IN THE SUPREME COURT OF FLORIDA

Case No. SC02-1574

IN RE: AMENDMENTS TO THE FLORIDA FAMILY RULES OF PROCEDURE

COMMENT REGARDING PROPOSED AMENDMENTS TO RULE 12.610,
FLORIDA FAMILY RULES OF PROCEDURE

The Honorable Kathleen F. Dekker, Circuit Judge of the Second Judicial Circuit in and for Leon County, Florida, files this Comment and states:

1. I strongly oppose the rule change; and by separate document, I request to participate in oral argument.

2. The proposed rule eliminates a procedure which I have found to be efficient and nonconfrontational, yet ensures safety while preserving due process for all parties. This procedure occurs when both parties appear at the return hearing and the Respondent does not object to the permanent injunction, does not want a hearing, but does not want to admit to some or all of the allegations. Accordingly, without delay, the Petitioner, by stipulation, receives the permanent injunction. Both parties are satisfied. If the parties are facing a divorce, minimizing hostility is not only a safety issue, but it is better for the parties and any children involved. However, the proposed rule mandates a "finding of whether domestic violence occurred." How does a judge make this finding without taking evidence? Once the evidentiary process begins, the proceeding often becomes intense. This is a natural by-product of a contested case, but what justification exists for requiring an evidentiary hearing when both parties want to settle their civil case? It is better to let the judge have authority to require evidence, but not be mandated by rule to conduct an evidentiary hearing in every instance.

3. I also raise the question as to what type of hearing does the FCSC believe is currently mandated by statute and rule 12.610? While there is a current reference to the execution of "a full evidentiary hearing," I do not know of a single judge conducting an evidentiary hearing when the parties agree to an injunction. For example, lawyers often submit a stipulated permanent injunction order prior to a contested hearing date. As a result, no one thought it necessary to go forward with any further "hearing." Typically, I may set a hearing in spite of a stipulated order if I have identifiable concerns. I also set hearings when it is clear a statute requires certain testimony be taken, even when there is

a stipulated final judgment, e.g., a dissolution of marriage. In contrast, chapter 742 mentions “hearings,” but I routinely establish parentage by stipulated judgment without a hearing. As commonly practiced, notice and hearing can be affirmatively waived; only in a few circumstances is a hearing mandatory when there are no contested matters.

4. The proposed rule prohibits clerks, abuse shelter personnel, case managers, or anyone other than a “certified family court mediator” from assisting or facilitating with settling details on collateral matters, e.g., the parenting plan, exclusive use of the home, etc. These collateral matters are simple. They are settled without the need for formal mediation. In my caseload, I have 10-20 return hearings per week. An average of 1-8 result in agreed injunctions. It takes at least 10-20 minutes to fill out the permanent injunction form when child issues are present. I enlist the assistance of attorneys, clerks, my JA, and anyone willing to help fill in these uncontested matters. They proceed in open court; the parties are physically separate at all times; a bailiff is present; a representative from the local abuse shelter is present; an attorney from North Florida Legal Services is available to assist Petitioners; all proceedings are taped; and if the injunction terms are not fully agreed, the whole matter is set for a hearing at an agreed date and time.

5. The comment to the proposed rule states that the rule intends to preclude any settlement or negotiation unless through a certified mediator or attorney. How can the court discriminate against pro se civil litigants from discussing, presenting, or “negotiating” to settle one or more issues in the courtroom, facilitated by a person who can write down the agreement, or who can merely communicate information back and forth so that parties do not have to directly speak to each other? Under the Court supervision and the setting I described, the process is efficient and safe. This process affords pro se litigants, as well as represented litigants, the right and dignity to peacefully settle their own civil injunction case conveniently, inexpensively, and promptly.

6. I also believe that regardless of the injunction process, mediators should have a defined protocol to screen for domestic violence in any family law case. They need a protocol and procedure to excuse or terminate mediation, and to provide a secure, safe environment. This subject should be wholly resolved. This rule touches on the issue without wholly addressing it. The issue exists in many other family law contexts other than domestic violence injunction cases. Some of the most serious cases have no injunction in place.

7. Personally, I would not refer parties to formal mediation and bifurcate the return hearing process. This is because of the expense, the lack of mediator resources for indigents, a second trip to the mediator, a third meeting at trial if the matters are not settled, and the problems inherent in coordinating the referral process smoothly. This is an added expense and unnecessary hassle. Formal mediation would complicatesthe Court’s efforts to track these cases to their conclusion and to ensure that law enforcement has all of the terms of the injunction as to child contact, possession of home, etc. Is the county or state going to supply me with certified mediators on site? Also, the Court would have to deal with sanctions if Petitioners or Respondents failed to complete the mediation process. The delay in procuring a parenting order could result in a respondent failing to see the children for weeks. If the case settles, it might as well be at the return hearing since the collateral

issues are usually temporary until a divorce or paternity order provides final relief after a full opportunity for discovery, mediation, and representation.

8. These rule changes present a significant judicial workload issue if a judge has to personally micro-manage the final resolution of all domestic violence cases. I envision judges setting aside more time to hear these cases, reducing docket caps, and yet not achieving any appreciable benefit. The scheduling would reduce the time available for other family law cases demanding judicial hearings.

In summary, I support a concept of general statewide standards regarding domestic violence procedures, but I do not support micro-management by procedural rule. Flexibility is also essential to best meet the needs of the litigants and the courts. Further, I invite anyone to observe my court in order to evaluate the pros and cons of the procedures I have described.

Respectfully Submitted,

Kathleen F. Dekker
Circuit Court Judge
Family Law Division
Second Judicial Circuit
301 S. Monroe Street
Tallahassee, Florida 32301

THE FOREGOING DOCUMENT COMPLIES WITH THE FLA. R. APP. P. 9.210(a).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing COMMENT REGARDING PROPOSED AMENDMENTS TO RULE 12.610, FLORIDA FAMILY RULES OF PROCEDURE has been furnished by United States mail this _____ day of _____________, 2002, to **Judge Raymond T. McNeal, 110 N.W. First Avenue, Room 3058, Ocala, Florida 34475.**

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HON. KATHLEEN F.DEKKER
CIRCUIT COURT JUDGE