

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE FLORIDA
FAMILY LAW RULES OF PROCEDURE**

CASE NO.:

**OUT-OF CYCLE REPORT OF THE
FAMILY LAW RULES COMMITTEE;
AMENDMENTS IN RESPONSE TO AMENDMENTS
TO RULES OF CIVIL PROCEDURE**

Ashley J. McCorvey Myers, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this out-of cycle report under *Fla. R. Jud. Admin.* 2.140(e), in response to recent amendments to the Florida Rules of Civil Procedure. Because the Committee is currently at the end of its three-year cycle, it will be three years until these amendments can be made within the regular cycle.

In *In re Amendments to the Florida Rules of Civil Procedure*, 52 So. 3d 579 (Fla. 2010), the Court adopted three-year cycle amendments to the Florida Rules of Civil Procedure that became effective January 1, 2011. Since their original adoption in 1995, the Family Law Rules of Procedure have been closely aligned to the Rules of Civil Procedure. See, e.g., *Fla. Fam. L. R. P.* 12.020. In fact, amendments to the civil rules have been held to apply to the Family Law Rules even when there was no corresponding family law rule. *Wentworth v. Johnson*, 845 So. 2d 296 (Fla. 5th DCA 2003) (amendments to civil rules apply to family law rules by operation of *Rule* 12.020). Therefore, when amendments are made to the Rules of Civil Procedure, the Family Law Rules Committee reviews them to determine if amendments to the Family Law Rules of Procedure are necessary. The Family Law Rules Committee is submitting three new rules and one rule amendment in response to the civil rules amendments.

1. New *Fla. Fam. L. R. P.* 12.071 specifically incorporates the provisions of new *Fla. R. Civ. P.* 1.071, Constitutional Challenge to State Statute or County or Municipal Charter, Ordinance, or Franchise; Notice by Party, into the family law rules. The Committee believes that it is appropriate to include this rule in the family law rules.

2. New *Fla. Fam. L. R. P.* 12.287(a) specifically incorporates the provisions of new *Fla. R. Civ. P.* 1.285, Inadvertent Disclosure of Privileged Materials, into the family law rules. The new family law rule is numbered as *Rule*

12.285(a) because there is an existing *Rule* 12.285 (Mandatory Disclosure) in the family law rules. The Committee believes that it is appropriate to include this rule in the family law rules.

3. *Fla. Fam. L. R. P.* 12.340(a)(1) and (a)(2) have been amended to add a sentence stating that parties may serve fewer than the interrogatories set forth in *Forms* 12.930(b) and (c). This conforms to an amendment to *Fla. R. Civ. P.* 1.340(a). The Committee concurs with this new provision in the Civil Rules.

4. New *Fla. Fam. L. R. P.* 12.442 specifically provides that *Fla. R. Civ. P.* 1.442, Proposals for Settlement, shall not apply in proceedings governed by the Family Law Rules of Procedure. Proposals for settlement are not used and are not appropriate in cases governed by the Family Law Rules of Procedure. There currently is no *Rule* 12.442. The creation of this rule specifically excludes the application of *Fla. R. Civ. P.* 1.442 to family law proceedings.

The new and amended rules have been approved by both the Committee and The Florida Bar Board of Governors. Their voting records are found in Appendix A. Because this is an out-of-cycle amendment, it has not been published in The Florida Bar *News* or posted on the Bar's website for comment.

The rules are attached in both the full page (Appendix B) and two-column (Appendix C) formats.

The Family Law Rules Committee respectfully requests that the Court amend the Family Law Rules of Procedure as provided in this report.

Respectfully submitted _____.

ASHLEY J. MCCORVEY MYERS

Chair

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APPENDIX A

Voting Records

12.071	Constitutional Challenge to State Statute or County or Municipal Charter, Ordinance, or Franchise by Party	[NEW RULE]
	Committee vote: 22-0 Board of Governors vote: 25-0	
12.285(a)	Inadvertent Disclosure of Privileged Materials	[NEW RULE]
	Committee vote: 22-0 Board of Governors vote: 25-0	
12.340	Interrogatories to Parties	[AMENDED]
	Committee vote: 22-0 Board of Governors vote: 25-0	
12.442	Proposals for Settlement	[NEW RULE]
	Committee vote: 22-0 Board of Governors vote: 25-0	

APPENDIX B

**RULE 12.071. CONSTITUTIONAL CHALLENGE TO STATE
STATUTE OR COUNTY OR MUNICIPAL CHARTER,
ORDINANCE, OR FRANCHISE; NOTICE BY PARTY**

Constitutional challenges to a state statute or county or municipal charter, ordinance, or franchise, and the notice requirements of such challenges shall be governed by Florida Rule of Civil Procedure 1.071.

RULE 12.285(a) INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS

Inadvertent disclosure of privileged materials shall be governed by Florida Rule of Civil Procedure 1.285.

RULE 12.340. INTERROGATORIES TO PARTIES

Interrogatories to parties shall be governed generally by Florida Rule of Civil Procedure 1.340, with the following exceptions:

(a) Service of Interrogatories.

(1) Initial Interrogatories. Initial interrogatories to parties in original and enforcement actions shall be those set forth in Florida Family Law Rules of Procedure Form 12.930(b). Parties governed by the mandatory disclosure requirements of rule 12.285 may serve the interrogatories set forth in Florida Family Law Rules of Procedure Form 12.930(b) as set forth in rule 1.340. A party may serve fewer than the interrogatories set forth in Florida Family Law Rules of Procedure Form 12.930(b).

