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CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: 89,955

**COMMENTS FROM THE FAMILY LAW RULES COMMITTEE
ON THE COURT'S OCTOBER 29, 1998, ORDER**

THE HON. 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 regarding the Court's amendments to the Florida Family Law Rules of Procedure.

Because the Committee did not have a regular meeting scheduled before the Court's response deadline, the following comments were developed by the Executive Committee and submitted for vote by facsimile to the full committee. The full Committee's votes are indicated below each item. Copies of proposed amendments to rules and forms are attached.

**RULE 12.610, INJUNCTIONS FOR DOMESTIC AND REPEAT
VIOLENCE**

The amendment to Fla. Fam. L. R. P. 12.610(c)(6) requires any change or termination of a domestic violence injunction to be initiated by supplemental petition, with service of process by a law enforcement officer. This rule applies equally to the petitioner and the respondent. Section 741.30(9), Florida Statutes (1998) provides: "The petitioner or the respondent may move the court to modify or dissolve the injunction at any time." The committee recommends that, in conformance with the statute, modification be initiated by motion, with service on the other party to apprise him or her of the pendency of the proceeding.

To accomplish this recommendation, Rule 12.610 (b)(2)(C) and (c)(6) should be amended. Additionally, Form 12.980(k) and its instructions should be amended to reflect this change. A copy of the proposed amendments to the rule and form are attached.

Committee vote: 23-2-6

RULE 12.615, CIVIL CONTEMPT

Presumption of ability to pay

Section 61.14(5)(a), Florida Statutes, creates a statutory presumption of ability to pay:

[T]he original order of the court creates a presumption that the obligor has the present ability to pay the alimony or support and to purge himself or herself from the contempt. At the contempt hearing, the obligor shall have the burden of proof to show that he or she lacks the ability to purge himself or herself from the contempt. This presumption is adopted as a presumption under s. 90.302(2) to implement the public policy of this state that children shall be maintained from the resources of their parents

The cases cited in the Court's opinion do not adopt any presumption that the full arrearage amount is presumed to be the proper purge amount. To the contrary, the cases cited in the Court's opinion direct the trial court to find a reasonable purge amount. The Committee suggests that this statutory presumption be addressed in the rule to avoid both proof problems and the possibility of inequitable application of the statutory presumptions.

An amendment to Rule 12.615(c)(2)(iA) is proposed as follows: the court shall; [delete existing language] determine whether the failure to pay support is willful and apply a rebuttable presumption that the obligor has the present ability to pay the support and to purge himself or herself from the contempt. The obligor shall have the burden of proving that he or she lacks the ability to purge himself or herself from the contempt. If the obligor fails to rebut the presumption and the court finds that he or she has the present ability to pay, the court shall set a reasonable purge amount in accordance with subdivision (e) of this rule.

Committee vote: 29-2-0

Proof required for incarceration

The last sentence of Rule 12.615(e) does not provide the level or type of proof required for incarceration in deferred incarceration cases. The Committee

believes that the movant should have the burden of proving noncompliance and that an affidavit of noncompliance, with a certificate from the Central Governmental Depository, if applicable, should be sufficient proof for issuance of a writ of bodily attachment. To reflect this, the following should be added to Rule 12.615(e): If the court orders incarceration but defers incarceration to allow the contemnor a reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the movant shall file an affidavit of noncompliance with the court. If payment is being made through the Central Governmental Depository, a certificate from the depository shall be attached to the affidavit. The court then may issue a writ of bodily attachment. ~~then, u~~Upon incarceration,

Committee vote: 27-4-0

Interim purge amount

Rule 12.615(c)(2)(iiB) states that if the contemnor fails to appear the court may issue a writ of bodily attachment. A discussion with judges in the Sixth Judicial Circuit revealed a belief by some that it was not necessary to set a purge amount before issuing the writ. Other judges, however, expressed the opinion that a purge amount must always be set before a writ of bodily attachment may issue. The Committee believes that a purge amount should be set before a writ may issue and proposes the following amendment to Rule 12.615(c)(2)(iiB) to clarify this: If the alleged contemnor fails to appear, [current language deleted] the court shall set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a writ of bodily attachment

Committee vote: 26-5-0

Immediacy of hearing

Rule 12.615(c)(2)(iiB) requires that a contemnor who fails to appear be brought before the court “immediately” for a hearing on present ability to pay. Rule 12.615(e) also requires that a contemnor who has failed to comply with a purge be brought before the court “immediately” for a determination of present ability to pay. The committee is concerned that an “immediate” hearing (within 24 hours) may result in notice problems to all parties, often including the Department of Revenue, and may require a hearing before a magistrate judge not

familiar with the case. Additionally, if the respondent is arrested in another county, or he or she has a criminal hold in another county, an “immediate” hearing may not be possible.

The Committee recognizes the competing interests of appropriate due process for the alleged contemnor and the need for effective and efficient enforcement of the court’s order and collection of support for dependent spouses and children. In an attempt to balance these interests, the Committee suggests that “immediately” in Rule 12.615(c)(2)(~~ii~~**B**) be amended to read “as soon as practical, but not later than within 2 business days.” A corresponding amendment to the last sentence of Rule 12.615(e) is suggested as follows: “. . . then, upon incarceration, the contemnor must be brought ~~immediately~~ before the court as soon as practical, but not later than within 2 business days . . .” This time period allows for notice to the petitioner and ensures a hearing before a judicial officer familiar with the case.

