IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA FAMILY LAW RULES OF PROCEDURE (RULE 12.635 AND RELATED FORMS) **CASE NO.:** SC06-2513

RESPONSE TO COMMENTS OF THE FAMILY LAW SECTION

Raymond T. McNeal, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this response of the Family Law Rules Committee to comments on proposed *Fla. Fam. L. R. P.* 12.635, filed by the Family Law Section. The response and amended rule were approved by the Committee by a vote of 11-3. The rule is attached in both full page (see Appendix C) and two-column (see Appendix D) format. The Family Law Section through its Chair, Allyson Hughes, notified the Family Law Rules Committee that the Section supports the revised rule. Therefore, the Rules Committee requests the Court to approve the revised rule.

Background

On October 3, 2006, the Family Law Rules Committee filed amended rules and forms to implement statutory changes from the 2006 legislative session with this Court. The Committee proposed three new forms to implement newly enacted section 61.13001, Florida Statutes, which controls relocation of the principal residence of a minor child. In the report, the Committee raised concerns about the procedural problems caused by the new statute and asked for guidance on how to proceed. On March 9, 2007, the Court issued an order directing the Committee to “file a supplemental

report clarifying whether a new Florida Family Law Rule of Procedure is advisable to implement the amended statutory provisions and, if so, proposing an appropriate rule." On August 1, 2007, the Committee filed proposed *Fla. Fam. L. R. P.* 12.635, Relocation of Minor Child, and an amendment to *Fla. Fam. L. R. P.* 12.285, Mandatory Disclosure, to incorporate a provision of the new rule. The proposals were published in the August 1, 2007, issue of The Florida Bar *News* to allow the opportunity for comment. On August 31, 2007, the Family Law Section of The Florida Bar filed a Comment with the Court opposing the proposed rule and proposing collaboration between the Family Law Section and the Rules Committee. (See Appendix A.) The Court referred the Family Law Section's Comment to the Committee for response. As a result, the Family Law Rules Committee and the Family Law Section have worked together to revise *Fla. Fam. L. R. P.* 12.635. The original deadline for the Committee's response was September 25, 2007. The Committee has requested and received two extensions of time to allow negotiations with the Family Law Section to proceed. (See Appendix B.) The final deadline was November 19, 2007.

The rule is not perfect. It is difficult to reconcile the legislative policies expressed in the statute with customary procedures for resolving litigation. However, the Committee is satisfied that it has done its best to draft a rule that is consistent with the current version of the statute and accepted legal procedure.

Mandatory Disclosure

The Committee withdraws its previous request to modify *Fla. Fam. L. R. P.* 12.285 on mandatory disclosure. Cases involving relocation may or may not involve substantial financial issues. In those situations, parties may

seek to modify or limit the disclosure requirements by agreement or court order.

Relocation by Agreement

One of the legislative policies deserves further explanation. The statute requires a parent who is relocating with a minor child to notify the other parent of the intended relocation. See § 61.13001(3), Fla. Stat. (2006). At the same time, the Legislature expressed a preference for parents to resolve the question of relocation by agreement. See § 61.13001(2), Fla. Stat. If the parents have a written agreement allowing relocation, the trial court may ratify the agreement without an evidentiary hearing unless one of the parties requests an evidentiary hearing in writing within 10 days of the agreement being filed with the court. See § 61.13001(2)(b), Fla. Stat.

At the same time, the Legislature enacted § 28.241(1)(b)15, Fla. Stat. (2006), exempting a party from paying filing fees for reopening a civil case to file "a Notice of Intent to Relocate and any order issuing as a result of an uncontested relocation." This provision is consistent with § 28.241(1)(b)16, Fla. Stat., which exempts filing fees for reopening a civil case to file "stipulations." This policy encourages parents to resolve by agreement any disputes that arise after entry of a final judgment. Therefore, the Committee included a provision allowing the trial court to enter a supplemental final judgment based on the parties' written agreement without a motion or supplemental petition. See revised *Rule* 12.635(b)(2).

