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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 THE COURT'S FEBRUARY 26, 1998, ORDER

BURTON YOUNG, Chair of the Family Law Rules Committee, and JOHN F. HARKNESS, JR., Executive Director of The Florida Bar, file these comments regarding the Court's amendments to the Florida Family Law Rules of Procedure.

As requested, the Committee met on April 1, 1998, to consider the court's February 26, 1998 order. The Executive Committee also met by conference call to consider additional items on April 16, 1998. The Committee submits the following comments and suggestions for the Court's consideration. Copies of proposed amendments to rules and forms are attached. The full Committee's or Executive Committee's votes are indicated below each item.

Service of Petitions to Modify Domestic or Repeat Violence Injunctions:

It was brought to the Committee's attention that the new rules are ambiguous regarding the procedure litigants must follow to serve a motion to modify an injunction against domestic or repeat violence. Rule 12.610(c)(6) refers the parties to the Rules of Civil Procedure, which do not address service of either motion. Motions to modify, generally, would be governed by rules 12.070 and 12.080, but they contain a specific exclusion for injunctions against domestic and repeat violence.

The Committee has attempted to resolve this inconsistency by:

(1) Amending rule 12.080(a)(2) to state that this rule applies in domestic violence and repeat violence proceedings when it is not in conflict with rule 12.080. This will clarify that this rule provides the method of service for a motion to modify.

(2) Amending rule 12.610(b)(2)(C) to delete the reference to rule 12.070 (governing initial service of process) and deleting the last sentence of rule 12.610(c)(6), that referred parties to the Rules of Civil Procedure.

Executive Committee vote: 5-0-0

Rules 12.280, General Provisions Governing Discovery and 12.400, Confidentiality of Records and Proceedings:

The proposals to amend these rules suggest that the Court adopt, by rule, a statement

of public policy that financial information in family law cases can be sealed on request of one or all parties. The Family Law Rules Committee adopts the arguments in the response filed by the Family Court Steering Committee and would suggest strongly that with electronic filing, electronic storage, and Internet access to public records, the Court has a duty to protect litigants, who are required to file full financial disclosure, from theft or exploitation of that information by unscrupulous persons.

The members of both the Family Law Rules Committee and the Family Court Steering Committee agree that there is a need to have a readily accessible mechanism to seal financial information in family law cases. The members of the Family Law Rules Committee assert that this issue is of such great public importance that they personally have signed a request to the Court to adopt a statement of policy or some procedure that is much less restrictive than the rules provide presently.

Committee votes:
Rule 12.280: 15-3-5
Rule 12.400: 24-0-1

Rule 12.285(d)(~~12~~11), Mandatory Disclosure:

Subdivision (d)(~~12~~11) has been amended to clarify that the required documents must be provided for all insurance policies, whether individual or group.

Committee vote: 17-1-0

Rule 12.285(a)(1), (c)(2), (d)(2), and (j), Mandatory Disclosure:

The Executive Committee concurs in the Family Court Steering Committee's proposal to amend the above subdivisions to this rule. The amendment to subdivision (a)(1) requires that a child support guidelines worksheet be filed with the court. The current rule only requires service on the other party. However, this information is needed by the trial court in setting child support under the guidelines. Existing subdivisions (c)(2) and (d)(2) have been deleted and a new subdivision (j) added to require that the guidelines worksheet be filed before the hearing on child support, rather than with the initial mandatory disclosure. Information to complete the guidelines worksheet may not be available to a party until the other party's financial affidavit has been served. To avoid problems with failure of the other party to provide sufficient information to complete the guidelines worksheet, the Executive Committee has added a Committee Note indicating that if the other party has not provided necessary information, a good faith estimate may be made.

This amendment also requires amendment to Form 12.932, Certificate of Compliance with Mandatory Disclosure, to remove the Child Support Guidelines Worksheet from the list of documents to be served.

Executive Committee vote: 5-0-0

Rule 12.365, Expert Witnesses:

The Committee has revised and resubmits this rule for approval by the Court. The former proposed rule, rejected by the Court, dealt solely with court-appointed experts. The main concern expressed by the Court was that adoption of the rule would increase costs for litigants in family law cases.

