

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: 14-

**THREE-YEAR CYCLE REPORT OF
THE FAMILYLAW RULES COMMITTEE**

Mary Lou Miller Wagstaff, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this three-year cycle report of the Family Law Rules Committee under Fla. R. Jud. Admin. 2.140(b)(1). All rules and forms were approved by the full committee and, as required by Rule 2.140(b)(2), by The Florida Bar Board of Governors. The voting records of the committee and the Board of Governors are found in the Table of Contents, Appendix A. As also required by Rule 2.140(b)(2), the proposed amendments were published for comment in the July 1, 2013, issue of *The Florida Bar News* and posted on The Florida Bar’s website. (*See* Appendix D.)

Two comments were received, one from the Family Law Section, and the other from Joe Lovelace, a general magistrate in the sixth judicial circuit. (*See* Appendix E). The Family Law Section made various suggestions, some grammatical corrections and revisions to rules 12.363 and 12.364, to conform the rules to section 61.20, Florida Statutes (Social investigations and recommendations regarding a parenting plan). The Committee voted to accept all of the Family Law Section recommendations as well taken. However, the Committee voted to reject Mr. Lovelace’s suggested change and to retain its original recommendation to add “specific” before “general magistrate” in the first sentence of rule 12.490(b)(3).

The amendments are attached in the full page (*see* Appendix B) and two-column (*see* Appendix C) formats. The reasons for the proposed amendments are as follows:

Rule 12.012, Minimization of Sensitive Information. In *In re: Implementation of Committee on Privacy and Court Records Recommendations — Amendments to the Florida Rules of Civil Procedure; the Florida Rules of Judicial Administration; the Florida Rules of Criminal Procedure; the Florida Probate Rules; the Florida Small Claims Rules; the Florida Rules of Appellate Procedure; and the Florida Family Law Rules of Procedure*, 78 So. 3d 1045 (Fla. 2011), n.31, the Supreme Court asked “the rules committees, as part of their regular-cycle

review, to conduct a thorough review of rules and forms not amended here to determine whether any of those rules or forms should to be amended to ensure consistency with the amendments we adopt here.”

A subcommittee was appointed to study the issue. Ultimately, the committee opted to adopt a new rule, patterned after Fla. R Civ. P. 1.020, adopted by this Court in the Civil Rules Committee’s three-year cycle report, *In re: Amendments to the Florida Rules of Civil Procedure*, 38 Fla. L. Weekly S836 (Fla. Nov. 14, 2013).

The new rule, placed at the beginning of the rules set brings to the practitioner’s attention the requirement that all filings and pleadings be in conformity with Fla. R. Jud. Admin. 2.415. Like the Civil Rules Committee, the Family Law Rules Committee believed that this was a more practical approach than adding the requirement to multiple rules.

Rule 12.070, Process. Raymond McNeal, a former member of the Committee, brought the need for this proposed amendment to the Committee’s attention. Mr. McNeal noted in his referral e-mail (*see* Appendix F), that in *In re Amendments to the Florida Family Law Rules of Procedure*, 84 So. 3d 257 (Fla. 2012), this Court amended Fla. Fam. L. R. P. Forms 12.913(a)(1), and 12.913(b)–(c), and added form 12.913(a)(2). These forms all relate to constructive service of process. The Court, however, denied the Committee’s request to amend rule 12.070 (Process), because of issues raised in the comment filed and at oral argument. As a result, existing rule 12.070(c)(2) does not refer parties in cases involving parental responsibility, custody, or time-sharing to the correct form. Mr. McNeal’s solution was to create a new subdivision (c)(2) regarding constructive service of process in a proceeding involving parental responsibility, custody, or time-sharing with a minor child, and to renumber existing subdivision (c)(2) to (c)(3).

The Committee agreed with Mr. McNeal’s assessment that an amendment was required and with his suggested remedy. Therefore, they propose amending *Rule 12.070* so that the rule refers to the correct forms.