Committee vote: 28-3-0

Requirement for second hearing

The Committee suggests that if the hearing setting a purge and finding a reasonable ability to pay was recent, a second hearing should not be required. The trial court often will give a contemnor a specific amount of time to perform an act or acquire funds to pay a purge. This would eliminate the need for a second hearing if the act is not done or payment made within the required time.

Committee vote: 23-5-3

Notice of consequences of failure to appear

The Committee has recommended that “immediate” hearing in subdivision (c)(2)(~~ii~~**B**) be changed to “as soon as practical, but not later than within 2 business days.” To assure that alleged contemnors are notified of the consequences of their failure to appear, the Committee recommends adding a requirement that they be given specific notice, by amending the last sentence of subdivision (b): The notice must specify the time and place of the hearing and contain the following language:
FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP

TO 2 BUSINESS DAYS BEFORE A HEARING IS HELD.

Committee vote: 29-2-0

Issuance of writ in all cases of failure to appear

The Committee agrees with the Family Court Steering Committee's position that a writ of bodily attachment is not required to be issued by the court if the alleged contemnor fails to appear at the hearing. There may be equitable circumstances that would prevent the alleged contemnor from appearing or circumstances when contempt is found but incarceration is not the ordered sanction. The Committee recommends changing Rule 12.615(c)(2)(iiB) to read: the court shall set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a writ of bodily attachment. . . .

Committee vote: 26-5-0

Opportunity to show that contemnor no longer has the ability to pay

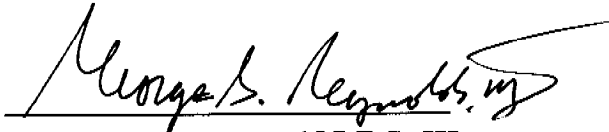
The Committee also agrees with the Family Court Steering Committee that Rule 12.615(c)(2)(iA) be amended to delete the provision that the alleged contemnor be given the opportunity to rebut the presumption of ability to pay and that the only required finding be that the failure to pay was willful.

Committee vote: 24-7-0

Rules style

The Committee also brings to Court's attention that subdivisions (c)(2)(i) and (c)(2)(ii) should be designated (c)(2)(A) and (c)(2)(B) to conform to the Court's adopted style.

Respectfully submitted this 15th day of December, 1998.



GEORGE S. REYNOLDS, III
Chair, Family Law Rules Committee
301 South Monroe St., Room 365K
Tallahassee, FL 32301-1803
(850) 488-7660

FLORIDA BAR NO.: 194234



JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
(850) 561-5600

FLORIDA BAR NO.: 123390

I HEREBY CERTIFY that a copy of the foregoing has been furnished to
THE HONORABLE KAREN K. COLE, Chair, Family Court Steering Committee,
330 East Bay Street, Room 200, Jacksonville, FL 32202-2921, this 17 day of
December, 1998.



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

(i) 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;

(ii) the party filing the petition was the victim of, or has reasonable cause to believe he or she is in imminent danger of becoming the victim of an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death perpetrated by the party against whom the injunction is sought; and

(iii) 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

(i) 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

(ii) 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), temporary injunction (if one has been entered), 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, temporary injunction (if one has been entered), 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 petitions, supplemental petitions, and orders granting injunctions shall be governed by rule 12.080. Service of a motion to modify or vacate an injunction should be reasonably calculated to apprise the non-moving party of the pendency of the action.

(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 rules.

(4) **Forms.**

(A) **Provision of 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 the petitioner in obtaining an injunction for protection against domestic or repeat violence as provided by law.

(B) **Confidential Filing of Address.** A petitioner's address may be furnished to the court in a confidential filing separate from a petition or other form if, for safety reasons, a petitioner believes that the address should be concealed. The ultimate determination of a need for confidentiality must be made by the court as provided in Florida Rule of Judicial Administration 2.051.

(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) **Issuing of Injunction.**

(A) **Standardized Forms.** The temporary and permanent injunction forms in these rules for repeat and domestic violence injunctions shall be the forms used in the issuance of injunctions under chapters 741 and 784, Florida Statutes. Additional provisions, not inconsistent with the standardized portions of those forms, may be added to the special provisions section of the temporary and permanent injunction forms on the written approval of the chief judge of the circuit. Copies of such additional provisions shall be sent to the Chief Justice, the chair of the Family Law Rules Committee of The Florida Bar, the chair of the Family Courts Steering Committee, and the chair of The Governor's Task Force on Domestic and Sexual Violence.

(B) **Bond.** 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.**

(i) **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 subdivision, 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.

(ii) **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 or until further order of court. 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 periods or until further order of court. 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 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) **Supplemental Petition Motion to Modify or Vacate Injunction.** The petitioner or respondent may file a ~~supplemental petition~~ motion with the court to modify or vacate an injunction at any time. Service of ~~supplemental petitions~~ motions to modify or vacate injunctions shall be governed by subdivision 12.610(b)(2) of this rule.

