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CITATIONS TO OPINIONS ADOPTING OR AMENDING RULES

ORIGINAL ADOPTION, effective 1-1-96: 663 So.2d 1049

OTHER OPINIONS:

Effective 1-1-96:	663 So.2d 1315.	Amended rules 12.280, 12.285.
Effective 2-1-96:	667 So.2d 202.	Amended form 12.901(a).
Effective 3-1-98:	713 So.2d 1.	Amended rules 12.070–12.080, 12.200, 12.285, 12.340, 12.491, 12.610; added rules 12.287, 12.363; replaced all forms and instructions.
Effective 7-1-98:	717 So.2d 914.	Amended forms 12.947(b), 12.948(b), 12.980(d)–(e), 12.983(a), 12.983(c), 12.983(g), 12.990(c)(1)–(c)(2), 12.993(a)–(c), 12.994(a)–(b).
Effective 1-1-99:	725 So.2d 365.	Added rule 12.750.
Effective 2-1-99:	723 So.2d 208.	Amended rules 12.080, 12.170, 12.285, 12.491, 12.610; added rules 12.365, 12.615; amended forms 12.901(d)–(e), 12.903(c), 12.932, 12.941(d), 12.980(b).
Effective 2-1-99:	746 So.2d 1073.	Amended rules 12.365, 12.610, 12.615.
Effective 7-1-99:	759 So.2d 583.	Amended forms 12.901(j), 12.920(c), 12.921, 12.943, 12.980(g), 12.980(j)–(k); deleted form 12.946(a); added forms 12.960–12.961.
Effective 5-25-00:	766 So.2d 999.	Added rule 12.650.
Effective 9-21-00:	810 So.2d 1.	Amended rules 12.000, 12.070, 12.105, 12.285, 12.287, 12.340, 12.490, 12.610, 12.750; added rule 12.015; replaced all forms and instructions.
Effective 1-1-01:	783 So.2d 937.	Amended rules 12.560, 12.610; amended forms 12.910(a), 12.930(b)–(c).
Effective 6-7-01:	816 So.2d 528.	Amended form 12.902(e).
Effective 12-6-01:	817 So.2d 721.	Amended forms 12.902(c)–(d), 12.941(e), 12.981(b).
Effective 3-28-02:	821 So.2d 263.	Amended and added forms 12.981(a)(1)–12.981(d)(2) (stepparent adoption).
Effective 5-30-02:	824 So.2d 95.	Amended rule 12.200, form 12.902(e).

Effective 10-3-02:	832 So.2d 684.	Amended forms 12.981(a)(2), 12.981(a)(5)–12.981(a)(7), 12.981(b)(1), 12.981(c)(1); added form 12.981(a)(8).
Effective 10-3-02:	833 So.2d 682.	Amended rule 12.200, form 12.902(e).
Effective 10-3-02:	830 So.2d 72.	Amended forms 12.980(a)–(b), (d)(1)–(f).
Effective 12-19-02:	836 So.2d 1019.	Amended forms 12.901(b)(1), 12.903(a)–(b), 12.903(c)(1), 12.903(e), 12.904(a), 12.905(a), 12.940(d), 12.941(a), 12.941(d)–(e), 12.947(a), 12.980(b), 12.980(d)(1), 12.980(e)(1), 12.980(k), 12.981(a)(1), 12.981(b)(1), 12.983(a)–(c).
Effective 5-1-03:	845 So.2d 174.	Amended rule 12.610.
Effective 5-15-03:	849 So.2d 1003.	Amended forms 12.980(a)–(n); added forms 12.980(o)–(s).
Effective 7-10-03:	853 So.2d 303.	Amended rules 12.200, 12.285, 12.490, 12.610, 12.750, forms 12.902(b)–(c), 12.930(a)–(c), 12.932.
Effective 1-1-04:	853 So.2d 303.	Amended rules 12.280, 12.340, 12.380, 12.400, 12.491, 12.615.
Effective 1-1-04:	860 So.2d 394.	Added rule 12.040.
Effective 3-25-04:	871 So.2d 113.	Amended forms 12.931(a)–(b); deleted form 12.980(a); amended and renumbered forms 12.980(a)–(p), (t)–(u); added forms 12.980(q)–(s).
Effective 3-25-04:	870 So.2d 791.	Deleted forms 12.981(a)(1), (a)(6)–(a)(7), (c)(3); amended and renumbered forms 12.981(a)(1)–(a)(5); added forms 12.981(a)(6)–(a)(7); amended forms 12.981(b)(1)–(c)(2).
Effective 7-8-04:	880 So.2d 579.	Amended forms 12.980(g)–(j), (q)–(s).
Effective 9-15-04:	883 So.2d 1285.	Amended rule 12.015; added forms 12.900(b)–(f).
Effective 10-1-04:	887 So.2d 1090.	Amended rules 12.015, 12.200, 12.490, 12.492; amended General Information, forms 12.920(a)–(c), 12.921, 12.923, 12.960–12.961.
Effective 11-24-04:	891 So.2d 1016.	Amended forms 12.982(a), (c), (f).
Effective 3-3-05:	897 So.2d 467.	Added rule 12.525.
Effective 6-2-05:	905 So.2d 865.	Amended rules 12.010, 12.070–12.080, 12.200, 12.285, 12.490, 12.492, 12.610, 12.740–12.741, 12.750.
Effective 6-30-05:	910 So.2d 194.	Amended forms 12.901(a)–(b)(3),

		12.904(a)–(b), 12.905(b)–(c), 12.913(1),12.983(a), General Information for Self-Represented Litigants; deleted form 12.902(a).
Effective 1-1-06:	915 So.2d 145.	Amended rule 12.741.
Effective 1-1-06:	913 So.2d 545.	Amended rule 12.285, form 12.932; deleted form 12.984.
Effective 2-9-06:	920 So.2d 1145.	Amended form 12.900(a).
Effective 9-28-06:	940 So.2d 409.	Amended forms 12.902(b), (c), (i).
Effective 7-12-07:	962 So.2d 302.	Amended rule 12.070; added forms 12.905(d), 12.913(c).
Effective 4-24-08:	981 So.2d 1189.	Amended forms 12.905(a), 12.913(c); deleted form 12.905(d).
Effective 7-10-08:	987 So.2d 65.	Amended rule 12.285, forms 12.930(b), 12.932.
Effective 10-16-08:	995 So.2d 445.	Amended rules 12.010, 12.200, 12.210, 12.363, 12.491, 12.610, 12.650, forms 12.900(b)–(c), 12.902(e), 12.930(b)–(c).
Effective 12-11-08:	997 So.2d 401.	Amended rule 12.010.
Effective 1-1-09:	995 So.2d 407.	Amended rules 12.015, 12.040, 12.310, 12.400–12.410, 12.490, 12.610, 12.650, 12.750, forms 12.930(c), 12.982(c), 12.982(f); added forms 12.900(g)–(h).
Effective 5-28-09:	15 So.3d 558.	Amended rule 12.100; added rule 12.201.
Effective 1-1-10:	15 So.3d 998.	Added form 12.928.
Effective 3-26-09:	20 So.3d 173.	Amended General information for self-represented Litigants; 12.901(b)(1), 12.902(d), (f)(1), 12.903(a)–(b), 12.940(d)–(e), 12.941(a)–(b), (d)–(e), 12.942(a)–(b), 12.943, 12.947(a)–(b), 12.960, 12.980(a), (c)(1), (d)(1), 12.981(a)(1), (b)(1), 12.983(a)–(c), (g), 12.990(b)(1), (c)(1), 12.993(a)–(b), (d), 12.994(a); added 12.905(d), 12.995(a)–(b).
Effective 9-3-09:	19 So.3d 950.	Amended rules 12.363, 12.650, forms 12.900(b)–(c), 12.930(b)–(c).
Effective 10-15-09:	30 So.3d 477.	Amended rules 12.015, 12.100.
Effective 1-1-10:	30 So.3d 477.	Amended form 12.928.
Effective 1-28-10:	27 So.3d 650.	Amended rule 12.015; added rule

		12.742, forms 12.984, 12.988.
Effective 3-4-10:	29 So.3d 227.	Amended rule 12.015; added forms 12.996(a)–(c).
Effective 6-24-10:	50 So.3d 547.	Amended forms 12.982(a), (c), (e).
Effective 9-30-10:	55 So.3d 381.	Amended rules 12.280, 12.650; added forms 12.950(a)–(j), 12.951(a)–(b), 12.995(c).
Effective 10-1-10:	48 So.3d 25.	Amended 12.996(a).
Effective 1-1-11:	48 So.3d 25.	Amended 12.902(e).
Effective 10-1-11:	80 So.3d 317.	Amended 12.105, 12.130, 12.280, 12.285, 12.287, 12.340, 12.363, 12.370, 12.410, 12.440, 12.540, 12.560, 12.620, forms 12.905(d), 12.943.
Effective 10-6-11:	75 So.3d 203.	Amended 12.010.
Effective 1-1-12:	84 So.3d 257.	Amended forms 12.913(a)(1), 12.913(b)-(c); added form 12.913(a)(2).
Effective 1-19-12:	80 So.3d 317.	Amended forms 12.902(e) and 12.932.
Effective 6-7-12:	93 So.3d 194.	Amended forms 12.980(a)-(u).
Effective 6-28-12:	94 So.3d 558.	Amended rule12.015; added form 12.996(d).
Effective 9-1-12:	102 So.3d 505.	Amended rules 12.040, 12.080-12.090, 12.170, 12.285, 12.361, 12,410, 12.330, 12.500, 12.611, 12.615, forms 12.900(b)-(h), 12.902(b)-(c), (e), 12.910(a), 12.915, 12.920(a)-(c), 12.930(a)-(c), 12.932, 12.996(b)-(c).
Effective 10-1-12:	95 So.3d 126.	Amended rules 12.010, 12.070, 12.080, 12.200, 12.285, 12.490, 12.492, 12.610, and 12.750.
Effective 10-1-12:	95 So.3d 96.	Amended rule 12.090.
Effective 10-4-12:	101 So.3d 360.	Added rules 12.071, 12.281, 12.442 and amended rule 12.340.
Effective 1-1-13:	104 So.3d 1043.	Amended rule 12.740.
Effective 4-1-13:	102 So.3d 451.	Amended rules 12.010, 12.040, 12.080, 12.200, added rule 12.025.
Effective 10-1-13:	102 So.3d 505.	Amended rules 12.010, 12.080, 12.090, 12.170, 12.285, 12.351, 12.410, 12.440, 12.510, 12.611, 12.615, 12.630.
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Effective 7-3-14:	142 So.3d 831.	Amended rule 12.742. Amended and

		renumbered forms 12.984(a), (b), (c), and (d).
Effective 10-1-14:	141 So.3d 1172.	Amended rule12.741.
Effective 1-1-15:	154 So.3d 301.	Amended rules 12.070, 12.200, 12.363, 12.490, 12.491, and 12.560. Adopted rules 12.012 and 12.364. Amended forms 12.901(a), 12.902(b), and 12.902(c).
Effective 03-16-17:	214 So.3d 400.	Amended rules 12.005, 12.010, 12.015, 12.020, 12.030, 12.050, 12.060,12.070, 12.071, 12.080, 12.090,12.100, 12.110, 12.120, 12.140, 12.150, 12.160, 12.170, 12.180, 12.190, 12.210, 12.230, 12.240, 12.250, 12. 260, 12.270, 12.280, 12.281, 12.285, 12.290, 12.300, 12.310, 12.320, 12.330, 12.340, 12.350, 12.351, 12.360, 12.365, 12.370, 12.380, 12.410, 12.420, 12.430, 12.431, 12.440, 12.450, 12.460, 12.470, 12.480, 12.500, 12.510, 12.530, 12.540, 12.550, 12.570, 12.580, 12.590, 12.60012.620, 12.625, 12.630, and Forms 12.910 (a), 12.911(a), 12.911(b),12.911(c), 12.911(d),12.911(e), 12.930(a), 12.930(b), 12.930(c),12.930 (d), 12.975, and 12.999. Deleted Rule 12 .201, 12.442, 12.481, and 12.525, Adopted rule 12.605
Effective 07-01-17:	218 So.3d 440.	Adopted 12.745
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Effective 10-28-21:	344 So.3d 940.	Amended 12.003, 12.007, 12.010, 12.012, 12.015, 12.025, 12.030, 12.090, 12.130, 12.270, 12.280, 12.285, 12.310, 12.340, 12.350, 12.351, 12.363, 12.370, 12.400, 12.440, 12.4501, 12.460, 12.540, 12.610, 12.615, 12.620, 12.650, 12.745, 12.750
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Effective 7-14-22:	346 So.3d 1100.	Amended 12.340
Effective 8-25-22:	SC22-756	Amended 12.530
Effective 10-1-22:	47 Fla. L. Weekly S188	Amended 12.310, 12.320, 12.407, 12.410, 12.430, 12.440, and 12.740. Deleted 12.451.
Effective 10-24-22:	AOSC22-78	Style changed throughout to comply with the updated guidelines
Effective 4-27-23:	SC22-756	Amended Rule 12.530(a)
Effective 10-1-23:	SC23-0434	Amended Rules 12.070, 12.280, and 12.340
10-19-23:	SC22-756	Revised opinion amended Rule 12.530(a)
7-1-2024	SC23-1472	Amended Rules 12.400, 12.470, 12.490, 12.491, and 12.740

RULE 12.000. PREFACE

These rules consist of two separate sections. Section I contains the procedural rules governing family law matters and their commentary. Section II contains forms.

Commentary

1995 Adoption. These rules were adopted after the Florida Supreme Court determined that separate rules for family court procedure were necessary. *See In re Florida R. Fam. Ct. P.*, 607 So.2d 396 (Fla. 1992). The court recognized that family law cases are different from other civil matters, emphasizing that the 1993 creation of family divisions in the circuit courts underscored the differences between family law matters and other civil matters. In adopting the family law rules, the Court stressed the need for simplicity due to the large number of pro se litigants (parties without counsel) in family law matters. In an effort to assist the many pro se litigants in this field, the Court has included simplified forms and instructional commentary in these rules. *See* Section II. The instructional commentary to the forms refers to these rules or the Florida Rules of Civil Procedure, where applicable.

The forms originally were adopted by the Court pursuant to *Family Law Rules of Procedure*, No. 84,337 (Fla. July 7, 1995*); In re Petition for Approval of Forms Pursuant to Rule 10-1.1(b) of the Rules Regulating the Florida Bar—Stepparent Adoption Forms*, 613 So.2d 900 (Fla. 1992); *Rules Regulating the Florida Bar—Approval of Forms*, 581 So.2d 902 (Fla. 1991).

SECTION I
FAMILY LAW RULES OF PROCEDURE

RULE 12.003. COORDINATION OF RELATED FAMILY CASES AND HEARINGS

(a) Assignment to One Judge.

(1) All related family cases must be handled before one judge unless impractical.

(2) If it is impractical for one judge to handle all related family cases, the judges assigned to hear the related cases involving the same family and/or children may confer for the purpose of case management and coordination of the cases. Notice and communication shall comply with Canon 3.B.(7) of the Code of Judicial Conduct. The party who filed the notice of related cases or the court may coordinate a case management conference under rule 12.200 between the parties and the judges hearing the related cases. In addition to the issues that may be considered, the court shall:

(A) consolidate as many issues as is practical to be heard by one judge;

(B) coordinate the progress of the remaining issues to facilitate the resolution of the pending actions and to avoid inconsistent rulings;

(C) determine the attendance or participation of any minor child in the proceedings if the related cases include a juvenile action; and

(D) determine the access of the parties to court records if a related case is confidential pursuant to Florida Rule of General Practice and Judicial Administration 2.420.

(b) Joint Hearings or Trials.

(1) The court may order joint hearings or trials of any issues in related family cases.

(2) For joint or coordinated hearings, notice to all parties and to all attorneys of record in each related case shall be provided by the court, the moving party, or other party as ordered by the court, regardless of whether or not the party providing notice is a party in every case number that will be called for hearing.

RULE 12.004. JUDICIAL ACCESS AND REVIEW OF RELATED FAMILY FILES

(a) In General. A judge hearing a family case may access and review the files of any related case either pending or closed, to aid in carrying out his or her adjudicative responsibilities. Authorized court staff and personnel may also access and review the file of any related case.

(b) Family Case Defined. For purposes of this rule, a related family case is another pending or closed case separate from the pending case, as defined in Rule of Judicial Administration 2.545(d).

(c) Nondisclosure of Confidential Information. Judges or authorized court personnel shall not disclose confidential information and documents contained in related case files except in accordance with applicable state and federal confidentiality laws.

(d) Notice by Court Staff. Authorized court staff may advise the court about the existence of related legal proceedings, the legal issues involved, and administrative information about such cases.

RULE 12.005. TRANSITION RULE

These rules apply to all family law cases as of March 16, 2017. Any action taken in a family law case before March 16, 2017, that conformed to the then-effective rules or statutes governing family law cases, will be regarded as valid during the pendency of the litigation.

Commentary

1995 Adoption. This rule provides for an effective date of January 1, 1996, for these Florida Family Law Rules of Procedure. Under this rule, any action taken in a family law matter before January 1, 1996, will be regarded as valid during the pendency of the litigation so long as that action was taken in accordance with the then-effective rules or statutes governing family law cases. Any

action taken after January 1, 1996, in new or pending family law cases will be governed by these rules.

RULE 12.006. FILING COPIES OF ORDERS IN RELATED FAMILY CASES

The court may file copies of court orders in related family cases involving the same parties. All relevant case numbers should be placed on the order and a separate copy placed in each related case file.

RULE 12.007. ACCESS AND REVIEW OF RELATED FAMILY FILES BY PARTIES

(a) In General. Access to confidential files in related cases shall not be granted except as authorized by Florida Rule of General Practice and Judicial Administration 2.420.

(b) Confidentiality of Address. When a petitioner for domestic violence injunction requests that his or her address be kept confidential pursuant to section 741.30, Florida Statutes, this information is exempt from the public records provisions of section 119.07(1), Florida Statutes and article I, section 24(a), Florida Constitution, and is a confidential court record under Rule of General Practice and Judicial Administration 2.420(d). Persons with authorized access to confidential information shall develop methods to ensure that the address remains confidential as provided by law.

(c) Disclosure Prohibited. Disclosure by parties of confidential information and documents contained in court files for related family cases, except in accordance with applicable state and federal confidentiality statutes, is prohibited.

RULE 12.010. SCOPE, PURPOSE, AND TITLE

(a) Scope.

(1) These rules apply to all actions concerning family matters, including injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking, except as

otherwise provided by the Florida Rules of Juvenile Procedure or the Florida Probate Rules. “Family matters,” “family law matters,” or “family law cases” as used within these rules include, but are not limited to, matters arising from dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, an action involving a parenting plan for a minor child or children (except as otherwise provided by the Florida Rules of Juvenile Procedure), proceedings for temporary or concurrent custody of minor children by extended family, adoption, proceedings for emancipation of a minor, declaratory judgment actions related to premarital, marital, or postmarital agreements (except as otherwise provided, when applicable, by the Florida Probate Rules), injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking, and all proceedings for modification, enforcement, and civil contempt of these actions.

(2) The form, content, procedure, and time for pleading in all proceedings shall be as prescribed by the statutes governing the proceeding unless these rules or the Florida Rules of General Practice and Judicial Administration, where applicable, specifically provide to the contrary. All actions under these rules shall also be governed by the Florida Evidence Code, which applies in cases where a conflict with these rules may occur.

(b) Purpose.

(1) These rules are intended to facilitate access to the court and to provide procedural fairness to all parties, to save time and expense through active case management, setting timetables, and the use of alternatives to litigation, and to enable the court to coordinate related cases and proceedings to avoid multiple appearances by the same parties on the same or similar issues and to avoid inconsistent court orders.

(2) Nothing shall prohibit any intake personnel in family law divisions from assisting in the preparation of documents or forms to be filed in any action under these rules.

(c) Title. These rules shall be known as the Florida Family Law Rules of Procedure and abbreviated as Fla. Fam. L. R. P.

RULE 12.012. MINIMIZATION OF SENSITIVE INFORMATION

Every pleading or other document filed with the court shall comply with Florida Rule of General Practice and Judicial Administration 2.425, Minimization of the Filing of Sensitive Information.