The rule, as revised by the Committee, has been retitled "Expert Witnesses" and provides a procedure to be followed whenever an expert is appointed by the trial court or retained by a party. The proposed rule deletes language from the former proposal suggesting that a trial court can or should appoint an expert witness in a case whenever a party shows good cause for the appointment. The rule does not encourage expert witnesses to be appointed by the trial court or retained by parties. The Committee believes that adoption of this rule will not increase costs for family law litigants and that this revision addresses the concerns expressed by the Court.

The Committee genuinely believes that the proposed rule will clarify procedural requirements for use of experts in family law cases. In particular, the rule protects against ex parte communication between the trial court and the expert.

Committee vote: 17-2-4

Rule 12.491, Child Support Enforcement:

Federal rules adopted in connection with the 1984 amendments to Title IV-D of the Social Security Act required that states establish extrajudicial processes for expediting the handling of child support establishment and enforcement actions. 42 *U.S.C.* §§654(20), 666(a)(2); 45 C.F.R. §303.101. The federal rules required the states to implement a number of specific programs and procedures intended to improve the effectiveness of child support enforcement programs. Two of the goals were to expedite the establishment and the consequent enforcement of support orders.

Florida voluntarily elected to participate in the Title IV-D program. As a result, our state stood to receive, and has received, millions of dollars in federal funding. Over time, this participation should result in billions of dollars to our state. In these financially conservative times, such funding is, to say the least, important to our state and its citizens. However, as a condition of receiving the federal funding, our state must operate its support enforcement program in accordance with federal law. 42 *U.S.C.* §§602, 654, 658, 666. See, *e.g.*, *Kelly v. Department of Health and Rehabilitative Services*, 596 So. 2d 130, 132 (Fla. 1st DCA 1992) ("As a condition of receiving federal financial participation a state must operate its AFDC program in accordance with federal law."). See also *The Public Health Trust of Dade County v. Dade County School Board*, 693 So. 2d 562, 564 (Fla. 3d DCA 1997) ("The State of Florida elected to

participate in the Medicaid program, Title XIX of the Social Security Act, 42 *U.S.C.* §1396 et seq. (1994), which provides federal funds to states for the purpose of providing medical assistance to needy persons. However, once the State of Florida elected to participate in the Medicaid program, its medical assistance plan must comply with the federal Medicaid statutes and **regulations**. . . . Further, under the Supremacy Clause, if a state law actually conflicts with a federal statute **or regulation**, the state law is invalid." emphasis added); and *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 501, 110 S.Ct. 2510, 2513, 110 L.Ed.2d 455 (1990) ("Although participation in the program is voluntary, participating States must comply with certain requirements imposed by the [Medicaid] Act and regulations promulgated by the Secretary of Health and Human Services.").

Although the time frames since have been revised, in 1988 the federal legislation permitted an exemption from the federally mandated procedures as long as the state processes used for establishing and enforcing support orders provided that 90% of those cases were completed in three months from the date of inception, 98% in six months, and 100% in 12 months. See 45 C.F.R. §303.101(2). "Completion" means entry of a final order. Under the circumstances, our state could not rely on that exemption.

In light of the federally mandated requirements, the Florida Legislature enacted a law requiring this Court to take appropriate steps to ensure compliance with the federal time standards. Under the legislative mandate, representatives from the Circuit Court Judges Conference developed proposed amendments to existing *Fla. R. Civ. P.* 1.490 and 1.611, providing for the appointment of special masters to deal with child support matters. This Court rejected the proposed amendments and appointed a committee to study the problem. *In re Florida Rules of Civil Procedure (Amendment to Rules 1.490 & 1.611)*, 503 So. 2d 894 (Fla. 1987). In early 1988, after that committee reported its proposals, this Court adopted *Rule* 1.491. *In re Florida Rule of Civil Procedure 1.491 (Child Support Enforcement)*, 521 So. 2d 118 (Fla. 1988).