(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 12.980(b). 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 (b)(1)(B) include those set forth in Florida Family Law Form 12.980(d). The relief the court may grant in a temporary or permanent injunction against repeat violence is set forth in section 784.046(7), Florida Statutes.

Subdivision (b)(4) expands sections 741.30(2)(c)1 and (2)(c)2, Florida Statutes, 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 12.980(b) 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 12.901(f). If alimony or child support is sought a Financial Affidavit must be provided and completed in conformity with Family Law Form 12.901(d) or 12.901(e).

Subdivision (c)(1)(A) expands chapter 95-195, Laws of Florida, and section 784.046(6)(a), Florida Statutes, to make the limitation of evidence presented at an ex parte hearing permissive rather than mandatory given the due process concerns raised by the statutory restrictions on the taking of evidence.

Unlike traditional injunctions, under subdivision (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 (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 784.046(8)(a)1, Florida Statutes.

Subdivision (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 784.046(8)(c)1, Florida Statutes, 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 (c)(4)(A) restates sections 741.30(5)(c) and 784.046(6)(c), Florida Statutes, 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 (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), Florida Statutes, in the event a subsequent cause of action is filed under chapter 61, Florida Statutes, 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, Florida Statutes.

Subdivision (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), Florida Statutes, 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 the circuit court of the county in which the violation is alleged to have occurred to obtain information regarding enforcement.

Subdivision (c)(7) expands sections 741.30(2)(c)1 and (2)(c)2, Florida Statutes, 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.

Committee Note

1997 Amendment. This change mandates use of the injunction forms provided with these rules to give law enforcement a standardized form to assist in enforcement of injunctions. In order to address local concerns, circuits may add special provisions not inconsistent with the mandatory portions.

RULE 12.615

CIVIL CONTEMPT IN SUPPORT MATTERS

(a) **Applicability.** This rule governs civil contempt proceedings in support matters related to family law cases. 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.

(b) **Motion and Notice.** Civil contempt may be initiated by motion. No civil contempt may be imposed without notice to the alleged contemnor and without providing the alleged contemnor with an opportunity to be heard. The civil contempt motion and notice of hearing may be served by mail provided notice by mail is reasonably calculated to apprise the alleged contemnor of the pendency of the proceedings. The notice must specify the time and place of the hearing and contain the following language: FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP TO 2 BUSINESS DAYS BEFORE A HEARING IS HELD. †The motion must recite the essential facts constituting the acts alleged to be contemptuous.

(c) **Hearing.** In any civil contempt hearing, after the court makes an express finding that the alleged contemnor had notice of the motion and hearing:

(1) the court shall determine whether the movant has established that a prior order directing payment of support was entered, that the order was based on a finding that the alleged contemnor had the ability to pay the support ordered, and that the alleged contemnor has failed to pay all or part of the support set forth in the prior order; and

(2) if the court finds the movant has established all of the requirements in subdivision 12.615(c)(1) of this rule, the court shall;

~~(iA) if the alleged contemnor is present, determine whether the alleged contemnor has established that the alleged contemnor no longer has the present ability to pay support. If the court finds that the alleged contemnor has the present ability to pay support, the court is to determine whether the failure to pay such support is willful~~determine whether the failure to pay support is willful and apply a rebuttable presumption that the obligor has the present ability to pay the support and to purge himself or herself from the contempt. The obligor shall have the burden of proving that he or she lacks the ability to purge himself or herself from the contempt. If the obligor fails to rebut the presumption and the court finds that he or she has the present ability to pay, the court shall set a reasonable purge amount in accordance with subdivision (e) of this rule.

~~(iiB) if the alleged contemnor fails to appear, issue a writ of bodily attachment and direct that, upon execution of the writ of bodily attachment, the alleged contemnor be immediately brought before the court for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such~~

support is willful, the court shall set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a writ of bodily attachment and direct that, on execution of the writ, the alleged contemnor be brought before the court as soon as practical, but not later than within 2 business days, for a hearing in accordance with subdivision (c)(2)(A) of this rule.

(d) **Order and Sanctions.** After hearing the testimony and evidence presented by each party, the court shall enter a written order granting or denying the motion for contempt.

(1) An order finding the alleged contemnor to be in contempt shall contain a finding that a prior order of support was entered, that the alleged contemnor has failed to pay part or all of the support ordered, that the alleged contemnor has the present ability to pay support, and that the alleged contemnor has willfully failed to comply with the prior court order. The order shall contain a recital of the facts on which these findings are based.

(2) If the court grants the motion for contempt, the court may impose appropriate sanctions to obtain compliance with the order including incarceration, attorneys' fees, suit money and costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law provided the order includes a purge provision as set forth in subdivision 12.615(e) of this rule.

(e) **Purge.**

(1) If the court orders incarceration, a coercive fine, or any other coercive sanction for failure to comply with a prior support order, the court shall set conditions for purge of the contempt, based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding.

(2) The court may grant the contemnor a reasonable time to comply with the purge conditions. If the court orders incarceration but defers incarceration to allow the contemnor a reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the movant shall file an affidavit of noncompliance with the court. If payment is being made through the Central Governmental Depository, a certificate from the depository shall be attached to the affidavit. The court then may issue a writ of bodily attachment. ~~then, u~~ Upon incarceration, the contemnor must be brought ~~immediately~~ before the court as soon as practical, but not later than within 2 business days, for a determination of whether the contemnor continues to have the present ability to pay the purge.

