

D.A. 6-1-98

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FILED

SID J. WHITE

AUG 21 1998

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

**AMENDMENTS TO THE FAMILY
LAW RULES OF PROCEDURE**

CASE NO.: 89,955

**COMMENTS FROM THE FAMILY LAW RULES COMMITTEE
ON ADOPTION OF RULES AND FORMS**

GEORGE S. REYNOLDS, III, Chair of the Family Law Rules Committee, and JOHN F. HARKNESS, JR., Executive Director of The Florida Bar, file these comments on the adoption of rules and forms as requested by the Court in its February 26, 1998 order.

1. Adoption and amendment of rules: The Family Law Rules Committee is one of eleven rules committees authorized by the Supreme Court in Fla. R. Jud. Admin. 2.130. The Family Law Rules Committee, like the other rules committees, should continue to have responsibility for performing the functions required under Rule 2.130. Although Rule 2.130 allows "any person" to make recommendations to the Court regarding rules of procedure, rules committees should not routinely share this responsibility with other committees or groups. The committee notes that other groups, such as members of the Family Law Section and Family Court Steering Committee, are actively involved in and represented on the rules committee to provide input to the rulemaking process.

2. Adoption and amendment of forms: The forms accompanying the Family Law Rules are generally of two types: forms required for use by the rules and various forms intended primarily for use by pro se litigants and self help programs. These two types of forms should be handled by the Court and the committees as follows:

a. Forms required by rules: Presently, the Family Law Rules require use of specific forms (in "substantial conformity") or require use of specific language on certain forms. The committee believes that these forms should continue to be part of the rules and should be adopted and amended by the Family Law Rules Committee and the Court through the procedure in Fla. R. Jud. Admin. 2.130. These include:

- Family Law Financial Affidavit (Short Form), Form 12.901(d)
- Family Law Financial Affidavit, Form 12.901(e)
- Child Support Guidelines Worksheet, Form 12.901(g)
- Summons, Form 12.910(a)
- Affidavit of Diligent Search and Inquiry, Form 12.913(b)
- Motion for Referral to General Master, Form 12.920(a)
- Order of Referral to General Master, Form 12.920(b)
- Notice of Hearing Before General Master, Form 12.920(c)
- Notice of Service of Standard Family Law Interrogatories, Form 12.930(a)
- Standard Family Law Interrogatories for Original or Enforcement Proceedings,

Form 12.930(b)
Standard Family Law Interrogatories for Modification Proceedings, Form
12.930(c)
Certificate of Compliance with Mandatory Disclosure, Form 12.932
Temporary Injunction for Protection Against Domestic Violence, Form 12.980(d)
Final Judgment of Injunction for Protection Against Domestic Violence, Form
12.980(e)
Temporary Injunction for Protection Against Repeat Violence, Form 12.908(f)
Final Judgment of Injunction for Protection Against Repeat Violence, Form
12.980(m)

This list varies slightly from a similar list submitted by the Family Court Steering Committee because of corrections made after the last Family Court Steering Committee meeting.

b. Pro se Forms: The remaining forms currently included in the Family Law Rules are intended primarily for use by pro se litigants. They originally were developed and approved by the Court as Simplified Forms. When the Family Law Rules were adopted in 1995, these forms were transferred to the Family Law Rules. They have been substantially amended and revised by both the Rules Committee and the Family Court Steering Committee and presently comprise a reasonably complete set of forms for use in dissolutions of marriage and other family law proceedings.

These forms differ from those normally contained in rules of procedure. First, their development largely was driven by access issues and not the procedural concerns normally addressed by rules. Second, the requirement to amend them on a frequent basis to conform to statutory changes does not lend itself to use of the rule adoption and amendment procedure found in Fla. R. Jud. Admin. 2.130.

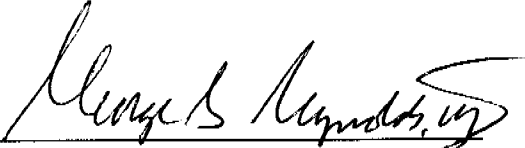
The committee, therefore, recommends that these forms be removed from the Family Law Rules of Procedure. Responsibility for their development and amendment should be vested in the Family Court Steering Committee, which has ongoing responsibility for other issues of access to the courts. The Family Law Rules Committee should have representation on the FCSC Forms Subcommittee and should receive notice of proposed amendments to facilitate coordination of rules and forms. Additionally, the forms should be adopted by the Court by opinion, rather than through the rulemaking process, to ensure that they remain accurate and legally sufficient.

