

AMENDMENTS TO THE FLORIDA FAMILY LAW RULES OF PROCEDURE.

No. 89,955

[January 28, 1999]

VERTON, Senior Justice.

On October 29, 1998, this Court issued an opinion modifying a number of the Florida Family Law Rules effective February 1, 1999. See Amendments to Florida Family Law Rules of Procedure, 23 Fla. L. Weekly S573 (Fla. Oct. 29, 1998). Given the nature of the modifications, we encouraged comments to be filed and we stated that we would review the comments prior to the effective date of the modifications. In this opinion, we address the comments that were filed and we again modify the rules consistent with many of the recommendations outlined in the comments.

RULES 2.051 AND 12.400-- CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

The Florida Department of Revenue has applauded this Court's findings regarding the presumption of openness of records in family law cases. However, the department notes that federal law directs states to enact laws requiring the recording of social security numbers for use in certain family law matters and that such information should always be sealed because federal and state law require that it be kept confidential. To that end, the department recommends that we amend Florida Rule of Judicial Administration 2.051(c) (7) to provide for the sealing of "all records made confidential under the Florida and United States Constitutions and Florida and federal law." We adopt this recommendation.

RULE 12.365-EXPERT WITNESSES

In our October 29 opinion, we adopted Florida Family Law Rule 12.365 entitled "Expert Witnesses." The rule governs the appointment of experts by the court and was adopted to clarify confusion regarding deposing expert witnesses and to assist in reducing costs. A number of circuit judges filed comments pointing out problems with the rule. The judges note potential problems involving statutory conflicts, the need for pretrial disclosure in certain circumstances, changes in expert opinions before trial, and unnecessary expenses that would be incurred for experts when cases settle. We find the comments to have merit, and we have amended the rule accordingly.

RULE 12.610--INJUNCTIONS FOR DOMESTIC AND REPEAT VIOLENCE

We received a number of comments requesting that requests for modifications of injunctions in domestic and repeat violence cases be made by motion rather than supplemental petition and that service of such motions to modify be made by mail rather than by personal service. After further consideration, we agree we those recommendations. However, we conclude that, when the nonmoving party is not represented by

an attorney, service must be in accord with rule 12.070 or the moving party must file with the court proof that the nonmoving party personally received a copy of the motion.

RULE 12.615--CIVIL CONTEMPT

The new rule governing civil contempt in family law cases generated the most comments. Almost all comments favored adoption of the rule but a number of clarifying modifications were proposed. In sum, the comments requested that (1) the rule allow for compensatory fines; (2) the notice requirement be amended to correspond to the statute; (3) the finding of contempt as to willful failure to pay support and the finding for an appropriate purge of that contempt be based on the present ability to pay; (4) the term "immediately brought before the court" be defined; (5) the statutory presumption of ability to pay be incorporated into the rule; (6) when incarceration is deferred to allow for a purge, the movant be required to file an affidavit of noncompliance to allow for issuance of a writ of bodily attachment; (7) a purge amount be set by the court before a writ of bodily attachment is issued; (8) a second hearing not be required when the deferral of incarceration is only for a forty-eight hour period of time; (9) because a writ of bodily attachment is not always required when a contemnor fails to appear, the issuance of such a writ be discretionary rather than mandatory; (10) the rule allow for the granting of any other required relief; (11) the rule direct that the notice of hearing inform the contemnor as to what will occur if the contemnor fails to appear; and (12) the rule be expanded to cover payment of court-ordered attorney's fees and costs. Some of these suggestions were rejected in our October 29 opinion. Most, however, have merit. Accordingly, we have modified the new rule to incorporate all of the suggestions but items (2), (5), and (12).⁽¹⁾ Specifically, as to suggestion (8), we find that a forty-eight-hour deferral of incarceration may be imposed without triggering the need for a second hearing on a contemnor's present ability to pay. We do so because we agree that a contrary finding will result in a substantial decrease in deferrals, which are designed to serve the interests of all affected parties in these types of proceedings. Notably, as this contempt rule is applied, continued refinement may be required. As such, we will continue to consider comments regarding this rule as the need arises.

MISCELLANEOUS COMMENTS

In addition to detailed suggestions regarding changes to the rules, we also received several comments contending that the rules are still too complicated, especially for lower income individuals. As we have stated in prior opinions, we direct the Florida Family Law Rules Committee to continue to work towards simplification of the family law rules.

Accordingly, we adopt the amendments to the rules as set forth in the attached appendix, effective 12:01 a.m., February 1, 1999. The amendments to rules 12.365, 12.610, and 12.615 are shown as changes to those rules as adopted or amended by our opinion of October 29, 1998, even though those changes have not yet taken effect. The amendments adopted on October 29 that are not affected by the current changes will still take effect on the date stated in the October 29 opinion. See 23 Fla. L. Weekly at D577.

It is so ordered.

HARDING, C.J., SHAW, WELLS, ANSTEAD and PARIENTE, JJ., and KOGAN, Senior Justice, concur.

Original Proceeding - Florida Family Law Rules of Procedure

Honorable Karen K. Cole, Chair, Family Court Steering Committee, Jacksonville, Florida; Honorable George S. Reynolds, III, Chair, Family Law Rules Committee, Tallahassee, Florida; John F. Harkness, Jr., Executive Director of The Florida Bar, Tallahassee, Florida; and B. Elaine New, Senior Attorney, Department of Legal Affairs & Education, Office of the State Courts Administrator, Tallahassee, Florida,

for Petitioners

Allan L. Hoffman, West Palm Beach, Florida; Howard W. Dixon, Miami, Florida; C. Richard Parker, President, Florida Public Defender Association, Inc., Gainesville, Florida; B. Niklas Brihammar of Sheri Smallwood, Chartered, Key West, Florida; Hon. Robert J. Jones, Administrative General Master, Eleventh Judicial Circuit of Florida, Miami, Florida; Virginia Daire, General Counsel, Florida Coalition Against Domestic Violence, Tallahassee, Florida; Thomas J. Mato, Chief Legal Counsel and Chriss Walker, Senior Attorney, Department of Revenue, Child Support Enforcement, Tallahassee, Florida; Kay D. Sloan, General Master, Family Division, Sixth Judicial Circuit, St. Petersburg, Florida; and Judges of the Circuit Court, Family Division, Eleventh Judicial Circuit, Miami, Florida,

Responding

FOOTNOTES:

1. Many comments made suggestions on the same issue but the actual suggested modifications varied from comment to comment. We have implemented those suggestions that we believe best accommodate the concerns raised by the comments.