(f) **Review after Incarceration.** Notwithstanding the provisions of this rule, at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and modify any prior orders.

Commentary

1998 Adoption. 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.

**INSTRUCTIONS FOR FLORIDA FAMILY LAW FORM 12.980(k),
~~SUPPLEMENTAL PETITION~~MOTION FOR MODIFICATION OF INJUNCTION FOR
PROTECTION AGAINST DOMESTIC VIOLENCE OR REPEAT VIOLENCE**

When should this form be used?

This form may be used if you are a **party** to a previously entered injunction for protection against domestic violence or repeat violence and you want the court to **modify the terms** of the injunction.

This form should be typed or printed in black ink. After completing this form, you should sign the form before a **notary public** or the **clerk of the circuit court**. You should then **file** the original with the clerk in the county where the original petition was filed and keep a copy for your records. **You must file a petitionmotion for modification before the previously entered order expires.** If you have any questions or need assistance completing this form, the clerk or **family law intake staff** will help you.

What should I do next?

For your case to proceed, you will need to set a **hearing** on your petitionmotion. You must properly notify the other party of the petitionmotion and hearing. You should check with the clerk of court for information on the local procedure for scheduling a hearing. When you know the date and time of your hearing, you should file **Notice of Hearing (General)**, ~~☞~~ Florida Family Law Form 12.923, or other appropriate notice of hearing form. You will need to use **personal service** to ~~deliver~~mail a copy of your petition and the Notice of Hearing to the **respondent**.

You will need to appear at a hearing on your petitionmotion for modification of injunction. After the hearing, if the judge grants your supplementalpetitionmotion, he or she will prepare a new injunction for protection that contains the modifications. After the judge signs the new injunction, the clerk will provide you with the necessary copies. **Make sure that you keep a certified copy of the new injunction with you at all times!**

Where can I look for more information?

Before proceeding, you should read “General Information for Pro Se Litigants” found at the beginning of these forms. The words that are in “**bold underline**” are defined in that section. The clerk of the circuit court or family law intake staff will help you complete any necessary domestic or repeat violence forms and will answer any question that you may have.

Special notes...

If the injunction you are seeking to modify is for domestic violence and you want the court to modify **alimony**, **custody** of a minor child(ren), or **child support**, you must establish that there has been a substantial change in circumstance(s) that requires this (these) modification(s). Be sure that you make these substantial change(s) clear in your supplemental petition.

With this form you may also file the following:

- **Petitioner’s Request for Confidential Filing of Address**, ~~☞~~ Florida Family Law Form 12.980(i), if your petition is for domestic violence and you wish to keep your address confidential.

- **Uniform Child Custody Jurisdiction Act (UCCJA) Affidavit**, Florida Family Law Form 12.901(f), must be completed and attached if the modification(s) you are seeking involve temporary custody of any minor child(ren).
- **Financial Affidavit**, Florida Family Law Form 12.901(d) or (e), must be completed and attached if the modification(s) you are seeking involves temporary alimony or temporary child support.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No.: _____

Division: _____

_____,
Petitioner,

and

_____,
Respondent.

**SUPPLEMENTAL ~~PETITION~~ MOTION FOR MODIFICATION OF INJUNCTION FOR
PROTECTION AGAINST () DOMESTIC VIOLENCE () REPEAT VIOLENCE**

I, {full legal name} _____, being sworn, certify that the following statements are true:

SECTION I. PETITIONER (This section is about you. It must be completed. However, **if this is a domestic violence case and you fear that disclosing your address to the respondent would put you in danger**, you should complete and file **Petitioner's Request for Confidential Filing of Address**, Florida Family Law Form 12.980(i), and write "confidential" in the space provided on this form for your address and telephone number.)

1. Petitioner currently lives at: {street address} _____
{city, state and zip code} _____
Telephone Number: {area code and number} _____

2. Filing Fees

[one only]

- _____ a. Petitioner is paying the filing fee and sheriff's (or other authorized law enforcement agency's) service fees.
- _____ b. Petitioner does not have enough money to pay the filing fee or service fees and files an Affidavit and Motion for Waiver of Fees, Florida Family Law Form 12.980(a), and a Financial Affidavit, Florida Family Law Form 12.901(d) or (e). Petitioner asks that he/she not have to pay the fees necessary to process the ~~petition~~ motion and serve the injunction and any motions or orders needed to enforce the injunction, subject to later order(s) of the Court about the payment of such fees.

3. Petitioner's attorney's name, address and telephone number is: _____

(If you do not have an attorney, write "none.")

SECTION II. NEW INFORMATION

New information since the previous injunction was issued: (If known, write Respondent's new address, place of employment, physical description, vehicle, aliases or nicknames, or attorney's name.)