3. Rules amendments to reflect change: To effect this change, the committee proposes amendment of Fla. Fam. L. R. P. 12.000 and adoption of Fla. Fam. L. R. P. 12.015. The proposed rules are attached.

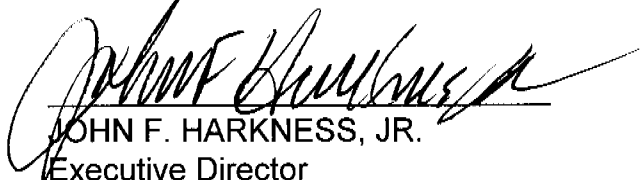
4. Voting Record: These comments and proposed changes were adopted by the Family Law Rules Committee by a vote of 26-0-3 and by The Florida Bar Board of Governors by a vote of 31-1-0.

Additional Issue: In its June 29, 1998 petition, the Family Court Steering Committee also proposed an emergency amendment to Fla. Fam. L. R. P. 12.080. The Family Law Rules Committee considered this proposal at its June 19, 1998 meeting and voted 26-0-0 to support the amendment to this rule.

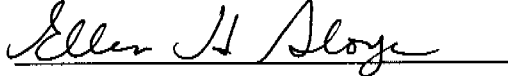
Respectfully submitted this 21st day of August, 1998.


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I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to B. Elaine New, Senior Attorney, Office of the State Courts Administrator, 500 South Duval Street, Tallahassee, FL 32399.



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. The instructional commentary to the forms refers to these rules or the Florida Rules of Civil Procedure, where applicable.~~

~~————The forms originally 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).~~

RULE 12.015. FAMILY LAW FORMS

(a) Forms Adopted as Rules. Forms required for use by these rules shall be adopted by the rulemaking process in Fla. R. Jud. Admin. 2.130. The Family Law Rules Committee of The Florida Bar shall propose amendments to forms and instructions required by these rules. Forms coming under this provision are:

- (1) 12.901(d) Financial Affidavit (Short Form);
- (2) 12.901(e) Financial Affidavit;
- (3) 12.901(g), Child Support Guidelines Worksheet;
- (4) 12.910(a), Summons, Personal Service on an Individual;
- (5) 12.913(b), Affidavit of Diligent Search and Inquiry;
- (6) 12.920(a), Motion for Referral to General Master;
- (7) 12.920(b), Order of Referral to General Master;
- (8) 12.920(c), Notice of Hearing Before General Master;
- (9) 12.930(a), Notice of Service of Standard Family Law Interrogatories;
- (10) 12.930(b), Standard Family Law Interrogatories for Original and Enforcement Proceedings;
- (11) 12.930(c), Standard Family Law Interrogatories for Modification Proceedings;
- (12) 12.932, Certificate of Compliance with Mandatory Disclosure;
- (13) 12.980(d), Temporary Injunction for Protection Against Domestic Violence;
- (14) 12.980(e), Final Judgment of Injunction for Protection Against Domestic Violence;
- (15) 12.980(f), Temporary Injunction for Protection Against Repeat Violence; and
- (16) 12.980(m), Final Judgment of Injunction for Protection Against Repeat Violence (after Notice).

(b) Other Family Law Forms. All additional Florida Family Law Forms shall be adopted and approved by opinion of the Supreme Court of Florida and outside of the rulemaking procedures required by rule 2.130. The Family Court Steering Committee shall have primary responsibility for development of the additional family law forms and accompanying instructions, as well as corrections to existing forms and instructions. The Family Court Steering Committee shall continue to evaluate and propose changes to the family law forms on an as needed basis in order to simplify the forms for the purposes of providing meaningful access to the courts for unrepresented litigants.

Commentary

1998 Adoption. To help the many people in family law court cases who do not have attorneys to represent them (pro se litigants), the Florida Supreme Court added simplified forms and directions to the Florida Family Law Rules of Procedure when adopting these rules in 1995.

The forms were adopted by the Court pursuant to the Family Law Rules of Procedure, 663 So.2d 1049 (Fla. 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).

In 1997, in an effort to fulfill the spirit of the Court's directives to simplify the process of litigation in family law matters, the Family Court Steering Committee completely revised the forms and also added a number of new forms. The rules and forms then constituted more than 500 pages.

This rule was adopted in recognition that the forms would require continuous updating and that the rulemaking process was too cumbersome for such an extensive undertaking.