The Committee is aware that a person seeking entry of a supplemental final judgment must file a supplemental petition in usual cases. *Fla. Fam. L. R. P.* 12.110. However, it is not unusual for trial courts to modify existing judgments based on stipulation of the parties when it is clear that the court has jurisdiction and the parties are in agreement. For example, a trial court

entering a final judgment of dissolution of marriage may also modify a final judgment of injunction for protection against domestic violence to make it consistent with the final judgment of dissolution of marriage if both parties agree to the modification. The question of jurisdiction to allow relocation and modify parenting time is satisfied by filing a Uniform Child Custody Jurisdiction and Enforcement Act Affidavit with the agreement. Revised *Rule* 12.635(b)(1)(B). Notice is provided either by service of the Notice of Intent to Relocate, revised *Rule* 12.635(c), or by signing the agreement. Under these circumstances, the supplemental petition is merely a vehicle to request the trial court to enter an order and does not serve any other useful purpose. The revised rule does not prohibit filing a supplemental petition. A parent or attorney may choose to file a supplemental petition, but the clerk will charge the filing fee for reopening the case.

If an action involving the child is pending before the trial court, the parties will obtain entry of a judgment on an agreement to allow relocation through customary processes.

Based on these considerations, the Family Law Rules Committee requests the Florida Supreme Court to approve the revised rule.

Respectfully submitted ________________________________.

___________________________	________________________________
RAYMOND T. McNEAL	JOHN F. HARKNESS, JR.
Chair	Executive Director
Family Law Rules Committee	The Florida Bar
2640 S.E. 45th St.	651 East Jefferson Street
Ocala, FL 33480-5784	Tallahassee, FL 32399-2300
352/351-5828	850/561-5600
FLORIDA BAR NO.: 163824	FLORIDA BAR NO.: 123390

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this response was mailed to Allyson Hughes, Attorney at Law, Chair of the Family Law Section, 7604 Massachusetts Way, New Port Richey, FL 34653, and Jeffrey A. Weissman, Attorney at Law, One Financial Plaza, Suite 2208, Fort Lauderdale, FL 33394 on ____________________________.

____

APPENDIX A

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
FLORIDA FAMILY LAW RULES
OF PROCEDURE (RULE 12.635
AND RELATED FORMS) CASE NO.: SC06-2513

COMMENT OF THE FAMILY LAW SECTION OF THE FLORIDA BAR

THE FAMILY LAW SECTION OF THE FLORIDA BAR, by and through its Chair, Allyson Hughes, Esquire, and its Chair of the Relocation Subcommittee, Jeffrey A. Weissman, Esquire, hereby files this Comment of the Family Law Section of The Florida Bar to Proposed Rule 12.635, and states:

A. BRIEF OVERVIEW AND IMPRESSIONS OF RULE 12.635

Rule 12.635 was prepared and drafted by the Rules Committee of the Florida Bar. It seeks to define the procedure that is to be employed in relocation cases pursuant to Section 61.13001, Florida Statutes. The Rules Committee did a commendable job in many respects; however, certain provisions of the rule are inconsistent with the statute. Such inconsistencies often cause the rule to conflict with the statute which, for sure, was unforeseen and unintended by the drafters. On Tuesday, August 28, 2007, the Executive Council of the Family Law Section voted 26-0 in opposition to proposed Rule 12.635. Thus, the Family Law Section of The Florida Bar strenuously opposes the adoption of proposed Rule 12.635 in its current form and would graciously accept any invitation to work collaboratively with the Rules Committee in an effort to promptly correct the noted deficiencies.

B. ANALYSIS OF RULE 12.635

Issue 1 – Subsection (a) Application:

This provision should be amended to clarify that the rule applies to all proceedings to relocate the principal residence of a minor child under the Section 61.13001, and, more specifically, the applicability provisions thereof found in Section 61.13001 (11). Further, language should be added to clarify that the rule only applies in cases where there is an existing cause of action, judgment or decree because the statute does not, and cannot, legislate what people must do who have never invoked the jurisdiction of the court.

Issue 2 – Subsection (b) Pleadings and Papers

This subsection uses the word "privacy" instead of "confidentiality" when referring to Rule 12.280. However, Rule 12.280 uses the word "confidentiality." Consequently, it is recommended that the word "privacy" be changed to "confidentiality" so that the proposed rule is consistent with the existing rule that it references.

Issue 3 – Subsection (j) Relocation of Minor Child by Agreement:

Relocation by agreement is the first substantive provision of the statute, currently found in subsection (2) (a). In contrast, the rule addresses relocation by agreement much later in subsection (j). Its placement so far down in the rule is confusing to anyone, particularly to pro se litigants, because one cannot easily read the statute and rule side-by-side. It is our opinion that the structure of the rule should mirror the statute and that relocation by agreement should be addressed much earlier. It is recommended that relocation by agreement be moved up to subsection (c) with the subsequent subsections appropriately re-lettered.