SECTION III. CASE HISTORY AND REASON FOR SEEKING MODIFICATION OF INJUNCTION

1. Describe any attempts since the date of the current injunction by either Petitioner or Respondent to get an injunction for protection in this or any other court (other than the injunction you are asking to modify in this ~~petition~~motion). _____

2. Describe any attempts since the date of the current injunction by either Petitioner or Respondent to modify or extend an injunction for protection in this or any other court. _____

3. Describe any other court cases (including case numbers, if known) since the date of the current injunction between Petitioner and Respondent, including any cases involving the parties' minor child(ren), divorce, juvenile dependency, guardianship, or other civil or criminal cases. _____

4. Petitioner requests that the previously entered injunction for protection against domestic violence or repeat violence be modified for the following **specific** reasons: *{State why you wish the injunction to be changed.}* _____

Check here if you are attaching additional pages to continue these facts.

SECTION IV. REQUESTED RELIEF

1. Petitioner understands that the court will hold a hearing on this ~~petition~~motion and that he or she must appear at the hearing.

2. Petitioner asks the Court to enter an order in this case, that modifies the previously entered injunction in the following ways: *{State how you wish the injunction to be changed.}* _____

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this ~~supplemental petition~~motion and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of Party

STATE OF FLORIDA
COUNTY OF _____

Sworn to or affirmed and signed before me on _____ by _____.

NOTARY PUBLIC—DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or clerk.]

- ___ Personally known
- ___ Produced identification
- Type of identification produced _____

Current Rule

Proposed Rule

Reasons for Change

RULE 12.610. INJUNCTIONS FOR DOMESTIC AND REPEAT VIOLENCE

RULE 12.610. INJUNCTIONS FOR DOMESTIC AND REPEAT VIOLENCE

The Court's amendment to Fla. Fam. L. R. P. 12.610(c)(6) requires any change or termination of a domestic violence injunction to be initiated by supplemental petition, with service of process by a law enforcement officer. This rule applies equally to the petitioner and the respondent. Section 741.30(9), Florida Statutes (1998) provides: "The petitioner or the respondent may move the court to modify or dissolve the injunction at any time." The committee recommends that, in conformance with the statute, modification be initiated by motion, with service on the other party to apprise him or her of the pendency of the proceeding.

To accomplish this recommendation, Rules 12.610 (b)(2)(C) and (c)(6) should be amended.

(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.

(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.**

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(1) **Requirements for Use.**

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(A) **Domestic Violence.**

Any person may file a petition for an injunction for protection against domestic violence if they certify under oath that

(A) **Domestic Violence.**

Any person may file a petition for an injunction for protection against domestic violence if they certify under oath that

(i) 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

(i) 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;

(ii) the party filing the petition was the victim of, or has reasonable cause to believe he or she is in imminent danger of becoming the victim of an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death perpetrated by the party against whom the injunction is sought; and

(iii) 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

(i) two incidents of violence, defined as any assault, battery, sexual battery or stalking, one

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;

(ii) the party filing the petition was the victim of, or has reasonable cause to believe he or she is in imminent danger of becoming the victim of an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death perpetrated by the party against whom the injunction is sought; and

(iii) 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

(i) 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

(ii) 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), temporary injunction (if one has been entered), 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

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

(ii) 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), temporary injunction (if one has been entered), 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, temporary injunction (if one has been entered), 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 petitions, supplemental petitions, and orders granting injunctions shall be governed by rule 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

court shall furnish a copy of the petition for an injunction for protection against repeat violence, temporary injunction (if one has been entered), 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 petitions, supplemental petitions; and orders granting injunctions shall be governed by rule 12.080. Service of a motion to modify or vacate an injunction should be reasonably calculated to apprise the non-moving party of the pendency of the action.

(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

any petition, or otherwise be heard in person on any petition consistent with these rules.

(4) Forms.

(A) Provision of 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 the petitioner in obtaining an injunction for protection against domestic or repeat violence as provided by law.

(B) Confidential Filing of Address. A petitioner's address may be furnished to the court in a confidential filing separate from a petition or other form if, for safety reasons, a petitioner believes that the address should be concealed. The ultimate determination of a need for confidentiality must be made by the court as provided in Florida Rule of Judicial Administration 2.051.

(c) Orders of Injunction.

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 rules.

(4) Forms.

(A) Provision of 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 the petitioner in obtaining an injunction for protection against domestic or repeat violence as provided by law.

(B) Confidential Filing of Address. A petitioner's address may be furnished to the court in a confidential filing separate from a petition or other form if, for safety reasons, a petitioner believes that the address should be concealed. The ultimate determination of a need for confidentiality must be made by the court as provided in Florida Rule of

(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) **Issuing of Injunction.**

(A) **Standardized Forms.** The temporary and permanent injunction forms in these rules for repeat and domestic violence

Judicial Administration 2.051.

(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) **Issuing of Injunction.**

injunctions shall be the forms used in the issuance of injunctions under chapters 741 and 784, Florida Statutes. Additional provisions, not inconsistent with the standardized portions of those forms, may be added to the special provisions section of the temporary and permanent injunction forms on the written approval of the chief judge of the circuit. Copies of such additional provisions shall be sent to the Chief Justice, the chair of the Family Law Rules Committee of The Florida Bar, the chair of the Family Courts Steering Committee, and the chair of The Governor's Task Force on Domestic and Sexual Violence.

(B) **Bond.** 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

(A) Standardized Forms.