RULE 12.015. FAMILY LAW FORMS

(a) Forms Adopted as Rules. The forms listed in this rule shall be adopted by the rulemaking process in Florida Rule of General Practice and Judicial Administration 2.140. The Family Law Rules Committee of The Florida Bar may propose amendments to these forms and any associated instructions. These forms shall be designated "Florida Family Law Rules of Procedure Forms." Forms coming under this provision are:

(1) 12.900(a), Disclosure From Nonlawyer;

(2) 12.900(b), Notice of Limited Appearance;

(3) 12.900(c), Consent to Limited Appearance by Attorney;

(4) 12.900(d), Termination of Limited Appearance;

(5) 12.900(e), Acknowledgment of Assistance by Attorney;

(6) 12.900(f), Signature Block for Attorney Making Limited Appearance;

(7) 12.900(g), Agreement Limiting Representation;

(8) 12.900(h), Notice of Related Cases;

(9) 12.901(a), Petition for Simplified Dissolution of Marriage;

(10) 12.902(b), Family Law Financial Affidavit (Short Form);

(11) 12.902(c), Family Law Financial Affidavit (Long Form);

(12) 12.902(e), Notice of Filing Child Support Guidelines Worksheet;

(13) 12.902(f)(3), Marital Settlement Agreement for Simplified Dissolution of Marriage;

(14) 12.910(a), Summons: Personal Service on an Individual;

(15) 12.911(a), Subpoena for Hearing or Trial (Issued by Clerk);

(16) 12.911(b), Subpoena for Hearing or Trial (Issued by Attorney);

(17) 12.911(c), Subpoena Duces Tecum for Hearing or Trial (Issued by Clerk);

(18) 12.911(d), Subpoena Duces Tecum for Hearing or Trial (Issued by Attorney);

(19) 12.911(e), Subpoena for Deposition (Issued by Clerk);

(20) 12.913(b), Affidavit of Diligent Search and Inquiry;

(21) 12.913(c), Affidavit of Diligent Search;

(22) 12.920(a), Motion for Referral to General Magistrate;

(23) 12.920(b), Order of Referral to General Magistrate;

(24) 12.920(c), Notice of Hearing Before General Magistrate;

(25) 12.928, Cover Sheet for Family Court Cases;

(26) 12.930(a), Notice of Service of Standard Family Law Interrogatories;

(27) 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings;

(28) 12.930(c), Standard Family Law Interrogatories for Modification Proceedings;

(29) 12.930(d), Notice of Service of Answers to Standard Family Law Interrogatories;

(30) 12.932, Certificate of Compliance with Mandatory Disclosure;

(31) 12.975, Notice of Compliance When Constitutional Challenge is Brought;

(32) 12.984(a), Order of Referral to Parenting Coordinator;

(33) 12.984(b), Response by Parenting Coordinator;

(34) 12.984(c), Parenting Coordinator Report of an Emergency;

(35) 12.984(d), Parenting Coordinator Request for Status Conference;

(36) 12.990(a), Final Judgment of Simplified Dissolution of Marriage;

(37) 12.996(a), Income Deduction Order (Non-Title IV-D);

(38) 12.996(b), Notice to Payor;

(39) 12.996(c), Notice of Filing Return Receipt;

(40) 12.996(d), Florida Addendum to Income Withholding Order; and

(41) 12.999, Final Disposition Form.

(b) Other Family Law Forms. All additional Supreme Court approved forms shall be adopted by opinion of the Supreme Court of Florida and outside of the rulemaking procedures required by rule 2.140. These forms shall be designated "Florida Supreme Court Approved Family Law Forms."

Commentary

2000 Adoption. To help the many people in family law court cases who do not have attorneys to represent them (pro se litigants), the Florida Supreme Court added simplified forms and directions to the Florida Family Law Rules of Procedure when adopting the rules in 1995. These forms initially had been adopted by the Court in *In re Family Law Rules of Procedure*, 663 So.2d 1049 (Fla. 1995); *In re Petition for Approval of Forms Pursuant to Rule 10-1.1(b) of the Rules Regulating the Florida Bar—Stepparent Adoption Forms*, 613 So.2d 900 (Fla. 1992), and *Rules Regulating The Florida Bar—Approval of Forms*, 581 So.2d 902 (Fla. 1991).

In 1997, in an effort to fulfill the spirit of the Court's directives to simplify the process of litigation in family law matters, the Family Court Steering Committee completely revised the existing forms and added new forms and instructions. The rules and forms then constituted more than 500 pages.

Subdivision (b) of this rule was adopted in recognition that the forms would require continuous updating and that the rulemaking process was too cumbersome for such an undertaking.

2009 Amendment. In 2009, Subdivision (a)(20) was adopted to require the filing of a Cover Sheet for Family Court Cases, Form 12.928, in every proceeding to which the Florida Family Law Rules of Procedure apply and to require the Family Law Rules Committee to be responsible for proposing amendments as necessary.

RULE 12.020. DEFINITIONS

For definitions of family law terms found in these rules, refer to the Family Law Glossary of Common Terms and Definitions

contained in the General Information for Self-Represented Litigants located at www.flcourts.org.

RULE 12.025 APPLICABILITY OF RULES OF GENERAL PRACTICE AND JUDICIAL ADMINISTRATION

(a) Electronic Filing. Florida Rules of General Practice and Judicial Administration 2.520 and 2.525 are applicable in all family law matters except as otherwise provided in these rules.

(b) Exceptions. Any document filed pursuant to any proceeding under Chapter 63, Florida Statutes, which may be relied upon by the court to terminate parental rights, including consent for adoption or affidavit of nonpaternity, shall be exempt from the requirements of Rule of General Practice and Judicial Administration 2.525(c).

RULE 12.030. VERIFICATION OF PLEADINGS

Except as otherwise provided in these rules, verification of pleadings shall be governed by the Florida Rules of General Practice and Judicial Administration or applicable statute.

RULE 12.040. ATTORNEYS

(a) Limited Appearance. An attorney of record for a party, in a family law matter governed by these rules, shall be the attorney of record throughout the same family law matter, unless at the time of appearance the attorney files a notice, signed by the party, specifically limiting the attorney's appearance only to the particular proceeding or matter in which the attorney appears.

(b) Withdrawal or Limiting Appearance.

(1) Prior to the completion of a family law matter or prior to the completion of a limited appearance, an attorney of record, with approval of the court, may withdraw or partially withdraw, thereby limiting the scope of the attorney's original appearance to a particular proceeding or matter. A motion setting

forth the reasons must be filed with the court and served upon the client and interested persons.

(2) The attorney shall remain attorney of record until such time as the court enters an order, except as set forth in subdivision (c) below.

(c) Scope of Representation.

(1) If an attorney appears of record for a particular limited proceeding or matter, as provided by this rule, that attorney shall be deemed "of record" for only that particular proceeding or matter. Any notice of limited appearance filed shall include the name, address, e-mail address(es), and telephone number of the attorney and the name, address, and telephone number of the party. If the party designates e-mail address(es) for service on and by that party, the party's e-mail address(es) shall also be included. At the conclusion of such proceeding or matter, the attorney's role terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. The notice, which shall be titled "Termination of Limited Appearance," shall include the names and last known addresses of the person(s) represented by the withdrawing attorney.

(2) An attorney for the State's Title IV-D child support enforcement agency who appears in a family law matter governed by these rules shall file a notice informing the recipient of Title IV-D services and other parties to the case that the IV-D attorney represents only the Title IV-D agency and not the recipient of IV-D services. The notice must state that the IV-D attorney may only address issues concerning determination of paternity, and establishment, modification, and enforcement of support obligations. The notice may be incorporated into a pleading, motion, or other document filed with the court when the attorney first appears.

(d) Preparation of Pleadings or Other Documents. A party who files a pleading or other document of record pro se with the assistance of an attorney shall certify that the party has received assistance from an attorney in the preparation of the pleading or

other document. The name, address, and telephone number of the party shall appear on all pleadings or other documents filed with the court. If the party designates e-mail address(es) for service on and by that party, the party's e-mail address(es) shall also be included.

(e) Notice of Limited Appearance. Any pleading or other document filed by a limited appearance attorney shall state in bold type on the signature page of that pleading or other document: "Attorney for [Petitioner] [Respondent] [attorney's address, e-mail address(es), and telephone number] for the limited purpose of [matter or proceeding]" to be followed by the name of the petitioner or respondent represented and the current address and telephone number of that party. If the party designates e-mail address(es) for service on and by that party, the party's e-mail address(es) shall also be included.

(f) Service. During the attorney's limited appearance, all pleadings or other documents and all notices of hearing shall be served upon both the attorney and the party. If the attorney receives notice of a hearing that is not within the scope of the limited representation, the attorney shall notify the court and the opposing party that the attorney will not attend the court proceeding or hearing because it is outside the scope of the representation.

Committee Notes

2012 Amendment. Subdivisions (c), (d), and (e) are amended to provide e-mail addresses in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.050. WHEN ACTION COMMENCED

Every family law matter shall be deemed commenced when the petition is filed, except that ancillary proceedings shall be deemed commenced when the writ is issued or the pleading setting forth the claim of the party initiating the action is filed.

RULE 12.060. TRANSFERS OF ACTIONS

(a) Transfers of Courts. If it should appear at any time that an action is pending in the wrong court of any county, it may be transferred to the proper court within the county by the same method as provided by Florida law.

(b) Wrong Venue. When any action is filed placing venue in the wrong county, the court may transfer the action in the manner provided by Florida law to the proper court in any county in which it might have been brought in accordance with the venue statutes. When the venue might have been placed in 2 or more counties, the person bringing the action may select the county to which the action is transferred. If no such selection is made, the matter shall be determined by the court.

(c) Method. The service charge of the clerk of the court to which an action is transferred under this rule must be paid by the party who commenced the action within 30 days from the date the order of transfer is entered, subject to taxation as provided by law when the action is determined. If the service charge is not paid within the 30 days, the action must be dismissed without prejudice by the court that entered the order of transfer.

RULE 12.070. PROCESS

(a) Issuance of Summons.

(1) *In General.* The summons or other process authorized by law must be issued and delivered for service immediately on the commencement of the action, including proceedings to modify a final judgment, by the clerk or judge under the clerk's or the judge's signature and the seal of the court.

(2) *Contents of Summons.* All summons in family law matters must be patterned after Florida Family Law Rules of Procedure Form 12.910(a) and must specifically contain the following language:

WARNING: Rule 12.285, Florida Family Law Rules of Procedure, requires certain automatic disclosure of documents and information. Failure to comply can result in sanctions, including dismissal or striking of pleadings.

(b) Service; By Whom Made. Service of process may be made by an officer authorized by law to serve process, but the court may appoint any competent person not interested in the action to serve the process. When so appointed, the person serving process must make proof of service by affidavit promptly and within the time during which the person served must respond to the process. Failure to make proof of service will not affect the validity of the service. When any process is returned not executed or returned improperly executed for any respondent, the party causing its issuance must be entitled to additional process against the unserved party as is required to effect service.

(c) Service; Numerous Respondents. If there is more than 1 respondent, the clerk or judge must issue as many writs of process against the respondents as may be directed by the petitioner or the petitioner's attorney.

(d) Service by Publication. Service of process by publication may be made as provided by statute.

(e) Constructive Service.

(1) For constructive service of process on the legal father in any case or proceeding to establish paternity which would result in termination of the legal father's parental rights, the petitioner must file an affidavit of diligent search and inquiry that conforms with Florida Family Law Rules of Procedure Form 12.913(c). If the legal father cannot be located, he must be served with process by publication in the manner provided by chapter 49, Florida Statutes. The notice must be published in the county where the legal father was last known to have resided. The clerk of the circuit court must mail a copy of the notice to the legal father at his last known address.

(2) For constructive service of process in any case or proceeding involving parental responsibility, custody, or time-sharing with a minor child, the petitioner must file an affidavit of diligent search and inquiry that conforms with Florida Family Law Rules of Procedure Form 12.913(b). If the responding party cannot be located, the party must be served with process by publication in the manner provided by chapter 49, Florida Statutes. The clerk of the circuit court must mail a copy of the notice to the party's last known address.

(3) For constructive service of process in all other cases, an affidavit of diligent search and inquiry in substantial conformity with Florida Family Law Rules of Procedure Form 12.913(b), must be filed.

(f) Domestic, Repeat, Dating, and Sexual Violence, and Stalking Proceedings. This rule does not govern service of process in proceedings for injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking.

(g) Copies of Initial Pleading for Persons Served. At the time of personal service of process a copy of the initial pleading must be delivered to the party on whom service is made. The date and hour of service must be endorsed on the original process and all copies of it by the person making the service. The party seeking to effect personal service must furnish the person making service with the necessary copies. When the service is made by publication, copies of the initial pleadings must be furnished to the clerk and mailed by the clerk with the notice of action to all parties whose addresses are stated in the initial pleading or sworn statement.

(h) Service of Orders. If personal service of a court order is to be made, the original order must be filed with the clerk, who must certify or verify a copy of it without charge. The person making service must use the certified copy instead of the original order in the same manner as original process in making service.

(i) Fees; Service of Pleadings. The statutory compensation for making service cannot be increased by the simultaneous

delivery or mailing of the copy of the initial pleading in conformity with this rule.

(j) Pleading Basis. When service of process is to be made under statutes authorizing service on nonresidents of Florida, it is sufficient to plead the basis for service in the language of the statute without pleading the facts supporting service.

(k) Service of Process by Mail. A respondent may accept service of process by mail.

(1) Acceptance of service of a petition by mail does not waive any objection to the venue or to the jurisdiction of the court over the person of the respondent.

(2) A petitioner may notify any respondent of the commencement of the action and request that the respondent waive service of a summons. The notice and request must:

(A) be in writing and be addressed directly to the respondent, if an individual, or to an officer or managing or general agent of the respondent, or other agent authorized by appointment or law to receive service of process;

(B) be dispatched by certified mail, return receipt requested;

(C) be accompanied by a copy of the petition and must identify the court in which it has been filed;

(D) inform the respondent of the consequences of compliance and of failure to comply with the request;

(E) state the date on which the request is sent;

(F) allow the respondent 20 days from the date on which the request is received to return the waiver, or, if the address of the respondent is outside of the United States, 30 days from the date on which it is received to return the waiver; and

(G) provide the respondent with an extra copy of the notice and request, including the waiver, as well as a prepaid means of compliance in writing.

(3) If a respondent fails to comply with a request for waiver within the time provided herein, the court may impose the costs subsequently incurred in effecting service on the respondent unless good cause for the failure is shown.

(4) A respondent who, before being served with process, timely returns a waiver so requested is not required to respond to the petition until 60 days after the date the respondent received the request for waiver of service. For purposes of computing any time prescribed or allowed by these rules, service of process will be deemed effected 20 days before the time required to respond to the petition.

(5) When the petitioner files a waiver of service with the court, the action must proceed, except as provided in subdivision (k)(4) above, as if a summons and petition had been served at the time of filing the waiver, and no further proof of service shall be required.

(*l*) Summons; Time Limit. If service of process on an initial or supplemental pleading is not made on a respondent within 120 days after filing of the pleading directed to that respondent, the court, on its own initiative after notice or on motion, must direct that service be effected within a specified time or must dismiss the action without prejudice or drop that respondent as a party. If the petitioner shows good cause or excusable neglect for the failure, the court may extend the time for service for an appropriate period. When a motion for leave to amend with the attached proposed amended petition is filed, the 120-day period for service of amended petitions on the new party or parties begins on the entry of an order granting leave to amend. A dismissal under this subdivision is not considered a voluntary dismissal and does not operate as an adjudication on the merits under rule 12.420(a)(1).

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

A party that files a pleading, written motion, or other document drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise must promptly

(a) file a notice of constitutional question stating the question and identifying the document that raises it; and

(b) serve the notice and the pleading, written motion, or other document drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise on the Attorney General or the state attorney of the judicial circuit in which the action is pending, by either certified or registered mail.

Service of the notice and pleading, written motion, or other document does not require joinder of the Attorney General or the state attorney as a party to the action.

RULE 12.080. SERVICE OF PLEADINGS AND FILING OF DOCUMENTS

(a) Service.

(1) *Family Law Actions Generally.* Every pleading subsequent to the initial pleading and every other document filed or required by statute or rule to be served must be served in conformity with the requirements of Florida Rule of General Practice and Judicial Administration 2.516.

(2) *Domestic, Repeat, Dating, and Sexual Violence, and Stalking Actions.* Service of pleadings and documents regarding proceedings for injunctions against domestic, repeat, dating, and sexual violence, and stalking is governed by rule 12.610, where it is in conflict with this rule.

(3) *Limited Appearance.* Florida Rule of General Practice and Judicial Administration 2.516 also applies to service on the party during the attorney's limited appearance as provided in rule 12.040(f) and must be expanded as set forth in subdivisions (b) and (c) to include additional requirements for service of recommended orders and for service on defaulted parties.

(b) Service and Preparation of Orders and Judgments. A copy of all orders or judgments involving family law matters, except proceedings for injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking, must be transmitted by the court or under its direction to all parties at the time of entry of the order or judgment. The court may require that recommended orders, orders, or judgments be prepared by a party. If the court requires that a party prepare the recommended order, order, or judgment, the party must furnish the court with stamped, addressed envelopes to all parties for service of the recommended order, order, or judgment. The court may also require that any proposed recommended order, order, or judgment that is prepared by a party be furnished to all parties no less than 24 hours before submission to the court of the recommended order, order, or judgment.

(c) Defaulted Parties. No service need be made on parties against whom a default has been entered, except that:

(1) Pleadings asserting new or additional claims against defaulted parties must be served in the manner provided for service of summons contained in rule 12.070.

(2) Notice of final hearings or trials and court orders must be served on defaulted parties in the manner provided for service of pleadings and documents contained in Florida Rule of Judicial Administration 2.516.

(3) Final judgments must be served on defaulted parties as set forth in Florida Rule of Judicial Administration 2.516(h).

Commentary

1995 Adoption. This rule provides that the procedure for service shall be as set forth in Florida Rule of Civil Procedure 1.080 with the following exceptions or additions to that rule. First, subdivision (b) corresponds to and replaces subdivision (h)(1) of rule 1.080 and expands the rule to include recommended orders. Second, this rule expands items that must be served on defaulted parties to ensure that defaulted parties are at least minimally advised of the progress of the proceedings. This rule is not intended to require the furnishing of a proposed recommended order, proposed order, or proposed final judgment to a defaulted party.

Committee Notes

2012 Amendment. Subdivision (a)(1) is amended to provide for service on the party during the attorney's limited appearance. Subdivision[s] (a)(1), (c)(2), and (c)(3) are amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.090. TIME

(a) Computation. Computation of time shall be governed by Florida Rule of General Practice and Judicial Administration 2.514.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time by order of court, by these rules, or by notice given thereunder, for cause shown the court at any time in its discretion (1) with or without notice, may order the period enlarged if a request is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) on motion made and notice after the expiration of the specified period, may permit the act to be done when failure to act was the result of excusable neglect. However, the court may not extend the time for making a motion for new trial, for rehearing, or to alter or amend a judgment, making a motion for relief from a judgment under rule 12.540(b), taking an appeal or filing a petition for certiorari, or making a motion for a directed verdict.

(c) For Motions. A copy of any written motion which may not be heard ex parte and a copy of the notice of the hearing on the

written motion must be served a reasonable time before the time specified for the hearing.

Committee Notes

2012 Amendment. The rule is amended to treat e-mail service as service by mail for the computation of time in accordance with Florida Rule of Judicial Administration 2.516(b)(1)(D)(iii).

RULE 12.100. PLEADINGS AND MOTIONS

(a) Pleadings. There must be a petition or, when so designated by a statute or rule, a complaint, and a response or answer to it; a response or answer to a counterclaim denominated as such; an answer to a crossclaim if the answer contains a crossclaim; a third-party petition if a person who was not an original party is summoned as a third-party respondent or defendant; and a third-party response or answer if a third-party complaint is served. If a response or answer contains an affirmative defense and the opposing party seeks to avoid it, the opposing party shall file a reply containing the avoidance. In a post-judgment case, there are a supplemental petition and a response or an answer and a counter-supplemental petition and a response or an answer to it, if applicable. In those cases in which there is a related civil action that is not otherwise specifically addressed in the Family Law Rules of Procedure, then the Rules of Civil Procedure governs those pleadings. No other pleadings are allowed unless otherwise provided by law.

(b) Motions. An application to the court for an order must be by motion which must be made in writing unless made during a hearing or trial, must state with particularity the grounds therefor, and must set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. All notices of hearings must specify each motion or other matter to be heard.

(c) Caption.

(1) Trial level nomenclature used in the caption should be simple, clear and constant, regardless of who files a petition, counter-petition, motion, or a supplemental action. Even upon filing a supplemental petition or counter-petition, the trial level nomenclature must remain unchanged. Information as to who files a pleading or motion should be part of the document rather than in the caption of the case. Notwithstanding the foregoing, a court, for good cause shown, may change a caption.

(2) Every pleading, motion, order, judgment, or other document must have a caption containing the name of the court, the file number, and except for in rem proceedings, the name of the first party on each side with an appropriate indication of other parties, and a designation identifying the party filing it and its nature or the nature of the order, as the case may be. In any in rem proceeding, every pleading, motion, order, judgment, or other document must have a caption containing the name of the court, the file number, the style "In re" (followed by the name or general description of the property), and a designation of the person or entity filing it and its nature or the nature of the order. All documents filed in the action must be styled in such a manner as to indicate clearly the subject matter of the document and the party requesting or obtaining relief. Specific captions for family law cases are as follows:

(A) Matters Arising From Dissolution of Marriage.

(i) Original Dissolution of Marriage: In re the Marriage of ....., Petitioner and ....., Respondent, regardless of who files first and whether there is a counter-petition.

(ii) Modification of Final Judgment of Dissolution of Marriage: In the Former Marriage of ....., Petitioner, and ....., Respondent, regardless of who files the supplemental petition and whether there is a supplemental counter-petition.

(B) Annulment.

(i) Original Annulment: In re the Marriage of ....., Petitioner and ....., Respondent, regardless of who files first and whether a counter-petition for annulment or any other pleading in the alternative for dissolution of marriage is filed.

(ii) Supplemental or Enforcement Proceedings. The caption must remain the same, regardless of whether an annulment or a dissolution of marriage was ultimately granted in the original proceeding.

(C) Support Unconnected With Dissolution of Marriage: In re the Marriage of ....., Petitioner and ....., Respondent, regardless of whether there is a counter-petition.

(D) Paternity.

