

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO
THE FLORIDA FAMILY
LAW FORMS

CASE NO. SC08-2058

COMMENT OF THE FAMILY LAW SECTION OF THE FLORIDA BAR

THE FAMILY LAW SECTION OF THE FLORIDA BAR, by and through its Chair, Peter L. Gladstone, and the Co-Chair of its Rules and Forms Committee, Matthew B. Capstraw, hereby files this Comment of the Family Law Section of The Florida Bar to proposed Amendments to the Florida Family Law Forms and states:

A. POSITION

A Fast-Track Sub-Committee of the Rules and Forms Committee of the Family Law Section of The Florida Bar was appointed to consider matters requiring comment and/or action relating to proposed Amendments to Family Law Rules and Forms. As the committee was notified by Magistrate Keith that the forms attached to the Supreme Court decision were not the correct version, pursuant to her suggestion, the forms listed on the Supreme Court web page: http://www.flcourts.org/gen_public/family/forms_rules/index.shtml, were reviewed in the creation of this memo as a corrected opinion was not expected to be issued. The Sub-Committee reported to the Executive Council of the Family

Law Section on October 24, 2009, which voted to adopt and approve this Comment as that of the Family Law Section.

B. DISCUSSION OF CONCERNS AND RECOMMENDATIONS

Please note, comments are limited solely to the modifications made to the existing form by the Supreme Court Workgroup. Additional changes, corrections and modification are required for some forms but, if comments were made beyond the scope of the changes made by the Workgroup to deal with the 2008 Legislative changes, it would delay implementation of the revision of these forms to the detriment of the people of the State of Florida.

I. Areas of Agreement with the Florida Bar Family Law Rules Committee

The following are modifications which were also suggested by the Florida Bar Family Rules Committee that are supported and adopted by the Florida Bar Family Law Section. They are presented in the same format as submitted by the Family Laws Rules Committee to make review easier and hopefully lesson the work of the Workgroup:

Form 12.905(d), Supplemental Petition for Temporary Modification of Parenting Issues for Child(ren) of Parent Activated, Deployed, or Temporarily Assigned to Military Service.

The second paragraph of the instructions has been amended as follows:

This form should be typed or printed in black ink. After completing this form, you should sign the form before a **notary public** or **deputy clerk**. You should file the original with the **clerk of the circuit court** in the county where you live and keep a copy for your records. This form and these instructions do not apply to modification of temporary orders.

The committee believed that an explanatory sentence was needed to clarify that this form is not to be used to modify a temporary order in an ongoing case. The committee plans to develop a form for modification of temporary orders.

Form 12.947(b), Temporary Order of Support and Time-sharing with Dependent or Minor Child(ren).

The Committee proposes amending Section III, item 4, as follows:

- d. ~~_____ N _____~~ Mother _____ Father shall have **no contact** with the parties' minor child(ren) until further order of the Court, due to the existing conditions that are detrimental to the welfare of the minor child(ren): *{explain}*: _____

This paragraph originally applied only to the temporary secondary residential parent. As revised, it now applies to time-sharing with either parent. Therefore, a designation of which parent is being denied contact is needed.

An editorial correction has also been made in Section III, item 5:

5. ~~provider or other person entrusted by the other parent with the care of the child(ren) without~~ **Limitations on Time-sharing.** Neither parent shall take the child(ren) from the other parent or any child care ~~provider or other person entrusted by the other parent with the care of the child(ren)~~ without the agreement of the other party during the other party's time-sharing. The above time-sharing shall be:

[if applies]

- a. _____ **supervised by a responsible adult** who is mutually agreeable to the parties. If the parties cannot agree, the supervising adult shall be: *{name}* _____.
- b. _____ at a **supervised visitation** center located at: *{address}* _____, subject to the available times and rules of the supervised visitation center. The cost of such visits shall be paid

by () Mother () Father () Both.

Form 12.983(b), Answer to Petition to Determine Paternity and for Related Relief.

The Committee proposes amending the Parenting Plan paragraph in the “Special notes” section of the instructions to state:

Parenting Plan and Time-Sharing. If the parents are unable to agree on parenting arrangements and a time-sharing schedule, a judge will decide ~~for these issues~~ as part of establishing a Parenting Plan. ~~The judge will decide the parenting arrangements and time-sharing~~ based on the child(ren)’s best interests. Regardless of whether there is an agreement between the parties, the court reserves jurisdiction to modify issues relating to minor child(ren).