The rule, as initially adopted, fully complied with the federal expedited process provisions of the applicable federal regulations. First, with regard to the scope of the rule, *Rule* 1.491(b) provided, in pertinent part, that the "rule shall apply to proceedings for the establishment, enforcement, or modification of **support**" (emphasis added). *In re Florida Rule of Civil Procedure 1.491 (Child Support Enforcement)*, *supra*. Because Title IV-D of the Social Security Act governs not only child support but also support for a parent with whom the child is living, the rule could be construed as allowing a hearing officer to hear not only child support issues but the enforcement of alimony for the parent with whom the child is living. See 42 *U.S.C.* §654(4)(b); 45 C.F.R. §301.1; 45 C.F.R. §302.31. See also sections 409.2554(10), 409.2564, Florida Statutes. Second, there was no specific prohibition against a hearing officer hearing a contested paternity case and the rule could be construed as allowing the hearing officer to hear a contested paternity case.

However, it is now clear that *Fla. Fam. L. R. P.* 12.491 is not in compliance with the

federal requirements. The first problem arose in 1992, when the Court, without explanation, amended *Rule* 1.491(b) to limit the scope of the rule to the establishment, enforcement, or modification of "child support." *In re Amendments to the Florida Rules of Civil Procedure*, 604 So. 2d 1110 (Fla. 1992). By limiting the rule to child support only, and thus excluding the enforcement of alimony for the parent with whom the child is living, the scope of the rule was narrowed improperly. The second problem arose in 1996, when the new Family Law Rules of Procedure were promulgated, and *Rule* 1.491 was replaced by *Rule* 12.491. In promulgating *Rule* 12.491, the Court, again without explanation, included a specific prohibition against a hearing officer hearing a contested paternity case. This violates the federal requirements. See 42 *U.S.C.* §666(a)(2); See also 45 C.F.R. §302.70, 45 C.F.R. §303.5, 45 C.F.R. §303.101(a), (c), (d).

Because our state's support enforcement program is subject to being federally audited for compliance every three years, and noncompliance could result in a loss of the much needed federal funding, a proactive approach to the apparent compliance problems seems necessary and appropriate. See 45 C.F.R. §305.0.

In that regard, this Committee respectfully requests that this Court amend *Rule* 12.491 to allow a hearing officer to hear nonjury contested paternity cases and the enforcement of alimony for a parent with whom the child is living. This will resolve the existing compliance problems.

Further, it is respectfully submitted that the rule, if amended, will serve to improve the effectiveness and efficiency our state's child support enforcement program on the one hand, while on the other hand preserving the due process rights of all litigants involved in the program, including pro se litigants. It is clear that this balance, although vexing at times, is necessary and must be maintained.

Justice Overton's observations, regarding child support enforcement, in *State ex rel. Pittman v. Stanjeski*, 562 So. 2d 673, 677–678 (Fla. 1990), are instructive and have been considered:

> The enforcement of child support has become a major governmental concern in the last twenty-five years. It is a problem fueled in part by the increasingly transient nature of our society. In many instances, when obligors fail to pay support, payees are discouraged from seeking enforcement because they are unable to hire legal counsel, they believe that seeking enforcement would futile, or, in some instances, they believe that welfare programs will pay them as much as they would receive in support, even if they received such support regularly. The 1980 census reflected 75% of all children in single parent households received no support from their noncustodial parents, National Conference of State Legislatures, In the Best Interests of the Child: A Guide to State Child Support and Paternity Laws at iv (1982), and, in the early 1980's, the Office of Child Support Enforcement, United States Department of Health and Human Services, reported that almost 87% of all children receiving