(i) Original Paternity Proceeding when Paternity is not Admitted Before Filing: ....., Petitioner, and ....., Respondent, regardless of whether there is a counter-petition.

(ii) Original Paternity Proceedings when Paternity has been Admitted Before Filing: ....., Petitioner, and ....., Respondent, regardless of whether there is a counter-petition.

(iii) Paternity Modification: ....., Petitioner, and ....., Respondent, regardless of who files the supplemental petition and whether there is a supplemental counter-petition.

(iv) Disestablishment of Paternity Proceeding: ....., Petitioner, and ....., Respondent.

(E) Proceedings for Temporary or Concurrent Custody of Minor Children by Extended Family: In the interest of ....., Child(ren).

(F) Adoption.

(i) In re: Termination of Parental Rights for Proposed Adoption of .....(name on child's birth certificate)....., Minor Child(ren).

(ii) In re: Adoption of .....(name to be given child(ren))....., Adoptee(s).

(iii) Stepparent Adoption Proceedings: In re: the Adoption of .....(name to be given child(ren))....., Adoptee(s).

(G) Proceedings for Emancipation of a Minor: In re: Emancipation of ....., Minor.

(H) Title IV-D Cases: State, Dept. of Revenue, Child Support Program ex rel. ....., Petitioner, and ....., Respondent.

(3) A cover sheet for family court cases (form 12.928) must be completed and filed with the clerk at the time a complaint or petition is filed by the party initiating the action. If the cover sheet is not filed, the clerk must accept the complaint or petition for filing; but all proceedings in the action must be abated until a properly executed cover sheet is completed and filed. The clerk must complete the cover sheet for a party appearing pro se.

(4) A final disposition form (form 12.999) must be filed with the clerk at the time of the filing of the order or judgment which disposes of the action. If the action is settled without a court order or judgment being entered, or dismissed by the parties, the plaintiff or petitioner must immediately file a final disposition form with the clerk. The clerk must complete the final disposition form for a party appearing pro se, or when the action is dismissed by court order for lack of prosecution under rule 12.420(d).

(d) Notice of Related Cases. A notice of related cases, form 12.900(h), must be filed in conformity with Florida Rule of General Practice and Judicial Administration 2.545(d).

Commentary

1995 Adoption. This rule provides that pleadings and motions are to be governed by Florida Rule of Civil Procedure 1.100. The cover sheets and disposition forms described in that rule shall be the same cover sheets and disposition forms used in family law proceedings.

Court Commentary

2022 Amendments. This rule is amended to clarify that trial level nomenclature should be simple, clear, and constant even upon the filing of a post-judgment motion or supplemental action, unless there has been a judicial determination of good cause shown.

RULE 12.105. SIMPLIFIED DISSOLUTION PROCEDURE

(a) Requirements for Use. The parties to the dissolution may file a petition for simplified dissolution if they certify under oath that

(1) the parties do not have any minor or dependent children together, the wife does not have any minor or dependent children who were born during the marriage, and the wife is not now pregnant;

(2) the parties have made a satisfactory division of their property and have agreed as to payment of their joint obligations; and

(3) the other facts set forth in Florida Family Law Rules of Procedure Form 12.901(a) (Petition for Simplified Dissolution of Marriage) are true.

(b) Consideration by Court. The clerk shall submit the petition to the court. The court shall consider the cause expeditiously. The parties shall appear before the court in every case and, if the court so directs, testify. The court, after examination of the petition and personal appearance of the parties, shall enter a judgment granting the dissolution (Florida Family Law Rules of Procedure Form 12.990(a)) if the requirements of this rule

have been established and there has been compliance with the waiting period required by statute.

(c) Final Judgment. Upon the entry of the judgment, the clerk shall furnish to each party a certified copy of the final judgment of dissolution, which shall be in substantially the form provided in Florida Family Law Rules of Procedure Form 12.990(a).

(d) Forms. The clerk or family law intake personnel shall provide forms for the parties whose circumstances meet the requirements of this rule and shall assist in the preparation of the petition for dissolution and other papers to be filed in the action.

Commentary

1995 Adoption. This rule was previously contained in Florida Rule of Civil Procedure 1.611, which included several unrelated issues. Those issues are now governed by separate family law rules for automatic disclosure, central governmental depository, and this rule for simplified dissolution procedure. Under this rule, the parties must file a financial affidavit (Florida Family Law Rules of Procedure Form 12.902(b) or 12.902(c)), depending on their income and expenses) and a marital settlement agreement (Florida Family Law Rules of Procedure Form 12.902(f)(3)).

RULE 12.110. GENERAL RULES OF PLEADING

(a) Forms of Pleadings. Forms of action and technical forms for seeking relief and of pleas, pleadings, or motions are abolished.

(b) Claims for Relief. A pleading which sets forth a claim for relief, whether an original petition, counterpetition, counterclaim, crossclaim, or third-party claim, must state a cause of action and must contain

(1) a short and plain statement of the grounds on which the court's jurisdiction depends, unless the court already has jurisdiction and the pleading needs no new grounds of jurisdiction to support it,

(2) a short and plain statement of both the relief requested and the ultimate facts showing that the pleader is entitled to that relief, and

(3) a demand for judgment for the relief to which the pleader deems himself or herself entitled.

Relief in the alternative or of several different types may be demanded. Every petition shall be considered to pray for general relief.

(c) The Answer. In the answer a pleader must state in short and plain terms the pleader's answers to each claim asserted and must admit or deny the allegations on which the adverse party relies. If the pleader is without knowledge, he or she must so state and such statement operates as a denial. Denial must fairly meet the substance of the allegations denied. When a pleader intends in good faith to deny only a part of an allegation, the pleader must specify so much of it as is true and must deny the remainder. Unless the pleader intends in good faith to controvert all of the allegations of the preceding pleading, the pleader may make denials as specific denials of designated allegations or may generally deny all of the allegations except such designated allegations as the pleader expressly admits. However, when the pleader does so intend to controvert all of its allegations, including allegations of the grounds on which the court's jurisdiction depends, the pleader may do so by general denial.

(d) Affirmative Defenses. In the answer a party must state affirmatively any matter constituting an avoidance or affirmative defense or any other affirmative defense as allowed by law. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, on terms if justice so requires, must treat the pleading as if there had been a proper designation. Affirmative defenses appearing on the face of a prior pleading may be asserted as grounds for a motion or defense under rule 12.140, provided this shall not limit amendments under rule 12.190 even if such grounds are sustained.

(e) Effect of Failure to Deny. Allegations in a pleading to which a responsive pleading is required, other than those as to the relief requested, are admitted when not denied in the responsive pleading. Allegations in a pleading to which no responsive pleading is required or permitted must be taken as denied or avoided.

(f) Separate Statements. All allegations of claim or defense must be made in consecutively numbered paragraphs, the contents of each of which must be limited as far as practicable to a statement of a single set of circumstances, and a paragraph may be referred to by number in all subsequent pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials must be stated in a separate count or response when a separation facilitates the clear presentation of the matter set forth.

(g) Joinder of Causes of Action; Consistency. A pleader may set up in the same action as many claims or causes of action or defenses in the same right as the pleader has, and claims for relief may be stated in the alternative if separate items make up the cause of action, or if 2 or more causes of action are joined. A party may also set forth 2 or more statements of a claim or defense alternatively, either in 1 count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and 1 of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A party may also state as many separate claims or defenses as that party has, regardless of consistency and whether based on legal or equitable grounds or both. All pleadings must be construed so as to do substantial justice.

(h) Subsequent Pleadings. When the nature of an action permits pleadings subsequent to final judgment and the jurisdiction of the court over the parties has not terminated, the initial pleading subsequent to final judgment must be designated a supplemental petition. The action must then proceed in the same manner and time as though the supplemental petition were the initial pleading in the action, including the issuance of any needed process. Proceedings to modify a final judgment must be initiated only under

this subdivision and not by motion. This subdivision does not apply to proceedings that may be initiated by motion under these rules.

Commentary

1995 Adoption. This rule clarifies that final judgment modifications must be initiated pursuant to a supplemental petition as set forth in rule 1.110(h), rather than through a motion. Rule 1.110(h) is to be interpreted to require service of process on a supplemental petition as set forth in Florida Family Law Rule of Procedure 12.070.

RULE 12.120. PLEADING SPECIAL MATTERS

(a) Capacity. Unless required by statute, it is not necessary to allege the capacity of a party to sue or be sued, the authority of a party to sue or be sued in a representative capacity, or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. The initial pleading served on behalf of a minor party must specifically allege the age of the minor party. When a party desires to raise an issue as to the legal existence of any party, the capacity of any party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity, that party must do so by specific negative allegation(s) which must include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud; Mistake; Condition of the Mind. In all allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with such particularity as the circumstances may permit. Malice, intent, knowledge, mental attitude, and other condition of mind of a person may be alleged generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence must be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to allege that the document was issued or the act done in compliance with law.

(e) Judgment or Decree. In pleading a judgment or decree of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it is sufficient to allege the judgment or decree without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, allegations of time and place are material and must be considered like all other allegations of material matter.

(g) Special Damage. When items of special damage are claimed, they must be specifically stated.

RULE 12.130. DOCUMENTS SUPPORTING ACTION OR DEFENSE

(a) Documents Attached. If it is essential to state a cause of action, or otherwise required by law, documents or a copy, when otherwise required, or the relevant portions of the documents must be incorporated in or attached to the pleadings.

(b) Part for All Purposes. Any exhibit attached to a pleading must be considered part of the pleading. Statements in a pleading may be adopted by reference in a different part of the same pleading, in another pleading, or in any motion.

(c) Protection of Account and Personal Identifying Numbers. Any reference in any pleading or exhibit filed with the court to account numbers, social security numbers, employee identification numbers, driver's license numbers, passport numbers, or other personal identifying information must be presented as provided in Florida Rule of General Practice and Judicial Administration 2.425.

RULE 12.140. RESPONSES

(a) When Presented.

(1) Unless a different time is prescribed in a statute of Florida, a respondent must serve a response within 20 days after service of original process and the initial pleading on the respondent, or not later than the date fixed in a notice by publication. The petitioner must serve a response to a counterpetition within 20 days after service of the counterpetition. If a reply is required, the reply must be served within 20 days after service of the response. A party served with a pleading stating a crosspetition against that party must serve a response to it within 20 days after service on that party.

(2) The service of a motion under this rule, except a motion for judgment on the pleadings or a motion to strike under subdivision (f), alters these periods of time so that if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings must be served within 10 days after notice of the court's action or, if the court grants a motion for a more definite statement, the responsive pleadings must be served within 10 days after service of the more definite statement unless a different time is fixed by the court in either case.

(3) If the court permits or requires an amended or responsive pleading or a more definite statement, the pleading or statement must be served within 10 days after notice of the court's action. Responses to the pleadings or statements must be served within 10 days of service of such pleadings or statements.

(b) How Presented. Every defense in law or fact to a claim for relief in a pleading must be asserted in the responsive pleading, if one is required, but the following responses may be made by motion at the option of the pleader:

(1) lack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) improper venue;

(4) insufficiency of process;

(5) insufficiency of service of process;

(6) failure to state a cause of action; and

(7) failure to join indispensable parties.

A motion making any of these responses must be made before pleading if a further pleading is permitted. The grounds on which any of the enumerated responses are based and the substantial matters of law intended to be argued must be stated specifically and with particularity in the responsive pleading or motion. Any ground not stated must be deemed to be waived except any ground showing that the court lacks jurisdiction of the subject matter may be made at any time. No response or objection is waived by being joined with other responses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert any defense in law or fact to that claim for relief at the trial, except that the objection of failure to state a legal defense in an answer or reply must be asserted by motion to strike the defense within 20 days after service of the answer or reply.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings.

(d) Preliminary Hearings. The responses in subdivisions (b)(1)–(b)(7), whether made in a pleading or by motion, and the motion for judgment in subdivision (c) must be heard and determined before trial on application of any party unless the court orders that the hearing and determination will be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading. The motion must point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days

after notice of the order or such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time.

(g) Consolidation of Responses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available to that party. If a party makes a motion under this rule but omits from it any responses or objections then available to that party that this rule permits to be raised by motion, that party shall not thereafter make a motion based on any of the responses or objections omitted, except as provided in subdivision (h)(2).

(h) Waiver of Responses.

(1) A party waives all responses and objections that the party does not present either by motion under subdivisions (b), (e), or (f) or, if the party has made no motion, in a responsive pleading except as provided in subdivision (h)(2).

(2) The responses of failure to state a cause of action or a legal defense or to join an indispensable party may be raised by motion for judgment on the pleadings or at the trial on the merits in addition to being raised either in a motion under subdivision (b) or in the answer or reply. The defense of lack of jurisdiction of the subject matter may be raised at any time.

RULE 12.150. SHAM PLEADINGS

(a) Motion to Strike. If a party deems any pleading or part of it filed by another party to be a sham, that party may move to strike the pleading or part of it before the cause is set for trial and the court must hear the motion, taking evidence of the respective parties, and if the motion is sustained, the pleading to which the motion is directed must be stricken. Default and summary judgment on the merits may be entered in the discretion of the

court or the court may permit additional pleadings to be filed for good cause shown.

(b) Contents of Motion. The motion to strike must be verified and must set forth fully the facts on which the movant relies and may be supported by affidavit.

RULE 12.160. MOTIONS

All motions for the issuance of process and to enforce and execute judgments, for entering defaults, and for such other proceedings in the clerk's office not requiring an order of court must be deemed grantable as of course by the clerk. The clerk's action may be suspended, altered, or rescinded by the court upon good cause shown.

RULE 12.170. COUNTERPETITTIONS AND CROSSCLAIMS

(a) Compulsory Counterpetitions. A pleading must state as a counterpetition any claim which at the time of serving the pleading the pleader has against any opposing party, provided it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. But the pleader need not state a claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon that party's claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on the claim and the pleader is not stating a counterpetition under this rule.

(b) Permissive Counterpetition. A pleading may state as a counterpetition any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in

amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State. These rules shall not be construed to enlarge beyond the limits established by law the right to assert counterclaims or to claim credits against the state or any of its subdivisions or other governmental organizations of the state subject to suit or against a municipal corporation or against an officer, agency, or administrative board of the state.

(e) Counterclaim Maturing or Acquired after Pleading. A claim which matured or was acquired by the pleader after serving the pleading may be presented as a counterpetition by supplemental pleading with the permission of the court.

(f) Omitted Counterclaim or Crossclaim. When a pleader fails to set up a counterclaim or crossclaim through oversight, inadvertence, or excusable neglect, or when justice or equity requires, the pleader may set up the counterclaim or crossclaim by amendment with leave of the court.

(g) Crossclaim Against Co-Party. A pleading may state as a crossclaim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of either the original action or a counterclaim within the original action, or relating to any property that is the subject matter of the original action. The crossclaim may include a claim that the party against whom it is asserted is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant. Service of a crossclaim on a party who has appeared in the action must be made under rule 12.080. Service of a crossclaim against a party who has not appeared in the action must be made in the manner provided for service of summons.

(h) Additional Parties May Be Brought In. When the presence of parties other than those to the original action is required to grant complete relief in the determination of a counterclaim or crossclaim, they must be named in the counterpetition or crossclaim and be served with process and will be parties to the action thereafter if jurisdiction of them can be

obtained and their joinder will not deprive the court of jurisdiction of the action. Rules 12.250(b) and (c) apply to parties brought in under this subdivision.

(i) Separate Trials; Separate Judgment. If the court orders separate trials, a judgment on a counterclaim or crossclaim may be rendered when the court has jurisdiction to do so even if a claim of the opposing party has been dismissed or otherwise disposed of.

Committee Notes

2012 Amendment. This rule is amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.180. THIRD-PARTY PRACTICE

(a) When Available. At any time after commencement of the action a respondent may have a summons and petition served on a person not a party to the action who is or may be liable to the respondent for all or part of the petitioner's claim against the respondent, and may also assert any other claim that arises out of the transaction or occurrence that is the subject matter of the petitioner's claim. The respondent need not obtain leave of court if the respondent files the third-party complaint not later than 20 days after the respondent serves the original answer. Otherwise, the respondent must obtain leave on motion and notice to all parties to the action. The person served with the summons and third-party complaint, the third-party respondent, must make defenses to the respondent's claim as provided in rules 12.110 and 12.140 and counterpetitions against the respondent and crossclaims against other third-party respondents as provided in rule 12.170. The third-party respondent may assert against the petitioner any defenses that the respondent has to the petitioner's claim.

(b) Additional Claims. The third-party respondent may also assert any claim against the petitioner arising out of the transaction or occurrence that is the subject matter of the petitioner's claim against the respondent. The petitioner may assert any claim against the third-party respondent arising out of the transaction or occurrence that is the subject matter of the petitioner's claim

against the respondent, and the third-party respondent must assert a defense as provided in rules 12.110 and 12.140 and counterpetitions and crossclaims as provided in rule 12.170. Any party may move to strike the third-party claim or for its severance or separate trial. A third-party respondent may proceed under this rule against any person not a party to the action who is or may be liable to the third-party respondent for all or part of the claim made in the action against the third-party respondent.

(c) When Petitioner May Bring in Third Party. When a counterpetition is asserted against the petitioner, the petitioner may bring in a third party under circumstances which would entitle a respondent to do so under this rule.

RULE 12.190. AMENDED PLEADINGS

(a) Amendments. A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, may so amend it at any time within 20 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party. If a party files a motion to amend a pleading, the party must attach the proposed amended pleading to the motion. Leave of court shall be given freely when justice so requires. A party must plead in response to an amended pleading within 10 days after service of the amended pleading unless the court otherwise orders.

(b) Amendments to Conform with the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend will not affect the result of the trial of these issues. If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended to conform with the evidence and must do so freely when the merits of

the cause are more effectually presented thereby and the objecting party fails to satisfy the court that the admission of such evidence will prejudice the objecting party in maintaining an action or defense upon the merits.

(c) Relation Back of Amendments. When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment must relate back to the date of the original pleading.

(d) Amendments Generally. At any time in furtherance of justice, upon such terms as may be just, the court may permit any process, proceeding, pleading, or record to be amended or material supplemental matter to be set forth in an amended or supplemental pleading. At every stage of the action the court must disregard any error or defect in the proceedings that does not affect the substantial rights of the parties.

RULE 12.200. CASE MANAGEMENT AND PRETRIAL CONFERENCES

(a) Case Management Conference.

(1) *Family Law Proceedings, Generally.* A case management conference may be ordered by the court at any time on the court's initiative. A party may request a case management conference 30 days after service of a petition or complaint. At such a conference the court may:

(A) schedule or reschedule the service of motions, pleadings, and other documents;

(B) set or reset the time of trials, subject to rule 12.440;

(C) coordinate the progress of the action if complex litigation factors are present;

(D) limit, schedule, order, or expedite discovery;

(E) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts;

(F) schedule or hear motions related to admission or exclusion of evidence;

(G) pursue the possibilities of settlement;

(H) require filing of preliminary stipulations if issues can be narrowed;

(I) refer issues to a magistrate for findings of fact, if consent is obtained as provided in rules 12.490 and 12.492 and if no significant history of domestic, repeat, dating, or sexual violence, or stalking that would compromise the process is involved in the case;

(J) refer the parties to mediation if no significant history of domestic, repeat, dating, or sexual violence, or stalking that would compromise the mediation process is involved in the case and consider allocation of expenses related to the referral; or refer the parties to counseling if no significant history of domestic, repeat, dating, or sexual violence or stalking that would compromise the process is involved in the case and consider allocation of expenses related to the referral;

(K) coordinate voluntary binding arbitration consistent with Florida law if no significant history of domestic, repeat, dating, or sexual violence or stalking that would compromise the process is involved in the case;

(L) appoint court experts and allocate the expenses for the appointments;

(M) refer the cause for a parenting plan recommendation, social investigation and study, home study, or psychological evaluation and allocate the initial expense for that study;

(N) appoint an attorney or guardian ad litem for a minor child or children if required and allocate the expense of the appointment;

(O) schedule other conferences or determine other matters that may aid in the disposition of the action; and

(P) consider any agreements, objections, or form of production of electronically stored information.

(2) *Adoption Proceedings.* A case management conference may be ordered by the court within 60 days of the filing of a petition when:

(A) there is a request for a waiver of consent to a termination of parental rights of any person required to consent by section 63.062, Florida Statutes;

(B) notice of the hearing on the petition to terminate parental rights pending adoption is not being afforded a person whose consent is required but who has not consented;

(C) there is an objection to venue, which was made after the waiver of venue was signed;

(D) an intermediary, attorney, or agency is seeking fees, costs, or other expenses in excess of those provided under section 63.097 or 63.212(5), Florida Statutes;

(E) an affidavit of diligent search and inquiry is filed in lieu of personal service under section 63.088(4), Florida Statutes; or

(F) the court is otherwise aware that any person having standing objects to the termination of parental rights pending adoption.

(b) Pretrial Conference. After the action is at issue the court itself may or must on the timely motion of any party require the parties to appear for a conference to consider and determine:

(1) proposed stipulations and the simplification of the issues;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(4) the limitation of the number of expert witnesses; and

(5) any matters permitted under subdivision (a).

(c) Notice. Reasonable notice must be given for a case management conference, and 20 days' notice must be given for a pretrial conference. On failure of a party to attend a conference, the court may dismiss the action, strike the pleadings, limit proof or witnesses, or take any other appropriate action. Any documents that the court requires for any conference must be specified in the order. Orders setting pretrial conferences must be uniform throughout the territorial jurisdiction of the court.