Rule 12.200, Case Management and Pretrial Conferences. This amendment arose from the Committee’s review of the Civil Rules Committee’s electronic discovery case. *See In re: Amendments to the Florida Rules of Civil Procedure — Electronic Discovery*, 95 So. 3d 76 (Fla. 2012). In this case, Fla. R. Civ. P. 1.200(a)(5)–(a)(7) were created to allow consideration of discovery of electronically stored information at the case management conference. A Family

Law Rules Committee subcommittee recommended that Fla. Fam. L. R. P. 12.200 be amended to create a new subdivision (a)(1)(P), permitting the parties to raise these issues and the court to consider “any agreement, objections, or form of production of electronically stored information.” This amendment allows electronic discovery to be brought to the court’s attention early in the case and so that any conflicts can be resolved on a timely basis.

Rules 12.363, Evaluation of a Minor Child, and 12.364, Social Investigations. These amendments were proposed by then-Committee member William Grant III. Mr. Grant noted that there appeared to be a conflict between rule 12.363 and section 61.20, Florida Statutes, regarding the requirement for submission of a social investigation to the court. Rule 12.363(b)(1) provides that the expert is to send a written notice to the court that the report has been completed, while section 61.20(1), Florida Statutes, requires that the person conducting the social investigation furnish the court a written study and recommendations. As the subcommittee began studying the issue, they realized that there were additional discrepancies (see, *e.g.*, rule 12.363(a)(1) and section 61.20, Florida Statutes, regarding who may be examined). The subcommittee determined that a separate rule for social investigations under section 61.20, Florida Statutes, should be created and that rule 12.363 should be amended to differentiate it from social investigations and make clear that it governs only evaluations of a minor child.

Throughout Rule 12.363, “licensed mental health professional or” has been deleted so that the requirement is only for an “expert.” [Reason?] In subdivision (a)(1), the reference to conducting a home study or social investigation has been removed to conform to the addition of Rule 12.364 governing social investigations. The last sentence of (a)(1) has been amended to add that there be a determination of the need for an expert before the court appoints an expert. Subdivision (b)(1) has been amended to require that the expert’s report be provided to the party, rather than the attorney. In conformity with subdivision (b)(1), subdivision (d) has been amended to provide that prior notice of communication with the court be given to the parties and not their attorneys. In subdivision (e) a sentence requiring that the report not be considered by the court until it is properly admitted into evidence has been deleted. However, a requirement has been added in the fifth sentence of subdivision (e) requiring that the report be properly admitted into evidence and considered by the court before it is filed. A new subdivision (f) has been added stating that this rule shall not apply to parenting coordinators or social investigators. This was added because parenting coordinators (Rule 12.742) and social investigators (proposed Rule 12.364) have specific rules governing them.

Rule 12.364 is a new rule governing social investigations under section 61.20, Florida Statutes. The new rule provides in subdivision (a) that it is applicable only to social investigations under section 61.20, Florida Statutes, to differentiate it from rules 12.363 (Evaluation of a Minor Child) and 12.742 (Parenting Coordination). Subdivision (b) provides the requirements for appointment of a social investigator and the process to be used by the court in appointment an expert. Subdivision (c) provides general provisions for the order for social investigation, while subdivision (d) outlines the contents of the order. Subdivision (e) governs the written study of the social investigator. Subdivision (f) provides for a party to file a motion for an additional social investigation. Subdivision (g), similar to rule 12.363(b)(2) provides for production of the investigator's file to another investigator who may review it and testify.

Rule 12.490, General Magistrates. The suggestion to add “specific” before general magistrate in the first sentence of (b)(3) was made by then-member Steven Combs. It was reported to the committee that, despite form 12.920(b)'s requirement that the general magistrate be named, some jurisdictions are taking a referral to a general magistrate as a referral to any general magistrate in the jurisdiction. The committee believed that this practice is not consistent with the intent of the rule. The practice of considering a referral to be to all magistrates also makes it more difficult for parties to know if they should object to the referral, as some magistrates may be perceived as preferable. In subdivision (d)(3), papers has been changed to documents in accordance with e-filing and e-service.

