

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE  
FLORIDA SUPREME COURT APPROVED  
FAMILY LAW FORMS -- FORMS 12. 948(a)-(e)      CASE NO. : SC19-1897**

**COMMENT OF THE RULES AND FORMS COMMITTEE OF THE  
FAMILY LAW SECTION OF THE FLORIDA BAR TO THE  
FLORIDA SUPREME COURT APPROVED FAMILY LAW FORMS  
-- FORMS 12.948(a)-(e)**

Anthony M. Genova and K. Beth Luna, Co-Chairs of the Rules and Forms Committee, and Amy Hamlin, Chair, of the Family Law Section of The Florida Bar, submit the following comments regarding the Supreme Court Approved Family Law -- Forms 12.948(a)-(e), as set forth in the opinion published on December 5, 2019.

**GENERAL COMMENT ON PROPOSED FORM CHANGES**

The Section appreciates the hard work of the committee in creating these forms, which assist military families in addressing parenting issues arising when a parent deploys for military or other national service. The Family Law Section supports the creation of forms that provide attorneys and pro se litigants with clarity for actions arising under the Uniform Deployed Parents Act, codified as Part IV of Chapter 61, Florida Statutes (2018). All page numbers refer to the pages indicated on the opinion published December 5, 2019.

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## **COMMENTS ON THE PROPOSED FORMS**

The Section requests consideration of the following changes and modifications to the Forms as noted below:

### **I. General**

Consider adding “Space Force” to the list of uniformed services in each set of instructions because this military branch would be covered by the statute.

“Nonparent” should be capitalized every time it is used.

All text should be justified.

All notary certificates should be updated to reflect the new provisions for online notarization.

### **II. Forms 12.948(a) Agreement Granting Temporary Custodial Responsibility During Deployment**

Page 4, after the definition of “deployment,” the Section suggests adding the following in bold: “This procedure is not available if the deployment is for a term longer than 18 months. This procedure does not apply to a permanent change of station (PCS).” This language prevents improper filings from members trying to apply this statute to a PCS.

In the paragraph beginning, “This agreement is temporary and terminates...” (top of page 5), the first sentence should be replaced with the following: “This agreement is temporary and terminates pursuant to Fla. Stat. 61.761(3) after the Deployed Parent gives notice of his/her return from deployment, unless the

agreement has been terminated prior to that time in a record, by written agreement, or by court order.” This language adds clarity to the requirements for terminating the Agreement.

Under the paragraph heading, “The Agreement Granting Temporary Custodial Responsibility During Deployment Must,” the 5<sup>th</sup> bullet point should read: “Provide a process to resolve any dispute that may arise between the Other Parent and one or more agreed-upon Nonparent(s), or between two or more agreed-upon Nonparents.”

Page 5, under the last full paragraph (ending “Officer authorized to administer oaths,) add the sentence: “However, it is not required that this must be executed under oath for it to be valid.”

At the top of Page 6, the Supreme Court form number should be 12.948(b).

On Page 7, there is an extra space before “Nonlawyer” in the last paragraph.

Page 8, paragraph 1, consider adding lines for more than one Nonparent.

On Page 8, remove the phrase “being sworn” from the first paragraph of the form. The statute does not require these forms to be executed under oath. In the alternative, add language that a notary is not required for the Agreement to be valid.

Page 8, Section I, the Section recommends asking for additional information under the jurisdiction because a UCCJEA form is not required to be filed. Pro Se litigants do not know the jurisdictional requirements and this will assist the court in

determining jurisdiction under UCCJEA at the outset of the case. In addition, the Section suggests asking for the dates that the child has been physically present in the State, the Court that entered the Final Judgment, and the date of the Final Judgment. Military families often have prior orders from other states and seeking this additional information helps prevent later jurisdictional issues.

Page 9, Section II, paragraph 3 should read: “To the extent is permissible to provide this information, the *anticipated* duration of the deployment is:” Deployments are rarely an exact length and there should be some acknowledgement that the duration is anticipated and not certain.

Page 9, add a space between the definition of Decision-making Authority and the sentence beginning, “The allocations of caretaking and decision-making authority...” This language adds clarity to the document.

Page 9, Section 3, the sentence should read “The allocations of caretaking and decision-making authority *under this temporary agreement* are as follows:” This language clarifies that the court is seeking information about the prospective arrangements and not the arrangements set forth under the Final Judgment.

Page 10, Paragraph 4, add the following sentence: “nor does this agreement constitute a basis for a permanent modification of parental responsibility under an existing Final Judgment.”

Section IV(1), add more lines for each subsection (a)-(f), or give the option to attach additional pages as necessary. Allowing additional room will help ensure that these agreements are very detailed.

Section IV(1)(f) the colon should not be underlined.

Section IV, the Section suggests adding a paragraph (3) which states: “This Agreement does not constitute a basis for a permanent modification of timesharing under an existing Final Judgment.”

Page 11, Section V, the first sentence should read: “Specify the set contact an agreed Nonparent has with the child(ren).” The goal is to create a specific schedule for contact with a Nonparent and not to limit the contact with a Nonparent.

