

## **Proposed amendments to Family Law Rules of Procedure 12.490 and 12.491, and Family Law Rules of Procedure Forms 12.920(a)-(c)**

The Florida Bar's Family Law Rules Committee (Committee) has submitted to the Florida Supreme Court a report proposing amendments to Family Law Rules of Procedure 12.490 and 12.491, and Family Law Rules of Procedure Forms 12.920(a)-(c). The proposed amendments align rules 12.490 and 12.491 and the accompanying forms so that hearings in front of magistrates are treated the same as those held in front of child support hearing officers.

The Court invites all interested persons to comment on the proposed amendments, which are summarized by the Committee below and reproduced in full online at <https://www.floridasupremecourt.org/Case-Information/Rules-Cases-Proposed-Amendments>. All comments must be filed with the Court on or before November 1, 2021, with a certificate of service verifying that a copy has been served on the Committee Chair, Ashley Elizabeth Taylor, PO Box 1531, Tampa, Florida 33601-1531, [aet@macfar.com](mailto:aet@macfar.com), and on the Bar Staff Liaison to the Committee, Mikalla Andies Davis, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, [midavis@floridabar.org](mailto:midavis@floridabar.org), as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until November 22, 2021, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

**IN THE SUPREME COURT OF FLORIDA  
 IN RE: AMENDMENTS TO FLORIDA FAMILY LAW RULES OF  
 PROCEDURE 12.490 AND 12.491, AND FORMS 12.920(a)-(c),  
 CASE NO. SC21-1171**

<b>Rule</b>	<b>Explanation</b>
<p>Rule 12.490.</p>	<p>Changes to Rule 12.490 (Magistrates) are made throughout to make the rule consistent with the requirements for hearings before a hearing officer (Rule 12.491).</p> <p>In subdivision (b), “reference” is replaced with “referral” in the subdivision title and the first sentence.</p> <p>In the first sentence of subdivision (b)(2), “shall” is changed to “must” twice for greater clarity for the reader.</p> <p>In the first paragraph of the bold, indented language in subdivision (b)(2), “made” is replaced by “filed” and “commencement of” is added for greater clarity.</p> <p>In the second paragraph of the bold indented language in subdivision (b)(2), deletes “report and recommendations” and replaces it with “recommended order” to match rule 12.491. Also, in that paragraph, deletes “shall” and replaces it with “must” for greater clarity for the reader and deletes “exceptions” and replaces it with “a motion to vacate” in the middle of the sentence for consistency with Rule 12.491. In addition, deletes “f” and replace it with “e” to correctly cite to</p>

12.490(e). Also, in this paragraph, deletes “may be” and replaces with “is” as transcription of the hearing is necessary for hearing in front of the general magistrate. Last, “exceptions” is replaced by “motion to vacate unless waived by order of the court prior to any hearing on the motion to vacate” for greater flexibility to the court.

In subdivision (b)(4), “reference” is replaced by “referral” to update the terminology.

In subdivision (c), replaces “shall” with “must” for greater clarity for the reader.

In subdivision (d)(1), “reference” is replaced by “referral” throughout the subdivision to update the terminology.

In subdivision (d)(1), “report” is replaced by “recommended order” to match Rule 12.491.

In subdivision (d)(3), “reference” is replaced by “referral” to update the terminology.

In the bold, indented paragraph of subdivision (d)(4), deletes “recommendation” and replaces it with “recommended order” for consistency with Rule 12.491. In addition, deletes “f” and replace it with “e” to correctly cite to 12.490(e). Also, in this paragraph, deletes “exceptions” and replaces it with “a motion to vacate” for consistency with Rule 12.491. In this paragraph, deletes “exceptions or your exceptions” and replaces it with “motion to vacate or your motion.”

Last, adds in the last sentence, “unless waived by order of the court prior to any hearing on the motion to vacate” for greater clarity.

Deletes existing subdivisions (e) and (f) as it is recommended that general magistrates complete recommended orders consistent with hearings in front of hearing officers in Rule 12.491.

Adds a new subdivision (e) regarding the requirements of the magistrate’s recommended order.

Renumbers the previous subdivision (g) as subdivision (f) to accommodate the deletions of two subdivisions and addition of a subdivision.