> Aid for Dependent Children were eligible for welfare because a living parent failed to pay support. Note, Child Support Enforcement: Balancing Increased Federal Involvement with Procedural Due Process, 19 Suffolk U.L.Rev. 687, 687 n. 1 (1985). These statistics are some of the reasons why courts and federal and state legislative bodies have enacted new rules and legislation which strongly emphasize the development of more effective and efficient processes to enforce support orders. Courts have an interest in the issue because they wish to see their orders enforced, and legislative bodies have a fiscal interest because it has been clearly demonstrated that, when there is effective enforcement of support orders against obligors, government payments for Aid to Families with Dependent Children are substantially reduced. All branches of government have a public policy interest in the maintenance and support of minor children.
>
> The United States Congress, through legislation, has directed states to aggressively establish child support collection programs and to implement some strong enforcement techniques. When these programs are implemented by state statutes, rules, and administrative action in accordance with federal statutes and regulations, states receive a financial reward by having a portion of the cost of these programs funded by the federal government. . . .
>
> The federal legislation also requires that the state support enforcement programs follow certain procedures to ensure effectiveness and to provide procedural due process. . . .
>
> Section 61.14(5), Florida Statutes (1987), is only a part of the Florida Legislature's support enforcement package, which was enacted in the 1987 legislative session in an attempt to bring Florida into full compliance with the 1984 and 1986 congressional acts and implementing federal regulations, thus avoiding a loss of federal funds for the Aid to Families with Dependent Children program. . . .
>
> This Court has a long history of support for effective child support collection. . . .

The committee is cognizant of and sensitive to the Court's concern about protecting the due process rights of litigants, whether they are represented by counsel or not. It also knows that, as previously noted, any system that serves as an adjunct of the court must have, in its role of assisting the court, an appropriate balance between efficiency, effectiveness, and safeguards for the due process rights of litigants. In that regard, *Rule* 12.491 provides, in pertinent part, that:

> A. The Chief Judge of each judicial circuit shall appoint the hearing officers.

B. Upon receipt of a support proceeding, the hearing officer shall assign a time and place for an appropriate hearing and give notice to each of the parties as required by law.

C. The hearing officer shall take testimony and establish a record.

D. The hearing officer shall evaluate the evidence and promptly make a recommended order to the court.

E. The recommended order shall set forth findings of fact.

F. Upon receipt of the recommended order, the court (an Article V judicial officer) shall review the recommended order and the findings of fact 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.

It is clear that, with respect to safeguards, any recommended order of a hearing officer must be supported by the law and the facts as developed by the evidence, and must be consistent with due process requirements. The recommended order must include supporting findings of fact, a record of the proceedings must be created and, if necessary, be available to an Article V judicial officer and the litigants. The ultimate safeguard is that an Article V judicial officer must review the recommended order. The Article V judicial officer has the clear authority to either accept or approve the recommended order if it is consistent with the law, or reject or not approve the recommended order if it is insufficient on it face or does not comport with the requirements of the law, either procedurally or substantively.

Further, as another safeguard, if an order is entered on the hearing officer's recommended order, *Rule* 12.491(f) provides for a right of review by an Article V judicial officer. Within 10 days of the entry of the order, any party affected by the order has the right to move to vacate the order on the recommended order. If a motion to vacate is filed and served, any other party can file a cross-motion to vacate within 5 days of service of the initial motion to vacate. The Article V judicial officer must hold a hearing on the motion to vacate, which would include a review of the record of the proceedings before the hearing officer. The hearing must be held within 10 days after the movant applies for a hearing on the motion. Of course, the court, on its own, can set the hearing on the motion, and should do so on a timely basis. If, after the hearing, the Article V judicial officer believes error has occurred, he or she has the ability to cure the error by vacating or amending the order in whole or in part.

The committee also recognizes that the ideal procedure would be to have Article V judicial officers hearing all support cases. However, thousands upon thousands of support determinations must be made in our state each year, a very substantial portion of which are paternity determinations. (Paternity action filings are increasing at a very high, if not alarming, rate in our state and nationally. Literally thousands of paternity

tests were administered in our state last year, and several thousand paternity tests have already been administered in our state this year). In light of the number of support cases that need to be heard and determined, the federally mandated requirements, including the federally mandated time standards, our limited judicial resources, and our state's election to participate in the Title IV-D program, and the simple fact that children need to be supported by their parents on a timely basis and not by the state, it is clear that our Article V judicial officers need assistance. In that regard, it appears that at least 80% of our circuits have established and are utilizing a child support hearing officer program.

