unit of the court. This subdivision makes the procedures in cases of domestic and cases of repeat violence identical to resolve inconsistencies in the statutes.

RULE 12.611. CENTRAL GOVERNMENTAL DEPOSITORY

(a) **Administrative Order.** If the chief judge of the circuit by administrative order authorizes the creation of a central governmental depository for the circuit or county within the circuit to receive, record, and disburse all support alimony or maintenance payments, as provided in section 61.181, Florida Statutes (1983), the court may direct that payment be made to the officer designated in the administrative order.

(b) **Payments to Public Officer.**

(1) If the court so directs, the payments shall be made to the officer designated.

(2) The officer shall keep complete and accurate accounts of all payments received. Payments shall be made by cash, money order, cashier's check, or certified check. The officer shall promptly disburse the proceeds to the party entitled to receive them under the judgment or order.

(3) Payment may be enforced by the party entitled to it or the court may establish a system under which the officer issues 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.

Commentary

1995 Adoption. This rule is a remnant of Florida Rule of Civil Procedure 1.611, which contained several unrelated issues. Those issues are now governed by separate family law rules for automatic disclosure, simplified dissolution procedure, and this rule for central governmental depository.

RULE 12.620. RECEIVERS

Receivers shall be governed by Florida Rule of Civil Procedure 1.620.

RULE 12.625. PROCEEDINGS AGAINST SURETY ON JUDICIAL BONDS

Proceedings against sureties on judicial bonds shall be governed by Florida Rule of Civil Procedure 1.625.

RULE 12.630. EXTRAORDINARY REMEDIES

Extraordinary remedies shall be governed by Florida Rule of Civil Procedure 1.630.

RULE 12.740. FAMILY MEDIATION

(a) **Applicability.** This rule governs mediation of family matters and related issues.

(b) **Referral.** Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort shall be made to expedite mediation of family issues.

(c) **Limitation on Referral to Mediation.** Unless otherwise agreed by the parties, family matters and issues may be referred to a mediator or mediation program which charges a fee only after the court has determined that the parties have the financial ability to pay such a fee. This determination may be based upon the parties' financial affidavits or other financial information available to the court. When appropriate, the court shall apportion mediation fees between the parties and shall state each party's share in the order of referral.

(d) **Appearances.** Unless otherwise stipulated by the parties, a party is deemed to appear at a family mediation convened pursuant to this rule if the named party is physically present at the mediation conference. In the discretion of the mediator and with the agreement of the parties, family mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(e) **Completion of Mediation.** Mediation shall be completed within 75 days of the first mediation conference unless otherwise ordered by the court.

(f) **Report on Agreement.**

(1) If agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be reduced to writing, signed by the parties and their counsel, if any and if present, and submitted to the court unless the parties agree otherwise. By stipulation of the parties, the agreement may be electronically or stenographically recorded and made under oath or affirmed. In such event, the transcript may be filed with the court. The mediator shall report the existence of the signed or transcribed agreement to the court within 10 days. If counsel for any party is not

present when the agreement is reached the mediator shall mail a copy of the agreement to counsel within 5 days. Counsel shall have 10 days from service of a copy of the agreement to object in writing. Absent written objection the agreement is presumed to be approved by counsel and shall be filed with the court by the mediator. Any objection shall be mailed to the mediator, unrepresented parties, and counsel.

(2) After the agreement is filed, the court shall take action as required by law. When court approval is not necessary, the agreement shall become binding upon filing. When court approval is necessary, the agreement shall become binding upon approval. In either event, the agreement shall be made part of the final judgment or order in the case.

Commentary

1995 Adoption. This rule is substantially the same as former Florida Rule of Civil Procedure 1.740.

RULE 12.741. MEDIATION RULES

(a) **Discovery.** Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.

(b) **General Procedures.**

(1) **Interim or Emergency Relief.** A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court, or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods when mediation is interrupted pending resolution of such a motion.

(2) **Sanctions for Failure to Appear.** If a party fails to appear at a duly noticed mediation conference without good cause, the court upon motion shall impose sanctions, including an award of mediator and attorneys' fees and other costs, against the party failing to appear. If a party to mediation is a public entity required to conduct its business pursuant to chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Otherwise, unless stipulated by the parties or changed by order of the court, a party is deemed to appear at a mediation conference if the following persons are physically present:

(A) The party or its representative having full authority to settle without further consultation.

(B) The party's counsel of record, if any.

(C) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.

(3) **Adjournments.** The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference.

(4) **Counsel.** The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation. Counsel shall be permitted to communicate privately with their clients. In the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(5) **Communication with Parties.** The mediator may meet and consult privately with any party or parties or their counsel.

(6) **Appointment of the Mediator.**

(A) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:

(i) a certified mediator; or

(ii) a mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(B) If the parties cannot agree upon a mediator within 10 days of the order of referral, the plaintiff or petitioner shall so notify the court within 10 days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

(C) If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

(7) **Compensation of the Mediator.** The mediator may be compensated or uncompensated. When the mediator is compensated in whole or part by the parties, the presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the presiding judge in the referral order. Where appropriate, each party shall pay a proportionate share of the total charges of the mediator. Parties may object to the rate of the mediator's compensation within 15 days of the order of referral by serving an objection on all other parties and the mediator.

(c) **Failure to Reach Agreement.** If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other

action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

Commentary

1995 Adoption. This rule combines and replaces Florida Rules of Civil Procedure 1.710, 1.720, and 1.730. The rule, as combined, is substantially similar to those three previous rules, with the following exceptions. This rule deletes subdivisions (a) and (b) of rule 1.710 and subdivisions (b) and (c) of rule 1.730.