

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. SC02-2445**

**IN RE: AMENDMENTS TO FLORIDA  
FAMILY LAW RULES FORMS 12.980(a-q)**

**COMMENTS REGARDING PROPOSED  
FLORIDA FAMILY LAW RULES FORMS 12.980(a-q)**

The **Honorable Linda L. Vitale, Administrative Judge** of the Unified Family Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, and **Thomas A. Genung, Esq., Family Court Administrator** of the Seventeenth Judicial Circuit in and for Broward County, Florida, file this Comment regarding the proposed amendments to Florida Family Law Rules Forms 12.980(a-q), and state:

**Comments regarding proposed Florida Family Law Rules Form 12.980(b), Petition for Injunction for Protection Against Domestic Violence**

Section 741.30(3)(b), Florida Statutes, states that “[t]he sworn petition shall be in substantially the following form:”...

*“(h) Petitioner is either a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence because respondent has \_\_\_ (mark all sections that apply and describe in the spaces below the incidents of violence or threats of violence, specifying when and where*

*they occurred, including, but not limited to, locations such as a home, school, place of employment, or visitation exchange) \_\_\_\_:*

*\_\_\_\_\_ committed or threatened to commit domestic violence defined in s.741.28, Florida Statutes, as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another. With the exception of persons who are parents of a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.*

*\_\_\_\_\_ previously threatened, harassed, stalked, or physically abused the petitioner.*

*\_\_\_\_\_ attempted to harm the petitioner or family members or individuals closely associated with the petitioner.*

*\_\_\_\_\_ threatened to conceal, kidnap, or harm the petitioner's child or children.*

*\_\_\_\_\_ intentionally injured or killed a family pet.*

*\_\_\_\_\_ used, or has threatened to use, against the petitioner any weapons such as guns or knives.*

*\_\_\_\_\_ physically restrained the petitioner from leaving the home or calling law enforcement.*

*\_\_\_\_\_ a criminal history involving violence or the threat of violence (if known).*

\_\_\_\_\_ *another order of protection issued against him or her previously or from another jurisdiction (if known).*

\_\_\_\_\_ *destroyed personal property, including, but not limited to, telephones or other communication equipment, clothing, or other items belonging to the petitioner.*

\_\_\_\_\_ *engaging in any other behavior or conduct that leads the petitioner to have reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.”*

The proposed Florida Supreme Court Approved Family Law Form 12.980(b), Petition for Injunction for Protection Against Domestic Violence, does not contain the aforementioned provisions which according to s. 741.30(6)(b)1.-10., Florida Statutes, are factors which may be alleged in the petition, which the court shall consider and evaluate when determining whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.

The proposed Florida Family Law Form 12.980(b) does not appear to contain essential information referred to in s. 741.30(3)(b), Florida Statutes, under subsection (i) of the Petition for Injunction for Protection Against Domestic Violence as follows:

*“(i) Petitioner alleges the following additional specific facts: (mark appropriate sections)*

\_\_\_\_\_ *Petitioner is the custodian of a minor child or children whose names and ages are as follows:*

“ ...

“ \_\_\_\_\_ *Petitioner genuinely fears that respondent imminently will abuse, remove, or hide the minor child or children from petitioner because:* \_\_\_\_\_ “

It would be very helpful to the trial judge to have current custody information included in *Section V* of form 12.980(b). A question should be added which requests whether or not there is an existing order addressing custody of the child or children. If there is such an order, the petitioner should clearly state the nature of the court ordered custodial arrangement, identifying who has primary residential custody, sole custody, or how the joint custody is arranged in the court order. This information is important to the judge, who is addressing requests for custody through the petition for injunction for protection against domestic violence, as the UCCJEA does not require such information, and form 12.980(b) does not currently require this information. Due to the lack of a statewide or nationwide database for court cases, the court must rely upon self reporting by the litigants to provide information about custody orders from other jurisdictions.

In addition, and for the sake of consistency, *paragraph 2. of Section III* of form 12.980(b), should read “Has Respondent ever received or tried to get an injunction for protection against domestic violence against Petitioner in this or any other court?” The addition of the underlined phrase would make *paragraphs 1. and 2. of Section III* of form 12.980(b) consistent.

*Paragraph e. of Section VII* of form 12.980(b), should be amended to read “prohibiting respondent from defacing or destroying Petitioner's personal property, including the petitioner's motor

vehicle". The inclusion of the underscored phrase would make *paragraph e.* consistent with s.

741.31(4)(a)7., Florida Statutes.