Substantively, this provision of the rule conflicts with the applicable provision of the statute and the public policy in support thereof. The rule requires that court approval must be obtained *even in* the absence of any existing cause of action, judgment or decree (emphasis added). This is error. Subsection (2) (b) of the statute only requires that any relocation agreement be ratified by court order if there is an existing cause of action, judgment or decree of record pertaining to the child's primary residence or visitation. The reason for this is fairly simple: the statute does not apply to persons who have never invoked the jurisdiction of the court. The rule, in contrast, improperly obligates individuals to invoke the jurisdiction of the court whenever they want to relocate. The rule also requires that a supplemental petition, or a motion, be filed *even if* no action has ever been initiated (emphasis added). The statute does not require such filing in the absence of any existing cause of action, judgment or decree of record, again because the statute does not apply to persons who have never invoked the jurisdiction of the court. Moreover, assuming that there is an existing cause of action, judgment or decree of record, and the parties reach an agreement regarding relocation, the rule requires that a supplemental petition, or a motion, must be filed when the preferred methodology would be to merely file an agreed final judgment regarding

relocation or an agreed final judgment of modification regarding relocation. Chapter 28 of Florida Statutes was amended expressly to avoid the necessity of having to pay a reopening fee to accommodate a scenario of amicable resolution by agreement. The rule, however, clearly undermines this intent by requiring, in all instances, that litigants file a supplemental petition or motion.

Consistent with the foregoing recommendation, the related proposed form, AGREEMENT FOR MODIFICATION TO PERMIT RELOCATION WITH MINOR CHILD(REN) INCLUDING OR NOT INCLUDING MODIFICATION OF CHILD SUPPORT, should contain the following notice in all capital letters:

"THIS AGREEMENT MAY BE RATIFIED BY THE COURT WITHOUT THE NECESSITY OF AN EVIDENTIARY HEARING THEREON, AS IT SHALL BE PRESUMED THAT THIS AGREEMENT IS IN THE BEST INTERESTS OF THE MINOR CHILD(REN). NOTWITHSTANDING, EITHER OR BOTH PARTIES MAY SEEK AN EVIDENTIARY HEARING REGARDING THE RELOCATION AGREEMENT BY REQUESTING SAME, IN WRITING, WITHIN 10 DAYS AFTER THE AGREEMENT IS FILED WITH THE COURT."

Issue 4 – Subsection (c) Mandatory Disclosure:

Based upon our prior recommendations, this subsection should be re-lettered as (d). Procedurally, the rule, as written, states that mandatory disclosure does not (and seemingly cannot) apply to relocation cases. However, the statute requires that the court evaluate several factors, some of which are financially based, when determining whether to grant or deny a request to relocate. Furthermore, the statute allows for a claim of attorney's fees and costs under certain circumstances. Consequently, it is our recommendation that the rule should be revised to state that, "Rule 12.285 shall not automatically apply to proceedings to relocate the principal residence of a minor child under Section 61.13001, Florida Statutes; however, a party may affirmatively request that limited or complete mandatory disclosure shall apply as might be warranted under the particular facts and circumstances of the case."

Issue 5 – Subsection (d) Notice of Intent to Relocate:

This subsection should be re-lettered as (e). Procedurally, provision (e) (1), should be entitled Applicability. It should be made perfectly clear that the Notice of Intent to Relocate requirement does not apply to relocation by agreement. We therefore suggest that the applicability provision state that a Notice

of Intent to Relocate shall be applicable to a parent or person having primary residential responsibility for, or who is entitled to timesharing with, a minor child who seeks to relocate the minor child's principal residence under Section 61.13001, Florida Statutes, and who has been unable to otherwise procure relocation by agreement pursuant to Section 61.13001 (2) (a), Florida Statutes.