The temporary and permanent injunction forms in these rules for repeat and domestic violence injunctions shall be the forms used in the issuance of injunctions under chapters 741 and 784, Florida Statutes. Additional provisions, not inconsistent with the standardized portions of those forms, may be added to the special provisions section of the temporary and permanent injunction forms on the written approval of the chief judge of the circuit. Copies of such additional provisions shall be sent to the Chief Justice, the chair of the Family Law Rules Committee of The Florida Bar, the chair of the Family Courts Steering Committee, and the chair of The Governor's Task Force on Domestic and Sexual Violence.

(B) **Bond.** 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.

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.

(i) 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

(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.

(i) 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

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 subdivision, 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.

(ii) **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

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 subdivision, 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.

(ii) **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.**

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 or until further order of court. 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 periods or until further order of court. 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 rule 12.570, or in criminal contempt

(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 or until further order of court. 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 periods or until further order of court. 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

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) **Supplemental Petition to Modify or Vacate Injunction.** The petitioner or respondent may file a supplemental petition with the court to modify or vacate an injunction at any time. Service of supplemental petitions to modify or vacate injunctions shall be governed by subdivision 12.610(b)(2) of this rule.

(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

repeat violence in civil contempt proceedings, which are governed by 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) **Supplemental ~~Petition~~Motion to Modify or Vacate Injunction.** The petitioner or respondent may file a ~~supplemental petition~~motion with the court to modify or vacate an injunction at any time. Service of ~~supplemental petitions~~motions to modify or vacate injunctions shall be governed by subdivision 12.610(b)(2) of this rule.

(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.

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 12.980(b). 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).

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 12.980(b). 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

The facts and circumstances to be alleged under subdivision (b)(1)(B) include those set forth in Florida Family Law Form 12.980(d). The relief the court may grant in a temporary or permanent injunction against repeat violence is set forth in section 784.046(7), Florida Statutes.

Subdivision (b)(4) expands sections 741.30(2)(c)1 and (2)(c)2, Florida Statutes, 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 12.980(b) 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 12.901(f). If alimony or child support is sought a Financial Affidavit must be provided and completed in conformity with Family Law Form 12.901(d) or 12.901(e).

Subdivision (c)(1)(A) expands chapter 95-195, Laws of Florida, and section 784.046(6)(a), Florida Statutes,

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 (b)(1)(B) include those set forth in Florida Family Law Form 12.980(d). The relief the court may grant in a temporary or permanent injunction against repeat violence is set forth in section 784.046(7), Florida Statutes.

Subdivision (b)(4) expands sections 741.30(2)(c)1 and (2)(c)2, Florida Statutes, 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 12.980(b) 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 12.901(f). If alimony or child support is sought a Financial Affidavit must be provided and completed in conformity with Family Law Form 12.901(d) or

to make the limitation of evidence presented at an ex parte hearing permissive rather than mandatory given the due process concerns raised by the statutory restrictions on the taking of evidence.

Unlike traditional injunctions, under subdivision (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 (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 784.046(8)(a)1, Florida Statutes.

Subdivision (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

12.901(e).

Subdivision (c)(1)(A) expands chapter 95-195, Laws of Florida, and section 784.046(6)(a), Florida Statutes, to make the limitation of evidence presented at an ex parte hearing permissive rather than mandatory given the due process concerns raised by the statutory restrictions on the taking of evidence.

Unlike traditional injunctions, under subdivision (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 (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 784.046(8)(a)1, Florida Statutes.

replace the differing requirements contained in sections 741.30(7)(a)3 and (7)(c)1 and 784.046(8)(c)1, Florida Statutes, 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 (c)(4)(A) restates sections 741.30(5)(c) and 784.046(6)(c), Florida Statutes, 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 (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), Florida Statutes, in the event a subsequent cause of action is filed under chapter 61, Florida Statutes, any orders entered

Subdivision (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 784.046(8)(c)1, Florida Statutes, 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 (c)(4)(A) restates sections 741.30(5)(c) and 784.046(6)(c), Florida Statutes, 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 (c)(4)(B) makes the procedures in cases of domestic and repeat violence identical, resolving

therein shall take precedence over any inconsistent provisions of an injunction for protection against domestic violence which addresses matters governed by chapter 61, Florida Statutes.

Subdivision (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), Florida Statutes, 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 the circuit court of the county in which the violation is alleged to have occurred to obtain information regarding enforcement.

Subdivision (c)(7) expands sections 741.30(2)(c)1 and (2)(c)2, Florida Statutes, 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

inconsistencies in the statutes. As stated in section 741.30(1)(c), Florida Statutes, in the event a subsequent cause of action is filed under chapter 61, Florida Statutes, 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, Florida Statutes.

Subdivision (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), Florida Statutes, 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 the circuit court of the county in which the violation is alleged to have occurred to obtain information regarding enforcement.

Subdivision (c)(7) expands sections

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.

Committee Note

1997 Amendment. This change mandates use of the injunction forms provided with these rules to give law enforcement a standardized form to assist in enforcement of injunctions. In order to address local concerns, circuits may add special provisions not inconsistent with the mandatory portions.

741.30(2)(c)1 and (2)(c)2, Florida Statutes, 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.