Of course, any assistance provided by a hearing officer program must be efficient, effective and competent. With respect to that, the Office of the State Court Administrator along with the Advanced Judicial Studies College have been working together to establish and provide state-wide training programs for support enforcement hearing officers and general masters, with the upcoming training program to emphasize due process considerations and case management. Appropriate training and education clearly contribute to the establishment and maintenance of necessary due process safeguards.

With regard to paternity determinations, the approved scientific testing that is available today, such as DNA and HLA testing, clearly simplifies the paternity determination process and reduces the risk of error. Further, Chapter 742, Florida Statutes, establishes certain presumptions based on the test results and allows for the entry of a summary judgment on the issue of paternity under certain circumstances. In short, although paternity determinations are time consuming because of the sheer number of cases being filed and heard, paternity determinations are not overly complicated. In fact, in most paternity cases the most difficult aspect of the case is establishing the appropriate amount of future and retroactive child support to be paid. Establishing the amount of support to be paid by a litigant is no less a "substantive due process decision" than establishing paternity. Support enforcement hearing officers assist our courts on a daily basis by hearing cases involving the establishment, modification, and enforcement of support. As it stands now, however, in the absence of a stipulation regarding paternity, *Rule* 12.491 prohibits a hearing officer from even recommending that an order be entered by the court requiring an HLA or DNA test in a paternity case. Allowing hearing officers to hear nonjury contested paternity cases will bring the hearing officer program into compliance with the federal requirements and will allow our Article V judicial officers more time to devote to more complex matters, which complex matters may include one or more pro se litigants. In short, allowing hearing officers to hear nonjury contested paternity cases will contribute to the overall efficient administration of justice, and makes good sense.

With regard to the alimony issue, the proposed amendment to *Rule* 12.491 will only allow a hearing officer to hear an alimony enforcement matter in conjunction with an ongoing child support matter. It will not allow a hearing officer to either establish alimony in the first instance or to modify an alimony award. Allowing hearing officers to

hear such alimony enforcement matters will bring the hearing officer program into compliance with the federal requirements, will contribute to the overall efficient administration of justice, and, again, makes good sense.

This Court adopted the support enforcement hearing officer rule in the first instance to comply with federal requirements. The rule, in its present form, is no longer in compliance with the federal requirements. This Court can clearly resolve the problem by adopting the proposed amendments.

Committee votes:

Enforcement of alimony 32-0-0
Hearing contested paternity cases 14-0-0

Rule 12.615, Civil Contempt

As evidenced by numerous appellate decisions across our state, there appears to be considerable confusion concerning civil contempt. See, *e.g.*, *Hipschman v. Cochran*, 683 So. 2d 209 (Fla. 4th DCA 1996); *Thompson v. Plowmaker*, 681 So. 2d 727 (Fla. 2d DCA 1996); *Arena v. Herman*, 675 So. 2d 210 (Fla. 3d DCA 1996); *Coogan v. Coogan*, 662 So. 2d 1380 (Fla. 1st DCA 1995); *Brown v. Brown*, 658 So. 2d 627 (Fla. 5th DCA 1995). In an effort to reduce that confusion, reduce the number of appeals in this area of the law, and address concerns raised by this Court, a revised, more streamlined, civil contempt rule proposal is submitted for this Court's review and consideration.

Subdivision (a) of the proposed rule provides that a civil contempt may be initiated by a motion and that the motion and notice may be served by mail provided that mail notice is reasonably calculated to apprise the alleged contemnor of the pendency of the proceeding. See *Department of Health and Rehabilitative Services v. Pierre*, 625 So. 2d 987 (Fla. 3d DCA 1993); *Pennington v. Pennington*, 390 So. 2d 809 (Fla. 5th DCA 1980).

