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SID J. WHITE
DEC 9 1998
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

IN RE: FAMILY LAW RULES
OF PROCEDURE

Case No.: 89,955

_____ /

COMMENTS ON PROPOSED AMENDMENTS TO THE FLORIDA FAMILY
LAW RULES OF PROCEDURE

COMES NOW, B. NIKLAS BRIHAMMAR, of SHERI SMALLWOOD,
CHARTERED, an attorney and counselor at law admitted to practice in all Courts of the
State of Florida, and submits the following comments regarding the proposed
amendments to the Florida Family Law Rules of Procedure:

1. Regarding Rule 12.285:

Rule 12.285 is being amended to reflect that a Child Support Guidelines
Worksheet must be filed with the Court and that this requirement cannot be waived by
the parties. The Committee Notes state:

"If one party has not provided necessary financial
information for the other party to complete a child support
guidelines worksheet, a good faith estimate should be made."

The undersigned believes it would be beneficial to clarify *by whom* such a good faith

estimate should be made. It is suggested it would be logical to modify the Committee

Notes to the following:

"If one party has not provided necessary financial information for the other party to complete a child support guidelines worksheet, a good faith estimate should be made by the party who has provided necessary financial information."

(Added language underlined)

or in the alternative:

"If one party has not provided necessary financial information for the other party to complete a child support guidelines worksheet, a good faith estimate should be made by the court."

(Added language underlined)

2. Regarding Rule 12.615:

A. Rule 12.615 governs "Civil Contempt in Support Matters". To avoid misunderstanding, the undersigned believes it should be specifically mentioned what matters are included in the term "support", and that payment of court ordered attorney's fees and costs are included in the term "support". Fishman v. Fishman, 656 So.2d 1250 (Fla. 1995) (Rule that civil contempt powers may be used to enforce support payments in domestic relations cases, without violating state constitutional prohibition against

imprisonment for debt, also covers enforcement of payments of attorney fees relating to dissolution proceedings).

Therefore, Rule 12.615(a) should be modified to read as follows:

"Applicability. This rule governs civil contempt proceedings in support matters related to family law cases, including, but not limited to, child support, alimony, and attorney fees. The use of civil contempt sanctions under this rule shall be limited to those used to compel compliance with a court order. Contempt sanctions intended to punish an offender or to vindicate the authority of the court are criminal in nature and are governed by Florida Rules of Criminal Procedure 3.830 and 3.840."

(Added language underlined)

B. The proposed Commentary to Rule 12.615 reads as follows:

"This rule is limited to civil contempt proceedings. Should a court wish to impose sanctions for criminal contempt, the court must refer to Florida Criminal Rules of Procedure 3.830 and 3.840 and must provide the alleged contemnor with all of the constitutional due process protections afforded to criminal defendants. This rule is created to assist the trial courts in ensuring that the due process rights of alleged contemnors are protected. The contempt notice in Form 1.982, Rules of Civil Procedure, may be used to initiate civil contempt proceedings under this rule."

(i) Since the Rule is limited to civil contempt in support matters, this limitation should be specifically stated in the Commentary in order to avoid confusion,

as follows:

"This rule is limited to civil contempt proceedings in support matters. Should a court wish to impose sanctions for criminal contempt, the court must refer to Florida Criminal Rules of Procedure 3.830 and 3.840 and must provide the alleged contemnor with all of the constitutional due process protections afforded to criminal defendants. This rule is created to assist the trial courts in ensuring that the due process rights of alleged contemnors are protected. The contempt notice in Form 1.982, Rules of Civil Procedure, may be used to initiate civil contempt proceedings under this rule."

(Added language underlined)

(ii) Since the civil contempt powers which may be used to enforce support payments in domestic relations cases also covers enforcement of payments of attorney fees relating to dissolution proceedings, pursuant to Fishman v. Fishman, 656 So.2d 1250 (Fla. 1995), this should also be specifically stated in the Commentary in order to avoid confusion, as follows:

"This rule is limited to civil contempt proceedings in support matters, including, but not limited to child support, alimony, and attorney fees. Should a court wish to impose sanctions for criminal contempt, the court must refer to Florida Criminal Rules of Procedure 3.830 and 3.840 and must provide the alleged contemnor with all of the constitutional due process protections afforded to criminal defendants. This rule is created to assist the trial courts in ensuring that the

due process rights of alleged contemnors are protected. The contempt notice in Form 1.982, Rules of Civil Procedure, may be used to initiate civil contempt proceedings under this rule."

(Added language underlined)

WHEREFORE, the undersigned respectfully prays This Honorable Court consider the above comments in connection with any amendments to the Florida Family Law Rules of Procedure.

Respectfully submitted this 7 day of
December 1998.



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