Page 11, section V should specify whether the contact information needs to be given to the court or the Other Parent, to the Nonparents, or all of the above. The Section also suggests providing a space for the contact information for the Nonparent(s) to be added to the form.

Section VIII is better set forth as a series of options with boxes to check. The suggested options are:

- (a) after the Deploying Parent returns from deployment in accordance with Section 61.671, F.S., or
- (b) On \_\_\_\_\_ (date), or
- (c) upon the following conditions: \_\_\_\_\_.

Section IX, The second sentence should read: “The Agreement must be filed within a reasonable time with the court that has entered *the most recent* order in effect relating to...” As previously discussed, military families may have court orders from multiple jurisdictions and a clarification that the Agreement only needs to be filed with the most recent court will be helpful to pro se litigants.

Page 14, consider adding more places for Nonparents to sign in the event there is more than one Nonparent involved.

### **III. Form 12.948(b) Motion for Temporary Order Granting Custodial Responsibility During Deployment**

Page 15, paragraph 3, after the definition of “deployment,” the Section suggests adding the following in bold: “This procedure is not available if the deployment is for a term longer than 18 months. This procedure does not apply to a permanent change of station (PCS).”

The Section suggests adding a definition for “Notice of Deployment” in the instructions because the statute provides that notice is defined more broadly than the actual receipt of deployment orders (“Notice of deployment” means official notification to a service member, through orders or other written or electronic communication, that the service member is subject to deployment on or about a specified date.)

Page 18, paragraph numbered 1, the Section recommends asking for additional information regarding jurisdiction because a UCCJEA form is not

required to be filed. Pro se litigants do not know the jurisdictional requirements, and additional information will assist the court in determining jurisdiction under UCCJEA at the outset of the case. In addition, the Section suggests asking for the dates that the child has been physically present in the State, the location that the court that entered the Final Judgment, and the date of the Final Judgment. Military families often have prior orders from other states, and requesting this additional information will help prevent later jurisdictional issues.

On page 18, the Section recommends adding a statement after Paragraph number 1 and before paragraph number 2 that seeks an affirmative statement consistent with Fla. Stat. 61.737 that no prior orders or agreements exist: “No prior agreement or judicial order has been previously entered granting custody, custodial responsibility or limited contact with a Nonparent in the event of a deployment.” This language will prevent needless litigation where there is already a determination of parenting time during a deployment, in which case the action would need to be brought as a modification rather than an initial determination under the deployment provisions of the statute.

Page 18, Paragraph number 2, the sentence should read: “The parent, {name} \_\_\_\_\_ has received a notice of deployment that he/she is subject to deployment on or about {specific date} \_\_\_\_\_ for a period of less than

18 months, and the anticipated duration of the deployment is {length of time}\_\_\_\_\_.”

Page 19, paragraph 9, add more lines or the option to attach additional sheets of paper as necessary.

Page 19, paragraph 10, the Section suggests changing the sentence to read: “This temporary custodial responsibility and decision-making authority is in the best interests of the child(ren) because:”

Page 19, paragraph 11 highlights a possible conflict within the statute. Section 61.721(h) requires the parties to acknowledge that the Agreement Granting Temporary Custodial Responsibility During Deployment does not modify any existing child support obligation. In contrast, if a motion is filed and an order is entered, the Court then does have authority to modify child support. This procedure may encourage litigation rather than agreement which is contrary to the purpose of this statute. In addition, it is possible that the Florida Court may have UCCJEA jurisdiction but not personal jurisdiction over the payor parent to modify child support. While the forms are consistent with the statute, the statute itself may not be consistent.

Page 19, Section paragraph 13, the Section recommends asking for additional information under the jurisdiction because a UCCJEA form is not required to be filed. Pro Se litigants do not know the jurisdictional requirements and this

information will assist the court in determining jurisdiction under UCCJEA at the outset of the case. In addition, the Section suggests asking for the dates that the child has been physically present in the State, the Court that entered the Final Judgment, and the date of the Final Judgment. Military families often have prior orders from other states and seeking this additional information will help to prevent later jurisdictional issues.

### **III. Form 12.948(c) Order Granting Temporary Custodial Responsibility During Deployment**

Page 22, section I, paragraph 3, in addition to the date, consider adding in a line for the Court to indicate which court (circuit and state) entered the last order.

Page 23, section II, paragraphs 1 and 2 are both missing periods at the end of the sentence.

Page 23, section II, paragraph 3, should be revised to read: "... the *anticipated* duration of the deployment is: \_\_\_\_\_."

Page 23, Section III, at the end of the first paragraph add "The parents shall follow the terms of the Agreement."

Page 23, Section III, second paragraph beginning "have NOT filed an Agreement..." the Section suggests putting the word "parents" in bold because this section addresses parents while the next section addresses Nonparents. The distinction will be less confusing to differentiate.