The Service provision should be re-lettered to (e) (2) and should be entitled Service of Notice of Intent to Relocate with Minor Child(ren). Subparagraph (A) seemingly requires service of a Notice of Intent to Relocate *even in* the absence of any existing cause of action, judgment or decree (emphasis added). However, as previously stated, the statute does not apply to persons who have never invoked the jurisdiction of the court. Simply, the statute does not, and the rule cannot, legislate what people must do before they ever invoke the jurisdiction of the court. Therefore, the Notice of Intent to Relocate requirement should only apply whenever there is any existing cause of action, judgment or decree. A simple fix to this problem would be to reword the beginning of the sentence of Subparagraph (A) to read, "If an action concerning the child is not then pending with the court but is to be simultaneously filed, or if there is an existing judgment or decree, the copy of the notice of intent …" In the situation where someone seeks to relocate or has already relocated in a pre-suit context, and the other party objects or has objected in a pre-suit context, then the objecting party has certain available remedies such as initiating litigation and seeking injunctive relief and/or compelling the return of the minor child(ren), which, if successful, might then trigger the statutory criteria and application of the rule in any subsequent proceedings. However, in the absence of an existing cause of action, judgment or decree it is improper to trigger application of the rule. In addition, subparagraph (A) mistakenly only allows for service by certified mail, restricted delivery, return receipt requested. The statute requires service to be made pursuant to Chapter 48 and 49, or by certified mail, restricted delivery, return receipt requested

Another sub-provision, (e) (3), should be added and should be entitled Certificate of Service of Notice of Intent to Relocate. This provision will need to state that the certificate is to be served and filed with the court at the same time pursuant to the statute.

The current (d) (2) will need to be re-lettered to (e) (4).

Issue 6 – Subsection (e) Objection to Notice of Intent to Relocate:

This should be re-lettered to subsection (f).

Issue 7 – Subsection (f) Waiver of Right to Object:

This should be re-lettered to subsection (g).

Issue 8 – Subsection (g) Pleadings:

This should be re-lettered to subsection (h). Procedurally, subsection (h) (1) needs to be re-worded. We suggest the following language: "If an objection is timely filed by the non-relocating parent or other person who is entitled to timesharing with a minor child who is the subject of a notice of intent to relocate, then no relocation may occur absent court order. Should the parent seeking to relocate still wish to relocate after an objection has been timely filed, he or she must file with the court, and serve upon the objecting party, the following:"

[proceed with current (A), (B), (C) and (2)]

Issue 9 – Subsection (h) Hearings:

This should be re-lettered to subsection (i). Subsection (h) (1) in its current form is very troubling. It grossly misinterprets the statute and should be stricken in its entirety. There is no such thing as a right to a hearing on an objection. Once an objection is filed, the burden falls back on the parent seeking to relocate to file an appropriate pleading seeking the permission of the court to relocate. The statute then allows for hearings to take place on a temporary and permanent basis. Subsection (h) (3) in its current form needs to be re-worded as follows: "If no timely objection to the notice of intent is filed, the party seeking to relocate with the minor child may submit and request entry of an expedited order without the necessity of a hearing. Absent good cause the court is obliged to enter the expedited order."

We would recommend that an additional sub-provision be incorporated which allows for a party to seek an expedited hearing so that the underlying pleading is accorded priority on the court's calendar. Such a sub-provision would be consistent with the statute.

Issue 10 – Subsection (i) Orders:

This should be re-lettered to (j). Subsection (i) (1) in its current form does not comport with the statute. The best interests standard is not the standard employed pursuant to the statute; rather, the statute

itself sets forth the appropriate standard for temporary relocations. Consequently, the entire provisions should be stricken and reworded as follows: "The court may grant temporary relief restraining the relocation of a child, or ordering the return of a child if a relocation has previously taken place, permitting temporary relocation, or other remedial relief pending disposition at trial or final hearing." Subsection (i)(2) in its current form suffers from the same problem and should be reworded as follows: The court may enter a partial or final judgment or order granting the relocation.

Issue 11 – Subsection (k) Notice of Withdrawal of Intent to Relocate:

This should be re-lettered to (l). Procedurally this section needs to be revised. It requires a litigant to file a Notice of Withdrawal of Intent to Relocate if the litigant ever decides to abandon the pursuit of litigation after serving the Notice of Intent to Relocate. However it does not require the Notice of Withdrawal of Intent to Relocate to be served upon the other party, which was of course an inadvertent omission. Consequently, it needs to be revised to require service of the Notice of Withdrawal of Intent to Relocate, both in situations where service is required to be made pursuant to Chapters 48, 49 or certified mail, and where service is required to be made in accordance with the rules.