**Comments regarding proposed Florida Family Law Rules Form 12.980(d)(1), Temporary Injunction for Protection Against Domestic Violence with Minor Child(ren), proposed Florida Family Law Rules Form 12.980(d)(2), Temporary Injunction for Protection Against Domestic Violence without Minor Child(ren), proposed Florida Family Law Rules Form 12.980(e)(1), Final Judgment of Injunction for Protection Against Domestic Violence with Minor Child(ren) (After Notice), and proposed Florida Family Law Rules Form 12.980(e)(2), Final Judgment of Injunction for Protection Against Domestic Violence without Minor Child(ren) (After Notice),**

Section 741.31(4)(a)7., Florida Statutes, indicates that a person who willfully violates an injunction for protection against domestic violence by "[d]efacing or destroying the petitioner's personal property, including the petitioner's motor vehicle;" ... "commits a misdemeanor of the first degree..." The second paragraph of the "Temporary Injunction and Terms" section of proposed forms 12.980(d)(1), 12.980(d)(2), 12.980(e)(1), and 12.980(e)(2) does not include the phrase "including the petitioner's motor vehicle" as identified above in Section 741.31(4)(a)7., Florida Statutes. Therefore, it is important to add the language to these proposed forms in the "Temporary Injunction and Terms" section.

In addition, the "**ORDERED and ADJUDGED**" section of proposed forms 12.980(d)(1), 12.980(d)(2), 12.980(e)(1), and 12.980(e)(2) should be amended to include the language from s. 741.31(4)(a)7., Florida Statutes, prohibiting the respondent from "defacing or destroying the petitioner's

personal property, including the petitioner’s motor vehicle”. The respondent must be ordered to enjoin from such actions to be held accountable for violating an injunction for protection against domestic violence based upon those actions. Therefore, it is important to add the language indicated in s. 741.31(4)(a)7., Florida Statutes, to the “**ORDERED and ADJUDGED**” section of proposed forms 12.980(d)(1), 12.980(d)(2), 12.980(e)(1), and 12.980(e)(2).

**Comments regarding proposed Florida Family Law Rules Form 12.980(f), Order of Dismissal of Temporary Injunction for Protection Against Domestic Violence, Repeat Violence, or Dating Violence**

Proposed form 12.980(f), does not contain an option for petitions which are improperly plead, i.e., petitions which are insufficient for one type of injunction but sufficient for another type. In addition, there are no Supreme Court Approved forms which address vacating or dissolving a Final Injunction for Protection Against Domestic Violence, Repeat Violence or Dating Violence. Adding sections to proposed form 12.980(f) to address both of these points would be very helpful to trial judges, parties, and law enforcement officials charged with the responsibility of entering injunction related orders into local law enforcement databases, and the FCIC and NCIC systems.

**Comments regarding proposed Florida Family Law Rules Form 12.980(g), Petition for Injunction for Protection Against Repeat Violence, proposed Florida Family Law Rules Form 12.980(l),**

**Temporary Injunction for Protection Against Repeat Violence, and proposed Florida Family Law Rules Form 12.980(m), Final Judgment of Injunction for Protection Against Repeat Violence (After Notice)**

*Paragraph 2. of Section III* of proposed form 12.980(g), should be amended to make this paragraph consistent with *paragraph 1. of Section III*, as follows: “Has Respondent ever received or tried to get a repeat violence injunction for protection against Petitioner in this or any other court?” Adding the underscored phrase would make *paragraphs 1. and 2. of Section III* consistent.

Petitioner safety is of paramount concern in cases seeking injunctions for protection against violence. *Paragraph 2.b.* of the “**ORDERED and ADJUDGED**” section of the proposed forms 12.980(l) and 12.980(m) states, “Respondent may not knowingly come within 100 feet of Petitioner’s automobile at any time”. Section 784.047, Florida Statutes, does not indicate that a person who willfully violates an injunction for protection against repeat violence by knowingly coming within 100 feet of Petitioner’s automobile at any time, commits a misdemeanor of the first degree. A violation of this section of proposed forms 12.980(l) or 12.980(m), would only be enforceable under the current statutes as civil or criminal contempt. While this section is important to assure the safety of the petitioner, enforcement of this section will be confusing to law enforcement, as well as time consuming and frustrating to the petitioner.

Accordingly, *section IV* of proposed form 12.980(g) should be amended to include as an optional request that the court order that “Respondent may not knowingly come within 100 feet of Petitioner’s automobile at any time”. This proposed change would allow the petitioner to request that the court order that provision which is contained in the current proposed forms 12.980(l) and 12.980(m) at *paragraph*

2.b. of the “**ORDERED and ADJUDGED**” section.

