O.A.-6-1-98

To clerk: MBK

COMMENTS ON AMENDMENTS TO THE FLORIDA FAMILY LAW RULES OF PROCEDURE

89,955

This short memorandum is intended to stimulate concern for those citizens of Florida who are least likely to be aware that a simple but contested divorce may engender costs beyond their ability to pay and require extensive legal work beyond their needs. They are the poor and low income citizens of this state.

The manifest good intentions of the recently proposed amendments is apparent; to provide for maximum discovery in the shortest period of time that is equitable. However with regard to those parties whose income is $50,000.00, or less, the criteria does not bode well for those low income parties earning from zero to $15,000. annually.

The low income client often seeks the assistance of a Legal Aid Society or Legal Services Program whose volume of cases is all too often controlled by factors outside of their control as will be evident from the enforcement of the new rule.

One of those factors is the proposed sec 12.285 of the florida Family Law Rules of Procedure where the number of items proposed for discovery has been increased from five to fifteen.

First: The sheer burden of paper work may now be increased in the average dissolution by a factor of three.

Second: The increased amount of discovery that one party may inspire an opposing counsel to produce will in most cases increase attorneys fees drastically, at least for that attorney.

For the Legal Aid lawyer his or her output on a case by case basis will have to decline, as one of the most obdurate matters that arise in family law is how to impress the Respondent/Husband who earns zero to $15,000.00 to produce non-existing brokerage accounts or his Keogh Plan.

When the rule establishes that each party may have a maximum gross annual income of $50,000.00 for a total of $100,000.00 or more between both parties ; it seems that low income people are receiving little or no consideration in the application of Rule 12.285 and the Rule becomes a Lawyer's Retirement Act.

I would suggest that a 3rd category be introduced that would have a gross annual income of $25,000.00 for each party. And those groups would only have to produce those items as previously provided by Rule 12.285.

II

The above argument disclosed a further question that is not resolved by the proposed new Rule:

Mandatory disclosure contemplates that someone (an attorney) will organize the flow of discovery. In Dade County there is a large number of in forma pauperis cases filed, many of course are uncontested but there are always that awkward exception; perhaps the Court may refer it to Legal Aid, which would again over burden a staff already bowed down by the requirement of 12.285.

Child Support Enforcement

12.491(b)(2) provides that the jurisdiction is based on receiving services pursuant to Title IV-D and to Non-Title IV-D proceedings upon the administrative order of the chief justice. This, not a new amendment, but it should be reconsidered.

It appears that as a matter of right that IV-D recipients are entitled to have hearings before Support enforcement Hearing Officers, with non IV- persons seeking enforcement based upon factors such as the will or the whim of the Chief Judge Justice. While indeed public servants may, at time, seek to control the intake of their program it would be a denial of equal protection of the law under both State and Federal sanctions. If Title IV-D clients are to have enforcement of child support orders mandated by the Rule; then in that event it should be provided to non IV-D recipients also without any additional criteria as getting the permission of the Chief Justice.

Dated at Miami, Florida this 30th Day of November 1998.

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