

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, 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. Under the proposed emergency rule amendment, the parties to a Domestic Violence Injunction proceeding will be prohibited from settling their cases without an evidentiary hearing being conducted, the Court will be required to make a number of preliminary findings before referring any issues to mediation, and all mediators handling specified ancillary issues will be required to be certified Family Court Mediators. The FCSC proposes the emergency rule amendment to specifically define the judicial involvement and oversight required in these proceedings.

In the Commentary to the proposed Amendment, the FCSC explains that the rule's new prohibition against the use of any means of alternative dispute resolution other than mediation was intended to preclude courts from offering facilitation or other processes which encourage agreement on any issue, while allowing the acceptance of settlements from those parties who have counsel to present their agreements for them. Under the proposed rule, self-represented litigants in Domestic Violence Injunction proceedings will be denied the means and opportunity to identify areas of agreement, or to present their agreement to the entry of the Injunction, and must participate in an evidentiary hearing to obtain any relief whatsoever. The result, then, will be to deny self-represented litigants the same opportunity for reaching settlement, and presenting the court with an agreement, that is clearly available to litigants with lawyers. At the same time, the rule is silent regarding the process surrounding the petitioner's request to dismiss. The unintended result of this change, then, may be to replace the settlement options of self-represented petitioners with an all or nothing proposition: to proceed through an adversarial hearing without representation or knowledge of the law, or to dismiss your petition and seek protection elsewhere.

Although the emergency amendment is proposed with the intent of emphasizing the importance of judicial involvement in resolving domestic violence cases, its effect will be to undermine the efforts of the Family Court judges of the Sixteenth Judicial Circuit, who have developed a highly effective system of handling these important and sensitive cases. Under intensive judicial supervision, trained court staff meet individually with the parties, explain the court process, and the content of the

lengthy Injunction Orders to litigants who, for the most part, are self-represented. Participation is voluntary, and parties meet with court staff in a safe and neutral setting, in advance of the hearing on the Petition. During this process, the parties identify areas of agreement and dispute. In every case, the presiding judge reviews the allegations and any agreements that may have been reached, and is responsible to ensure that the relief to be granted is appropriate, comprehensive, and understood by the parties. Hearing time is devoted to resolving contested issues, crafting proper remedies, and emphasizing the content and effect of the Final Injunction Order. This system and exercise of judicial involvement is entirely consistent with the court's responsibilities as set forth in §741.2902, Fla. Stat.

The Commentary to the proposed amendment presumes that there is only one proper and reasoned way to demonstrate judicial involvement in resolving domestic violence cases, and that is by holding evidentiary hearings in every case. Our experience in the Sixteenth Judicial Circuit demonstrates otherwise. Our use of trained court staff to meet with the parties in advance of the hearing on the Injunction petition enables the presiding judge to have the information available to evaluate the case, and to determine what resources are required and how to proceed. This procedure is consistent with the direction given by the Court in its opinion, *In re Report of the Family Court Steering Committee*, 794 So. 2d 518 (Fla. 2001), for Model Family Courts. Our system provides the parties with an accessible and coordinated means of resolving their disputes, and assists them in reaching resolution without the additional emotional trauma inherent in the adversarial process.

Finally, the proposed amendment's prohibition against the use of any other means of alternative dispute resolution except mediation, and its requirement that the Court refer these cases to certified Family Court Mediators only, severely and unnecessarily restricts the options available to the parties to Injunction proceedings. In the Sixteenth Circuit, as in other rural jurisdictions, the availability of certified Family Court Mediators is limited, as is the funding for their services. Our court staff have many years of experience in the legal system and far more training in domestic violence issues than that required of Certified Family Court Mediators. They do not, however, hold master's or doctorate degrees in social work, mental health, or behavioral or social sciences, nor are they physicians, psychiatrists, attorneys, or accountants. Our Domestic Violence court staff have a licensed attorney and Certified Family Court Mediator as their managing supervisor, and they serve at the express direction of the Chief Judge, and the Family Court Judges. Adequate safeguards are in place to ensure safety and due process for the parties. The proposed emergency amendment would eliminate our present system of handling these matters entirely, and will have a negative impact on the efficient administration of justice in our Circuit. In addition, the proposed rule change would result in dramatically increasing the costs associated with the implementation of a certified mediator

based system, at a time when State funding for truly essential and necessary judicial branch functions is in jeopardy.

As Chief Judge for the Sixteenth Judicial Circuit, I have approved this system of handling Domestic Violence Injunction cases, and the training and supervision of the court staff assisting the courts and litigants, pursuant to Fla. R. Jud. Admin. 2.050. Neither the FCSC nor the Office of the State Courts Administrator has observed the system in operation in this Circuit. This system benefits the litigants, the courts, and is a proper exercise of the principles of therapeutic justice. We have received numerous favorable comments from *pro se* litigants as well as parties represented by counsel, and have created a system drawing upon specially trained and supervised court staff, who are already employed by the Sixteenth Circuit's Family Court Programs. Our system works, and does so without the expenditure of additional funds for staffing, or to secure the services of certified Family Court Mediators to perform case management functions.

Based upon the foregoing, the undersigned Chief Judge of the Sixteenth Judicial Circuit requests that the Florida Supreme Court find that no emergency exists, pursuant to Rule 2.130(a), Fla. R. Jud. Admin., which would require the use of expedited procedures. The proposed rule change should be referred to the appropriate committee of the Florida Bar for consideration and recommendations, as required by Rule 2.130(b), Fla. R. Jud. Admin.

Respectfully submitted,

HON. RICHARD G. PAYNE
Chief Judge, 16th Judicial Circuit
Florida Bar Number 0132276
Monroe County Courthouse Annex
502 Whitehead Street
Key West, FL 33040
Telephone: (305) 292-3433
FAX: (305) 295-3611

CERTIFICATE OF SERVICE

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

<p>Hon. Raymond R. McNeal, Chair, Family Court Steering Committee 110 NW First Avenue, Room 3058 Ocala, Florida 34775</p> <p>Mr. John F. Harkness Executive Director The Florida Bar 650 Appalachee Parkway Tallahassee, Florida 32399</p> <p>Mr. Michael Walsh Chair, Family Law Rules Committee 501 S. Flagler Drive, Suite 306 West Palm Beach, Florida 33401- 5911</p>	<p>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</p> <p>Ms. Caroline Black Chair, Family Law Section of the Florida Bar 307 S. Magnolia Avenue Tampa, Florida 33606</p> <p>Deborah A. Lacombe Legal Affairs and Education Office of the State Courts Administrator 500 South Duval Street Tallahassee, Florida 32399</p>
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Certificate of Compliance

I hereby certify that this document was printed in Courier New
12-point font.

By: _____
Hon. Richard G. Payne

4

Chief Judge