(d) Case Management and Pretrial Order. The court shall make an order reciting the action taken at a conference and any stipulations made. The order will control the subsequent course of the action unless modified to prevent injustice.

Commentary

1995 Adoption. This rule addresses issues raised by decisions such as *Dralus v. Dralus*, 627 So.2d 505 (Fla. 2d DCA 1993); *Wrona v. Wrona*, 592 So.2d 694 (Fla. 2d DCA 1991); and *Katz v. Katz*, 505 So.2d 25 (Fla. 4th DCA 1987), regarding the cost of marital litigation. This rule provides an orderly method for the just, speedy, and inexpensive determination of issues and promotes amicable resolution of disputes.

This rule replaces and substantially expands Florida Rule of Civil Procedure 1.200 as it pertained to family law matters. Under

this rule, a court may convene a case management conference at any time and a party may request a case management conference 30 days after service of a petition or complaint. The court may consider the following additional items at the conference: motions related to admission or exclusion of evidence, referral of issues to a master if consent is obtained pursuant to the rules, referral of the parties to mediation, referral of the parties to counseling, coordination of voluntary binding arbitration, appointment of court experts, referral of the cause for a home study psychological evaluation, and appointment of an attorney or guardian ad litem for a minor child.

Committee Note

1997 Amendment. In *In re Adoption of Baby E.A.W.*, 658 So.2d 961 (Fla. 1995), and other cases involving protracted adoption litigation, it becomes clear that the earlier the issue of notice is decided by the court, the earlier the balance of the issues can be litigated. Because both parents' constitutional standing and guarantees of due process require notice and an opportunity to be heard, this rule amendment will help solve the problems of adoption litigation lasting until a child's third, fourth, or even fifth birthday. Furthermore, this rule will encourage both parents to be more candid with intermediaries and attorneys involved in the adoption process.

In *E.A.W.*, 658 So.2d at 979, Justice Kogan, concurring in part and dissenting in part, stated: "I personally urge the Family Law Rules Committee . . . to study possible methods of expediting review of disputes between biological and adoptive parents." This rule expedites resolution of preliminary matters concerning due process in difficult adoption disputes. This rule also mandates early consideration of the child's rights to due process at early stages of adoption litigation.

Noncompliance with subdivision (a)(2) of this rule shall not invalidate an otherwise valid adoption.

RULE 12.210. PARTIES

(a) Parties Generally. Every action may be prosecuted in the name of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. All persons having an interest in any subject of the action may be joined. Any person may at any time be made a party if that person's presence is necessary or proper for a complete determination of the cause.

(b) Minors, Incapacitated, or Incompetent Persons. When a minor, incapacitated, or incompetent person has a representative, such as a guardian or other like fiduciary, the representative may appear in the action on behalf of the minor, incapacitated, or incompetent person. A minor, incapacitated, or incompetent person who does not have a duly appointed representative may appear by next friend or by a guardian ad litem. The court shall have the discretion to appoint a guardian ad litem and/or attorney ad litem for a minor, incapacitated, or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor, incapacitated, or incompetent person.

(c) Child as Party. This rule shall not be read to require that a child is an indispensable party for a dissolution of marriage or action involving a parenting plan.

RULE 12.230. INTERVENTIONS

Anyone claiming an interest in pending litigation may, at any time, be permitted to assert a right by intervention, but the intervention must be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.

RULE 12.240. INTERPLEADER

Persons having claims against the petitioner may be joined as parties and required to interplead when their claims are such that the petitioner is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claim of the several claimants or the titles on which their claims depend do not have common origin or are not identical but are adverse to and independent of one another, or it is alleged that the petitioner is not liable in whole or in part to any or all of the claimants. A party exposed to similar liability may obtain such interpleader by way of crossclaim or counterpetition. The provisions of this rule supplement and do not in any way limit the joinder of parties otherwise permitted.

RULE 12.250. MISJOINDER AND NONJOINDER OF PARTIES

(a) Misjoinder. Misjoinder of parties is not a ground for dismissal of an action. Any claim against a party may be severed and proceeded with separately.

(b) Dropping Parties. Parties may be dropped by an adverse party in the manner provided for voluntary dismissal in rule 12.420(a)(1) subject to the exception stated in that rule. If notice of lis pendens has been filed in the action against a party so dropped, the notice of dismissal must be recorded and cancels the notice of lis pendens without the necessity of a court order. Parties may be dropped by order of court on its own initiative or the motion of any party at any stage of the action on such terms as are just.

(c) Adding Parties. Parties may be added once as a matter of course within the same time that pleadings can be so amended under rule 12.190(a). If amendment by leave of court or stipulation of the parties is permitted, parties may be added in the amended pleading without further order of court. Parties may be added by order of court on its own initiative or on motion of any party at any stage of the action and on such terms as are just.

RULE 12.260. SURVIVOR; SUBSTITUTION OF PARTIES

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, must be served on all parties as provided in rule 12.080 and on persons not parties in the manner provided for the service of a summons. If a party dies while a proceeding is pending and that party's rights survive, the court may order the substitution of the proper party on its own motion or that of any interested person.

(2) In the event of the death of one or more of the petitioners or of one or more of the respondents in an action in which the right sought to be enforced survives only to the surviving petitioners or only against the surviving respondents, the action does not abate. The death shall be suggested on the record and the action proceeds in favor of or against the surviving parties.

(b) Incapacity. If a party becomes incapacitated, the court may allow the action to be continued by or against that person's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion must be made as provided in subdivision (a).

(d) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted

party, but any misnomer not affecting the substantial rights of the parties must be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order does not affect the substitution.

(2) When a public officer sues or is sued in an official capacity, the officer may be described as a party by the official title rather than by name but the court may require the officer's name to be added.

RULE 12.270. CONSOLIDATION; SEPARATE TRIALS

Related cases and consolidation of cases are governed by Florida Rule of General Practice and Judicial Administration 2.545.

RULE 12.271. CONFIDENTIALITY OF RELATED FAMILY HEARINGS

(a) Confidentiality of Coordinated or Joint Hearings. When related family cases are coordinated or joint hearings ordered, any hearings or proceedings involving more than one related family case are subject to the applicable state and federal confidentiality statutes pertaining to each case as if heard separately.

(b) No Waiver. The confidentiality of a case or issue is not waived by coordination or a joint hearing.

RULE 12.280. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods. Parties may obtain discovery by 1 or more of the following methods: depositions on oral examination or written questions; written interrogatories; production of documents or things or permission to enter on land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise and under subdivision (d), the frequency of use of these methods is not limited, except as provided in rules 12.200, 12.340, and 12.370.

(b) Redaction of Personal Information. All filings of discovery information with the clerk of court must comply with Florida Rule of General Practice and Judicial Administration 2.425. This does not apply to discovery information not filed with the clerk of court. The court has the authority to impose sanctions for violation of this rule.

(c) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows.

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Indemnity Agreements.* A party may obtain discovery of the existence and contents of any agreement under which any person may be liable to satisfy part or all of a judgment that may be entered in the action or to indemnify or to reimburse a party for payments made to satisfy the judgment.

(3) *Electronically Stored Information.* A party may obtain discovery of electronically stored information in accordance with these rules.

(4) *Trial Preparation: Materials.* Subject to the provisions of subdivision (c)(5), a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (c)(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that party's representative, including that party's attorney, consultant, or agent, only on a showing that the party seeking discovery has need of the materials

in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. Without the required showing a party may obtain a copy of a statement concerning the action or its subject matter previously made by that party. On request without the required showing a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 12.380(a)(4) apply to the award of expenses incurred as a result of making the motion. For purposes of this subdivision, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording or transcription of it that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(5) *Trial Preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (c)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(A) (i) By interrogatories a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial may be deposed in accordance with rule 12.390 without motion or order of court.

(iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or

otherwise as a person expected to be called as an expert witness at trial:

a. The scope of employment in the pending case and the compensation for such service.

b. The expert's general litigation experience, including the percentage of work performed for petitioners and respondents.

c. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial.

d. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as an expert witness; however, the expert must not be required to disclose his or her earnings as an expert witness or income derived from other services.

An expert may be required to produce financial and business records only under the most unusual or compelling circumstances and may not be compelled to compile or produce nonexistent documents. On motion, the court may order further discovery by other means, subject to such restrictions as to scope and other provisions under subdivision (c)(5)(C) concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in rule 12.360(b) or on a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, the court must require that the party seeking discovery pay the expert a

reasonable fee for time spent in responding to discovery under subdivisions (c)(5)(A) and (c)(5)(B); and concerning discovery from an expert obtained under subdivision (c)(5)(A) the court may require, and concerning discovery obtained under subdivision (c)(5)(B) must require, the party seeking discovery to pay the other party a fair part of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) As used in these rules an expert shall be an expert witness as defined in rule 12.390.

(6) *Claims of Privilege or Protection of Trial Preparation Materials.* When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(d) Protective Orders. On motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that the discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of rule 12.380(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Limitations on Discovery of Electronically Stored Information.

(1) A person may object to discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of burden or cost. On motion to compel discovery or for a protective order, the person from whom the discovery is sought must show that the information sought or the format requested is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order the discovery from such sources or in such formats if the requesting party shows good cause. The court may specify conditions of the discovery, including ordering that some or all of the expenses incurred by the person from whom discovery is sought be paid by the party seeking discovery.

(2) In determining any motion involving discovery of electronically stored information, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that

(A) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive; or

(B) the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(f) Sequence and Timing of Discovery. Except as provided in subdivision (c)(5) or unless the court upon motion for the convenience of parties and witnesses and in the interest of justice orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not delay any other party's discovery.

(g) Supplementing of Responses. A party is under a duty to amend a prior response or disclosure if the party:

(1) obtains information or otherwise determines that the prior response or disclosure was incorrect when made; or

(2) obtains information or otherwise determines that the prior response or disclosure, although correct when made, is no longer materially true or complete.

(h) Time for Serving Supplemental Responses. Any supplemental response served under this rule must be served as soon as possible after discovery of the incorrect information or change, but in no case may the supplemental response be served later than 24 hours before any applicable hearing absent a showing of good cause.

(i) Confidentiality of Records. A determination as to the confidentiality of a court record must be made in accordance with Florida Rule of General Practice and Judicial Administration 2.420. Records found to be confidential under Florida Rule of General

Practice and Judicial Administration 2.420 must be sealed on request of a party.

(j) Court Filing of Documents and Discovery. Information obtained during discovery must not be filed with the court until such time as it is filed for good cause. The requirement of good cause is satisfied only where the filing of the information is allowed or required by another applicable rule of procedure or by court order.

(k) Form of Responses to Written Discovery Requests. When responding to requests for production served under rule 12.310(b)(5), written deposition questions served under rule 12.320, interrogatories served under rule 12.340, requests for production or inspection served under rule 12.350, requests for production of documents or things without deposition served under rule 12.351, requests for admissions served under rule 12.370, or requests for the production of documentary evidence served under rule 12.410(c), the responding party must state each deposition question, interrogatory, or discovery request in full as numbered, followed by the answer, objection, or other response. Requests must be arranged so that a blank space is provided after each separately numbered request. The space must be reasonably sufficient to enable the responding party to insert the responses within the space. If sufficient space is not provided, the responding party may attach additional pages with responses and refer to them in the space provided in the requests.

Commentary

1995 Adoption. Florida Rule of Civil Procedure 1.280 is to govern the general discovery provisions in family law matters with the exceptions set forth above. Subdivision (a) of this rule alters rule 1.280(e) by placing a duty on parties in family law matters to supplement responses. Under rule 1.280(e), no supplemental response is required. Subdivisions (b), (c), and (d) of this rule are in addition to the general requirements of rule 1.280 and have no counterparts in the Rules of Civil Procedure. Subdivisions (c) and (d) have been implemented in recognition of the fact that family law cases often involve sensitive information that should be deemed

confidential under Florida Rule of Judicial Administration 2.051. For instance, financial records filed may contain information regarding a family business, which, if public, could provide competitors with an advantage and adversely affect the family business.

RULE 12.281. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIALS

(a) Assertion of Privilege as to Inadvertently Disclosed Materials. Any party, person, or entity, after inadvertent disclosure of any materials under these rules, may thereafter assert any privilege recognized by law as to those materials. This right exists without regard to whether the disclosure was made under formal demand or informal request. To assert the privilege, the party, person, or entity must, within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of privilege on the party to whom the materials were disclosed. The notice must specify with particularity the materials as to which the privilege is asserted, the nature of the privilege asserted, and the date on which the inadvertent disclosure was actually discovered.

(b) Duty of the Party Receiving Notice of an Assertion of Privilege. A party receiving notice of an assertion of privilege under subdivision (a) must promptly return, sequester, or destroy the materials specified in the notice, as well as any copies of the material. The party receiving the notice must also promptly notify any other party, person, or entity to whom it has disclosed the materials of the fact that the notice has been served and of the effect of this rule. That party must also take reasonable steps to retrieve the materials disclosed. Nothing herein affects any obligation under Rules Regulating the Florida Bar 4-4.4(b).

(c) Right to Challenge Assertion of Privilege. Any party receiving a notice made under subdivision (a) has the right to challenge the assertion of privilege. The grounds for the challenge may include, but are not limited to, the following:

(1) The materials in question are not privileged.

(2) The disclosing party, person, or entity lacks standing to assert the privilege.

(3) The disclosing party, person, or entity has failed to serve timely notice under this rule.

(4) The circumstances surrounding the production or disclosure of the materials warrant a finding that the disclosing party, person, or entity has waived its assertion that the material is protected by a privilege.

Any party seeking to challenge the assertion of privilege must do so by serving notice of its challenge on the party, person, or entity asserting the privilege. Notice of the challenge must be served within 20 days of service of the original notice given by the disclosing party, person, or entity. The notice of the recipient's challenge must specify the grounds for the challenge. Failure to serve timely notice of challenge is a waiver of the right to challenge.

(d) Effect of Determination that Privilege Applies. When an order is entered determining that materials are privileged or that the right to challenge the privilege has been waived, the court must direct what is to be done with the materials and any copies so as to preserve all rights of appellate review. The recipient of the materials must also give prompt notice of the court's determination to any other party, person, or entity to whom it had disclosed the materials.

RULE 12.285. MANDATORY DISCLOSURE

(a) Application.

(1) *Scope.* This rule applies to all proceedings within the scope of these rules except proceedings involving adoption, simplified dissolution, enforcement, contempt, injunctions for protection against domestic, repeat, dating, or sexual violence, or stalking, and uncontested dissolutions when the respondent is served by publication and does not file an answer. Additionally, no financial affidavit or other documents shall be required under this rule from a party seeking attorneys' fees, suit money, or costs, if the

basis for the request is solely under section 57.105, Florida Statutes, or any successor statute. Except for the provisions as to child support guidelines worksheets, any portion of this rule may be modified by order of the court or agreement of the parties.

(2) *Original and Duplicate Copies.* Unless otherwise agreed by the parties or ordered by the court, copies of documents required under this rule may be produced in lieu of originals. Originals, when available, must be produced for inspection upon request. Parties shall not be required to serve duplicates of documents previously served.

(3) *Documents Not to be Filed with Court; Sanctions.*

(A) Except for the financial affidavit and child support guidelines worksheet, no documents produced under this rule shall be filed in the court file without first obtaining a court order.

(B) References to account numbers and personal identifying information to be filed in the court file are governed by Florida Rule of General Practice and Judicial Administration 2.425.

(C) Sanctions are governed by rule 12.380.

(b) Time for Production of Documents.

(1) *Temporary Financial Relief Hearings.* Any document required under this rule in any temporary financial relief proceeding, whether an initial proceeding or supplemental proceeding, must be served on the other party for inspection and copying as follows.

(A) Any party seeking relief must serve the required documents on the other party at least ten days prior to the temporary financial hearing, unless the documents have already been served under subdivision (b)(2).

(B) The responding party, if not otherwise seeking relief, must serve the required documents on the party seeking

relief at least five days prior to the temporary financial hearing, unless the documents have already been served under subdivision (b)(2) of this rule.

(2) *Initial and Supplemental Proceedings.* Any document required under this rule for any initial or supplemental proceeding must be served on the other party for inspection and copying within 45 days of service of the initial pleading on the respondent.

(c) Exemption from Requirement to File and Serve Financial Affidavit.

(1) The parties are not required to file or serve a financial affidavit under subdivisions (d) and (e) if they are seeking a simplified dissolution of marriage under rule 12.105, 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.

(2) Upon agreement of the parties and filing of a notice of joint verified waiver of filing financial affidavits, the court shall not require that financial affidavits be filed. In the notice, both parties must acknowledge:

(A) that evidence of their current or past financial circumstances may be necessary for future court proceedings;

(B) they each have provided the other with a fully executed and sworn financial affidavit in conformity with Florida Family Law Form 12.902(b) or 12.902(c), as applicable;

(C) that the responsibility to retain copies of all affidavits exchanged rests solely with the parties;

(D) that the waiver only applies to the current filing and does not automatically apply to any future filings; and

(E) that the waiver may be revoked by either party at any time.

(d) Disclosure Requirements for Temporary Financial Relief. In any proceeding for temporary financial relief heard within 45 days of the service of the initial pleading or within any extension of the time for complying with mandatory disclosure granted by the court or agreed to by the parties, the following documents must be served on the other party:

(1) A financial affidavit in substantial conformity with Florida Family Law Rules of Procedure Form 12.902(b) if the party's gross annual income is less than $50,000, or Florida Family Law Rules of Procedure Form 12.902(c) if the party's gross annual income is equal to or more than $50,000. This requirement cannot be waived by the parties.

(2) All complete federal and state personal income tax returns, gift tax returns, and foreign tax returns filed by the party or on the party's behalf for the past 3 years, including all attachments, including Forms W-2, 1099, K-1, and all accompanying schedules and worksheets comprising the entire tax return. A party may file a transcript of the tax return as provided by Internal Revenue Service Form 4506 T in lieu of his or her individual federal income tax return for purposes of a temporary hearing.

(3) IRS forms W-2, 1099, and K-1 for the past year, if the income tax return for that year has not been prepared. If income tax returns have not been filed for any of the prior 2 years beyond the past year, then IRS forms W-2, 1099, and K-1 for those prior 2 years as well.

(4) Pay stubs or other evidence of earned income for the 6 months before compliance with these disclosure requirements for temporary financial relief.

(e) Parties' Disclosure Requirements for Initial or Supplemental Proceedings. A party must serve the following documents in any proceeding for an initial or supplemental request for permanent financial relief, including, but not limited to, a request for child support, alimony, equitable distribution of assets or debts, or attorneys' fees, suit money, or costs:

(1) A financial affidavit in substantial conformity with Florida Family Law Rules of Procedure Form 12.902(b) if the party's gross annual income is less than $50,000, or Florida Family Law Rules of Procedure Form 12.902(c) if the party's gross annual income is equal to or more than $50,000, which requirement cannot be waived by the parties. A party may request, by using the Standard Family Law Interrogatories, or the court on its own motion may order, a party whose gross annual income is less than $50,000 to complete Florida Family Law Rules of Procedure Form 12.902(c). All documents supporting the income, assets, and liabilities figures entered into the financial affidavit must also be produced.

(2) All complete federal and state personal income tax returns, gift tax returns, and foreign tax returns filed by the party or on the party's behalf for the past 3 years, including all attachments, including Forms W-2, 1099, K-1, and all accompany schedules and worksheets comprising the entire tax return. A party may file a transcript of the tax return as provided by Internal Revenue Service Form 4506T in lieu of his or her individual federal income tax return for purposes of a temporary hearing.

(3) IRS forms W-2, 1099, and K-1 for the past year, if the income tax return for that year has not been prepared. If income tax returns have not been filed for any of the prior 2 years beyond the past year, then IRS forms W-2, 1099, and K-1 for those prior 2 years as well.

(4) Pay stubs or other evidence of earned income for the 6 months before compliance with these disclosure requirements for initial or supplemental proceedings.

(5) A statement by the producing party identifying the amount and source of all income received from any source during the 6 months preceding the compliance with these disclosure requirements for initial or supplemental proceedings if not reflected on the pay stubs produced.

(6) All loan applications, financial statements, credit reports, or any other form of financial disclosure, including

financial aid forms, prepared or used within the 24 months preceding compliance with these disclosure requirements for initial or supplemental proceedings, whether for the purpose of obtaining or attempting to obtain credit or for any other purpose.

(7) All deeds evidencing any ownership interest in property held at any time during the last 3 years, all promissory notes or other documents evidencing money owed to either party at any time within the last 24 months, and all leases, whether held in the party's name individually, in the party's name jointly with any other person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf wherein either the party:

(A) is receiving or has received payments at any time within the last 3 years for leased real or personal property, or

(B) owns or owned an interest.

(8) All periodic statements from the last 12 months for all checking accounts, and for all other accounts (for example, savings accounts, money market funds, certificates of deposit, etc.), regardless of whether or not the account has been closed, including those held in the party's name individually, in the party's name jointly with any other person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf. For all accounts that have check-writing privileges, copies of canceled checks and registers, whether written or electronically maintained, shall also be produced, so that the payee and purpose of each individual instrument can be ascertained.

(9) All brokerage account statements in which either party to this action held within the last 12 months or holds an interest including those held in the party's name individually, in the party's name jointly with any person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf. For all accounts that have check-writing privileges, copies of canceled checks and registers, whether written or electronically

maintained, shall also be produced, so that the payee and purpose of each individual instrument can be ascertained.