Subdivision (b) of the proposed rule clarifies the court's initial obligation during the civil contempt hearing. See *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

Subdivision (c) of the proposed rule outlines the requirements for the order on the motion for contempt, including the findings requirements. This section is extremely important because a substantial number of the orders reversed on appeal are reversed because of a lack of the required findings, especially findings regarding purge conditions. See, *e.g.*, *Arena v. Herman*, *supra*; *Coogan v. Coogan*, *supra*; *Brown v. Brown*, *supra*. The remainder of this subdivision deals primarily with available remedies in civil contempt proceedings. This information is important because of a general lack of awareness regarding the availability of various forms of relief, other than incarceration, for a civil contempt. See, *e.g.*, *Johnson v. Bednar*, 573 So. 2d 822 (Fla. 1991).

Subdivision (d) of the proposed rule provides that a prior order creates a rebuttable presumption that the contemnor has the present ability to comply with the prior order.

With respect to support related matters, the provisions of this section are clearly consistent with current case and statutory law. See *Bowen v. Bowen*, *supra*, and section 61.14(5)(a), Florida Statutes. With respect to matters other than support, if a prior support order creates a rebuttable presumption that the contemnor has the present ability to comply, shouldn't a prior visitation or parental responsibility order create a rebuttable presumption that the contemnor has the present ability to comply with the order? Should a visitation order and support order be treated differently? Is there really a rational basis for distinguishing between support matters and visitation matters? In either case, if this provision is approved by the Court, the presumption would be rebuttable, not conclusive. Because contempt is not available for property related matters, and because this is a family law rule, the application of this rule essentially will be limited to support related and parental responsibility related matters. See, *e.g.*, *Bishop v. Bishop*, 667 So. 2d 246 (Fla. 1st DCA 1995). Thus, it is respectfully submitted that this subdivision of the rule should be adopted and should apply to both support related and parental responsibility related matters.

Subdivision (e) of the proposed rule includes two subsections, one related to support matters and one related to matters other than support. Unlike the subsection related to matters other than support, because of the presumption established in *Bowen v. Bowen*, *supra*, and presumptions in section 61.14(5)(a), Florida Statutes, the support related subsection includes the following sentence: "Once the court determines the purge conditions, a rebuttable presumption arises that the contemnor has the continuing ability to comply with the purge."

Although the Court may have some concern about that sentence, it is not inconsistent with the concept that a prior order establishing support creates a rebuttable presumption that the obligor has the continuing ability to pay the established support amount and has the ability to pay a purge amount. In each instance, the trial court initially establishes an amount to be paid (the support amount or the purge amount), determines the present ability to pay the amount established (the support amount or purge amount), and a presumption arises regarding the litigant's continuing ability to pay the amount established (the support amount or the purge amount). The presumption is **rebuttable**. Is there any significant difference? Would such a rebuttable presumption enhance the support enforcement process? Could it actually serve to encourage trial judges to grant contemnors a reasonable time within which to comply with the set purge conditions?

As a safeguard, subdivision (f) of the proposed rule would allow a contemnor to move for a hearing after the entry of the contempt order, but before the date set for the purge, and at the hearing the contemnor may present evidence regarding the contemnor's ability to comply with the purge conditions.

Further, subdivision (g) of the proposed rule provides that if the contemnor timely moves for the hearing, a Writ of Bodily Attachment shall not issue until after the hearing.

And last, but not least, subdivision (h) of the proposed rule provides that after the contemnor's incarceration, the trial court on its own motion or on the motion of any party, may review the contemnor's present ability to comply with the purge condition and the duration of the incarceration.

It is respectfully requested that this Court adopt the revised proposed civil contempt rule. It is felt that this rule will be helpful to the bench, bar, and litigants. Most importantly, it should serve to reduce the number of appeals in this area of the law, should reduce the costs of litigation, and may serve to deter the use of inappropriate sanctions or remedies in civil contempt matters, while encouraging the use or appropriate sanctions or remedies.

Committee vote: 11-2-1

General Information for Pro se Litigants:

In the Mandatory Disclosure section, the list of circumstances in which mandatory disclosure is not required was amended to incorporate the 1998 amendment to rule 12.285(a), Mandatory Disclosure, approved by the Court.

