

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC02-1574

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

WILLIAM L. BLACKWELL
Chief Judge, Twentieth Judicial Circuit
Florida Bar Number 0228400
Charlotte County Justice Center
350 East Marion Avenue
Punta Gorda, Florida 33950
Telephone (941) 637-2375
Fax Number (941) 637-2283

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC02-1574

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

Pursuant to Rule 2.130(a), Florida Rules of Judicial Administration, the Family Court Steering Committee (hereinafter referred to as FCSC) has filed an emergency petition to amend Rule 12.610, Family Law Rules of Procedure.

As the basis for the emergency nature of the petition, the FCSC cites directions it received in In re: Family Court Steering Committee, No. AOSC00-18 and In re: Report of the Family Court Steering Committee, 794 So. 2d 518 (Fla. 2001), as well as the need for clear, statewide standards for conducting domestic violence injunction hearings to ensure safety and due process for victims, abusers and their children. The Court extended the effective term of the FCSC to June 30, 2002 and directed it to give priority over those next two years to eight specific tasks, the fourth of which was to "conduct an assessment of how courts are handling domestic violence cases and develop recommendations for model practices for handling these cases in a manner that helps ensure the safety of victims and children." In re: Family Court Steering Committee, No. AOSC00-18. As part of their overall review of how domestic violence cases are processed, the Domestic Violence Subcommittee of the FCSC directed staff from the Office of the State Courts Administrator (hereinafter referred to as OSCA) to conduct surveys and site visits. The FCSC's emergency petition included an analysis of alternative dispute resolution techniques in domestic violence cases and was based upon just two site visits. OSCA is presently conducting additional site visits and assessments on how domestic violence cases are processed throughout the State. The final report is not due until December 31, 2002.

We can find nothing in the directives to the FCSC in either In re: Family Court Steering Committee, No. AOSC00-18 or In re: Report of the Family Court Steering Committee, 794 So. 2d 518 (Fla. 2001) that necessitates the requested emergency action by the Florida Supreme Court. To the contrary, the Court was specific in requiring assessments and site visits to develop model practices. Since these visits are still occurring, expedited action by the Court would be based upon incomplete information and contrary to the Court's intention for a full and well-researched review. Indeed, elimination of the facilitation programs could have an opposite effect of that intended by the FCSC. Based upon surveys distributed to domestic violence petitioners and respondents in the Twentieth Judicial Circuit, an overwhelming percentage of petitioners would prefer not to have a hearing before a judge where they must face their perpetrator and rehash their violent experience. Victims feel safer and more empowered in a facilitation process where the atmosphere is not adversary and the respondent has the opportunity to voluntarily consent to the entry of the injunction. Part of the facilitation process entails educating the parties about the procedure, and also giving the victim an opportunity to speak to a

volunteer advocate about resources and whether or not fear or threats are guiding their decisions. The facilitation process itself is safe as the parties are kept separate and the injunctions that are entered as a result of the facilitation are less likely to be violated because they are entered into voluntarily. Assisting the parties in obtaining an injunction for protection without an adversarial hearing is quite arguably the safest and least traumatic method for both them and their children. Victim advocates, family law attorneys, judges, and court staff sent letters to the FCSC in opposition to the proposed amendment to 12.610, Family Law Rules of Procedure. Copies of those letters are attached hereto as an appendix (A5- 25).

The proposed rule amendment requires judges to conduct a hearing in all domestic violence injunction cases and to make a finding of whether domestic violence occurred or whether imminent danger of domestic violence exists. If the court finds in the affirmative and issues an injunction, it must also rule on the other major ancillary issues involved in the case. It is only at this point, that the court may, with the consent of the parties, send the details of those issues to a certified family mediator for attempted resolution that same day. The court may not offer any other form of alternative dispute resolution before or after the hearing.

The effects of the proposed rule amendment are troubling. Since the parties would violate the temporary injunction if they were to have contact with each other, the possibility of a pre-hearing settlement is limited to discussions between their attorneys, the hiring of which is often financially impossible for domestic violence petitioners. The effect of the proposed amendment is the elimination of extremely effective, safe, voluntary and judicially promoted domestic violence facilitation procedures utilized in the Twentieth Judicial Circuit and other circuits in the State. During the facilitation process in place in the Twentieth Judicial Circuit, the issuance of the injunction is *never* mediated. If the respondent does not agree to the entry of the injunction, the judge will conduct a hearing, thereby ensuring that due process and an opportunity to be heard are afforded to the respondent. If, however, both parties consent to the entry of the injunction during the facilitation, and do not wish to have a hearing, then a hearing before a judge on the specifics of the violence and other ancillary issues is not required. The facilitation takes place with highly experienced domestic violence staff that has followed the case from the beginning and are the most likely to be cognizant of whether a balance of power exists between the petitioner and respondent for purposes of a fair facilitation process. Surveys were conducted in both Lee and Collier counties in the Twentieth Judicial Circuit. In Lee County, 97% of petitioners and 91% of respondents thought that the facilitation process was fair. In Collier County, 100% of petitioners and 93% of respondents deemed the process fair. A compilation of the comments received in both counties from petitioners and respondents is

attached as an appendix (A1-4).

The proposed rule amendment includes extensive procedural changes that would effectively eliminate several successful facilitation programs throughout the State. OSCA personnel are currently conducting site visits and assessments on domestic violence processes that should be considered before an opinion is rendered on the proposed rule amendment. Additionally, the rule amendment as proposed substantially inhibits the authority of Chief Judges to administer justice efficiently and properly pursuant to Florida Rule of Judicial Administration 2.050(b).

For the foregoing reasons, the Twentieth Judicial Circuit, in and through its undersigned Chief Judge, requests that the Supreme Court of Florida finds that an emergency does not exist, and that the Court refers the proposed rule change to the appropriate committee of the Florida Bar for recommendations pursuant to Rule 2.130(b), Florida Rules of Judicial Administration.

Respectfully submitted,

WILLIAM L. BLACKWELL
Chief Judge, Twentieth Judicial Circuit
Florida Bar Number 0228400
Charlotte County Justice Center
350 East Marion Avenue
Punta Gorda, Florida 33950
Telephone (941) 637-2375
Fax Number (941) 637-2358

Certificate of Service

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

The Honorable Raymond T. McNeal
Chair, Family Court Steering Committee
110 N.W. First Avenue, Room 3058
Ocala, Florida 34775

Mr. John F. Harkness

Executive Director, The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399

Mr. Michael Walsh
Chair, Family Law Rules Committee
501 S. Flagler Drive, Suite 306
West Palm Beach, Florida 33401-5911

The Honorable Peter D. Webster
Chair, Rules of Judicial Administration Committee
First District Court of Appeal
301 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32399-1850

Ms. Caroline K. Black
Chair, Family Law Section of the The Florida Bar
307 S. Magnolia Avenue
Tampa, Florida 33606

Deborah A. Lacombe
Legal Affairs and Education
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, Florida 32399

By: William L. Blackwell, Chief Judge
Certificate of Compliance

I hereby certify that this document was printed in Times New Roman,
14-point font.

By: William L. Blackwell, Chief Judge

INDEX TO APPENDIX

Comments re: domestic violence facilitation process in Lee and Collier Counties by petitioners who participated in the process.....A1-3

Comments re: domestic violence facilitation process in Lee and Collier Counties by respondents who participated in the process.....A4

Letters from various interested parties in opposition to the proposed amendment to Rule 12.610, Family Law Rules of Procedure.....A5-25