C. ANALYSIS OF FORMS REFERENCED IN RULE 12.635

The title of the NOTICE OF INTENT TO RELOCATE WITH CHILDREN should be amended to include the word MINOR in the title. In addition, paragraph 6 should reflect that completion thereof is mandatory.

The MOTION FOR ORDER PERMITTING RELOCATION OF MINOR CHILD(REN) should be amended to delete the phrase *EX PARTE* replaced with (NO OBJECTION). It should also provide for a notary public jurat.

WHEREFORE, THE FAMILY LAW SECTION OF THE FLORIDA BAR respectfully files this Comment in opposition to proposed Florida Family Law Rule of Procedure 12.635.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the original and nine copies of the foregoing Comment have been filed with the Clerk and a true copy has been served via Federal Express on The Honorable Raymond T. McNeal, 2640 S.E. 45th Street, Ocala 34480, this ________ day of August, 2007.

Respectfully submitted,

ALLYSON HUGHES, P.A.
7604 Massachusetts Way
New Port Richey, FL 34653
Telephone: (727) 842-8227

By:_____________________
ALLYSON HUGHES
FLA. BAR NO.: 712698

-and-

GLADSTONE & WEISSMAN,
P.A
One Financial Plaza
Suite 2208
Fort Lauderdale, FL 33394
Telephone: (954) 761-9994

BY:____________________
JEFFREY A. WEISSMAN
FLA. BAR NO.: 0017530

APPENDIX B

Supreme Court of Florida

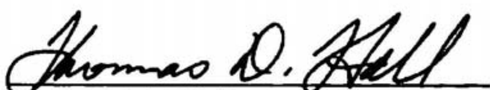
THURSDAY, SEPTEMBER 27, 2007

CASE NO.: SC06-2513

IN RE: AMENDMENTS TO THE FLORIDA FAMILY LAW RULES

The Family Law Rules Committee's motion for extension of time to file response is granted and the committee is allowed to and including November 1 2007, in which to serve the response.

A True Copy
Test:



Thomas D. Hall
Clerk, Supreme Court

vm
Served

J. FRASER HIMES
JEFFREY ADAM WEISSMAN
ELLEN H. SLOYER
RAYMOND T. MCNEAL
ALLYSON HUGHES
JOHN F. HARKNESS, JR.

Supreme Court of Florida

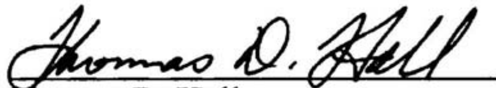
FRIDAY, NOVEMBER 2, 2007

CASE NO.: SC06-2513

IN RE: AMENDMENTS TO THE FLORIDA FAMILY LAW RULES

The Family Law Rules Committee's motion for extension of time is granted and the Committee is allowed to and including November 19, 2007, in which to serve their response.

A True Copy
Test:



Thomas D. Hall
Clerk, Supreme Court

vm
Served:

J. FRASER HIMES
JEFFREY ADAM WEISSMAN
ELLEN H. SLOYER
RAYMOND T. MCNEAL
ALLYSON HUGHES
JOHN F. HARKNESS, JR.

APPENDIX C

RULE 12.635 RELOCATION OF MINOR CHILD

(a) Application. This rule applies to all proceedings to relocate the principal residence of a minor child under section 61.13001, Florida Statutes.

(b) Relocation with Minor Child by Agreement of the Parties.

(1) If all persons who have residential responsibility for, or who are entitled to timesharing with, the minor child agree to the proposed relocation and sign an agreement that complies with section 61.13001(2), Florida Statutes, the person seeking to relocate with the minor child shall, before the relocation of the minor child, file with the court and serve on all parties to the agreement

(A) a copy of the agreement complying with section 61.13001(2), Florida Statutes, that permits relocation of the minor child, with a notice stating the date the agreement is being filed with the court and that if a hearing is not requested within 10 days of filing, then it shall be presumed that the relocation is in the best interest of the child and the court may ratify the agreement without an evidentiary hearing; and

(B) a Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) affidavit, in substantial conformity with Florida Supreme Court Approved Family Law Form 12.902(d).

(2) The parties shall obtain a judgment from the court permitting the relocation before the parent relocates with the minor child. The court may enter a supplemental final judgment ratifying the agreement without a motion or supplemental petition.