(10) The most recent statement and statements for the past 12 months for any profit sharing, retirement, deferred compensation, or pension plan (for example, IRA, 401(k), 403(b), SEP, KEOGH, or other similar account) in which the party is a participant or an alternate payee receiving payments and the summary plan description for any retirement, profit sharing, or pension plan in which the party is a participant or an alternate payee receiving payments. (The summary plan description must be furnished to the party on request by the plan administrator as required by 29 U.S.C. § 1024(b)(4).)

(11) The most recent statement and statements for the past 12 months for any virtual currency transactions in which either party to this action participated within the last 12 months or holds an interest, including those held in the party's name individually, in the party's name jointly with any person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf. Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. A listing of all current holdings of virtual currency shall also be disclosed.

(12) The declarations page, the last periodic statement, statements for the past 12 months, and the certificate for all life insurance policies insuring the party's life or the life of the party's spouse, whether group insurance or otherwise, and all current health and dental insurance cards covering either of the parties and/or their dependent children.

(13) Corporate, partnership, and trust tax returns for the last 3 tax years if the party has an ownership or interest in a corporation, partnership, or trust.

(14) All promissory notes evidencing a party's indebtedness for the last 24 months, whether since paid or not, all credit card and charge account statements and other records

showing the party's indebtedness as of the date of the filing of this action and for the last 24 months preceding compliance with these disclosure requirements, and all present lease agreements, whether owed in the party's name individually, in the party's name jointly with any other person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf.

(15) All written premarital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage, and all affidavits and declarations of non-paternity or judgments of disestablishment of paternity for any minor or dependent children born or conceived during the marriage. Additionally, in any modification proceeding, each party must serve on the opposing party all written agreements entered into between them at any time since the order to be modified was entered.

(16) All documents supporting the producing party's claim that an asset or liability is nonmarital, for enhancement or appreciation of nonmarital property, or for an unequal distribution of marital property. The documents produced must be for the time period from the date of acquisition of the asset or debt to the date of production or from the date of the marriage, if based on premarital acquisition.

(17) Any court orders directing a party to pay or receive spousal or child support.

(f) Duty to Supplement Disclosure; Amended Financial Affidavit.

(1) Parties have a continuing duty to supplement documents described in this rule, including financial affidavits, whenever a material change in their financial status occurs.

(2) If an amended financial affidavit or an amendment to a financial affidavit is filed, the amending party must also serve any subsequently discovered or acquired documents supporting the amendments to the financial affidavit.

(g) Sanctions. Any document to be produced under this rule that is not served on the opposing party within the time periods set forth in subdivision (b)(1), as applicable, before a nonfinal hearing or in violation of the court's pretrial order shall not be admissible in evidence at that hearing unless the court finds good cause for the delay. In addition, the court may impose other sanctions authorized by rule 12.380 as may be equitable under the circumstances. The court may also impose sanctions upon the offending lawyer in lieu of imposing sanctions on a party.

(h) Extensions of Time for Complying with Mandatory Disclosure. By agreement of the parties, the time for complying with mandatory disclosure may be extended. Either party may also file, before the due date, a motion to enlarge the time for complying with mandatory disclosure. The court must grant the request for good cause shown.

(i) Objections to Mandatory Automatic Disclosure. Objections to the mandatory automatic disclosure required by this rule shall be served in writing at least 5 days before the due date for the disclosure or the objections shall be deemed waived. The filing of a timely objection, with a notice of hearing on the objection, automatically stays mandatory disclosure for those matters within the scope of the objection. For good cause shown, the court may extend the time for the filing of an objection or permit the filing of an otherwise untimely objection. The court must impose sanctions for the filing of meritless or frivolous objections.

(j) Certificate of Compliance. All parties subject to automatic mandatory disclosure must file with the court a certificate of compliance, Florida Family Law Rules of Procedure Form 12.932, identifying with particularity the documents which have been delivered and certifying the date of service of the financial affidavit and documents by that party. The party must swear or affirm under oath that the disclosure is complete, accurate, and in compliance with this rule, unless the party indicates otherwise, with specificity, in the certificate of compliance.

(k) Child Support Guidelines Worksheet. If the case involves child support, the parties must file with the court at or

before a hearing to establish or modify child support a Child Support Guidelines Worksheet in substantial conformity with Florida Family Law Rules of Procedure Form 12.902(e). This requirement cannot be waived by the parties.

(*l*) Place of Production.

(1) Unless otherwise agreed by the parties or ordered by the court, all production required by this rule takes place in the county where the action is pending and in the office of the attorney for the party receiving production. Unless otherwise agreed by the parties or ordered by the court, if a party does not have an attorney or if the attorney does not have an office in the county where the action is pending, production takes place in the county where the action is pending at a place designated in writing by the party receiving production, served at least 5 days before the due date for production.

(2) If venue is contested, on motion by a party the court must designate the place where production will occur pending determination of the venue issue.

(m) Failure of Defaulted Party to Comply. Nothing in this rule shall be deemed to preclude the entry of a final judgment when a party in default has failed to comply with this rule.

Commentary

1995 Adoption. This rule creates a procedure for automatic financial disclosure in family law cases. By requiring production at an early stage in the proceedings, it is hoped that the expense of litigation will be minimized. See *Dralus v. Dralus*, 627 So.2d 505 (Fla. 2d DCA 1993); *Wrona v. Wrona*, 592 So.2d 694 (Fla. 2d DCA 1991); and *Katz v. Katz*, 505 So.2d 25 (Fla. 4th DCA 1987). A limited number of requirements have been placed upon parties making and spending less than $50,000 annually unless otherwise ordered by the court. In cases where the income or expenses of a party are equal to or exceed $50,000 annually, the requirements are much greater. Except for the provisions as to financial affidavits, other than as set forth in subdivision (k), any portion of this rule

may be modified by agreement of the parties or by order of the court. For instance, upon the request of any party or on the court's own motion, the court may order that the parties to the proceeding comply with some or all of the automatic mandatory disclosure provisions of this rule even though the parties do not meet the income requirements set forth in subdivision (d). Additionally, the court may, on the motion of a party or on its own motion, limit the disclosure requirements in this rule should it find good cause for doing so.

Committee Notes

1997 Amendment. Except for the form of financial affidavit used, mandatory disclosure is made the same for all parties subject to the rule, regardless of income. The amount of information required to be disclosed is increased for parties in the under-$50,000 category and decreased for parties in the $50,000-or-over category. The standard family law interrogatories are no longer mandatory, and their answers are designed to be supplemental and not duplicative of information contained in the financial affidavits.

1998 Amendment. If one party has not provided necessary financial information for the other party to complete a child support guidelines worksheet, a good faith estimate should be made.

2005 Amendment. The requirement that a party certify compliance with mandatory disclosure is intended to facilitate full disclosure and prevent a party from alleging that he or she did not know he or she had to provide documents required by this rule. This certification does not relieve the party of the duty to supplement disclosure.

2012 Amendment. Subdivision (b)(1)(B) is amended to provide for e-mail service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.287. FINANCIAL AFFIDAVITS IN ENFORCEMENT AND CONTEMPT PROCEEDINGS

Any party in an enforcement or contempt proceeding may serve upon any other party a written request to serve a financial affidavit if the other party's financial circumstances are relevant in the proceeding. The party to whom the request is made shall serve the requested financial affidavit and file a notice of compliance within 10 days after the service of the written request. The court may allow a shorter or longer time. The financial affidavit shall be in substantial conformity with Florida Family Law Rules of Procedure Form 12.902(b) (Short Form), all sections of which shall be completed.

RULE 12.290. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

(1) *Petition.* A person who desires to perpetuate that person's own testimony or that of another person regarding any matter that may be cognizable in any court of this state may file a verified petition in the circuit court in the county of the residence of any expected adverse party. The petition must:

(A) be titled in the name of the petitioner; and

(B) show:

(i) that the petitioner expects to be a party to an action cognizable in a court of Florida, but is presently unable to bring it or cause it to be brought,

(ii) the subject matter of the expected action and the petitioner's interest in it,

(iii) the facts which the petitioner desires to establish by the proposed testimony and the petitioner's reasons for desiring to perpetuate it,

(iv) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and

(v) the names and addresses of the persons to be examined and the substance of the testimony that the petitioner expects to elicit from each; and must ask for an order authorizing the petitioner to take the deposition of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner must serve a notice on each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court at a time and place named therein for an order described in the petition. At least 20 days before the date of hearing the notice must be served either within or without the county in the manner provided by law for service of summons, but if such service cannot with due diligence be made on any expected adverse party named in the petition, the court may make an order for service by publication or otherwise, and must appoint an attorney for persons not served in the manner provided by law for service of summons who will represent them, and if they are not otherwise represented, will cross-examine the deponent.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it must make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the deposition shall be taken upon oral examination or written interrogatories. The deposition may then be taken in accordance with these rules and the court may make orders in accordance with the requirements of these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference to the court in which the action is pending shall be deemed to refer to the court in which the petition for deposition was filed.

(4) *Use of Deposition.* A deposition taken under this rule may be used in any action involving the same subject matter subsequently brought in any court in accordance with rule 12.330.

(b) Pending Appeal. If an appeal has been taken from a judgment of any court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion for leave to take the deposition on the same notice and service as if the action was pending in the court. The motion must show (1) the names and addresses of persons to be examined and the substance of the testimony which the movant expects to elicit from each, and (2) the reason for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay in justice, it may make an order allowing the deposition to be taken and may make orders of the character provided for by these rules, and thereupon the deposition may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

RULE 12.300. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

(a) Persons Authorized. Depositions may be taken before any notary public or judicial officer or before any officer authorized by the statutes of Florida to take acknowledgments or proof of executions of deeds or by any person appointed by the court in which the action is pending.

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of Florida or of the United States, (2) before a person commissioned by the court, and a person so

commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony, or (3) pursuant to a letter of request. A commission or a letter of request must be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient, and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in .....(name of country)....." Evidence obtained in response to a letter of request need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or any similar departure from the requirements for depositions taken within Florida under these rules.

(c) Selection by Stipulation. If the parties so stipulate in writing, depositions may be taken before any person at any time or place upon any notice and in any manner and when so taken may be used like other depositions.

(d) Persons Disqualified. Unless so stipulated by the parties, no deposition may be taken before a person who is a relative, employee, attorney, or counsel of any of the parties, is a relative or employee of any of the parties' attorneys or counsel, or is financially interested in the action.

RULE 12.310. DEPOSITIONS UPON ORAL EXAMINATION

(a) When Depositions May Be Taken. After commencement of the action any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the petitioner seeks to take a deposition within 30 days after service of the process and initial pleading on any respondent, except that leave is not required (1) if a respondent has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2). The attendance of witnesses may be compelled by subpoena as provided in rule 12.410. The

deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice; Method of Taking; Production at Deposition.

(1) A party desiring to take the deposition of any person upon oral examination must give reasonable notice in writing to every other party to the action. The notice must state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced under the subpoena must be attached to or included in the notice, and if the deposition is to be taken through the use of communication technology, the parties shall provide the subpoenaed documents no later than 5 days prior to the deposition.

(2) Leave of court is not required for the taking of a deposition by petitioner if the notice states that the person to be examined is about to go out of the state and will be unavailable for examination unless a deposition is taken before expiration of the 30-day period under subdivision (a). If a party shows that when served with notice under this subdivision that party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against that party.

(3) For cause shown the court may enlarge or shorten the time for taking the deposition.

(4) Any deposition may be audiovisually recorded without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. In addition to the requirements in subdivision (b)(1), a party intending to audiovisually record a deposition must:

(i) state that the deposition is to be audiovisually recorded in the title of the notice; and

(ii) identify the method for audiovisually recording the deposition and, if applicable, provide the name and address of the operator of the audiovisual recording equipment in the body of the notice.

(B) Court Reporter. Audiovisually recorded depositions must also be stenographically recorded by a certified court reporter, unless all parties agree otherwise. If all parties have agreed to waive the requirement of stenographic recording, then in addition to the requirements of subdivision (b)(4)(A), the notice or subpoena setting deposition shall set forth that agreement.

(C) Procedure. At the beginning of the deposition, the officer before whom it is taken must, on camera: (i) identify the style of the action, (ii) state the date, and (iii) put the witness under oath as provided in subdivision (c)(1).

(D) Responsibility for Recordings and Obtaining Copies. The attorney for the party, or the self-represented litigant, requesting the audiovisual recording of the deposition must take custody of and be responsible for the safeguarding of the recording. If requested, an attorney or self-represented litigant safeguarding a recording must provide a copy of the recording at the expense of the party requesting the copy unless the court order otherwise. An attorney or self-represented litigant safeguarding a recording may condition providing a copy of the recording upon receipt of payment. An attorney or self-represented litigant who fails to safeguard a recording or provide a copy as set forth in this subdivision may be subject to sanctions.

(E) Cost of Audiovisually Recorded Depositions. The party requesting the audiovisual recording bears the initial cost of the recording.

(5) The notice to a party deponent may be accompanied by a request made in compliance with rule 12.350 for the production of documents and tangible things at the taking of the

deposition. The procedure of rule 12.350 applies to the request. Rule 12.351 provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents.

(6) In the notice a party may name as the deponent a public or private corporation, a partnership or association, or a governmental agency, and designate with reasonable particularity the matters on which examination is requested. The organization so named must designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify. The persons so designated must testify about matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules.

(7) A deposition may be taken by communication technology, as that term is defined in Florida Rule of General Practice and Judicial Administration 2.530, if stipulated by the parties or if ordered by the court on its own motion or on motion of a party. A court official must determine whether good cause exists before authorizing the use of communication technology for the taking of a deposition, but a motion filed under this subdivision shall not require a hearing. The order may prescribe the manner in which the deposition will be taken. In addition to the requirements of subdivision (b)(1), a party intending to take a deposition by communication technology must:

(A) state that the deposition is to be taken using communication technology in the title of the notice; and

(B) identify the specific form of communication technology to be used and provide instructions for access to the communication technology in the body of the notice.

(8) Any minor subpoenaed for testimony has the right to be accompanied by a parent, guardian, guardian ad litem, or attorney ad litem at all times during the taking of testimony

notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor. The provisions of this subdivision do not alter the requirements of rule 12.407 that a court order must be obtained before a minor child may be deposed or brought to a deposition.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections; Transcription.

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken must put the witness under oath and must personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness, except that when a deposition is being taken by communication technology under subdivision (b)(7), the witness must be put under oath as provided in Florida Rule of General Practice and Judicial Administration 2.530. The testimony must be taken stenographically or recorded via audio-video communication technology under subdivision (b)(4). All objections made at the time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, or the conduct of any party, and any other objection to the proceedings must be noted by the officer during the deposition. Any objection during a deposition must be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d). Otherwise, evidence objected to must be taken subject to the objections. Instead of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party must transmit them to the officer, who must propound them to the witness and record the answers verbatim.

(2) If requested by a party, the testimony must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties. A party who intends to use an audio or audiovisual recording of testimony at a hearing or trial must have the testimony transcribed and must file a copy of the transcript with the court.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and on a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, or that objection and instruction to a deponent not to answer are being made in violation of subdivision (c), the court in which the action is pending or the circuit court where the deposition is being taken may order the officer conducting the examination to cease immediately from taking the deposition or may limit the scope and manner of the taking of the deposition under rule 12.280(d). If the order terminates the examination, it shall be resumed thereafter only on the order of the court in which the action is pending. On demand of any party or the deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of rule 12.380(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Witness Review. If the testimony is transcribed, the transcript must be furnished to the witness for examination and must be read to or by the witness unless the examination and reading are waived by the witness and by the parties. Any changes in form or substance that the witness wants to make must be listed in writing by the officer with a statement of the reasons given by the witness for making the changes. The changes must be attached to the transcript. It must then be signed by the witness unless the parties waived the signing or the witness is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within a reasonable time after it is furnished to the witness, the officer signs the transcript and states on the transcript the waiver, illness, absence of the witness, or refusal to sign with any reasons given. The deposition may then be used as fully as though signed unless

the court holds that the reasons given for the refusal to sign require rejection of the deposition wholly or partly, on motion under rule 12.330(d)(4).

(f) Filing; Exhibits.

(1) If the deposition is transcribed, the officer must certify on each copy of the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Documents and things produced for inspection during the examination of the witness must be marked for identification and annexed to and returned with the deposition on the request of a party, and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification if that person affords to all parties fair opportunity to verify the copies by comparison with the originals. If the person producing the materials requests their return, the officer must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition.

(2) On payment of reasonable charges therefor the officer must furnish a copy of the deposition to any party or to the deponent.

(3) A copy of a deposition may be filed only under the following circumstances:

(A) It may be filed in compliance with Florida Rule of General Practice and Judicial Administration 2.425 and rule 12.280(j) by a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing of the deposition must be given to all parties unless notice is waived. A party filing the deposition must furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.

(B) If the court determines that a deposition previously taken is necessary for the decision of a matter pending

before the court, the court may order that a copy be filed by any party at the initial cost of the party, and the filing party must comply with rules 2.425 and 12.280(j).

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed with the deposition and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by the other party and the other party's attorney in attending, including reasonable attorneys' fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena on the witness and the witness because of the failure does not attend and if another party attends in person or by attorney because that other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorneys' fees.

Committee Note

2008 Amendment. The provisions of *Fla. R. Civ. P.* 1.310(b)(8) do not alter the requirements of Rule 12.407 that a court order must be obtained before deposing a minor child.

RULE 12.320. DEPOSITIONS UPON WRITTEN QUESTIONS

(a) Serving Questions; Notice. After commencement of the action any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in rule 12.410. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. A party desiring to take a deposition upon written questions must serve them with a notice stating

(1) the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which that person belongs, and

(2) the name or descriptive title and address of the officer before whom the deposition is to be taken.

Within 30 days after the notice and written questions are served, a party may serve cross questions on all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions on all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions on all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served must be delivered by the party taking the depositions to the officer designated in the notice, who must proceed promptly to take the testimony of the witness in the manner provided by rules 12.310(c), (e), and (f) in response to the questions and to prepare the deposition, attaching the copy of the notice and the questions received by the officer. The questions must not be filed separately from the deposition unless a party seeks to have the court consider the questions before the questions are submitted to the witness. Any deposition may be audiovisually recorded without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with rule 12.310(b)(4).

RULE 12.330. USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) Use of Depositions. At the trial or on the hearing of a motion or an interlocutory proceeding, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice of it so far as admissible under the rules of evidence applied as though the witness were then present and testifying in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any purpose permitted by the Florida Evidence Code.

(2) The deposition of a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead;

(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena;

(E) on application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

(F) the witness is an expert or skilled witness.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

(b) Objections to Admissibility. Subject to the provisions of subdivision (d)(3) of this rule and of rule 12.300(b), objection may be made at the trial or hearing to receiving in evidence any

deposition or part of it for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Taking or Using Depositions. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part of it for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this does not apply to the use by an adverse party of a deposition under subdivision (a)(2). At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) Effect of Errors and Irregularities.

(1) *As to Notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving the notice.

(2) *As to Disqualification of Officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind that might be obviated,

removed, or cured if promptly presented are waived unless timely objection to them is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under rule 12.320 are waived unless served in writing on the party propounding them within the time allowed for serving the succeeding cross or other questions and within 10 days after service of the last questions authorized.

(4) *As to Completion and Return.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, or otherwise dealt with by the officer under rules 12.310 and 12.320 are waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after the defect is, or with due diligence might have been, discovered.

RULE 12.340. INTERROGATORIES TO PARTIES

(a) Procedure for Use. Without leave of court, any party may serve on any other party written interrogatories to be answered by the party to whom the interrogatories are directed, or if that party is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who must furnish the information available to that party. Interrogatories may be served on the petitioner after commencement of the action and on any other party with or after service of the process and initial pleading on that party. A party may serve fewer than all of the approved interrogatories within a form.

(1) *Initial Interrogatories.* Initial interrogatories to parties in original and enforcement actions must 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).

(2) *Modification Interrogatories.* Interrogatories to parties in cases involving modification of a final judgment must 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).

(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. The expert interrogatories authorized by rule 12.280 are not included within the limitation of ten additional interrogatories to a party prescribed by this rule.

(c) Service of and Objections to Interrogatories. Each interrogatory must be answered separately and fully in writing under oath unless it is objected to, in which event the grounds for objection must be stated and signed. The party to whom the interrogatories are directed must serve the answers and any objections within 30 days after the service of the interrogatories, except that a respondent may serve answers or objections within 45 days after service of the process and initial pleading on that respondent. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under rule 12.380(a) on any objection to or other failure to answer an interrogatory.

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

(e) Scope; Use at Trial. Interrogatories may relate to any matters that can be inquired into under rule 12.280(b), and the answers may be used to the extent permitted by the rules of evidence except as otherwise provided in this subdivision. An

interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. A party must respond to such an interrogatory by giving the information the party has and the source on which the information is based. Such a qualified answer may not be used as direct evidence for or impeachment against the party giving the answer unless the court finds it otherwise admissible under the rules of evidence.

(f) Option to Produce Records. When the answer to an interrogatory may be derived or ascertained from the records (including electronically stored information) of the party to whom the interrogatory is directed or from an examination, audit, or inspection of the records or from a compilation, abstract, or summary based on the records and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries, production of the records in lieu of a written response is a sufficient answer. An answer must be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained, or must identify a person or persons representing the interrogated party who will be available to assist the interrogating party in locating and identifying the records at the time they are produced. If the records to be produced consist of electronically stored information, the records must be produced in a form or forms in which they are ordinarily maintained or in a reasonably usable form or forms.