(2) Modification Interrogatories. Interrogatories to parties in cases involving modification of a final judgment shall be those set forth in Florida Family Law Rules of Procedure Form 12.930(c). Parties governed by the mandatory disclosure requirements of rule 12.285 may serve the interrogatories set forth in Florida Family Law Rules of Procedure Form 12.930(c) as set forth in rule 1.340. A party may serve fewer than the interrogatories set forth in Florida Family Law Rules of Procedure Form 12.930(c).

(b) Additional Interrogatories. Ten interrogatories, including subparts, may be sent to a party, in addition to the standard interrogatories contained in Florida Family Law Rules of Procedure Form 12.930(b) or Florida Family Law Rules of Procedure Form 12.930(c). A party must obtain permission of the court to send more than 10 additional interrogatories.

(c) Serving of Responses. Parties shall serve responses to interrogatories on the requesting party. Responses shall not be filed with the court unless they are admitted into evidence by the court and are in compliance with Florida Rule of Judicial Administration 2.425. The responding party shall file with the court Florida Family Law Rules of Procedure Form 12.930(d), Notice of Service of Answers to Standard Family Law Interrogatories.

Commentary

1995 Adoption. For parties governed under the disclosure requirements of rule 12.285(d) (income or expenses of \$50,000 or more), the answers to the interrogatories contained in Form 12.930(b) must be automatically served on the other party. For parties governed under the disclosure requirements of rule 12.285(c) (income and expenses under \$50,000), the service of the interrogatories contained in Form 12.930(b) is optional as provided in Florida Rule of Civil Procedure 1.340. Additionally, under this rule, 10 additional interrogatories, including subparts, may be submitted beyond those contained in Florida Family Law Rules of Procedure Form 12.930(b). Leave of court is required to exceed 10 additional interrogatories. The provisions of Florida Rule of Civil Procedure 1.340 are to govern the procedures and scope of the additional interrogatories.

Committee Note

1997 Amendment. The rule was amended to conform to the changes made to rule 12.285, Mandatory Disclosure.

RULE 12.442. PROPOSALS FOR SETTLEMENT

Florida Rule of Civil Procedure 1.442 shall not apply in proceedings governed by these rules.

APPENDIX C

APPX. C-1

Proposed rule

Reasons for change

RULE 12.071. **CONSTITUTIONAL CHALLENGE**
TO STATE STATUTE OR COUNTY
OR MUNICIPAL CHARTER,
ORDINANCE, OR
FRANCHISE; NOTICE BY PARTY

Constitutional challenges to a state statute or county or municipal charter, ordinance, or franchise, and the notice requirements of such challenges shall be governed by Florida Rule of Civil Procedure 1.071.

Incorporates into the Family Law Rules *Fla. R. Civ. P.* 1.071, as adopted by *In re Amendments to the Florida Rules of Civil Procedure*, 52 So. 3d 579 (Fla. 2010).

Proposed rule

Reasons for change

**RULE 12.285(a) INADVERTENT DISCLOSURE OF
PRIVILEGED MATERIALS**

Inadvertent disclosure of privileged materials shall be governed by Florida Rule of Civil Procedure 1.285.

Incorporates into the Family Law Rules *Fla. R. Civ. P.* 1.285, as adopted by *In re Amendments to the Florida Rules of Civil Procedure*, 52 So. 3d 579 (Fla. 2010).

Proposed rule

Reasons for change

RULE 12.340. INTERROGATORIES TO PARTIES

Interrogatories to parties shall be governed generally by Florida Rule of Civil Procedure 1.340, with the following exceptions:

(a) Service of Interrogatories.

(1) Initial Interrogatories. Initial interrogatories to parties in original and enforcement actions shall be those set forth in Florida Family Law Rules of Procedure Form 12.930(b). Parties governed by the mandatory disclosure requirements of rule 12.285 may serve the interrogatories set forth in Florida Family Law Rules of Procedure Form 12.930(b) as set forth in rule 1.340. A party may serve fewer than the interrogatories set forth in Florida Family Law Rules of Procedure Form 12.930(b).

Conforms rule to amendment to *Fla. R. Civ. P.* 1.340(a), in *In re Amendments to the Florida Rules of Civil Procedure*, 52 So. 3d 579 (Fla. 2010).

(2) Modification Interrogatories.

Interrogatories to parties in cases involving modification of a final judgment shall be those set forth in Florida Family Law Rules of Procedure Form 12.930(c). Parties governed by the mandatory disclosure requirements of rule 12.285 may serve the interrogatories set forth in Florida Family Law Rules of Procedure Form 12.930(c) as set forth in rule 1.340. A party may serve fewer than the interrogatories set forth in Florida Family Law Rules of Procedure Form 12.930(c).

Conforms rule to amendment to *Fla. R. Civ. P.* 1.340(a), in *In re Amendments to the Florida Rules of Civil Procedure*, 52 So. 3d 579 (Fla. 2010).

(b) [No change]

(c) [No change]

Commentary

[No change]

Committee Note

[No change]

Proposed rule

Reasons for change

RULE 12.442. PROPOSALS FOR SETTLEMENT

Florida Rule of Civil Procedure 1.442 shall not apply in proceedings governed by these Rules.

Provides that *Fla. R. Civ. P.* 1.442, Proposals for Settlement, shall not apply in proceedings under the Family Law Rules because such proposals are not appropriate in family law proceedings.

I certify that this out-of-cycle report has been prepared in conformance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

I certify that *Rule 12.340* was read against West's *Florida Rules of Court, Volume I – State*, 2011 Revised Edition.

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