

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
RULES OF JUDICIAL ADMINISTRATION, THE
FLORIDA RULES OF CIVIL PROCEDURE, THE
FLORIDA RULES OF CRIMINAL PROCEDURE, THE
FLORIDA PROBATE RULES, THE FLORIDA RULES
OF TRAFFIC COURT, THE FLORIDA SMALL CLAIMS
RULES, THE FLORIDA RULES OF JUVENILE
PROCEDURE, AND THE FLORIDA RULES OF
APPELLATE PROCEDURE — EMAIL SERVICE
RULE**

CASE NO.: SC10-2101

COMMENTS OF FAMILY LAW RULES COMMITTEE

Steven P. Combs, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file these comments of the Family Law Rules Committee to proposed *Fla. R. Jud. Admin.* 2.516. The comments were approved by the committee by a vote of 24-0 and by the Executive Committee of The Florida Bar Board of Governors by a vote of 9-0.

Limited Appearance Proceedings. *Fla. Fam. L. R. P.* 12.040(f) provides: “During the attorney’s limited appearance, all pleadings or other documents and all notices of hearing *shall be served upon both the attorney and the party*” (emphasis added). On the other hand, *Rule* 2.516(b) provides: “When service is required or permitted to be made upon a party represented by an attorney, *service must be made upon the attorney unless service upon the party is ordered by the court*”

(emphasis added). It would appear that a court order would be required for a client/party to also be served in limited appearance proceedings.

The client/party is omitted in limited appearance cases elsewhere. There is no provision for a client/party represented by a limited appearance attorney to designate an email address for service. *Rule 2.516(b)(1)(C)* provides:

Any party not represented by an attorney may serve a designation of a primary email address and also may designate no more than two secondary email addresses to which service must be directed in that proceeding by the means provided in subdivision (b)(1) of this rule. If a party not represented by an attorney does not designate an email address for service in a proceeding, service on and by that party must be by the means provided in subdivision (b)(2) of this rule (emphasis added).

Likewise, there is no provision for a client/party represented by a limited appearance attorney to serve by mail or delivery. *Rule 2.516(b)(2)* states: “Service on and by all *parties who are not represented by an attorney* and who do not designate an email address, and on and by all attorneys excused from email service, must be made by delivering a copy of the document or by mailing it to the attorney at their last known address or, if no address is known, by leaving it with the clerk of the court” (emphasis added).

Service of Notice and Orders After Default. Another apparent conflict exists with service after default. Under *Rule 2.516(a)*: “No service need be made on parties against whom a default has been entered, except that pleadings asserting new or additional claims against them must be served in the manner provided for service of summons.” This is the language found in existing *Fla. R. Civ. P. 1.080*. *Rule 12.080(c)(2)* contains an exception to *Rule 1.080*: “Notice of final hearings or trials and court orders shall be served on defaulted parties.”

Service on Minors Above 15 Years of Age. In family law proceedings, it is generally recognized that children, even older children, should not be involved in the litigation between their parents. As *Rule 2.516(b)(2)(D)* is drafted, service of a document in a family law matter can be made by leaving it with a child, who is possibly the subject of hostile litigation between the child’s parents, as long as the child is “at the person’s usual place of abode” and “above 15 years of age.” The rule also requires that the child be informed of the contents of the document. A minor child should not be designated as a person who may be served with documents in family law litigation.

Family Law Rules Committee’s Suggested Amendments.

1. *Rule 2.516* should provide an exception for limited appearance situations under *Rule 12.040*. The uniqueness of limited appearance situations has been addressed by *Rule 2.505(f)(4)*, which provides for termination of limited

representation under *Rule* 12.040(c). Although it is preferable for *Rule* 2.516 to provide exceptions for certain family law matters to avoid potential conflict and confusion, the committee believes that *Rule* 2.516 does not prohibit the Florida Family Law Rules of Procedure from imposing the additional requirements contained in *Rule* 12.040.

2. Proposed changes pending in this case to *Rule* 12.080 will provide that service as set forth in *Rule* 2.516 shall also apply to service on the party during the party's limited appearance as required in *Rule* 12.040. Although it would be desirable for *Rule* 2.516(a) to be clearer, it provides that "no service need be made" and does not prohibit additional requirements. Another proposed change pending in this case to *Rule* 12.080(c) will provide that notice of final hearings or trials and court orders shall be served on defaulted parties as set forth in *Rule* 2.516.

3. It is the committee's opinion that *Rule* 2.516(b)(2)(D) should not apply in family law cases.

Respectfully submitted _____.

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CERTIFICATE OF SERVICE

I certify that a copy of these comments were provided by U.S. Mail on

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that this pleading was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

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