(g) Effect on Other Parties. Answers made by a party are not binding on any other party.

(h) Service. Interrogatories must be arranged so that a blank space is provided after each separately numbered interrogatory. The

space must be reasonably sufficient to enable the answering party to insert the answer within the space. If sufficient space is not provided, the answering party may attach additional pages with answers and refer to them in the space provided in the interrogatories. Interrogatories must be served on the party to whom the interrogatories are directed and copies must be served on all other parties. A certificate of service of the interrogatories must be filed, giving the date of service and the name of the party to whom they were directed. The answers to the interrogatories must be served on the party originally propounding the interrogatories and a copy must be served on all other parties by the answering party. The original or any copy of the answers to interrogatories may be filed in compliance with Florida Rule of General Practice and Judicial Administration 2.425 and rule 12.280(j) by any party when the court should consider the answers to interrogatories in determining any matter pending before the court. The court may order a copy of the answers to interrogatories filed at any time when the court determines that examination of the answers to interrogatories is necessary to determine any matter pending before the court.

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 12.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY ON LAND FOR INSPECTION AND OTHER PURPOSES

(a) Request; Scope. Any party may request any other party:

(1) to produce and permit the party making the request, or someone acting in the requesting party's behalf, to inspect and copy any designated documents, including electronically stored information, writings, drawings, graphs, charts, photographs, audio, visual, or digital recordings, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of rule 12.280(c) and that are in the possession, custody, or control of the party to whom the request is directed;

(2) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of rule 12.280(c) and that are in the possession, custody, or control of the party to whom the request is directed; or

(3) to permit entry on designated land or other property in the possession or control of the party on whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on it within the scope of rule 12.280(c).

(b) Procedure. Without leave of court the request may be served on the petitioner after commencement of the action and on any other party with or after service of the process and initial pleading on that party. The request must set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the

request is directed must serve a written response within 30 days after service of the request, except that a respondent or third-party defendant may serve a response within 45 days after service of the process and initial pleading on that respondent or third-party defendant. The court may allow a shorter or longer time. For each item or category, the response must state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection must be stated. If an objection is made to part of an item or category, the part must be specified. When producing documents, the response must include an accompanying notice filed in compliance with Rule of General Practice and Judicial Administration 2.425 with the court that states with specificity each document produced. When producing documents, the producing party must either produce them as they are kept in the usual course of business or must identify them to correspond with the categories in the request. A request for electronically stored information may specify the form or forms in which electronically stored information is to be produced. If the responding party objects to a requested form, or if no form is specified in the request, the responding party must state the form or forms it intends to use. If a request for electronically stored information does not specify the form of production, the producing party must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The party submitting the request may move for an order under rule 12.380 concerning any objection, failure to respond to the request, or any part of it, or failure to permit the inspection as requested.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter on land.

(d) Filing of Documents. Unless required by the court, a party shall not file any of the documents or things produced with the response, although a party must include an accompanying notice filed in compliance with Rule of General Practice and Judicial Administration 2.425 with the court that states with specificity each document produced. Documents or things may be filed in compliance with Florida Rule of General Practice and Judicial

Administration 2.425 and rule 12.280(j) when they should be considered by the court in determining a matter pending before the court.

RULE 12.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION

(a) Request; Scope. A party may seek inspection and copying of any documents or things within the scope of rule 12.350(a) from a person who is not a party by issuance of a subpoena directing the production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things. This rule provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents or things under rule 12.310.

(b) Procedure. A party desiring production under this rule must serve notice as provided in Florida Rule of General Practice and Judicial Administration 2.516 on every other party of the intent to serve a subpoena under this rule at least 10 days before the subpoena is issued if service is by delivery, facsimile, or e-mail and 15 days before the subpoena is issued if the service is by mail. The proposed subpoena must be attached to the notice and must state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; must include a designation of the items to be produced; and must state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and proposed subpoena shall not be furnished to the person on whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service of the notice, if service is by delivery, facsimile, or email or within 15 days if services is by mail, the documents or things must not be produced

pending resolution of the objection in accordance with subdivision (d).

(c) Subpoena. If no objection is made by a party under subdivision (b), an attorney of record in the action may issue a subpoena or the party desiring production must deliver to the clerk for issuance a subpoena together with a certificate of counsel or pro se party that no timely objection has been received from any party, and the clerk must issue the subpoena and deliver it to the party desiring production. Service within the state of Florida of a nonparty subpoena is deemed sufficient if it complies with rule 12.410(d) or if (1) service is accomplished by mail or hand delivery by a commercial delivery service, and (2) written confirmation of delivery, with the date of service and the name and signature of the person accepting the subpoena, is obtained and filed by the party seeking production. The subpoena must be identical to the copy attached to the notice and must specify that no testimony may be taken and must require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person on whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena may require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person on whom the subpoena is served objects at any time before the production of the documents or things, the documents or things will not be produced under this rule, and relief may be obtained under rule 12.310.

(d) Ruling on Objection. If an objection is made by a party under subdivision (b), the party desiring production may file a motion with the court seeking a ruling on the objection or may proceed under rule 12.310.

(e) Copies Furnished. If the subpoena is complied with by delivery or mailing of copies as provided in subdivision (c), the party

receiving the copies may furnish a legible copy of each item furnished to any other party who requests it upon the payment of the reasonable cost of preparing the copies.

(f) Independent Action. This rule does not affect the right of any party to bring an independent action for production of documents and things or permission to enter on land.

Committee Note

2012 Amendment. This rule is amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.360. EXAMINATION OF PERSONS

(a) Request; Scope.

(1) A party may request any other party to submit to, or to produce a person in that other party's custody or legal control for, examination by a qualified expert when the condition that is the subject of the requested examination is in controversy. Examinations may include, but are not limited to, examinations involving physical or mental condition, employability or vocational testing, genetic testing, or any other type of examination related to a matter in controversy.

(A) When the physical condition of a party or other person under subdivision (a)(1) is in controversy, the request may be served on the party or other persons without leave of court after commencement of the action, and on any other person or party with or after service of the process and initial pleading. The request must specify a reasonable time, place, manner, conditions, and scope of the examination and the person or persons by whom the examination is to be made. The party to whom the request is directed must serve a response within 30 days after service of the request, except that a respondent need not serve a response until 45 days after service of the process and initial pleading on that respondent. The court may allow a shorter or longer time. The response must state that the examination will be permitted as requested unless the request is objected to, in which event the

reasons for the objection must be stated. If the examination is to be recorded or observed by others, the request or response must also include the number of people attending, their role, and the method or methods of recording.

(B) In cases in which the condition in controversy is not physical, a party may move for an examination by a qualified expert as in subdivision (a)(1). The order for examination may be made only after notice to the person to be examined and to all parties, and must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(C) The examination of a minor child is governed by rule 12.363.

(D) Social investigations are governed by rule 12.364.

(2) An examination under this rule is authorized only when the party submitting the request has good cause for the examination. At any hearing the party submitting the request has the burden of showing good cause.

(3) On request of either the party requesting the examination or the party or person to be examined, the court may establish protective rules governing such examination.

(b) Report of Examiner.

(1) If requested by the party to whom a request for examination or against whom an order is made under subdivision (a)(1)(A) or (a)(1)(B) or by the person examined, the party requesting the examination must deliver to the other party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnosis, and conclusions, with similar reports of all earlier examinations of the same condition. After delivery of the detailed written report, the party requesting the examination is entitled, on request, to receive from the party to whom the request for examination or against whom the order is

made a similar report of any examination of the same condition previously or thereafter made, unless in the case of a report of examination of a person not a party the party shows the inability to obtain it. On motion, the court may order delivery of a report on such terms as are just; and if an examiner fails or refuses to make a report, the court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or requested or by taking the deposition of the examiner, the party examined waives any privilege that party may have in that action or any other involving the same controversy regarding the testimony of every other person who has examined or may thereafter examine that party concerning the same condition.

(3) This subdivision applies to examinations made by agreement of the parties unless the agreement provides otherwise. This subdivision does not preclude discovery of a report of an examiner or taking the deposition of the examiner in accordance with any other rule.

(c) Examiner as Witness. The examiner may be called as a witness by any party to the action, but is not to be identified as appointed by the court.

Commentary

1995 Adoption. This rule expands Florida Rule of Civil Procedure 1.360 to specify common examinations in family law matters, but this rule is not intended to be an exclusive list of allowable examinations. Rule 1.360 should be interpreted to discourage subjecting children to multiple interviews, testing, and evaluations.

RULE 12.363. EVALUATION OF MINOR CHILD

(a) Appointment of Expert.

(1) The court, on motion of any party or the court's own motion, may appoint an expert for an examination, evaluation,

testing, or interview of any minor child. The parties may agree on the particular expert to be appointed, subject to approval by the court. If the parties have agreed, they shall submit an order including the name, address, telephone number, area of expertise, and professional qualifications of the expert. If there has been a determination of the need for the appointment of an expert and the parties cannot agree on the selection of the expert, the court shall appoint an expert.

(2) After the examination, evaluation, or investigation, any party may file a motion for an additional expert examination, evaluation, interview, testing, or investigation by another expert. The court upon hearing may permit the additional examination, evaluation, testing, or interview only on a showing of good cause and only upon a finding that further examinations, testing, interviews, or evaluations would be in the best interests of the minor child.

(3) Any order entered under this rule shall specify the issues to be addressed by the expert.

(4) Any order entered under this rule may require that all interviews of the child be recorded and the tapes be maintained as part of the expert's file.

(5) The order appointing the expert shall include an initial allocation of responsibility for payment.

(6) A copy of the order of appointment shall be provided immediately to the expert by the court unless otherwise directed by the court. The order shall direct the parties to contact the expert appointed by the court to establish an appointment schedule to facilitate timely completion of the evaluation.

(b) Providing of Reports.

(1) Unless otherwise ordered, the expert shall prepare and provide a written report to each party and the guardian ad litem, if appointed, a reasonable time before any evidentiary hearing on the matter at issue. The expert also shall send written notice to

the court that the report has been completed and that a copy of the written report has been provided to each party and the guardian ad litem, if appointed. In any event, the written report shall be prepared and provided no later than 30 days before trial or 75 days from the order of appointment, unless the time is extended by order of the court. The expert shall not send a copy of the report to the court unless the parties and their attorneys have agreed in writing that the report will be considered by the court and filed in the court files as provided in subdivision (e).

(2) On motion of any party, the court may order the expert to produce the expert's complete file to another expert at the initial cost of the requesting party, for review by such expert, who may testify.

(c) Testimony of Other Experts. Any other expert who has treated, tested, interviewed, examined, or evaluated a child may testify only if the court determines that good cause exists to permit the testimony. The fact that no notice of such treatment, testing, interview, examination, or evaluation of a child was given to both parents shall be considered by the court as a basis for preventing such testimony.

(d) Communications with Court by Expert. No expert may communicate with the court without prior notice to the parties, who shall be afforded the opportunity to be present and heard during any such communication between the expert and the court. A request for communication with the court may be informally conveyed by letter or telephone. Further communication with the court, which may be conducted informally, shall be done only with notice to the parties.

(e) Use of Evidence. An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed expert's findings. Any finding or report by an expert appointed by the court may be entered into evidence on the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties. Any report filed with the court shall be in compliance with Florida

Rule of General Practice and Judicial Administration 2.425. The report shall not be filed in the court file unless or until it is properly admitted into evidence and considered by the court. The court shall consider whether the report should be sealed as provided by Florida Rule of General Practice and Judicial Administration 2.420.

(f) Limitation of Scope. This rule shall not apply to parenting coordinators or social investigators.

Committee Note

1997 Adoption. This rule should be interpreted to discourage subjecting children to multiple interviews, testing, and evaluations, without good cause shown. The court should consider the best interests of the child in permitting evaluations, testing, or interviews of the child. The parties should cooperate in choosing a mental health professional or individual to perform this function to lessen the need for multiple evaluations.

This rule is not intended to prevent additional mental health professionals who have not treated, interviewed, or evaluated the child from testifying concerning review of the data produced pursuant to this rule.

This rule is not intended to prevent a mental health professional who has engaged in long-term treatment of the child from testifying about the minor child.

RULE 12.364. SOCIAL INVESTIGATIONS

(a) Applicable to Social Investigations. This rule shall apply to the appointment of an investigator to conduct a social investigation and study under section 61.20, Florida Statutes.

(b) Appointment of Social Investigator. When the issue of time-sharing, parental responsibility, ultimate decision-making, or a parenting plan for a minor child is in controversy, the court, on motion of any party or the court's own motion, may appoint an investigator under section 61.20, Florida Statutes. The parties may agree on the particular investigator to be appointed, subject to

approval by the court. If the parties have agreed on the need for a social investigation or the court has determined there is such need, and the parties cannot agree on the selection, the court shall select and appoint an investigator. The social investigator must be qualified as an expert under section 90.702, Florida Statutes, to testify regarding the written study.

(c) Order for Social Investigation. The order for a social investigation shall state whether this is an initial establishment of a parenting plan or a modification of an existing parenting plan. The investigator shall be required to consider the best interests of the child based upon all of factors affecting the welfare and interest of the particular minor child and the circumstances of that family, including, but not limited to the statutory factors set forth in section 61.13, Florida Statutes.

(d) Order Appointing Social Investigator. An order appointing a social investigator shall state that the investigator is being appointed under section 61.20, Florida Statutes, and shall state:

(1) The name, address, and telephone number for each parent.

(2) The name, address, and telephone number of the investigator being appointed.

(3) Any specific issues to be addressed.

(4) An initial allocation of responsibility for payment of the costs for the social investigation. The court may consider taxing the costs at a final hearing.

(5) The order shall direct the parties to contact the investigator appointed by the court to establish an appointment schedule to facilitate timely completion of the investigation. A copy of the order of appointment shall be provided immediately to the investigator by the court, unless otherwise directed by the court.

(e) Written Study with Recommendations. The investigator shall prepare a written study with recommendations regarding a parenting plan, including a written statement of facts found in the social investigation on which the recommendations are based. The written study with recommendations shall be furnished to the court and a copy provided to all parties of record by the investigator at least 30 days before any hearing at which the court is to consider the written study and recommendations, unless otherwise ordered by the court.

(f) Additional Investigation. After the written study is furnished to the court, any party may file a motion for an additional expert examination, evaluation, interview, testing, or investigation. The court upon hearing may order the additional examination, evaluation, testing, or interview of the minor child based on the court finding that the investigation is insufficient and that further examinations, testing, interviews, or evaluations of the minor child would be in the best interests of the minor child.

(g) Production of File. On motion of any party, the court may order the investigator to produce the investigator's complete file to another qualified investigator for review by such investigator, who may render an opinion and testify.

RULE 12.365. EXPERT WITNESSES

(a) Application. The procedural requirements in this rule apply whenever an expert is appointed by the court or retained by a party. This rule applies to all experts including, but not limited to, medical, psychological, social, financial, vocational, and economic experts.

(b) Communication with Court by Expert. No expert may communicate with the court without prior notice to the parties and their attorneys, who must be afforded the opportunity to be present and heard during the communication between the expert and the court. A request for communication with the court may be conveyed informally by letter or telephone. Further communication with the court, which may be conducted informally, may be done only with notice to all parties.

(c) Use of Evidence. The court may not entertain any presumption in favor of a court-appointed expert's opinion. Any opinion by an expert may be entered into evidence on the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.

(d) Evaluation of Minor Child. This rule does not apply to any evaluation of a minor child under rule 12.363.

Committee Note

1998 Adoption. This rule establishes the procedure to be followed for the use of experts. The District Court of Appeal, Fourth District, has encouraged the use of court-appointed experts to review financial information and reduce the cost of divorce litigation. *Tomaino v. Tomaino*, 629 So.2d 874 (Fla. 4th DCA 1993). Additionally, section 90.615(1), Florida Statutes, allows the court to call witnesses whom all parties may cross-examine. See also *Fed. R. Evid. 706* (trial courts have authority to appoint expert witnesses).

RULE 12.370. REQUESTS FOR ADMISSION

(a) Request for Admission.

(1) *Service of Request.* A party may serve on any other party a written request for the admission of the truth of any matters within the scope of rule 12.280(c), set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request and any response must comply with Florida Rule of General Practice and Judicial Administration 2.425. Copies of documents must be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. However, documents attached to the request for admission may not be filed with the court and may only be attached to the copy served on the party to whom the request for admission is directed. Without leave of court the request may be served on the petitioner after commencement of the action and on any other party with or after service of the process and initial pleading on that party.

(2) *Limit on Number of Requests.* The request for admission may not exceed 30 requests, including all subparts, unless the court permits a larger number on motion and notice and for good cause, or the parties propounding and responding to the requests stipulate to a larger number. Each matter of which an admission is requested must be separately set forth.

(3) *Answer or Objection to Request.* The matter is admitted unless the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter within 30 days after service of the request or such shorter or longer time as the court may allow but, unless the court shortens the time, a respondent will not be required to serve answers or objections before the expiration of 45 days after service of the process and initial pleading on the respondent. If objection is made, the reasons must be stated. The answer must specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial must fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party must specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless that party states that that party has made reasonable inquiry and that the information known or readily obtainable by that party is insufficient to enable that party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not object to the request on that ground alone; the party may deny the matter or set forth reasons why the party cannot admit or deny it, subject to rule 12.380(c).

(4) *Motion to Determine Sufficiency of Answers or Objections.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it must order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

Instead of these orders the court may determine that final disposition of the request be made at a pretrial conference or at a designated time before trial. The provisions of rule 12.380(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to rule 12.200 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved by it and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against that party in any other proceeding.

RULE 12.380. FAILURE TO MAKE DISCOVERY; SANCTIONS

(a) Motion for Order Compelling Discovery. On reasonable notice to other parties and all persons affected, a party may apply for an order compelling discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending or in accordance with rule 12.310(d). An application for an order to a deponent who is not a party must be made to the circuit court where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under rule 12.310 or 12.320, or a corporation or other entity fails to make a designation under rule 12.310(b)(6) or 12.320(a), or a party fails to answer an interrogatory submitted under rule 12.340, or if a party in response to a request for inspection submitted under rule 12.350 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, or if a party in response to a request for examination of a person submitted under rule 12.360(a) objects to the examination, fails to respond that the examination will be

permitted as requested, or fails to submit to or to produce a person in that party's custody or legal control for examination, or if any person fails to comply with any discovery request or requirement under the Florida Family Law Rules of Procedure, including, but not limited to, the failure to comply with rule 12.285, the discovering party may move for an order compelling an answer, or a designation or an order compelling inspection, or an order compelling an examination in accordance with the request. The motion must include a certification that the movant, in good faith, has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made under rule 12.280(d).

(3) *Evasive or Incomplete Answer.* For purposes of this subdivision an evasive or incomplete answer shall be treated as a failure to answer.

(4) *Award of Expenses of Motion.* If the motion is granted and after opportunity for hearing, the court must require the party or deponent whose conduct necessitated the motion or the party or counsel advising the conduct to pay to the moving party the reasonable expenses incurred in obtaining the order that may include attorneys' fees, unless the court finds that the movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the opposition to the motion was substantially justified, or that other circumstances make an award of expenses unjust. If the motion is denied and after opportunity for hearing, the court must require the moving party to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion that may include attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust. If the motion is granted in part and denied in part, the court may apportion the reasonable

expenses incurred as a result of making the motion among the parties and persons.

(b) Failure to Comply with Order.

(1) If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of the court.

(2) If a party or an officer, director, or managing agent of a party or a person designated under rule 12.310(b)(6) or 12.320(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or rule 12.360, the court in which the action is pending may make any of the following orders:

(A) An order that the matters regarding which the questions were asked or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

(C) An order striking out pleadings or parts of them or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of it, or rendering a judgment by default against the disobedient party.

(D) Instead of any of the foregoing orders or in addition to them, an order treating as a contempt of court the failure to obey any orders except an order to submit to an examination made under rule 12.360(a)(1)(B) or subdivision (a)(2) of this rule.

(E) When a party has failed to comply with an order under rule 12.360(a)(1)(B) requiring that party to produce another for examination, the orders listed in subdivisions (b)(2)(A)–

(b)(2)(C), unless the party failing to comply shows the inability to produce the person for examination.

Instead of any of the foregoing orders or in addition to them, the court must require the party failing to obey the order to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Alternatively, the court may defer ruling on the party's motion for sanctions until the conclusion of the matter in controversy.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under rule 12.370 and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, the requesting party may file a motion for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, which may include attorneys' fees. The court may issue such an order at the time a party requesting the admissions proves the genuineness of the document or the truth of the matter, upon motion by the requesting party, unless it finds that

(1) the request was held objectionable under rule 12.370(a)(3),

(2) the admission sought was of no substantial importance, or

(3) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under rule 12.310(b)(6) or 12.320(a) to testify on behalf of a party fails

(1) to appear before the officer who is to take the deposition after being served with a proper notice,

(2) to serve answers or objections to interrogatories submitted under rule 12.340 after proper service of the interrogatories, or

(3) to serve a written response to a request for inspection submitted under rule 12.350 after proper service of the request, the court in which the action is pending may take any action authorized under subdivisions (b)(2)(A)–(b)(2)(C) of this rule.