(3) If an agreement complying with section 61.13001(2), Florida Statutes, has been filed with the court, the person seeking to relocate does not need to serve a notice of intent to relocate with minor child or a certificate of service of notice of intent to relocate.

(4) If an agreement complying with section 61.13001(2), Florida Statutes, has been signed by all of the persons having residential responsibility for, or entitlement to timesharing with, the minor child, the proposed relocation is presumed to be in the child's best interests and the court

may enter a judgment granting the relocation without an evidentiary hearing, unless one of the parties to the agreement requests an evidentiary hearing, in writing, within 10 days of the agreement being filed with the court.

(c) Notice of Intent to Relocate.

(1) Applicability. A notice of intent to relocate is required for a parent or person having residential responsibility for, or who is entitled to timesharing with, a minor child who seeks to relocate the minor child's principal residence under section 61.13001, Florida Statutes, and who has been unable to otherwise procure relocation by agreement under section 61.13001(2)(a), Florida Statutes.

(2) Service of Notice of Intent to Relocate with Minor Child.

(A) A parent or other person having residential responsibility for, or who is entitled to timesharing with, a minor child who seeks to relocate the minor child's principal residence under section 61.13001, Florida Statutes, shall file with the court a certificate of service of notice of intent to relocate with minor child in substantial conformity with Florida Family Law Rules of Procedure Form 12.950(b). The notice of intent to relocate with minor child, prepared in substantial conformity with Florida Family Law Rules of Procedure Form 12.950(a), shall not be filed with the court with the certificate of service.

(B) The parent seeking to relocate with a minor child shall contemporaneously serve on the other parent and any other person who is entitled to timesharing with the minor child a copy of the notice of intent to relocate with minor child and a separate certificate of service of notice of intent to relocate prepared in substantial conformity with form 12.950(b), as follows:

(i) If an action concerning the child is not pending with the court but is to be contemporaneously filed, or if an action concerning the child is not pending with the court but there is an existing judgment or decree concerning residential responsibility for the minor child, the copy of the notice of intent and the separate certificate of service shall be

served by certified mail, restricted delivery, return receipt requested or according to Chapter 48 or 49, Florida Statutes.

(ii) If an action concerning the child is pending with the court, the copy of the notice of intent and the separate certificate of service shall be served in accordance with these rules.

(3) Duty to Update. A party required to give current and updated information by section 61.13001(3)(d), Florida Statutes, shall do so by filing with the court and serving on the other parent and any other person who is entitled to timesharing with the minor child a notice of updated relocation information providing the updated information required by section 61.13001(3)(d), Florida Statutes.

(d) Objection to Notice of Intent to Relocate. A person on whom a notice of intent to relocate is served may object to the proposed relocation, in writing, within 30 days of service of the notice of intent, by filing with the court and serving by mail on the party seeking relocation at the address indicated for service on the notice of intent an objection to notice of intent to relocate in substantial conformity with Florida Family Law Rules of Procedure Form 12.950(c).

(e) Waiver of Right to Object. Failure to timely file an objection to the notice of intent to relocate waives that person's right to a hearing on the proposed relocation and the right to object to the proposed relocation. It shall be presumed that the relocation is in the child's best interests. An evidentiary hearing is not required to approve the proposed relocation if an objection is not timely filed.

(f) Pleadings.

(1) Applicability. This subdivision does not apply to relocation of a minor child by agreement of the parties under subdivision (b) of this rule.

(2) Filing and Service of Pleadings. At any time after an objection to the notice of intent to relocate is filed, or if no objection is timely filed, then after expiration of the period within which one may file a timely objection, but before relocating with the minor child, the person seeking

to relocate shall file with the court and serve in accordance with these rules on all persons having residential responsibility for, or who are entitled to timesharing with, the minor child, the following:

(A) a petition to relocate minor child's principal residence if an action concerning the child is not pending with the court but is to be filed contemporaneously with the notice of intent to relocate, or a supplemental petition to relocate minor child's principal residence if an action concerning the child is not pending with the court, but there is an existing judgment or decree concerning residential responsibility for the minor child;

(B) the original notice of intent to relocate and all notices of updated relocation information previously served; and

(C) a Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) affidavit in substantial conformity with Florida Supreme Court Approved Family Law Form 12.902(d).