**Comments regarding proposed Florida Family Law Rules Form 12.980(h), Supplemental Affidavit in Support of Petition for Injunction for Protection Against Domestic Violence, Repeat Violence or Dating Violence**

The instructions for the proposed form 12.980(h) identify the elements which must be satisfied for “dating violence”, but does not indicate that “[t]he term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context”, as is indicated in s. 741.046(c), Florida Statutes. This proposed change would also make the definition of “dating violence” in proposed form 12.980(h) consistent with the definition in the instructions for proposed form 12.980(o).

**Comments regarding proposed Florida Family Law Rules Form 12.980(o), Petition for Injunction for Protection Against Dating Violence, proposed Florida Family Law Rules Form 12.980(p), Temporary Injunction for Protection Against Dating Violence, and proposed Florida Family Law Rules Form 12.980(q), Final Judgment of Injunction for Protection Against Dating Violence (After Notice)**

*Paragraph 1. of Section III* of proposed form 12.980(o) should be amended to require the petitioner to indicate the date when the dating relationship began and when it ended. This information is important for the court to determine whether or not the relationship meets the requirements of s.



784.046(c)1., Florida Statutes, which states that “[a] dating relationship must have existed within the past 6 months”.

*Paragraph 3. of Section III* of proposed form 12.980(o) which currently reads: “Has Petitioner ever received or tried to get an injunction for protection against dating violence against Respondent in this or any other court?”, should be amended as follows: “Has Petitioner ever received or tried to get an injunction for protection against dating violence or repeat violence against Respondent in this or any other court?” Adding the underscored section would provide the important information to the court about prior injunctive relief sought by the petitioner against the respondent, which this paragraph appears to seek.

*Paragraph 4. of Section III* of proposed form 12.980(o) which currently reads: “Has Respondent ever received or tried to get a dating violence injunction for protection against petitioner”, should be amended as follows: “Has Respondent ever received or tried to get an injunction for protection against dating violence or repeat violence against Petitioner in this or any other court?” This change will make *paragraphs 3. and 4. of Section III* of proposed form 12.980(o) with the recommended changes made herein consistent.

In addition, the last sentence of *paragraph 6. of Section III* of proposed form 12.980(o) should be amended as follows: “[t]he most recent incident (including date and location) is described below.” This additional information will assist the petitioner in identifying for the court the most recent incident of violence.

Petitioner safety is of paramount concern in cases seeking injunctions for protection against violence. *Paragraph 2.b.* of the “**ORDERED and ADJUDGED**” section of the proposed forms

12.980(p) and 12.980(q) states, “Respondent may not knowingly come within 100 feet of Petitioner’s automobile at any time”. Section 784.047, Florida Statutes, does not indicate that a person who willfully violates an injunction for protection against repeat violence by knowingly coming within 100 feet of Petitioner’s automobile at any time, commits a misdemeanor of the first degree. A violation of this section of proposed forms 12.980(p) or 12.980(q), would only be enforceable under the current statutes as civil or criminal contempt. While this section is important to assure the safety of the petitioner, enforcement of this section will be confusing to law enforcement, as well as time consuming and frustrating to the petitioner.

Accordingly, *section IV* of proposed form 12.980(o) should be amended to include as an optional request that the court order that “Respondent may not knowingly come within 100 feet of Petitioner’s automobile at any time”. This proposed change would allow the petitioner to request that the court order that provision which is contained in the current proposed forms 12.980(p) and 12.980(q) at *paragraph 2.b.* of the “**ORDERED and ADJUDGED**” section.

Therefore, and in closing, it is respectfully requested that this Court consider these comments and amend the proposed Florida Family Law Rules Forms 12.980(a-q) as this Court deems appropriate.

Respectfully submitted this 16th day of January, 2003.

Linda L. Vitale, Administrative Judge,

Thomas A. Genung, Esq., Family Court Administrator

Unified Family Court  
Seventeenth Judicial Circuit

Unified Family Court  
Seventeenth Judicial Circuit

I HEREBY CERTIFY that a true and correct copy of this comment was mailed this 16th day of January, 2003, to: John F. Harkness, Jr., Executive Director of The Florida Bar, 650 Apalachee Pkwy., Tallahassee, Florida 32399-2300.

Linda L. Vitale, Administrative Judge,  
Unified Family Court  
Seventeenth Judicial Circuit

Thomas A. Genung, Esq., Family Court Administrator  
Unified Family Court  
Seventeenth Judicial Circuit