Committee Note

1997 Amendment. This change mandates use of the injunction forms provided with these rules to give law enforcement a standardized form to assist in enforcement of injunctions. In order to address local concerns, circuits may add special provisions not inconsistent with the mandatory portions.

Current Rule

Proposed Rule

Reasons for Change

RULE 12.615 CIVIL CONTEMPT IN SUPPORT MATTERS

RULE 12.615 CIVIL CONTEMPT IN SUPPORT MATTERS

Subdivision (b):

(a) **Applicability.** This rule governs civil contempt proceedings in support matters related to family law cases. 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.

(a) **Applicability.** This rule governs civil contempt proceedings in support matters related to family law cases. 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.

*The Committee has recommended below that "immediate" hearing in subdivision (c)(2)(#B) be changed to "as soon as practical, but not exceeding 2 business days." To assure that alleged contemnors are notified of the consequences of their failure to appear, the Committee recommends adding a requirement that they be given specific notice in subdivision (b), by amending the last sentence: The notice must specify the time and place of the hearing and contain the following language: **FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP TO 2 BUSINESS DAYS BEFORE A HEARING IS HELD.***

(b) **Motion and Notice.** Civil contempt may be initiated by motion. No civil contempt may be imposed without notice to the alleged contemnor and without providing the alleged contemnor with an opportunity to be heard. The civil contempt motion and notice of hearing may be served by mail provided notice by mail is reasonably calculated to apprise the alleged contemnor of the pendency of the proceedings. The notice must specify the time and place of the

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Subdivision (c)(2)(iA):

Section 61.14(5)(a), Florida Statutes, creates a statutory presumption of ability to pay:

hearing and the motion must recite the essential facts constituting the acts alleged to be contemptuous.

(c) **Hearing.** In any civil contempt hearing, after the court makes an express finding that the alleged contemnor had notice of the motion and hearing:

(1) the court shall determine whether the movant has established that a prior order directing payment of support was entered, that the order was based on a finding that the alleged contemnor had the ability to pay the support ordered, and that the alleged contemnor has failed to pay all or part of the support set forth in the prior order; and

(2) if the court finds the movant has established all of the requirements in subdivision 12.615(c)(1) of this rule, the court shall,

(i) if the alleged contemnor is present, determine whether the alleged contemnor has established that the alleged contemnor no longer has the present ability to pay support. If the court finds that the alleged contemnor

hearing and contain the following language: **FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP TO 2 BUSINESS DAYS BEFORE A HEARING IS HELD.**

†The motion must recite the essential facts constituting the acts alleged to be contemptuous.

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(1) the court shall determine whether the movant has established that a prior order directing payment of support was entered, that the order was based on a finding that the alleged contemnor had the ability to pay the support ordered, and that the alleged contemnor has failed to pay all or part of the support set forth in the prior order; and

(2) if the court finds the movant has established all of the requirements

[T]he original order of the court creates a presumption that the obligor has the present ability to pay the alimony or support and to purge himself or herself from the contempt. At the contempt hearing, the obligor shall have the burden of proof to show that he or she lacks the ability to purge himself or herself from the contempt. This presumption is adopted as a presumption under s. 90.302(2) to implement the public policy of this state that children shall be maintained from the resources of their parents

The cases cited in the Court's opinion do not adopt any presumption that the full arrearage amount is presumed to be the proper purge amount. To the contrary, the cases cited in the Court's opinion direct the trial court to find a reasonable purge amount. The Committee suggests that this statutory presumption be addressed in the rule to avoid both proof problems and the possibility of inequitable application of the statutory presumptions.

has the present ability to pay support, the court is to determine whether the failure to pay such support is willful;

(ii) if the alleged contemnor fails to appear, issue a writ of bodily attachment and direct that, upon execution of the writ of bodily attachment, the alleged contemnor be immediately brought before the court for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful.

(d) Order and Sanctions.

After hearing the testimony and evidence presented by each party, the court shall enter a written order granting or denying the motion for contempt.

(1) An order finding the alleged contemnor to be in contempt shall contain a finding that a prior order of support was entered, that the alleged contemnor has failed to pay part or all of the support ordered, that the alleged contemnor has the present ability to pay support, and that the alleged contemnor has willfully failed to comply with the prior court order. The order shall

in subdivision 12.615(c)(1) of this rule, the court shall;

(iA) if the alleged contemnor is present, determine whether the alleged contemnor has established that the alleged contemnor no longer has the present ability to pay support. If the court finds that the alleged contemnor has the present ability to pay support, the court is to determine whether the failure to pay such support is willful, determine whether the failure to pay support is willful and apply a rebuttable presumption that the obligor has the present ability to pay the support and to purge himself or herself from the contempt. The obligor shall have the burden of proving that he or she lacks the ability to purge himself or herself from the contempt. If the obligor fails to rebut the presumption and the court finds that he or she has the present ability to pay, the court shall set a reasonable purge amount in accordance with subdivision (e) of this rule.

(iiB) if the alleged contemnor fails to appear, issue a writ of bodily attachment and direct that, upon execution of the writ of bodily

The Committee also agrees with the Family Court Steering Committee that Rule 12.615(c)(2)(iA) be amended to delete the provision that the alleged contemnor be given the opportunity to rebut the presumption of ability to pay and that the only required finding be that the failure to pay was willful.