The paragraph as written was confusing and contained a grammatical error. The proposed revision clarifies it.

An editorial correction has also been made in paragraph 5 of the “Special notes” section to correct the name of the pleading (~~petition~~answer)

Form 12.995(a), Parenting Plan.

(1) The Committee proposes amending the second paragraph of the instructions as follows:

This form should be typed or printed in black ink. If an agreement has been reached, **both** parties must sign the Parenting Plan and have their signatures witnessed by a **notary public** or **deputy clerk**. After completing this form, you should **file** the original with the **clerk of the circuit court** in the county where the **petition** was filed and keep a copy for your records. You should then refer to the instructions for your petition, **answer**, or answer and **counterpetition** concerning the procedures for setting a hearing or **trial (final hearing)**. If an agreed Parenting Plan is not filed by the parties, the Court shall establish a Plan. If the parents have not reached an agreement, a proposed parenting plan may be filed by either party at any time prior to the final hearing.

This amendment clarifies, especially for *pro se* litigants, that either parent may unilaterally file a proposed Parenting Plan if agreement has not been reached.

A grammatical correction has been made in item 15 of the bulleted list of factors for the court to consider (division ~~of~~ of parental responsibilities).

(2) The Committee proposes amending Section IV, item 2. of the form as follows:

~~Unless otherwise specified in this plan, each parent shall make decisions regarding day-to-day care and control of each child, including the performance of daily tasks, while the child is with that parent.~~ Regardless of the allocation of decision making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child(ren) when the child is residing with that parent. A parent who makes an emergency decision shall share the decision with the other parent as soon as reasonably possible.

The “daily tasks” language conforms to *F.S. 61.13(2)(b)*.

(3) The Committee proposes amending Section V, first paragraph as follows:

~~Both parents~~ Unless otherwise prohibited by law, each parent shall have access to medical and school records and information pertaining to the child(ren) and shall be permitted to independently consult with any and all professionals involved with the child(ren). The parents shall cooperate with each other in sharing information related to the health, education, and welfare of the child(ren) and they shall sign any necessary documentation ensuring that both parents have access to said records.

Florida law provides protection to certain medical records of the children, such as psychiatric and psychological records. *See, e.g., Attorney ad Litem for D.K. v.*

Parents of D.K., 780 So. 2d 301 (Fla. 4th DCA 2001). Therefore, the committee believed the prefatory language was needed.

(4) In item XIV, the Committee proposes the following change:

This Parenting Plan may be modified or varied on a temporary basis when both parents agree in writing. When the parents do not agree, the Parenting Plan remains in effect until further order of the court. Temporary changes may be made informally without a written document. However, if the parties dispute the change, the Parenting Plan shall remain in effect.

Any substantial changes to the Parenting Plan must be sought through the filing of a supplemental petition for modification.

This change gives the parents some flexibility to make temporary changes (*e.g.*, who is picking the children up after school or soccer practice) by agreement but also provides a back-up mechanism should there be disagreements.

Form 12.995(b), Supervised/Safety-Focused Parenting Plan.

(1) The Committee proposes amending Section X, item 2, Communication, item 2, as follows:

- May call the child(ren) on the telephone ___ times per week. The call shall last no more than ___ minutes and shall take place between ___ m. and ___ m.
- Long distance telephone calls made by the child(ren) to a parent shall be paid for by ~~the parent receiving the call~~ _____.
Each parent shall provide a telephone number to the other parent, unless otherwise prohibited by court order.

This change makes it clear that the provision applies only to phone calls to parents. There is also no statutory basis for requiring a parent receiving a phone call from a child to automatically be the one to pay for it.

(2) In item XII, Children's Safety, the Committee proposes rewording a paragraph as follows:

- The following person(s) present a danger to the child(ren) ~~and shall not be present during time-sharing:~~ _____. Each parent shall ensure that during his/her time-sharing this/these person(s)
 - _____ will not be present
 - _____ will have no contact with the child(ren).

This change clarifies that not only may specified persons not be present during time-sharing but that they also may not contact the children (*e.g.*, by telephone or email) during that time. This change conforms to the definition of “No contact” in the glossary in “General Information for Self-Represented Litigants.”