(3) Additional Pleadings. Responsive pleadings and motions shall be served as provided by these rules.

(g) Hearings.

(1) Petition to Relocate with Minor Child. Either party may request a hearing on the initial or supplemental petition to relocate with minor child in accordance with these rules.

(2) No Objection to Notice of Intent to Relocate. If a timely objection to the notice of intent to relocate was not filed, the party seeking to relocate with the minor child may request a nonevidentiary hearing on the petition or supplemental petition at any time following service of the petition or supplemental petition to relocate with minor child.

(h) Temporary Orders on Relocation with Minor Child. The court may grant temporary relief restraining the relocation of a minor child, ordering the return of a minor child if a relocation has previously taken place, permitting or denying temporary relocation, or other remedial relief pending disposition at trial or final hearing.

(i) Notice of Withdrawal of Intent to Relocate. If the person seeking to relocate with the minor child decides to forgo the proposed relocation after serving the notice of intent to relocate, the person who served the notice of intent to relocate shall file with the court and contemporaneously serve on any other parent or person having residential responsibility for, or who is entitled to timesharing with, a minor child, a notice of withdrawal of intent to relocate. The notice of withdrawal of intent to relocate shall indicate the date of service of the certificate of service of notice of intent to relocate, and shall be served on all others required to receive notice if an action concerning the minor child is pending at the time the notice of withdrawal is to be served. If an action concerning the minor child is not pending at the time the notice of withdrawal is to be served, service shall be made by certified mail, restricted delivery, return receipt requested or according to Chapter 48 or 49, Florida Statutes.

APPENDIX D

Proposed rule	Reason for change
RULE 12.635 RELOCATION OF MINOR CHILD	Amended to provide procedural framework for section 61.13001, Florida Statutes.

(a) Application. This rule applies to all proceedings to relocate the principal residence of a minor child under section 61.13001, Florida Statutes.

(b) Relocation with Minor Child by Agreement of the Parties.

(1) If all persons who have residential responsibility for, or who are entitled to timesharing with, the minor child agree to the proposed relocation and sign an agreement that complies with section 61.13001(2), Florida Statutes, the person seeking to relocate with the minor child shall, before the relocation of the minor child, file with the court and serve on all parties to the agreement

(A) a copy of the agreement complying with section 61.13001(2), Florida Statutes, that permits relocation of the minor child, with a notice stating the date the agreement is being filed with the court and that if a hearing is not requested within 10 days of filing, then it shall be presumed that the relocation is in the best interest of the child and the court may ratify the agreement without an evidentiary hearing; and

(B) a Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit, in substantial conformity with Florida Supreme Court Approved Family Law Form 12.902(d).

(2) The parties shall obtain a judgment from the court permitting the relocation before the parent relocates with the minor child. The court may enter a supplemental final judgment ratifying the agreement without a motion or supplemental petition.

(3) If an agreement complying with section 61.13001(2), Florida Statutes, has been filed with the court, the person seeking to relocate does not need to serve a notice of intent to relocate with minor child or a certificate of service of notice of intent to relocate.

(4) If an agreement complying with section 61.13001(2), Florida Statutes, has been signed by all of the persons having residential responsibility for, or entitlement to timesharing with, the minor child, the proposed relocation is presumed to be in the child's best interests and the court may enter a judgment granting the relocation without an evidentiary hearing, unless one of the parties to the agreement requests an evidentiary hearing, in writing, within 10 days of the agreement being filed with the court.

(c) Notice of Intent to Relocate.

(1) Applicability. A notice of intent to

relocate is required for a parent or person having residential responsibility for, or who is entitled to timesharing with, a minor child who seeks to relocate the minor child's principal residence under section 61.13001, Florida Statutes, and who has been unable to otherwise procure relocation by agreement under section 61.13001(2)(a), Florida Statutes.

(2) Service of Notice of Intent to Relocate with Minor Child.

(A) A parent or other person having residential responsibility for, or who is entitled to timesharing with, a minor child who seeks to relocate the minor child's principal residence under section 61.13001, Florida Statutes, shall file with the court a certificate of service of notice of intent to relocate with minor child in substantial conformity with Florida Family Law Rules of Procedure Form 12.950(b). The notice of intent to relocate with minor child, prepared in substantial conformity with Florida Family Law Rules of Procedure Form 12.950(a), shall not be filed with the court with the certificate of service.