Committee vote: 21-0-0

Form 12.901(d), Financial Affidavit (Short Form):
Section II, E, Average Monthly Expenses:
Item 60 has been amended to read "Religious organizations/Charities" rather than "Church/Charities." This change is consistent with the long-form affidavit and reflects that there are other forms of religious organizations (*e.g.*, temples, synagogues, mosques).

Committee vote: 21-0-0

Form 12.901(d), Financial Affidavit (Short Form):
Section III, C, Contingent Liabilities:
The list of examples of contingent liabilities has been amended to include "contingent tax liabilities," which are not the same as "future unpaid taxes." See *Vaccaro v. Vaccaro*, 677 So. 2d 918 (Fla. 5th DCA 1996).

Committee vote: 22-0-0

Form 12.901(e), Financial Affidavit:
Section I, Present Monthly Gross Income:
Item 13 asks for information regarding in-kind payments to the extent that they reduce living expenses. A requirement to list each payment and the amount on a separate sheet has been added, similar to the current requirement in item 11 for rental income. Too often, the amount is not provided, only the category of the expense.

Committee vote: 19-3-0

Form 12.901(e), Financial Affidavit:
Section II, Average Monthly Expenses:
The introduction to this section has been amended to read "If this is a dissolution of marriage case and your current expenses do not reflect what you actually pay, you should write "estimate" next to each amount that is estimated." The current wording suggests that the form be completed to reflect anticipated expenses after dissolution. Because the information in the affidavit may be used to set temporary support, it should reflect current expenses. The financial affidavit also should reflect the standard of living during the intact marriage and not anticipated expenses after dissolution.

Committee vote: 20-0-0

Item 14 has been amended to read "Monthly food and home supplies" as "grocery" and "food" are synonymous.

Committee vote: 12-9-0.

Items 36–58, Monthly Expenses for Children Common to Both Parties, has been added. This was included on the previous long-form affidavit and currently is found on the short form. It was omitted by error. The numbering on the subsequent items also has been changed.

Committee vote: 21-0-0

Item ~~50~~73 has been amended to read "psychiatrist, psychologist or counselor" because a party generally will be consulting only one of these professionals at a time.

Committee vote: 20-0-0:

Form 12.901(e), Financial Affidavit:
Section III, C: Contingent Liabilities:
The list of examples of contingent liabilities has been amended to include "contingent tax liabilities," which are not the same as "future unpaid taxes." See *Vaccaro v. Vaccaro*, 677 So. 2d 918 (Fla. 5th DCA 1996).

Committee vote: 22-0-0

Instructions to Form 12.902(b), Answer to Petition for Dissolution of Marriage:

The title of Form 12.901(h)(1) has been corrected.

Committee vote: 21-0-0

Form 12.902(c)(2), Answer to Petition and Counterpetition for Dissolution of

Marriage with Property but no Dependent or Minor Child(ren):

The grammar in item four of the counterpetition has been corrected.

Committee vote: 21-0-0

Instructions to Form 12.903(c), Supplemental Petition for Modification of Alimony:

The instructions in the second paragraph on where the supplemental petition should be filed have been corrected.

Committee vote: 21-0-0

Form 12.924, Notice of Lis Pendens:

The Court asked that instructions be provided before approval of the form. On further consideration, the Committee voted not to resubmit the form for approval.

Committee vote: 23-1-2

Forms 12.930(b) and (c), Interrogatories (and Instructions):

In the Instructions, "he or she" has been changed to "the answering party."

Committee vote: 16-0-0

Item 3, Employment:

Items 3a and 3b on each form have been amended to read "contributions to pension or profitsharing plans," because this is the information that actually is sought.

Committee vote: 17-0-0

Form 12.941(d), Motion to Modify or Dissolve Temporary Injunction:

The number of the rule at the end of the first paragraph has been corrected.

Committee vote: 21-0-0

Form 12.945(b), Order to Pick-Up Minor Child(ren):

The reference to the department in paragraph 2 of the order has been corrected to reflect the statutory name.

Committee vote: 21-0-0

Form 12.947(b), Temporary Order of Support

In item 1 of Section II, "until" has been added to correct the sentence. In Item 2 of Section II, "(are)" has been added for grammatical reasons. The title of the form in the footer also has been corrected.