A grammatical correction has been made in item 15 of the bulleted list of factors for the court to consider (division ~~of~~ parental responsibilities). A grammatical correction has also been made in Section X., item 2 (unless otherwise prohibited by court order.)

II. Areas of Disagreement with the Florida Bar

Family Law Rules Committee

The Family Law Section differs from the recommendations of the Florida Bar Family Law Rules Committee in the following areas:

Form 12.901(b)(1), Petition for Dissolution of Marriage with Dependent or Minor Child(ren).

The Family Law Rules Committee proposes amending the introductory portion of the form as follows:

5. A completed Family Law Financial Affidavit, Florida Family Law Rules of Procedure Form 12.902(b) or (c), [**v one** only] () is filed with this answer or () will be timely filed.

The Family Law Section believes that this provision would be better worded as follows:

5. A completed Family Law Financial Affidavit, Florida Family Law Rules of Procedure Form 12.902(b) or (c), [**v one** only] () is filed with this Petition as it requests child support be established or () will be timely filed.

The Family Law Section believes that this wording is more proper since the term ‘answer’ is clearly a scribner’s error as this form is a Petition, and the statement better represents the requirements of an affidavit when child support is being sought pursuant to Florida Statute 61.30 (14).

Form 12.902(d), Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit.

The Committee proposes amending the instructions to add a paragraph in the “Special notes” section as follows:

Chapter 2008-61, Laws of Florida, effective October 1, 2008, eliminated such terms as custodial parent, noncustodial parent, and visitation from Chapter 61, Florida Statutes. Instead, parents are to formulate a parenting plan that includes, among other things, their time-sharing schedule for their minor children. However, because the UCCJEA uses the terms custody and visitation, they are included in this form.

The Family Law Section concurs that a note should be added but suggests that the note be reworded as follows:

Chapter 2008-61, Laws of Florida, effective October 1, 2008, eliminated such terms as custodial parent, noncustodial parent, primary residential parent, secondary residential parent, and visitation from Chapter 61, Florida Statutes. Instead, parents are to formulate a parenting plan that includes, among other things, their time-sharing schedule for their minor children. If the parents cannot agree, a parenting plan will be established by the court. However, because the Uniform Child Custody Jurisdiction and Enforcement Act, as well as other states, uses the terms custody and visitation, they are included in this form.

The changes were made to include the terms “primary and secondary residential parents”, acknowledge that parenting plans are created by the court if the parents cannot agree, and to use the full title of the Uniform Child Custody Jurisdiction

and Enforcement act rather than the acronym which is not as familiar to the pro se parties for whom this form is intended.

Form 12.995(a), Parenting Plan.

Additional Comments of the Family Law Section related to this Form:

The Family Law Section is concerned that the following provision: “X. Designation for Other Legal Purposes” which requires the designation of the parent in which the minor child spends a majority of time would actually encourage the same litigation over the equivalent of the title of ‘primary residential parent’ that this legislation hoped to remove or reduce. If this paragraph is maintained, it should be rearranged so to make the last sentence the first and the first sentence the last, to wit:

“The designation does not affect either parent’s rights and responsibilities under this parenting plan. This majority designation is SOLELY for the purposes of all other state and federal laws which require such a designation. The child(ren) named in this Parenting Plan are scheduled to reside the majority of time with the [] Mother [] Father.”

This simple rearrangement of the sentences of the paragraph places a greater emphasis on the limitation language.

The Family Law Section respectfully requests that the Court amend the Supreme Court Approved Family Law Forms as indicated in these comments.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Comment was prepared in compliance with the applicable Florida Rules of Appellate Procedure and Administrative Orders of the Court regarding electronic filing; and font size and font type, utilizing Times New Roman font and a font size of 14.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the original and nine copies of the foregoing have been furnished to the Clerk of the Supreme Court; and that a true and correct copy of the foregoing has been furnished to The Hon. Magistrate Susan Keith, Marion County Judicial Center, 110 NW 1st Avenue, Room 567, Ocala, Florida 34475-6601; and to Jack A. Moring, Esquire, Moring & Moring, P.A. 7655 West Gulf to Lake Highway, Suite 12, Crystal River, Florida 34429, by U.S. mail this 13th day of November, 2009.

Respectfully submitted,

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