

## Family Law Rules Committee Agenda

Thursday, October 7, 2020 at 9:00 a.m.

### [Zoom Conference](#)

#### **I. Call to Order**

- Present: Mikalla Davis, Cory Brandfon, Ashley Taylor, Charis Campbell, Latoya Williams, Michael Andriano, Jeff Batistia, Helen Torres, Chrystal Martin, Adam Kohl, Nadja Prias, Koch, Sheena Benjamin Wise, TJ Bryant, Marck Joseph, Mary Lou Cuellar-Stilo, Rachel Butler, jash, C. Fran Corallo, Ramona Chaplin, Catherine Rodriguez, Robert Merlin, Adam Kohl, Susan Glaco, Judge Howard McGillin, Jeff Battista, Michael Tanner, Lisa Klienberg, Robert Walton, Matthew Capstraw, Mag. Goiran, Chrystal Martin Thorton, Judge Del Pino, Mark Sawicki
- Approval of August 2020 minutes: Motion- Bob Merlin, Second- Nadja Prias. Approved
- Approval of Agenda: Motion-Ashley Taylor, Second-Susan Giacoletto Approved
- Presentations from Steven Davis, Dori Foster-Morales, Michael Tanner and Gary Lester.

#### **II. Old Business (Second Reading First Vote)**

##### **A. Parties Appearance Simplified Dissolution**

Presenter: Latoya Shelton Williams

No changes to proposal. 2nd reading we can proceed to vote. Over quorum 19 yay, 1 nay, 1 abstain.

##### **B. SB590 Timesharing**

Presenter: Michael Andriano

No changes to proposal. 2nd reading we can proceed to vote. Issue is whether committee should adopt a statewide form to supersede admin order re: child support and timesharing. Susan Giacoletto raised questions regarding whether this form apply to married couples with admin cases. Ms. Giacoletto makes motion to send back to subcommittee for further consideration. Lisa Klienberg seconds the motion. Motion passes.

### **C. Child Support Guidelines- Low income and high income**

Presenter: T.J. Bryant

Up for 2nd reading, already passed 1<sup>st</sup> reading. Statutes does not provide guidance with regarding to low income that does not fall on table. Added sentence that states- "If parties combined net monthly income is not listed on the below chart then calculate child support as provide by law." TJ moves to approve. Several seconds. Cory moves for friendly amendment to add possessive. Passes 19 yay, one abstention.

### **D. Victim of Domestic Violence Confidential Address**

Presenter: Roberta Walton

Question about language in instructions. Several forms have the requirement to file a Motion if you have not been found to be a victim. Subcommittee asking to remove this language. Pursuant to RJA there is an option for them to file a Motion if they do not otherwise qualify for confidential address. Want to be uniform with language of RJA. Roberta Walton moves for accept of subcommittee recommendation, Michael Andriano seconds motion. 20 yay 0 opposed 0 obtaining. Motion passes.

## **III. Old Business (Status Reports)**

### **A. Review of the Financial Affidavit Forms**

Presenter: Cory Brandfon

3 aspects of this referral: (1) review of form (2) privacy option to jointly waive requirement of filing (3) recommendation that RJA adoption amendment explicitly making financial affidavit confidential. Passes in June then sent back to sub-committee for more work. Committee worked on form and passed a Joint Verified Notice of Waiving of Filing of Financial Affidavit and a standalone Child Support Affidavit with intention to create a committee note. There were recommendations that these instructions be looked at. As for RJA, many of the things made confidential are by statute, but not all. Working on presentation to RJA committee. Renewed request for committee members to review their section and provide commitments to Corey. Once this is done committee will vote on all proposed changes.

### **B. Email Designation for Pro Se Litigants Subcommittee**

Presenter: Romona Chaplin

Romona had to step away. Williams on Ramona's behalf there nothing additional to report at this time.

