

IN THE SUPREME COURT OF FLORIDA

**IN RE: FLORIDA FAMILY LAW
 RULES OF PROCEDURE**

CASE NO. SC02-1574

**COMMENT TO THE FAMILY COURT STEERING COMMITTEE'S
PETITION TO AMEND RULE 12.610,
FLORIDA FAMILY LAW RULES OF PROCEDURE**

The Family Court Steering Committee (FCSC) has filed a Petition to Amend Rule 12.610, Fla. Fam. L. R. P., pursuant to the emergency procedure set forth in Rule 2.130(a), Fla. R. Jud. Admin. The Eleventh Judicial Circuit commends the FCSC for its noteworthy effort in developing a rule that would reconcile the divergent procedures followed throughout the State in resolving domestic violence injunction cases. Indeed, this Circuit fully understands and is in complete agreement with the intent behind the proposed Amendment to the rule of ensuring that the judiciary's function, rather than that of court staff, is determinative of the outcome in such cases.

Upon our analysis of the Amendment and its impact upon the functionality of this Circuit's long established, clearly defined procedures for handling domestic violence injunction cases, we have determined our procedures are congruous with the intent of the Amendment. While this Circuit does utilize court staff, hired as Case Managers, to obtain pertinent information relative to the eventual resolution of ancillary issues (as defined by the FCSC) prior to the court conducting an evidentiary hearing, due to the voluminous caseload of this Circuit, this "work-up" of the case is performed in the interest of judicial economy, not to usurp the authority of the Judge in making the final decision in the case. The Case Managers, although certainly integral to the effectiveness of the Circuit's procedures, merely speak with each party individually and separately, most of whom are pro se, to (a) disseminate factual and procedural information to the parties, (b) calculate proposed child support based upon each party's Financial Affidavit and utilizing a Child Support Guidelines Worksheet, and (c) record their respective positions regarding the ancillary issues, for the court to insert on the Final Judgment of Injunction form mandated by the Supreme Court of Florida. The Case Managers never disclose or reveal each parties' confidential positions to the opposing party. However, once the information is obtained, the Case Manager prepares a proposed order based upon the terms and conditions that are agreeable to both parties. Thereafter, the parties appear in court and the information ascertained by the Case Manager is provided to the court for the Judge's consideration and for the rendering of a decision relative thereto *after* a full evidentiary hearing is conducted. Accordingly, under no circumstance is the Case Manager authorized or encouraged to render legal advice to the parties or engage in decision-making regarding

the merits of petitions as to the issuance of the injunction or its duration.

Notwithstanding our determination that the aforementioned procedures should be continued in this Circuit, we have contemplated mediation as proposed in the Amendment and concluded that the number of hearings it will take to ultimately dispose of the ancillary matters would be significantly increased. In this event, the capacity of judicial and staff resources will be insufficient to fully comply with the fifteen (15) day requirement for final hearing. If the parties fail to agree about the ancillary issues, they will have to appear again before the court for a bifurcated hearing to have the remaining issues determined. Even when mediation is successful, based upon the practice in this Circuit and our interpretation of the Amendment, the parties will have to again appear before the court for ratification and essential judicial reinforcement, intended to serve as a deterrent to injunction violations. This will create a tremendous backlog on a voluminous docket, as the presiding judge will have to commence a secondary hearing for these mediated cases after conducting all of the initial hearings in other scheduled cases. As Judges in this Circuit routinely have successive calendars, there will not be time at the end of the calendar to hear all of these previous cases again in advance of the next scheduled calendar, or preceding the close of the workday.

Furthermore, were mediation mandated in the manner prescribed in the Amendment, we question its effectiveness in view of the fact that respondents often become agitated and hostile after the injunction is issued and are less likely to engage in meaningful discussion. Moreover and most significantly, to further delay the ultimate decision by requiring the parties to return to court on a subsequent date for final resolution may heighten the risk of danger to the victim and children. In fact, as is evidenced by mortality statistics in Miami-Dade County and national studies, the exchange of the children during visitation arrangements agreed upon by the parties, without the court's intervention, may allow for dangerous access to the victim, where further violence, sometimes lethal, has ensued.

In conclusion, the Amendment is a reasonable measure for emphasizing and ensuring judicial involvement in domestic violence injunction cases. However, the Amendment, if mandated Statewide without providing for the flexibility to allow for the continuation of our effective procedures, would not be an enhancement, but rather unduly burdensome due to our large volume of cases and the lack of resources to fulfill all of the requirements set forth therein.

Respectfully submitted,

The Honorable Joseph P. Farina
Chief Judge, Eleventh Judicial Circuit of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing comment has been provided by U.S. Mail, this _____ day of _____, 2002, to the following:

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By: _____
The Honorable Joseph P. Farina
Chief Judge, Eleventh Judicial Circuit

FOR ENVELOPES

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