Committee vote: 21-0-0

Form 12.948(b), Temporary Support Order with No Dependent or Minor Child(ren)

In item 1 of Section II, "until" has been added to correct the sentence.

Committee vote: 21-0-0

Form 12.982(c), Petition for Change of Name (Minor Child(ren)):

The title of the form has been corrected on the form and in the footer.

Committee vote: 21-0-0

Child Support Orders:

The Office of Program Policy Analysis and Government Accountability of Policy Studies (OPPAGA) has completed a study of Florida's child support guidelines for the Florida Legislature. To facilitate audit of orders for compliance with the guidelines, OPPAGA recommended that the Family Law Rules Committee develop model language for child support orders that includes (1) the number of children affected by the order; (2) the net income of each parent; (3) the payment amount prescribed by the guidelines; (4) how much support is being awarded; and (5) when applicable, an explanation of any deviation from the guidelines by more than 5%. The family law child support orders contain largely uniform language; it has been amended in the following forms to conform to OPPAGA's recommendations.

Form 12.947(b), Temporary Order for Support with Dependent or Minor Child(ren)
Form 12.980(e), Final Judgment of Injunction for Protection Against Domestic Violence (After Notice)
Form 12.983(g), Final Judgment of Paternity
Form 12.990(c)(1), Final Judgment of Dissolution of Marriage with Dependent or Minor Child(ren)
Form 12.993(a), Supplemental Final Judgment of Modification of Parental Responsibility/Visitation
Form 12.993(b), Supplemental Final Judgment Modifying Child Support
Form 12.994(a), Final Judgment for Support Unconnected with Dissolution of Marriage with Dependent or Minor Child(ren)

The Committee has been advised that the Family Court Steering Committee is

proposing different language. Because there also is pending legislation, we leave it to the sound discretion of the Court to determine how, or if, the child support orders should be modified to address OPPAGA's recommendations. The Committee, however, raises the following concerns to the Court:

1. The requirement that the amount prescribed by the child support guidelines be shown should be clarified. There apparently is confusion among the bench and bar as to what constitutes the "guidelines amount." Is it only the amount in the chart in section 61.30, Florida Statutes, or does the guidelines amount include statutory deductions and adjustments?

2. The Committee also expresses its concern regarding the additional work required to complete this information in all orders, even if the parties have reached a settlement agreement that is being incorporated in the final judgment by the trial court.

Committee vote: 21-0-0

Motions for New Trial:

As recommended by the Court, the Committee has formed a subcommittee to consult with the Appellate Rules Committee on this rule.

Family Court Steering Committee recommendations:

The Family Law Rules Committee and Family Court Steering Committee have attempted to work together in their responses to the Court. Some items, however, have been considered by one group and not the other. In its conference call on April 16, 1998, the Executive Committee considered additional recommendations made by the Family Court Steering Committee. The Executive Committee supports the following:

1. Amendment to the Instructions to Form 12.913(b), Affidavit of Diligent Search, to indicate that this form may also be used in adoption proceedings.

2. Amendment to Form 12.980(b), Petition for Injunction for Protection Against Domestic Violence, to change item 2 (which describes the relationship of the Petitioner and Respondent) from "√ one only" to "√ all that apply."

3. Amendment of Form 12.901(g), Child Support Guidelines Worksheet, to add Lines 10, 11, and 12 to reflect credits to the obligor's total obligation for direct payments for child care and health insurance.

Executive Committee vote: 5-0-0

Respectfully submitted this 30th day of April, 1998.

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I HEREBY CERTIFY that a copy of the foregoing has been furnished to THE HONORABLE DURAND ADAMS, Chair, Family Court Steering Committee, Suite 4115, 1115 Manatee Avenue, Bradenton, FL 34206, this 30th day of April, 1998.

Ellen Sloyer
for Burton Young

The undersigned members of The Family Law Rules Committee express their concern regarding public disclosure of parties' financial information in a dissolution of marriage proceeding and indicate by their signatures their support of the Committee's position on this issue.

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