

## **Proposed amendments to Family Law Rules of Procedure 12.490 (General Magistrates) and 12.491 (Child Support Enforcement)**

The Family Law Rules Committee invites comments on the proposed amendment to rules 12.490 (General Magistrates) and 12.491 (Child Support Enforcement). In rule 12.490(e)(4) and rule 12.491(f), adds that a motion to vacate operates as a motion for rehearing under rule 12.530. Interested persons have until August 15, 2023, to submit any comments, electronically, to Hon. Howard Ogle McGillin, Chair of the Family Law Rules Committee, and bar staff liaison Kelly N. Smith at [ksmith@floridabar.org](mailto:ksmith@floridabar.org).

### **FLORIDA FAMILY LAW RULES OF PROCEDURE RULE 12.490. GENERAL MAGISTRATES**

**(a) General Magistrates.** [no change]

**(b) Referral**

(1) No matter ~~shall~~can be heard by a general magistrate without an appropriate order of referral and the consent to the referral of all parties. Consent, as defined in this rule, to a specific referral, once given, cannot be withdrawn without good cause shown before the hearing on the merits of the matter referred. Consent may be express or may be implied in accordance with the requirements of this rule.

(A) [no change]

(B) [no change]

(C) [no change]

(D) [no change]

(2) [no change]

(3) [no change]

(4) [no change]

**(c) General Powers and Duties.** [no change]

**(d) Hearings.** [no change]

**(e) Entry of Order and Relief from Order.**

(1) [no change]

(2) [no change]

(3) ~~Upon~~On receipt of a recommended order, the court must review the recommended order and must enter the order promptly unless the court finds that the recommended order is facially or legally deficient, in which case, it must identify the deficiency by written order and remand to the general magistrate to address and, if necessary, conduct further proceedings without the necessity of a new order of referral to general magistrate. Any party affected by the ~~recommended~~ order may move to vacate the ~~recommended~~ order by filing a motion to vacate within ~~10~~15 days from the date of entry. Any party may file a cross-motion to vacate within 5 days of service of a motion to vacate, provided, however, that the filing of a cross-motion to vacate ~~shall~~will not delay the hearing on the motion to vacate unless good cause is shown.

(4) A motion to vacate the order must be heard within 30 days from the date the motion is filed, unless the time frame is extended by court order. If applicable, a motion to vacate operates as a motion for rehearing under rule 12.530. Thereafter, the judge must enter an order rendering a ruling no later than 30 days after the hearing on the motion to vacate.

(5) The party seeking review ~~shall~~must seek to schedule a hearing date at the same time that the motion to vacate is filed with the court. Failure to seek a hearing date ~~in conformity herewith~~ may result in a denial of the motion to vacate.

(6) A timely filed motion to vacate stays the enforcement of the ~~recommended~~ order rendered by the court until

after the court has conducted a hearing on the motion to vacate and renders an order granting or denying the motion to vacate.

**(f) Record.** [no change]

### **Commentary**

[no change]

### **Committee Notes**

[no change]

## **RULE 12.491. CHILD SUPPORT ENFORCEMENT**

**(a) Limited Application.** This rule ~~shall be~~ effective only when specifically invoked by administrative order of the chief justice for use in a particular county or circuit.

**(b) Scope.** This rule ~~shall apply to~~applies when a party seeking support is receiving services pursuant to Title IV-D of the Social Security Act (42 U.S.C. §§ 651 et seq.) or on administrative order of the chief justice when a party is not receiving Title IV-D services in proceedings for:

(1) the establishment, enforcement, or modification of child support, ~~or~~ and

(2) the enforcement of any support order for the parent or other person entitled to receive child support in conjunction with an ongoing child support or child support arrearage order;

~~when a party seeking support is receiving services pursuant to Title IV-D of the Social Security Act (42 U.S.C. §§ 651 et seq.) and to non-Title IV-D proceedings upon administrative order of the chief justice.~~

**(c) Support Enforcement Hearing Officers.** The chief judge of each judicial circuit ~~shall~~must appoint such ~~number of~~ support

enforcement hearing officers for the circuit or any county within the circuit as ~~are~~ necessary to expeditiously perform the duties prescribed by this rule. A hearing officer ~~shall~~must be a member of The Florida Bar unless waived by the chief justice and ~~shall~~serves at the pleasure of the chief judge and a majority of the circuit judges in the circuit.

**(d) Assignment.** ~~Upon~~On the filing of a cause of action or other proceeding for the establishment, enforcement, or modification of support to which this rule applies, the court or clerk of the circuit court ~~shall~~must assign ~~such~~the proceedings to a support enforcement hearing officer, pursuant to procedures to be established by administrative order of the chief judge.

**(e) General Powers and Duties.** [no change]

**(f) Entry of Order and Relief from Order.** ~~Upon~~On receipt of a recommended order, the court ~~shall~~must review the recommended order and ~~shall~~ enter an order promptly unless good cause appears to amend the order, conduct further proceedings, or reassign the matter back to the hearing officer to conduct further proceedings. If a court reporter was present, the recommended order shall must contain the name and address of the reporter. If the hearing was recorded and the litigant did not utilize a court reporter, the order shall must contain information as to how a litigant can obtain a copy of the recording. Any party affected by the order may move to vacate the order by filing a motion to vacate within ~~10~~15 days from the date of entry. Any party may file a cross-motion to vacate within 5 days of service of a motion to vacate, provided, however, that the filing of a cross-motion to vacate ~~shall~~must not delay the hearing on the motion to vacate unless good cause is shown. If applicable, a motion to vacate operates as a motion for rehearing under Rule 12.530. A motion to vacate the order ~~shall~~must be heard within 10 days after the movant applies for hearing on the motion.

**(g) Modification of Order.** [no change]

**(h) Record.** [no change]

**Commentary**

[no change]

**Committee Note**

[no change]