Subdivision (c)(2)(iiB)

Rule 12.615(c)(2)(iiB) states that if the contemnor fails to appear the court may issue a writ of bodily attachment. A discussion with judges in the Sixth Judicial Circuit revealed a belief by some that it was not necessary to set a purge amount before issuing the writ. Other judges, however, expressed the opinion that a purge amount must always be set before a writ of bodily attachment may issue. The Committee believes that a purge amount always must be set before a writ may issue and proposes amending this subdivision to reflect this.

Rule 12.615(c)(2)(iiB) also requires that a contemnor who fails to appear be brought before the court "immediately" for a hearing on present ability to pay. The committee is

contain a recital of the facts on which these findings are based.

(2) If the court grants the motion for contempt, the court may impose appropriate sanctions to obtain compliance with the order including incarceration, attorneys' fees, suit money and costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law provided the order includes a purge provision as set forth in subdivision 12.615(e) of this rule.

(e) **Purge.** If the court orders incarceration, a coercive fine, or any other coercive sanction for failure to comply with a prior support order, the court shall set conditions for purge of the contempt, based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding. The court may grant the contemnor a reasonable time to comply with the purge conditions. If the court orders incarceration but defers incarceration to allow the contemnor a reasonable time to comply with the

~~attachment, the alleged contemnor be immediately brought before the court for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful~~ the court shall set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a writ of bodily attachment and direct that, on execution of the writ, the alleged contemnor be brought before the court as soon as practical, but not later than within 2 business days, for a hearing in accordance with subdivision (c)(2)(A) of this rule.

(d) **Order and Sanctions.** After hearing the testimony and evidence presented by each party, the court shall enter a written order granting or denying the motion for contempt.

(1) An order finding the alleged contemnor to be in contempt shall contain a finding that a prior order of support was entered, that the alleged contemnor has failed to pay part or all of the support ordered, that the alleged contemnor has the present ability to pay support, and that the alleged contemnor

concerned that an "immediate" hearing (within 24 hours) may result in notice problems to all parties, often including the Department of Revenue, and may require a hearing before a magistrate judge not familiar with the case. Additionally, if the respondent is arrested in another county, or he or she has a criminal hold in another county, an "immediate" hearing may not be possible. The Committee recognizes the competing interests of appropriate due process for the alleged contemnor and the need for effective and efficient enforcement of the court's order and collection of support for dependent spouses and children. In an attempt to balance these interests, the Committee suggests that "immediately" in Rule 12.615(c)(2)(#B) be amended to read "as soon as practical, but not later than within 2 business days."

The Committee also agrees with the Family Court Steering Committee's position that a writ of bodily attachment is not required to be issued by the court if the alleged contemnor fails to appear at the hearing. There may be equitable circumstances that would prevent the alleged contemnor from appearing or circumstances when

purge conditions, and the contemnor fails to comply within the time provided, then, upon incarceration, the contemnor must be brought immediately before the court for a determination of whether the contemnor continues to have the present ability to pay the purge.

(f) Review after Incarceration.

Notwithstanding the provisions of this rule, at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and modify any prior orders.

Commentary

1998 Adoption. 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

has willfully failed to comply with the prior court order. The order shall contain a recital of the facts on which these findings are based.

(2) If the court grants the motion for contempt, the court may impose appropriate sanctions to obtain compliance with the order including incarceration, attorneys' fees, suit money and costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law provided the order includes a purge provision as set forth in subdivision 12.615(e) of this rule.

(e) Purge.

(1) If the court orders incarceration, a coercive fine, or any other coercive sanction for failure to comply with a prior support order, the court shall set conditions for purge of the contempt, based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding.

contempt is found but incarceration is not the ordered sanction. The Committee recommends changing Rule 12.615(c)(2)(iiB) to read: the court shall set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a writ of bodily attachment.

Subdivision (e):

The last sentence of Rule 12.615(e) does not provide the level or type of proof required for incarceration in deferred incarceration cases. The Committee believes that the movant should have the burden of proving noncompliance and that an affidavit of noncompliance, with a certificate from the Central Governmental Depository, if applicable, should be sufficient proof for issuance of a writ of bodily attachment. An amendment to this subdivision is proposed to reflect this.

An amendment to the last sentence of Rule 12.615(e) also is suggested, reflecting the same concerns expressed over "immediate" hearings in subdivision (c)(2)(iiB).

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.

(2) The court may grant the contemnor a reasonable time to comply with the purge conditions. If the court orders incarceration but defers incarceration to allow the contemnor a reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the movant shall file an affidavit of noncompliance with the court. If payment is being made through the Central Governmental Depository, a certificate from the depository shall be attached to the affidavit. The court then may issue a writ of bodily attachment. ~~then, u~~ Upon incarceration, the contemnor must be brought immediately before the court as soon as practical, but not later than within 2 business days, for a determination of whether the contemnor continues to have the present ability to pay the purge.

(f) Review after Incarceration.

Notwithstanding the provisions of this rule, at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and

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Commentary

1998 Adoption. 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.