(B) The parent seeking to relocate with a minor child shall contemporaneously serve on the other parent and any other person who is entitled to timesharing with the minor child a copy of the notice of intent to relocate with minor child and a separate certificate of service of notice of intent to relocate prepared in substantial conformity with form 12.950(b), as follows:

(i) If an action concerning the

child is not pending with the court but is to be contemporaneously filed, or if an action concerning the child is not pending with the court but there is an existing judgment or decree concerning residential responsibility for the minor child, the copy of the notice of intent and the separate certificate of service shall be served by certified mail, restricted delivery, return receipt requested or according to Chapter 48 or 49, Florida Statutes.

(ii) If an action concerning the child is pending with the court, the copy of the notice of intent and the separate certificate of service shall be served in accordance with these rules.

(3) Duty to Update. A party required to give current and updated information by section 61.13001(3)(d), Florida Statutes, shall do so by filing with the court and serving on the other parent and any other person who is entitled to timesharing with the minor child a notice of updated relocation information providing the updated information required by section 61.13001(3)(d), Florida Statutes.

(d) Objection to Notice of Intent to Relocate. A person on whom a notice of intent to relocate is served may object to the proposed relocation, in writing, within 30 days of service of the notice of intent, by filing with the court and serving by mail on the party seeking relocation at the address indicated for service on the notice of intent an objection to notice of intent to relocate in substantial conformity with Florida Family Law Rules of Procedure Form 12.950(c).

(e) Waiver of Right to Object. Failure to timely file

an objection to the notice of intent to relocate waives that person's right to a hearing on the proposed relocation and the right to object to the proposed relocation. It shall be presumed that the relocation is in the child's best interests. An evidentiary hearing is not required to approve the proposed relocation if an objection is not timely filed.

(f) Pleadings.

(1) Applicability. This subdivision does not apply to relocation of a minor child by agreement of the parties under subdivision (b) of this rule.

(2) Filing and Service of Pleadings. At any time after an objection to the notice of intent to relocate is filed, or if no objection is timely filed, then after expiration of the period within which one may file a timely objection, but before relocating with the minor child, the person seeking to relocate shall file with the court and serve in accordance with these rules on all persons having residential responsibility for, or who are entitled to timesharing with, the minor child, the following:

(A) a petition to relocate minor child's principal residence if an action concerning the child is not pending with the court but is to be filed contemporaneously with the notice of intent to relocate, or a supplemental petition to relocate minor child's principal residence if an action concerning the child is not pending with the court, but there is an existing judgment or decree concerning residential responsibility for the minor child;

(B) the original notice of intent to

relocate and all notices of updated relocation information previously served; and

(C) a Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) affidavit in substantial conformity with Florida Supreme Court Approved Family Law Form 12.902(d).

(3) Additional Pleadings. Responsive pleadings and motions shall be served as provided by these rules.

(g) Hearings.

(1) Petition to Relocate with Minor Child. Either party may request a hearing on the initial or supplemental petition to relocate with minor child in accordance with these rules.

(2) No Objection to Notice of Intent to Relocate. If a timely objection to the notice of intent to relocate was not filed, the party seeking to relocate with the minor child may request a nonevidentiary hearing on the petition or supplemental petition at any time following service of the petition or supplemental petition to relocate with minor child.

(h) Temporary Orders on Relocation with Minor Child. The court may grant temporary relief restraining the relocation of a minor child, ordering the return of a minor child if a relocation has previously taken place, permitting or denying temporary relocation, or other remedial relief pending disposition at trial or final hearing.

(i) Notice of Withdrawal of Intent to Relocate. If the person seeking to relocate with the minor child decides to forgo the proposed relocation after serving the notice of intent to relocate, the person who served the notice of intent to relocate shall file with the court and contemporaneously serve on any other parent or person having residential responsibility for, or who is entitled to timesharing with, a minor child, a notice of withdrawal of intent to relocate. The notice of withdrawal of intent to relocate shall indicate the date of service of the certificate of service of notice of intent to relocate, and shall be served on all others required to receive notice if an action concerning the minor child is pending at the time the notice of withdrawal is to be served. If an action concerning the minor child is not pending at the time the notice of withdrawal is to be served, service shall be made by certified mail, restricted delivery, return receipt requested or according to Chapter 48 or 49, Florida Statutes.