Rule 12.491, Child Support Enforcement. In subdivision (e)(2) a cross-reference to Florida Rule of Judicial Administration 2.535 has been corrected. See *In re amendments to the Florida Rules of Civil Procedure, the Florida Rules of Judicial Administration, the Florida Rules of Criminal Procedure, the Florida Probate Rules, the Florida Small Claims Rules, the Florida Rules of Juvenile Procedure, the Florida Rules of Appellate Procedure, and the Florida Family Law Rules of Procedure —Electronic Filing*, 102 So. 3d 451, 473 (Fla. 2012), which added subdivision (f) and renumbered subsequent subdivisions in rule 2.535.

12.560, Discovery In Aid of Execution. Subdivision (e), Notice of Compliance, has been deleted. As stated in the Committee Note, the change has been made because a notice of compliance is unnecessary for the judgment creditor to seek relief from the court for noncompliance with this rule and because the Fact Information Sheet, which contains sensitive information, should not be filed with the clerk. The name of form 1.977 has been added for clarity in subdivision (b). A Committee Note has also been adopted to explain the amendment.

Form 12.901(a), Petition for Simplified Dissolution of Marriage. In *In re Implementation of Committee on Privacy and Court Records Recommendations — Amendments to the Florida Rules of Civil Procedure; the Florida Rules of Judicial Administration; the Florida Rules of Criminal Procedure; the Florida Probate Rules; the Florida Small Claims Rules; the Florida Rules of Appellate Procedure; and the Florida Family Law Rules Of Procedure*, 78 So. 3d 1045, 1074 (Fla. 2011), a new subdivision (c) was created in rule 12.285, exempting parties in a simplified dissolution of marriage under rule 12.105 from filing a financial affidavit if “they have no minor children, have no support issues, and have filed a written settlement agreement disposing of all financial issues, or if the court lacks jurisdiction to determine any financial issues.” Form 12.901(a), Petition for Simplified Dissolution of Marriage and its Instructions have been amended to remove the requirement of filing a financial affidavit consistent with rule 12.285(c).

In West’s *Florida Rules of Court – State* (2013 Revised ed.), some of the blank lines to provide information are missing. These include lines for identification of the notary or clerk and lines following “Type of identification produced.” The lines are missing in the last opinion amending this form. *See In re Amendments to the Florida Family Law Rules of Procedure*, 104 So. 3d 304 (Fla. 2012). They continue to be missing in intervening cases, but are found in *Amendments to the Florida Family Law Rules of Procedure and Family Law Forms*, 810 So. 2d 1, 82 (Fla. 2001). The blank lines should logically be there and are found in other forms. *See, e.g.*, Form 12.901(b)(1). The lines have been reinstated in the form.

Form 12.902(b), Family Law Financial Affidavit (Short Form).

Douglas Balog, an attorney nonmember of the Committee, proposed the addition of an instruction in Section II Average Monthly Expenses of Form 12.902(b). The request was sent to the Supreme Court and forwarded to the Committee by Thomas D. Hall, clerk. (*See* Appendix G.) The requested language stated that in a dissolution of marriage case if “your expenses as listed below do not reflect what you pay currently, you should write “estimate” next to each amount that is estimated.” Often, in dissolution cases, a party’s current expenses (for example, while still living in the marital home) are not the same as they will be post-dissolution (when the party is living elsewhere). This amendment requires the party to indicate which expenses are not actual, but are estimated for what they will be post-dissolution. This amendment will allow the court to better evaluate the party’s financial circumstances pre- and post-dissolution.

Form 12.902(c), Family Law Financial Affidavit (Long Form). Douglas Balog, an attorney nonmember of the Committee, proposed the addition of an instruction in Section II. Average Monthly Expenses of Form 12.902(b). (*See* Form 12.902(b) above.) The Committee made the change requested in form 12.902(b) and is making the same change in form 12.902(c) for consistency in the two form financial affidavits.

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

Respectfully submitted February 3, 2014.

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CERTIFICATE OF SERVICE

I certify that the following persons were served this document by e-mail on February 3, 2014.

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CERTIFICATE OF COMPLIANCE

I certify that these rules were read against West's *Florida Rules of Court – State* (2013 Revised Edition).

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

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