Section IV, beginning on page 26, only contemplates that the Deployed Parent is paying support. It fails to contemplate a situation in which the Other Parent is paying support or where the parents are both paying support to the Nonparent. Consideration should be given to these alternate scenarios and the form should be modified and expanded to accommodate the same. The form should include an abatement of the other Parent's child support obligation if the Other Parent was paying support but is now exercising Custodial Responsibility.

Page 25, Section IV, Paragraph 2, first sentence should have a comma instead of a colon.

Page 25, Section IV, paragraph number 3 at the end of the paragraph beginning "Have filed an Agreement..." add "The parents and the agreed-upon Nonparent shall follow the terms of the Agreement."

Page 27, Section IV, paragraph 4, the first sentence of the second section should read, "Upon the termination of the obligation for child support for one of the parties' child(ren) *if prior to completion of the temporary deployment*, child support in the amount of ..."

Page 28, Section V, Paragraph 4, next to last paragraph (beginning "The deploying Parent shall...") add language specifying the temporary nature of the child support modification. Suggested language is: "The Deploying Parent shall pay the temporary child support for each minor or dependent child until the child reaches

the age of 18, becomes emancipated, marries, joins the armed services, dies, becomes self-supporting, or until further order of the court or agreement of the parties, whichever shall first occur.”

Page 28, Section V, Paragraph 4, next to last paragraph (beginning “The deploying Parent shall...”) The Section believes that it should read “deployment terminates” instead of “deployment terminated.”

Page 28, Section V, Paragraph 5 does not contemplate a scenario in which the Other Parent was paying support to the Deploying Parent or where support would be paid to a Nonparent. Consideration should be given to these alternate scenarios and the form should be modified and/or expanded to accommodate the same.

Top of page 29, there is a new paragraph marked as "c", which should be a continuation of the paragraph from the previous page. The "c" should be omitted.

Page 29, Section VI, last paragraph. The Deployed Parent may not be able to reimburse the Other Parent or Nonparent for medical bills within 30 days. This statute contemplates that the Deployed Parent is generally unavailable for transactions.

Page 30, section VII should read: “This order is temporary and terminates automatically upon the earlier of (a) after the Deploying Parent returns from deployment or (b) as provided for in Section VII of the Parties’ Agreement.”

#### **IV. Form 12.948(d) Motion to Modify or Terminate Temporary Grant of Custodial Responsibility or Limited Contact to Nonparent During Deployment**

There is no form for a motion to modify or terminate temporary grant of custodial responsibility to other parent during deployment. Consider the situation where the deployed parent initially allocated all custodial responsibility and decision-making to the Other Parent but later wants to allocate some of his/her custodial responsibility or decision-making authority to a Nonparent. This can be remedied by simply changing the title Form 12.948(d) to “Motion to Modify or Terminate Temporary Grant of Custodial Responsibility or Limited Contact During Deployment.”

Page 32, paragraph 1, last sentence is confusing because the entire temporary grant of caretaking authority and not just the modification, ends automatically after the Deploying Parent returns unless otherwise specified or ordered. Consider revising this sentence to read: “The temporary grant of custodial responsibility or limited contact, and any modification to the temporary grant of custodial responsibility or limited contact, is temporary and terminates after the Deploying Parent returns from deployment, unless the temporary grant of custodial responsibility or limited contact has been terminated before that time by court order.

Page 32, last paragraph, the font size of the last sentence does not appear to be consistent with the remainder of the document.

Page 34, paragraph 1, consider revising to include the limited contact. Suggested wording is: “I am the \_\_\_\_ Deploying Parent \_\_\_\_Other Parent \_\_\_\_Nonparent granted caretaking authority or limited contact.”

Page 34, paragraph 3 is confusing. The form is trying to solicit information about any modifications to the initial order. The Section suggests two enumerated paragraphs, the first of which should read: “The Order Granting Temporary Custodial responsibility During Deployment \_\_\_\_has \_\_\_\_has not been modified since its entry. It was modified on {date}\_\_\_\_\_.” The second paragraph should replace paragraph 3, and should read: “Paragraph(s) \_\_\_\_\_ of the most recent order, entered on {date}\_\_\_\_\_, describes the present caretaking authority, decision-making authority and any grant of limited contact with the child(ren). A copy of the most recent order is attached hereto.”

#### **V. Form 12.948(e) Agreement to Terminate Order Granting Temporary Custodial Responsibility During Deployment**

By the terms of the statute (61.761(3)), any temporary order granting temporary custodial responsibility during deployment ends 30 days after the Deployed Parent gives notice of his/her return. This form is not required and may cause unnecessary paperwork and burden for the court. Suggested language for Page 38, paragraph 1 is: “This form may be filed if no termination date is specified in the Order Granting Temporary Custodial Responsibility During Deployment and the

parties wish to terminate the order prior to the automatic expiration 30 days after the Deployed Parent gives notice of his/her return from deployment.”

The statute does not require this agreement to be under oath. Either remove the notary blocks on pages 41 and 42 or make it clear that a notary is not required in order for the Agreement to be valid.

Respectfully submitted this 17th day of February, 2020.

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