Any motion specifying a failure under subdivisions (d)(2) or (d)(3) must include a certification that the movant, in good faith, has conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. Instead of any order or in addition to it, the court may require the party failing to act to pay the reasonable expenses caused by the failure, which may include attorneys' fees, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 12.280(d).

(e) Electronically Stored Information; Sanctions for Failure to Preserve. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.

RULE 12.390. DEPOSITIONS OF EXPERT WITNESSES

(a) Definition. The term "expert witness" as used herein applies exclusively to a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.

(b) Procedure. The testimony of an expert or skilled witness may be taken at any time before the trial in accordance with the

rules for taking depositions and may be used at trial, regardless of the place of residence of the witness or whether the witness is within the distance prescribed by rule 12.330(a)(3)(B). No special form of notice need be given that the deposition will be used for trial.

(c) Fee. An expert or skilled witness whose deposition is taken must be allowed a witness fee in such reasonable amount as the court may determine. The court must also determine a reasonable time within which payment must be made, if the deponent and party cannot agree. All parties and the deponent must be served with notice of any hearing to determine the fee. Any reasonable fee paid to an expert or skilled witness may be taxed as costs.

(d) Applicability. Nothing in this rule prevents the taking of any deposition as otherwise provided by law.

RULE 12.400. CONFIDENTIALITY OF RECORDS AND PROCEEDINGS

(a) Closure of Proceedings or Records. Closure of court proceedings or sealing of records may be ordered by the court only as provided by Florida Rule of General Practice and Judicial Administration 2.420.

(b) Filing of Sensitive Information. All documents containing sensitive information must be filed in conformity with Florida Rule of General Practice and Judicial Administration 2.425.

(c) In Camera Inspections. The court must conduct an in camera inspection of any records sought to be sealed and consider the contents of the records in determining whether they should be sealed.

(d) Conditional Sealing of Financial Information.

(1) The court has the authority to conditionally seal the financial information required by rule 12.285 if it is likely that access to the information would subject a party to abuse, such as

the use of the information by third parties for purposes unrelated to government or judicial accountability or to first amendment rights. Any such order sealing the financial information is conditional in that the information must be disclosed to any person who establishes that disclosure of the information is necessary for government or judicial accountability or has a proper first amendment right to the information.

(2) Notice of conditional sealing is as required by Florida Rule of General Practice and Judicial Administration 2.420.

(3) Upon receipt of a motion to reopen conditionally sealed financial information, the court must schedule a hearing on the motion with notice provided to the movant and parties.

Commentary

1995 Adoption. Judicial proceedings and records should be public except when substantial compelling circumstances, especially the protection of children or of business trade secrets, require otherwise. Family law matters frequently present such circumstances. It is intended that this rule be applied to protect the interests of minor children from offensive testimony and to protect children in a divorce proceeding.

2003 Amendment. The adoption of a procedure for conditional sealing of the financial information does not change the burden of proof for closure of filed records of court proceedings set forth in *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 118 (Fla. 1988).

RULE 12.407. TESTIMONY AND ATTENDANCE OF MINOR CHILD

(a) Prohibition. Unless otherwise provided by law or another rule of procedure, children who are witnesses, potential witnesses, or related to a family law case, are prohibited from being deposed or brought to a deposition, from being subpoenaed to appear at any family law proceeding, or from attending any family law proceedings without prior order of the court based on good cause shown. In

addition to in-person proceedings, this rule applies to family law proceedings held remotely via communication technology. The parties, counsel, and the court must ensure that children are not present or nearby during any remote proceedings or able to overhear any remote proceedings.

(b) Related Proceedings. In a family law proceeding held concurrently with a proceeding governed by the Florida Rules of Juvenile Procedure, the Florida Rules of Juvenile Procedure govern as to the child's appearance in court.

(c) Uncontested Adoption. This rule does not apply to uncontested adoption proceedings.

Commentary

1995 Adoption. This rule is intended to afford additional protection to minor children by avoiding any unnecessary involvement of children in family law litigation. While due process considerations prohibit an absolute ban on child testimony, this rule requires that a judge determine whether a child's testimony is necessary and relevant to issues before the court prior to a child being required to testify.

2022 Amendment. The ambit of the rule is expanded to include remote proceedings conducted via communication technology and requires the court, parties, and counsel to ensure that minor children are not present during or do not overhear such remote proceedings.

Committee Notes

2018 Amendment. This rule is not intended to prohibit children who are unrelated to the litigation from attending court or depositions in family law cases for educational purposes and other reasons. This rule is intended to protect children who may be harmed by unnecessary involvement in family law proceedings. Children who may be harmed by unnecessary involvement include children who may be the subject of the family law case and children who are witnesses, are potential witnesses, or have extensive

involvement with the family that is the subject of a current family law case.

RULE 12.410. SUBPOENA

(a) Subpoenas Generally. Subpoenas for testimony before the court, subpoenas for production of tangible evidence, and subpoenas for taking depositions may be issued by the clerk of court or by any attorney of record in an action. No subpoena issued under this rule, even if for the purpose of proof of service or nonservice of the subpoena, shall be filed with the court unless in compliance with Florida Rule of Judicial Administration 2.425.

(b) Subpoena for Testimony Before the Court.

(1) Every subpoena for testimony before the court must be issued by an attorney of record in an action or by the clerk under the seal of the court and must state the name of the court and the title of the action and must command each person to whom it is directed to attend and give testimony at a time and place specified in it.

(2) On oral request of an attorney or party, the clerk must issue a subpoena for testimony before the court or a subpoena for the production of documentary evidence before the court signed and sealed but otherwise in blank, both as to the title of the action and the name of the person to whom it is directed, and the subpoena must be filled in before service by the attorney or party.

(c) For Production of Documentary Evidence.

(1) *Generally.* A subpoena may also command the person to whom it is directed to produce the books, papers, documents (including electronically stored information), or tangible things designated therein, but the court, on motion made promptly and in any event at or before the time specified in the subpoena for compliance with it, may:

(A) quash or modify the subpoena if it is unreasonable and oppressive, or

(B) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

A party seeking a production of evidence at trial which would be subject to a subpoena may compel such production by serving a notice to produce such evidence on an adverse party as provided in rule 12.080(a). Such notice shall have the same effect and be subject to the same limitations as a subpoena served on the party.

(2) *Compliance with Rule 2.425.* Any notice to produce issued under this rule must comply with Florida Rule of Judicial Administration 2.425.

(d) Service.

A subpoena may be served by any person authorized by law to serve process or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena on a person named in it shall be made as provided by law. Proof of such service shall be made by affidavit of the person making service except as applicable under rule 12.351(c) for the production of documents and things by a nonparty without deposition, if not served by an officer authorized by law to do so.

(e) Subpoena for Taking Depositions.

(1) Filing a notice to take a deposition as provided in rule 12.310(b) or 12.320(a) with a certificate of service on it showing service on all parties to the action constitutes an authorization for the issuance of subpoenas for the persons named or described in the notice by the clerk of the court in which the action is pending or by an attorney of record in the action. The subpoena must state the method for recording the testimony. A party intending to audiovisually record a deposition must state in the subpoena that

the deposition is to be audiovisually recorded and identify the method for audiovisually recording the deposition, including, if applicable, the name and address of the operator of the audiovisual recording equipment. If a party intends to take a deposition by communication technology, the subpoena must state the deposition is to be taken using communication technology, identify the specific form of communication technology to be used, and provide instructions for access to the communication technology. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things that constitute or contain evidence relating to any of the matters within the scope of the examination permitted by rule 12.280(c), but in that event the subpoena will be subject to the provisions of rule 12.280(d) and subdivision (c) of this rule. Within 10 days after its service, or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. If objection has been made, the party serving the subpoena may move for an order at any time before or during the taking of the deposition upon notice to the deponent.

(2) A person may be required to attend an examination only in the county in which the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of court.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served on that person may be deemed a contempt of the court from which the subpoena issued.

(g) Depositions before Commissioners Appointed in this State by Courts of Other States; Subpoena Powers; etc. When any person authorized by the laws of Florida to administer oaths is appointed by a court of record of any other state, jurisdiction, or government as commissioner to take the testimony of any named

witness within this state, that witness may be compelled to attend and testify before that commissioner by witness subpoena issued by the clerk of any circuit court at the instance of that commissioner or by other process or proceedings in the same manner as if that commissioner had been appointed by a court of this state; provided that no document or paper writing shall be compulsorily annexed as an exhibit to such deposition or otherwise permanently removed from the possession of the witness producing it, but in lieu thereof a copy may be annexed to and transmitted with such executed commission to the court of issuance.

(h) Subpoena of Minor. Any minor subpoenaed for testimony has the right to be accompanied by a parent, guardian, guardian ad litem, or attorney ad litem at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor. The provisions of this subdivision do not alter the requirements of rule 12.407 that a court order must be obtained before a minor child may be subpoenaed to appear at a hearing.

Committee Note

2008 Amendment. The provisions of Fla. R. Civ. P. 1.410(h) do not alter the requirements of rule 12.407 that a court order must be obtained before a minor child may be subpoenaed to appear at a hearing.

2012 Amendment. This rule is amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.420. DISMISSAL OF ACTIONS

(a) Voluntary Dismissal.

(1) *By Parties.* An action or a claim may be dismissed

(A) before trial by serving, or during trial by stating on the record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision; or

(B) by filing a stipulation of dismissal signed by all current parties to the action.

(2) *By Order of Court; Counterpetition.* Except as provided in subdivision (a)(1), an action may not be dismissed at a party's request except on order of the court and on such terms and conditions as the court deems proper. If the petitioner files a notice of dismissal of the original petition after a counterpetition is served by the respondent, the counterpetition shall not be automatically dismissed.

(3) *Adjudication on the Merits.* Unless otherwise specified in a notice of stipulation, a voluntary dismissal is without prejudice and does not operate as an adjudication on the merits.

(b) Involuntary Dismissal. Any party may move for dismissal of an action or of any claim against that party for failure of an adverse party to comply with these rules or any order of court. After a party seeking affirmative relief in an action has completed the presentation of evidence, any other party may move for a dismissal on the ground that on the facts and the law the party seeking affirmative relief has shown no right to relief, without waiving the right to offer evidence if the motion is not granted. Involuntary dismissal for lack of jurisdiction, improper venue, or lack of an indispensable party does not act as an adjudication on the merits. All other involuntary dismissals operate as an adjudication on the merits, unless otherwise specified by the court.

(c) Costs. Costs shall be assessed, except that the court may not require the payment of costs of a previously dismissed claim, which was based on or included the same claim against the same adverse party as the current action.

(d) Failure to Prosecute. In all actions in which it appears on the face of the record that for a period of 10 months, no activity by filing of pleadings or order of court has occurred, and no order staying the action has been issued nor stipulation for stay approved by the court, any interested person, whether a party to the action or not, the court, or the clerk of the court may serve notice to all parties that no such activity has occurred. If no such record activity has occurred within the 10 months immediately preceding the service of the notice, and no record activity occurs within 60 days immediately following the service of the notice, and if no stay was issued or approved before the expiration of the 60-day period, the action must be dismissed by the court on its own motion or on the motion of any interested person, whether a party to the action or not, after reasonable notice to the parties, unless a party shows good cause in writing at least 5 days before the hearing on the motion why the action should remain pending. Mere inaction for a period of less than 1 year is not sufficient cause for dismissal for failure to prosecute.

(e) Effect on Lis Pendens. If a notice of lis pendens has been filed in connection with a claim for affirmative relief that is dismissed under this rule, the notice of lis pendens connected with the dismissed claim is automatically dissolved at the same time. The notice, stipulation, or order must be recorded.

Commentary

1995 Adoption. Subdivision (a), which amends Florida Rule of Civil Procedure 1.420(a)(1), was added to eliminate the language of that subdivision which reads “except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim” and to specifically provide to the contrary. Subdivision (b), which amends rule 1.420(d), was added to prevent the discouragement of reconciliation.

RULE 12.430. DEMAND FOR JURY TRIAL; WAIVER

(a) Right Preserved. The right of trial by jury as declared by the Constitution or by statute must be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving on the other party a demand in writing at any time after commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. The demand may be endorsed on a pleading of the party.

(c) Specification of Issues. In the demand, a party may specify the issues that the party would like tried; otherwise, the party is deemed to demand trial by jury for all issues so triable. If a party has demanded trial by jury for only some of the issues, any other party may serve a demand for trial by jury of any other or all of the issues triable by jury 10 days after service of the demand or such lesser time as the court may order.

(d) Juror Participation Through Audio-Video Communication Technology. Prospective jurors may participate in voir dire or empaneled jurors may participate in the jury trial through audio-video communication technology, as described in Florida Rule of General Practice and Judicial Administration 2.530, if stipulated by the parties in writing and authorized by the court. The written stipulation and a written motion requesting authorization must be filed with the court within 60 days after service of a demand under subdivision (b), or within such other period as may be directed by the court.

(e) Waiver. A party who fails to serve a demand as required by this rule waives trial by jury. If waived, a jury trial may not be granted without the consent of the parties, but the court may allow an amendment in the proceedings to demand a trial by jury or order a trial by jury on its own motion. A demand for trial by jury may not be withdrawn without the consent of the parties.

RULE 12.431. JURY TRIAL

(a) Generally. In those family law cases in which a jury trial is available, this rule governs those proceedings.

(b) Questionnaire.

(1) The circuit court may direct the authority charged by law with the selection of prospective jurors to furnish each prospective juror with a questionnaire in the form approved by the supreme court from time to time to assist the authority in selecting prospective jurors. The questionnaire must be used after the names of jurors have been selected as provided by law but before certification and the placing of the names of prospective jurors in the jury box. The questionnaire must be used to determine those who are not qualified to serve as jurors under any statutory ground of disqualification.

(2) To assist in voir dire examination at trial, any court may direct the clerk to furnish prospective jurors selected for service with a questionnaire in the form approved by the supreme court from time to time. The prospective jurors shall be asked to complete and return the forms. Completed forms may be inspected in the clerk's office and copies must be available in court during the voir dire examination for use by parties and the court.

(c) Examination by Parties. The parties have the right to examine jurors orally on their voir dire. The order in which the parties may examine each juror is determined by the court. The court may ask such questions of the jurors as it deems necessary, but the right of the parties to conduct a reasonable examination of each juror orally must be preserved.

(d) Challenge for Cause.

(1) On motion of any party, the court must examine any prospective juror on oath to determine whether that person is related, within the third degree, to (A) any party, (B) the attorney of any party, or (C) any other person or entity against whom liability or blame is alleged in the pleadings, or is related to any person alleged

to have been wronged or injured by the commission of the wrong for the trial of which the juror is called, or has any interest in the action, or has formed or expressed any opinion, or is sensible of any bias or prejudice concerning it, or is an employee or has been an employee of any party or any other person or entity against whom liability or blame is alleged in the pleadings, within 30 days before the trial. A party objecting to the juror may introduce any other competent evidence to support the objection. If it appears that the juror does not stand indifferent to the action or any of the foregoing grounds of objection exists or that the juror is otherwise incompetent, another must be called in that juror's place.

(2) The fact that any person selected for jury duty from bystanders or the body of the county and not from a jury list lawfully selected has served as a juror in the court in which that person is called at any other time within 1 year is a ground of challenge for cause.

(3) When the nature of any action requires a knowledge of reading, writing, and arithmetic, or any of them, to enable a juror to understand the evidence to be offered, the fact that any prospective juror does not possess the qualifications is a ground of challenge for cause.

(e) Peremptory Challenges. Each party is entitled to 3 peremptory challenges of jurors, but when the number of parties on opposite sides is unequal, the opposing parties are entitled to the same aggregate number of peremptory challenges to be determined on the basis of 3 peremptory challenges to each party on the side with the greater number of parties. The additional peremptory challenges accruing to multiple parties on the opposing side must be divided equally among them. Any additional peremptory challenges not capable of equal division must be exercised separately or jointly as determined by the court.

(f) Exercise of Challenges. All challenges must be addressed to the court outside the hearing of the jury in a manner selected by the court so that the jury panel is not aware of the nature of the challenge, the party making the challenge, or the basis of the court's ruling on the challenge, if for cause.

(g) Swearing of Jurors. No one may be sworn as a juror until the jury has been accepted by the parties or until all challenges have been exhausted.

(h) Alternate Jurors.

(1) The court may direct that 1 or 2 jurors be impaneled to sit as alternate jurors in addition to the regular panel. Alternate jurors in the order in which they are called must replace jurors who have become unable or disqualified to perform their duties before the jury retires to consider its verdict. Alternate jurors must be drawn in the same manner, have the same qualifications, be subject to the same examination, take the same oath, and have the same functions, powers, facilities, and privileges as principal jurors. An alternate juror who does not replace a principal juror must be discharged when the jury retires to consider the verdict.

(2) If alternate jurors are called, each party is entitled to 1 peremptory challenge in the selection of the alternate juror or jurors, but when the number of parties on opposite sides is unequal, the opposing parties are entitled to the same aggregate number of peremptory challenges to be determined on the basis of 1 peremptory challenge to each party on the side with the greater number of parties. The additional peremptory challenges allowed under this subdivision may be used only against the alternate jurors. The peremptory challenges allowed under subdivision (e) may not be used against the alternate jurors.

(i) Interview of a Juror. A party who believes that grounds for legal challenge to a verdict exist may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to the challenge. The motion must be served within 10 days after rendition of the verdict unless good cause is shown for the failure to make the motion within that time. The motion must state the name and address of each juror to be interviewed and the grounds for challenge that the party believes may exist. After notice and hearing, the trial judge must enter an order denying the motion or permitting the interview. If the interview is permitted, the court may prescribe the place, manner, conditions, and scope of the interview.

(j) Communication with the Jury. This rule governs all communication between the judge or courtroom personnel and jurors.

(1) *Communication to be on the Record.* The court must notify the parties of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. Except as set forth below, all communications between the court or courtroom personnel and the jury must be on the record in open court or must be in writing and filed in the action. The court or courtroom personnel must note on any written communication to or from the jury the date and time it was delivered.

(2) *Exception for Certain Routine Communication.* The court may, by pretrial order or by statement on the record with opportunity for objection, set forth the scope of routine ex parte communication to be permitted and the limits imposed by the court with regard to such communication.

(A) Routine ex parte communication between the bailiff or other courtroom personnel and the jurors, limited to juror comfort and safety, may occur off the record.

(B) In no event shall ex parte communication between courtroom personnel and jurors extend to matters that may affect the outcome of the trial, including statements containing any fact or opinion concerning a party, attorney, or procedural matter or relating to any legal issue or lawsuit.

(3) *Instructions to Jury.* During voir dire, the court must instruct the jurors and courtroom personnel regarding the limitations on communication between the court or courtroom personnel and jurors. Upon empanelling the jury, the court must instruct the jurors that their questions are to be submitted in writing to the court, which will review them with the parties and counsel before responding.

(4) *Notification of Jury Communication.* Courtroom personnel must immediately notify the court of any communication

to or from a juror or among jurors in contravention of the court's orders or instructions, including all communication contrary to the requirements of this rule.

RULE 12.440. SETTING ACTION FOR TRIAL

(a) When at Issue. An action is at issue after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading. The party entitled to serve motions directed to the last pleading may waive the right to do so by filing a notice for trial at any time after the last pleading is served. The existence of crossclaims among the parties shall not prevent the court from setting the action for trial on the issues raised by the petition, counterpetition, and answer.

(b) Notice for Trial. Any party may file and serve a notice that the action is at issue and ready to be set for trial. The notice must include an estimate of the time required, indicate whether the trial is on the original action or a subsequent proceeding, and, if applicable, indicate that the court has authorized the participation of prospective jurors or empaneled jurors through audio-video communication technology under rule 12.430(d). The clerk must then submit the notice and the case file to the court. If there are any issues to be tried by jury, the notice for trial must so state.

(c) Setting for Trial. If the court finds the action ready to be set for trial, it shall enter an order setting the action for trial, fixing a date for trial, and setting a pretrial conference, if necessary. In the event a default has been entered, reasonable notice of not less than 10 days shall be given unless otherwise required by law. In actions in which the damages are not liquidated, the order setting an action for trial shall be served on parties who are in default in accordance with Florida Rule of General Practice and Judicial Administration 2.516. Trial shall be set within a reasonable time from the service of the notice for trial. At the pretrial conference, the parties should be prepared, consistent with rule 12.200, to present any matter that will prepare the parties for trial and that can expedite the resolution of the case. The trial court may also direct the parties to reciprocally exchange and file with the court all documents relative to the outcome of the case; a list of all witnesses, all issues to be tried,

and all undisposed motions; an estimate of the time needed to try the case; and any other information the court deems appropriate. Any court filings shall be in conformity with Florida Rule of Judicial Administration 2.425. This information should be served and filed no later than 72 hours before the pretrial conference or 30 days before the trial.

(d) Sanctions. The failure to comply with the requirements of the order setting the action for trial subjects the party or attorney to appropriate court sanctions.

Commentary

1995 Adoption. This rule amends Florida Rule of Civil Procedure 1.440(c), Setting for Trial, and creates a procedure to facilitate setting an action for trial. Proper pretrial compliance will foster knowledgeable settlement discussion and expedite an orderly trial. The rule also adds a provision for sanctions.

RULE 12.450. EVIDENCE

(a) Record of Excluded Evidence. If, during trial, an objection to a question propounded to a witness is sustained by the trier of fact, the examining attorney may make a specific offer of what the attorney expects to prove by the answer of the witness. The court may add such other and further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The court on request must take and report the evidence in full unless it clearly appears that the evidence is not admissible on any ground or is privileged. The court may require the offer to be made outside the hearing of the trier of fact.