### **C. LGBTQ concerns**

Presenter: Mark Sawicki

May need to be a standing committee. There are new complicated issues coming up all the time. Committee is moving along. Corey added that may need to touch base with Florida Bar Section- Legis committee b/c one of priorities for 2021 was related to "two Dads" syndrome. Roberta maybe suggesting to provide assignments to do due diligence and maybe local bar subcommittees that we should reach out to. Get their concerns. Corey- Must get feedback and narrow issues committee is going to work on

### **D. 12.351- and 5-days rules opinion**

Presenter: Trisha Armstrong- not present

Corey presented. Created to make change to RJA to remove 5 days for email which RJA did away with. We needed to take a look at 12.351 to determine if we need to get rid of it to be consistent with RJA. Also rule is different in general (10 days vs. 15 days). Rule needs to be fixed.

## **E. Ex Parte Filings**

Presenter: Nadja Prias

RJA provided new rule to review. Are we making any changes or recommendations to 2.421 re: ex parte filings? How atty presents doc when moving for confidentiality of document that is not automatically confidential. Major flaw, there is no time limit. Needs to reconvene with subcommittee. Nadja to send an email to the entire committee for comments/suggestions.

## **F. 12.200(c) Pretrial Orders**

Presenter: Ashley Taylor

12.200(c) states “Order setting pretrial conferences must be uniform throughout the territorial jurisdiction of the Court”. Referral from Judge Pollick. Subcommittee met on this issue our decision, wanted to get input from the Judiciary because they may have a different perspective. Judge McGillin requests to be on subcommittee. He thinks that uniformity is not a bad idea. Judge Del Pino agrees only way for uniformity is for there to be one standard order. How are circuits handling this now? It was reported that in the 6<sup>th</sup> Circuit not everyone is using uniform pretrial order. 13<sup>th</sup> all division are pretty much using the same pretrial order. 7<sup>th</sup>, 4<sup>th</sup> 17<sup>th</sup> and 11<sup>th</sup> Circuits do have a standard order, however, every division in each circuit may not be using it. 9<sup>th</sup> circuit also has a standard order.

## **G. Covid-19 Issues**

Presenter: Michael Andriano/Marck Joseph

Subcommittee met and came up with short, mid and long term possible solutions. Short term option: setting up a CLE to get information out and to address pitfalls and practice suggestions as a short term option. Mid-term option: look at defining what an emergency is and look at the case law to possibly adopt a rule. Long term option: getting the Supreme Court to modify address emergency situations like hurricanes, etc. Possibly to include guidance in parenting plan. Planning on having monthly meetings. Present case to workgroup so that they can bring to Supreme Court. Corey

will ask Mike Tanner to join his COVID-19 task force to bring to the taskforce the work that is being done by this subcommittee.

## **H. Forms**

Presenter: Bob Merlin

Subcommittee to review form instructions. Making sure they are written consistently, making sure there are no typos. That they are consistent and make sense. Subcommittee going through them. Hopefully by next meeting they will have recommendations for amendments.

## **I. Appellate Children's Appearance**

Presenter: Cory Brandfon (currently no chair)

Rule changed a year ago, "except in case of emergency" was removed; "prior court order upon good cause shown" remains. Case recently out of 2<sup>nd</sup> Cir. where a child was brought to an appellate proceeding so Jack brought referral to change 12.407 to include that not only trial level, but appellate level as well. Robert Merlin said this is an appellate rule committee issue. Maybe we should have subcommittee to bring a propose amendment to appellate rules. Looking at scope of family rules does not mention appeals. Or maybe we should just forward the referral to RJA subcommittee. Sheena Benjamin-Wise agrees to chair the subcommittee. Ashley Taylor agrees to assist. Nadja Prias, Michael Andriano, TJ Bryant and Mag Williams ad hoc. Committee will work on a specific recommendation for RJA.

## **J. Mediation Post Judgments**

Presenter: Ashley Taylor

Referral from attorney in Tampa. We have a rule in Tampa to mediate all matters. This results in delays. For instance contempt- even if parties are in agreement enforcement will be another contempt they must attend mediation. It is being used as a delay tactic; it is being used by respondents to delay ruling. Looking at 12.471(b)(1) a party can petition the court for emergency relief at any time. Suggestion would be to allow person who does not want mediation to, under circumstances, petition the court and

for the court to rule ex parte to waive mediation. Second suggestion would be to do a form motion to waive mediation requirement. Goal is to get party an opportunity to bypass mediation when it is clear that mediation is not going to be fruitful. Argument to be made that it is unconstitutional to require mediation; does this amount to individuals being deny access to the court. Matthew Capstraw volunteered to help out subcommittee. .