In the new subdivision (f), deletes “exceptions” and replaces it with “a motion to vacate” for consistency with Rule 12.491 throughout the subdivision. Also, in the subdivision, relocates the phrase “all depositions and documentary and other evidence presented at hearing” for greater clarity. At the end of subdivision (f)(1), adds an additional sentence regarding the ability to waive a transcript.

In the new subdivision (f)(2), adds a beginning phrase to the subdivision regarding the ability to waive a transcript. In the first sentence deletes “on exceptions” for consistency. In the second sentence, replaces

	<p>“prepared” with “furnished” for clarity of the terminology. Also in the second sentence of the subdivision, deletes “excepting” and replaces it with “moving”. Finally, the last sentence of the subdivision, deletes “exceptions” and replaces it with “motion to vacate.”</p>
<p>Rule 12.491</p>	<p>In subdivision (d), in the title and the subdivision, “referral” is replaced by “assignment” to update the terminology.</p> <p>In subdivision (e), a sentence is added to specify grounds for disqualifying hearing officers.</p> <p>In subdivision(e)(1), “assign” is replaced by “designate” for greater clarity.</p> <p>In subdivision (f), “refer” is replaced by “reassign” for greater clarity.</p>
<p>Forms 12.920 (a), (b), and (c).</p>	<p>In the first paragraph of the instructions, deletes “decisions” and replaces it with “orders” and deletes “recommendations” and replaces it with “recommended orders” to make the form instructions consistent with the proposed amendments to Rule 12.490, making hearings in front of magistrates consistent with hearings in front of a hearing officer.</p> <p>Also, in the first paragraph of the instruction, adds “and entered” and deletes “and are generally approved.”</p>

In the fourth paragraph of the instruction, deletes “the original” and replaces it with “these documents” for clarity when parties file electronically.

Adds a new section to the instructions regarding e-filing and e-service elections.

In the third paragraph of the “What should I do next?” section, deletes “the original” and replaces it with “this document” for clarity when parties file electronically.

In the Form 12.920(b) after “IT IS FURTHER ORDERED,” deletes “report and recommendations” and replaces it with “recommended order” to make it consistent with the proposed amendments to Rule 12.490, making hearings in front of magistrates consistent with hearings in front of a hearing officer.

In the second paragraph of boldface print, deletes “report and recommendations” and replaces it with “recommended order” consistent with the proposed amendments to Rule 12.490, making hearings in front of magistrates consistent with hearings in front of a hearing officer.

Also, in the second paragraph of boldface print, replaces “f” with “e,” replaces “may be” with “is,” and replaces “exceptions” with “the motion to vacate unless waived by order of the court prior to any hearing on the motion to vacate” and “a motion to vacate” to make it

consistent with the proposed amendments to Rule 12.490, making hearings in front of magistrates consistent with hearings in front of a hearing officer.

In the last paragraph of boldface print, deletes “report and recommendations” and replaces it with “recommended order and deletes “exceptions” three time and replaces it with “motion to vacate” and “a motion to vacate” in the paragraph to make it consistent with the proposed amendments to Rule 12.490, making hearings in front of magistrates consistent with hearings in front of a hearing officer. Also, in that paragraph, replaces “f” with “e” and adding “unless waived by order of the court prior to any hearing on the motion to vacate” to make consistent with the proposed amendments to Rule 12.490, making hearings in front of magistrates consistent with hearings in front of a hearing officer.

Also in Form 12.920(c), under “YOU ARE HEREBY ADVISED THAT IN THIS CIRCUIT” adds an option c to be consistent with Form 12.961.

In Form 12.920(c), in boldface type, adds language required by Turner v. Rogers, 564 U.S. 431 (2011), regarding the party’s ability to pay being a critical issue in contempt hearings.

Also in Form 12.920(c), after the ADA

required language, deletes “report and recommendations” and replaces it with “recommended order” and deletes “exceptions” and replaces it with “motion to vacate” and “a motion to vacate” in the paragraph to make it consistent with the proposed amendments to Rule 12.490, making hearings in front of magistrates consistent with hearings in front of a hearing officer. Also, in that paragraph, replaces “f” with “e” and deletes “if necessary” to make consistent with the proposed amendments to Rule 12.490, making hearings in front of magistrates consistent with hearings in front of a hearing officer.

Also in Form 12.920(c), under “YOU ARE HEREBY ADVISED THAT IN THIS CIRCUIT” adds an option c to be consistent with Form 12.961.