### **K. Expert Interrogatories**

Presenter: Catherine Rodriguez

Should expert interrogatories be included in limit of 10 interrogatories? Thinks answer should be no. Forms are just for family. Maybe look at revising standard interrogatories. Catherine to set up subcommittee meeting.

## **IV. New Business**

### **A. Rule 12.530 “Defendant”**

Why does this rule use term “Defendant” when almost exclusive use “Respondent” and “Petitioner” throughout family law rules? 4 instances of use of the term “Defendant”. We need to review them. Subcommittee formed.

Latoya Williams will chair. Chrystal Martin Thorton, Michael Andriano. Helen Torres and Mary Lou Cuellar-Stilo members.

### **B. Open Discussion**

Emergency Motions. There are limited cases out there. Maybe we can add to rules since a procedural issue. What qualifies as an emergency for the scheduling of an emergency hearing? Gielchinsky v. Gielchinsky, 662 So.2<sup>nd</sup> 732. Smith v. Crider, 31 F.L.W. D1018. Subcommittee formed.

Roberta Walton, Ashley Taylor, Chrystal Martin Thornton, Michael Andriano. Helen Torres, Latoya, Charis Campbell, Judge Del Pino, and Catherine Rodriguez.

## V. Informational

### A. Supreme Court Update

Presenter: Mikalla Davis presented-

These are the items we have currently pending before the S. Ct. There is a lot of transition this term for the S. Ct., do not think that there will be a decision re: this in this term.

1. **2020 Regular Cycle Report** was filed on February 3, 2020 SC20-162. It was published for comment. One comment was received. A response to comment was filed on April 9, 2020.
2. **Service amendment to 12.080** was filed as a joint report on December 31, 2019 in SC19-2162. Rule published for comment and no comment received.
3. **Collaborative Law Amendments. SC19-1032.** Committee responded to all comments. Court accepted the case without oral argument.

### B. Comment received from Family Law Section

Fox v. Fox Rehearing 12.530/Rehearing Subcommittee

Presenter: Chair Cory Brandfon

Received comment from family law section. Gave alternative suggestions. Maybe reform a subcommittee pulling from different areas. Convene a new subcommittee pulling from different areas with the goal of it being a joint subcommittee. Michael agrees to chair. Sheena will co-chair. Adam, Najia, and Ashley.

### C. DIY Florida Test Phase Interpersonal Violence

Presenter: Chair Cory Brandfon

Various members were sent a link to be interviewed. Seemed like a good system for prose people to go on and create documents. Clerks have program called Turbo Court. Still time to complete interview today if you received email.

#### **D. Magistrate Rules and Form/ Recommended Orders and Disqualification of Magistrates**

Presenter: *Chair Cory Brandfon*

At last meeting we passed changes to 12.490 and 12.491 addressing issues with Magistrates, Judges and Hearings Officers. Made two rules consistent. Previously published 12.490 for comment in June of 2019, we received comments and family law section was to work on it. We ultimately approved it. In the meantime, for the 1<sup>st</sup> time, we made the corresponding changes to 12.491 and we now have to publish 12.491 for comment. We could just send up 12.490 but it would be out of context, if we just publish 12.491 it too will be out of context. Chair recommends we publish both together. Deadline for publication 10/13 in Bar news. Will be in the November edition. We may get comments. Will not go before Board of Governors until after we publish.

#### **E. Family Law Section Report**

Presenter: *Trisha Armstrong/Mark Sawicki*

Nothing to report.

#### **F. Judicial Administration Rules Committee Liaison Report.**

Presenter: *Bob Merlin*

Bob Merlin had to go.

### **V. Announcements**

**A. List of Active Members-** see page 63 of our materials

**B. Next Meeting Dates**

December 2, 2020 @ 12:00 p.m.-1:30 p.m.- Zoom

January 13, 2021 @ 9:00 a.m.-1:00 p.m.- TBD

March 10, 2021 @ 12:00 p.m.-1:30 p.m.

May 4, 2021 @ 12:00 p.m.-1:30 p.m.

June 23, 2021 @ 9:00 a.m.-1:30 p.m.