(b) Filing. When documentary evidence is introduced in an action, the clerk or the judge must endorse an identifying number or symbol on it and when proffered or admitted in evidence, it must be filed by the clerk or judge and considered in the custody of the court and not withdrawn except with written leave of court.

RULE 12.4501. JUDICIAL NOTICE

In family cases, the court may take judicial notice of any matter described in section 90.202(6), Florida Statutes, when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under section 90.204(1), Florida Statutes, may be deferred until after judicial action has been taken. If judicial notice is taken under this rule, the court must, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this rule, the term "family cases" has the same meaning as provided in the Florida Rules of General Practice and Judicial Administration.

RULE 12.460. CONTINUANCES

Continuances are governed by Florida Rule of Judicial Administration 2.545(e). If a continuance is sought on the ground of nonavailability of a witness, the motion must show when it is believed the witness will be available.

RULE 12.470. EXCEPTIONS

(a) Adverse Ruling. For appellate purposes, an exception is not necessary to any adverse ruling, order, instruction, or thing whatsoever said or done at the trial, prior to the trial, or after the verdict, that was said or done after an objection was made and considered by the trial court and that affected the substantial rights of the complaining party and that is assigned as error, other than as provided by rules 12.490 and 12.492.

(b) Instructions to Jury. The Florida Standard Jury Instructions appearing on The Florida Bar's website must be used by the trial judges of this state in instructing the jury in civil actions to the extent that the Standard Jury Instructions are applicable, unless the trial judge determines that an applicable Standard Jury Instruction is erroneous or inadequate. If the trial judge modifies a Standard Jury Instruction or gives other

instruction as the judge determines necessary to accurately and sufficiently instruct the jury, on timely objection to the instruction, the trial judge must state on the record or in a separate order the legal basis for varying from the Standard Jury Instruction. Similarly, in all circumstances in which the notes accompanying the Florida Standard Jury Instructions contain a recommendation that a certain type of instruction not be given, the trial judge must follow the recommendation unless the judge determines that the giving of the instruction is necessary to accurately and sufficiently instruct the jury, in which event the judge must give the instruction as the judge deems appropriate and necessary. If the trial judge does not follow ~~such~~ a recommendation of the Florida Standard Jury Instructions, on timely objection to the instruction, the trial judge must state on the record or in a separate order the legal basis of the determination. The parties may file written requests on the law that the court instruct the jury no later than at the close of the evidence. The court may then require counsel to appear before it to settle the instructions to be given. At that conference, all objections must be made and ruled on and the court must inform counsel of the instructions the court will give. No party may assign as error the giving of any instruction or the failure to give any instruction unless that party objects at the conference. The court may orally instruct the jury before or after the arguments of counsel and ~~may~~ provide appropriate instructions during the trial. If the instructions are given before final argument, the presiding judge must give the jury final procedural instructions after final arguments are concluded and before deliberations. The court must provide each juror with a written set of the instructions for use in deliberations. The court must file a copy of the instructions.

(c) Orders on New Trial; Directed Verdicts; etc. It is not necessary to object or except to any order granting or denying motions for new trials, directed verdicts, or judgments notwithstanding the verdict or in arrest of judgment to entitle the party against whom the ruling is made to have it reviewed by an appellate court.

Commentary

1995 Adoption. This rule amends subdivision (a) of rule

1.470 as it applies to family law matters to eliminate possible confusion between common law exceptions and exceptions to recommendations of a general master under rule 12.490 or a special master under rule 12.492.

RULE 12.480. MOTION FOR A DIRECTED VERDICT

(a) Effect. A party who moves for a directed verdict at the close of the evidence offered by the adverse party may offer evidence in the event the motion is denied without having reserved the right to do so and to the same extent as if the motion had not been made. The denial of a motion for a directed verdict shall not operate to discharge the jury, if applicable. A motion for a directed verdict must state the specific grounds for it. The order directing a verdict is effective without any assent of the jury, if applicable.

(b) Reservation of Decision on Motion. When a motion for a directed verdict is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury, if applicable, subject to a later determination of the legal questions raised by the motion. Within 15 days after the return of a verdict, a party who has timely moved for a directed verdict may serve a motion to set aside the verdict and any judgment entered on it and to enter judgment in accordance with the motion for a directed verdict. If a verdict was not returned, a party who has timely moved for a directed verdict may serve a motion for judgment in accordance with the motion for a directed verdict within 15 days after discharge of the jury, if applicable.

(c) Joined with Motion for New Trial or Motion for Rehearing. A motion for a new trial or motion for rehearing may be joined with a motion for directed verdict or a new trial may be requested in the alternative. If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or rehearing, or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial or rehearing.

RULE 12.490. GENERAL MAGISTRATES

(a) General Magistrates. Judges of the circuit court may appoint as many general magistrates from among the members of The Florida Bar in the circuit as the judges find necessary, and the general magistrates will continue in office until removed by the court. The order making an appointment must be recorded. Every person appointed as a general magistrate must take the oath required of officers by the constitution and the oath must be recorded before the magistrate discharges any duties of that office.

(b) Referral

(1) No matter 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) A written objection to the referral to a general magistrate must be filed within 10 days of the service of the order of referral.

(B) If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing.

(C) If the order of referral is served within the first 20 days after the service of the initial process, the time to file an objection is extended to the time within which to file a responsive pleading.

(D) Failure to file a written objection within the applicable time period is deemed to be consent to the order of referral.

(2) The order of referral must be in substantial conformity with Florida Family Law Rules of Procedure Form 12.920(b), and must contain the following language in **bold** type:

> **A REFERRAL TO A GENERAL MAGISTRATE REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE THE GENERAL MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE FILED BEFORE COMMENCEMENT OF THE HEARING. IF THIS ORDER IS SERVED WITHIN THE FIRST 20 DAYS AFTER SERVICE OF PROCESS, THE TIME TO FILE AN OBJECTION IS EXTENDED TO THE TIME WITHIN WHICH A RESPONSIVE PLEADING IS DUE. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE A CONSENT TO THE REFERRAL.**
>
> **REVIEW OF THE RECOMMENDED ORDER MADE BY THE GENERAL MAGISTRATE MUST BE BY A MOTION TO VACATE AS PROVIDED IN RULE 12.490(e), FLORIDA FAMILY LAW RULES OF PROCEDURE. A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, IS REQUIRED TO SUPPORT THE MOTION TO VACATE, UNLESS WAIVED BY ORDER OF THE COURT PRIOR TO ANY HEARING ON THE MOTION TO VACATE**.

(3) The order of referral must state with specificity the matter or matters being referred and the name of the specific general magistrate to whom the matter is referred. The order of referral must also state whether electronic recording or a court reporter is provided by the court, or whether a court reporter, if desired, must be provided by the litigants.

(4) When a referral is made to a general magistrate, any party or the general magistrate may set the action for hearing.

(c) General Powers and Duties. Every general magistrate must perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court except those duties related to injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking. A general magistrate is empowered to administer oaths and conduct hearings, which may include the taking of evidence. All grounds for disqualification of a judge apply to general magistrates.

(d) Hearings.

(1) The general magistrate must assign a time and place for proceedings as soon as reasonably possible after the referral is made and give notice to each of the parties either directly or by directing counsel to file and serve a notice of hearing. If any party fails to appear, the general magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. The general magistrate must proceed with reasonable diligence in every referral and with the least delay practicable. Any party may apply to the court for an order to the general magistrate to speed the proceedings and to make the recommended order and to certify to the court the reason for any delay.

(2) The general magistrate must take testimony and establish a record which may be by electronic means as provided by Florida Rule of General Practice and Judicial Administration 2.535(h)(4) or by a court reporter. The parties may not waive this requirement.

(3) The general magistrate has the authority to examine under oath the parties and all witnesses upon all matters contained in the referral, to require production of all books, documents, writings, vouchers, and other documents applicable to it, and to examine on oath orally all witnesses produced by the parties. The general magistrate may take all actions concerning evidence that can be taken by the circuit court and in the same manner. The

general magistrate has the same powers as a circuit judge to utilize communications equipment as defined and regulated by Florida Rule of General Practice and Judicial Administration 2.530.

(4) The notice or order setting the cause for hearing must be in substantial conformity with Florida Family Law Rules of Procedure Forms 12.920 (b) and (c) and must contain the following language in **bold** type:

> **SHOULD YOU WISH TO SEEK REVIEW OF THE RECOMMENDED ORDER MADE BY THE GENERAL MAGISTRATE, YOU MUST FILE A MOTION TO VACATE IN ACCORDANCE WITH RULE 12.490(e), FLORIDA FAMILY LAW RULES OF PROCEDURE. YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR MOTION TO VACATE OR YOUR MOTION WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS UNLESS WAIVED BY ORDER OF THE COURT PRIOR TO ANY HEARING ON THE MOTION TO VACATE. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.**

(5) The notice or order setting a matter for hearing must state whether electronic recording or a court reporter is provided by the court. If the court provides electronic recording, the notice must also state that any party may provide a court reporter at that party's expense.

(e) Entry of Order and Relief from Order.

(1) The general magistrate must submit a recommended order to the court that includes findings of fact and conclusions of law.

(2) If a court reporter was present, the recommended order must contain the name, telephone number, and e-mail address of the court reporter.

(3) 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 order may move to vacate the order by filing a motion to vacate within 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 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 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 may result in a denial of the motion to vacate.

(6) A timely filed motion to vacate stays the enforcement of the 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. For the purpose of the hearing on a motion to vacate, a record, substantially in conformity with this rule, must be provided to the court by the party seeking review for the court's review.

(1) The record must consist of the court file, all depositions and documentary and other evidence presented at hearing, including the transcript of the relevant proceedings before

the general magistrate. However, the transcript may be waived by order of the court prior to any hearing on the motion to vacate.

(2) Unless waived by order of the court prior to any hearing on the motion to vacate, the transcript of all relevant proceedings, if any, must be delivered to the judge and provided to all other parties not less than 48 hours before the hearing. If less than a full transcript of the proceedings taken before the general magistrate is furnished by the moving party, that party must promptly file a notice setting forth the portions of the transcript that have been ordered. The responding parties must be permitted to designate any additional portions of the transcript necessary to the adjudication of the issues raised in the motion to vacate or cross-motion to vacate.

(3) The cost of the original and all copies of the transcript of the proceedings is borne initially by the party seeking review, subject to appropriate assessment of suit monies. Should any portion of the transcript be required as a result of a designation filed by the responding party, the party making the designation bears the initial cost of the additional transcript.

Commentary

1995 Adoption. This rule is a modification of Florida Rule of Civil Procedure 1.490. That rule governed the appointment of both general and special masters. The appointment of special masters is now governed by Florida Family Law Rule of Procedure 12.492. This rule is intended to clarify procedures that were required under rule 1.490, and it creates additional procedures. The use of general masters should be implemented only when such use will reduce costs and expedite cases in accordance with *Dralus v. Dralus*, 627 So.2d 505 (Fla. 2d DCA 1993), *Wrona v. Wrona*, 592 So.2d 694 (Fla. 2d DCA 1991), and *Katz v. Katz*, 505 So.2d 25 (Fla. 4th DCA 1987).

Committee Notes

2004 Amendment. In accordance with Chapter 2004-11, Laws of Florida, all references to general master were changed to general magistrate.

2015 Amendment. Subdivision (b)(3) has been amended to clarify that the order of referral must include the name of the specific general magistrate to whom the matter is being referred and who will conduct the hearing and that concurrent referrals to multiple general magistrates is inappropriate.

RULE 12.491. CHILD SUPPORT ENFORCEMENT

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

This rule 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; 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.

(c) Support Enforcement Hearing Officers. The chief judge of each judicial circuit must appoint 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 must be a member of The Florida Bar unless waived by the chief justice and serves at the pleasure of the chief judge and a majority of the circuit judges in the circuit.

(d) Assignment. 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 must assign 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. The support enforcement hearing officer shall be empowered to issue process, administer oaths, require the production of documents, and conduct hearings

for the purpose of taking evidence. A support enforcement hearing officer does not have the authority to hear contested paternity cases. All grounds for disqualification of a judge apply to support enforcement hearing officers. On the receipt of a support proceeding, the support enforcement hearing officer must:

(1) designate a time and place for an appropriate hearing and give notice to each of the parties as may be required by law;

(A) The notice or order setting the cause for hearing must contain the following language in **bold** type:

SHOULD YOU WISH TO SEEK REVIEW OF THE ORDER UPON THE RECOMMENDATIONS OF THE CHILD SUPPORT ENFORCEMENT HEARING OFFICER, YOU MUST FILE A MOTION TO VACATE WITHIN 15 DAYS FROM THE DATE OF ENTRY OF THE ORDER IN ACCORDANCE WITH FLORIDA FAMILY LAW RULE OF PROCEDURE 12.491(f). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR POSITION OR YOUR MOTION WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.

(B) The notice or order setting a matter for hearing shall state whether electronic recording or a court reporter is provided by the court. If the court provides electronic recording, the notice shall also state that any party may provide a court reporter at that party's expense.

(2) take testimony and establish a record, which record may be by electronic means as provided by Florida Rule of General Practice and Judicial Administration 2.535(h);

(3) accept voluntary acknowledgment of paternity and support liability and stipulated agreements setting the amount of support to be paid; and

(4) evaluate the evidence and promptly make a recommended order to the court. The order must set forth findings of fact.

(f) Entry of Order and Relief from Order. On receipt of a recommended order, the court must review the recommended order and 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 must contain the name, telephone number, and e-mail address of the reporter. If the hearing was recorded and the litigant did not utilize a court reporter, the order 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 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 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 must be heard within 10 days after the movant applies for hearing on the motion.

(g) Modification of Order. Any party affected by the order may move to modify the order at any time.

(h) Record. For the purpose of hearing on a motion to vacate, a record, substantially in conformity with this rule, must be provided to the court by the party seeking review.

(1) The record consists of the court file, including the transcript of the proceedings before the hearing officer, if filed, and all depositions and evidence presented to the hearing officer.

(2) The transcript of all relevant proceedings must be delivered to the judge and provided to opposing counsel not less than 48 hours before the hearing on the motion to vacate. If less than a full transcript of the proceedings taken before the hearing officer is ordered prepared by the moving party, that party shall promptly file a notice setting forth the portions of the transcript that

have been ordered. The responding party must be permitted to designate any additional portions of the transcript necessary to the adjudication of the issues raised in the motion to vacate or cross-motion to vacate.

(3) The cost of the original and all copies of the transcript of the proceedings must be borne initially by the party seeking review, subject to appropriate assessment of suit monies. Should any portion of the transcript be required as a result of a designation filed by the responding party, the party making the designation must bear the initial cost of the additional transcript.

Commentary

1995 Adoption. Previously, this rule was contained in Florida Rule of Civil Procedure 1.491. The new rule is substantially the same as previous rule 1.491, with the following additions.

It is intended that any administrative order issued by the chief justice of the Florida Supreme Court under rule 1.491(a) shall remain in full force and effect as though such order was rendered under this rule until changed by order of that same court.

Subdivision (e) now makes clear that contested paternity cases are not to be heard by support enforcement hearing officers.

Subdivision (h) has been added to provide requirements for a record.

1988 Adoption. Title: The terminology “hearing officer” is used rather than “master” to avoid confusion or conflict with rule 1.490.

Subdivision (a): The rule is intended as a fall back mechanism to be used by the chief justice as the need may arise.

Subdivision (b): The expedited process provisions of the applicable federal regulations apply only to matters which fall within the purview of Title IV-D. The committee recognizes, however, that the use of hearing officers could provide a useful case flow management tool in non-Title IV-D support proceedings.

It is contemplated that a circuit could make application to the chief justice for expansion of the scope of the rule upon a showing of necessity and good cause. It is the position of the representative of the Family Law Section of The Florida Bar that reference of non-Title IV-D proceedings should require the consent of the parties as is required by rule 1.490(c).

Subdivision (c): It is the position of the committee that hearing officers should be members of the Bar in that jurisdictional and other legal issues are likely to arise in proceedings of this nature. The waiver provision is directed to small counties in which it may be difficult or impossible to find a lawyer willing to serve and to such other special circumstances as may be determined by the chief justice.

Subdivision (d): This paragraph recognizes that the mechanics of reference and operation of a program are best determined at the local level.

Subdivision (e): This paragraph is intended to empower the hearing officer to fully carry out his or her responsibilities without becoming overly complicated. The authority to enter defaults which is referred to in the federal regulations is omitted, the committee feeling that the subject matter is fully and adequately covered by rule 1.500.

The authority to accept voluntary acknowledgments of paternity is included at the request of the Department of Health and Rehabilitative Services. Findings of fact are included in the recommended order to provide the judge to whom the order is referred basic information relating to the subject matter.

Subdivision (f): Expedited process is intended to eliminate or minimize delays which are perceived to exist in the normal processing of cases. This paragraph is intended to require the prompt entry of an order and to guarantee due process to the obligee.

General Note: This proposed rule, in substantially the same form, was circulated to each of the chief judges for comment. Five responses were received. Two responding endorsed the procedure,

and 3 responding felt that any rule of this kind would be inappropriate. The committee did not address the question of funding, which included not only salaries of hearing officers and support personnel, but also capital outlay for furniture, fixtures, equipment and space, and normal operating costs. The committee recognizes that the operational costs of such programs may be substantial and recommends that this matter be addressed by an appropriate body.

Committee Note

1998 Amendment. This rule shall not apply to proceedings to establish or modify alimony.

RULE 12.492. SPECIAL MAGISTRATES

(a) Special Magistrates. The court may appoint members of The Florida Bar as special magistrates for any particular service required by the court in a family law matter other than those involving injunctions for protection against domestic, repeat, dating, and sexual violence, and stalking. The special magistrates shall be governed by all the provisions of law and rules relating to general magistrates except as otherwise provided by this rule. Additionally, they shall not be required to make oath or give bond unless specifically required by the order appointing them. Upon a showing that the appointment is advisable, a person other than a member of The Florida Bar may be appointed.

(b) Reference. No reference shall be to a special magistrate without the express prior consent of the parties, except that the court upon good cause shown and without consent of the parties may appoint an attorney as a special magistrate to preside over depositions and rule upon objections.

(c) General Powers and Duties. Every special magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court. Hearings before any special magistrate shall be held in the county where the action is pending, but hearings may be held at any place by order of the court within or without the state to

meet the convenience of the witnesses or the parties. All grounds for disqualification of a judge shall apply to special magistrates.

(d) Bond. When not otherwise provided by law, the court may require special magistrates who are appointed to dispose of real or personal property to give bond and surety conditioned for the proper payment of all moneys that may come into their hands and for the due performance of their duties as the court may direct. The bond shall be made payable to the State of Florida and shall be for the benefit of all persons aggrieved by any act of the special magistrate.

(e) Hearings. When a reference is made to a special magistrate, any party or the special magistrate may set the action for hearing. The special magistrate shall assign a time and place for proceedings as soon as reasonably possible after the reference is made and give notice to each of the parties either directly or by requiring counsel to file and serve a notice of hearing. If any party fails to appear, the special magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. The special magistrate shall proceed with reasonable diligence in every reference and with the least delay practicable. Any party may apply to the court for an order to the special magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay. Unless otherwise ordered by the court, or agreed to by all parties, all parties shall equally share the cost of the presence of a court reporter at a special magistrate's proceedings. If all parties waive the presence of a court reporter, they must do so in writing. The special magistrate shall have authority to examine the parties and all witnesses under oath upon all matters contained in the reference and to require production of all books, papers, writings, vouchers, and other documents applicable to it. The special magistrate shall admit evidence by deposition or that is otherwise admissible in court. The special magistrate may take all actions concerning evidence that can be taken by the court and in the same manner. All parties accounting before a special magistrate shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the

account may examine the accounting party orally or by interrogatories or deposition as the special magistrate directs. All depositions and documents that have been taken or used previously in the action may be used before the special magistrate.

(f) Special Magistrate's Report. The special magistrate shall file a report that includes findings of fact and conclusions of law, together with recommendations. In the report made by the special magistrate no part of any statement of facts, account, charge, deposition, examination, or answer used before the special magistrate need be recited. The matters shall be identified to inform the court what items were used. The report shall include the name and address of the court reporter present, if any.

(g) Filing Report; Notice; Exceptions. The special magistrate shall file the report and recommendations and serve copies on the parties. The parties may file exceptions to the report within 10 days from the time it is served on them. If no exceptions are filed within that period, the court shall take appropriate action on the report. Any party may file cross-exceptions within 5 days from the filing of the exceptions, provided, however, that the filing of cross-exceptions shall not delay the hearing on the exceptions unless good cause is shown. If exceptions are filed, they shall be heard on reasonable notice by either party. The party seeking to have exceptions heard shall be responsible for the preparation of the transcript of proceedings before the special magistrate.

(h) Expenses of Special Magistrate. The costs of a special magistrate may be assessed as any other suit money in family proceedings and all or part of it may be ordered prepaid by order of the court.

Commentary

1995 Adoption. Originally, both general and special masters were governed under Florida Rule of Civil Procedure 1.490. General and special masters are now governed under Florida Family Law Rules of Procedure 12.490 and 12.492, respectively. The requirements for appointing special masters are essentially the same as under the previous rule; but this rule eliminates the need

for consent for the court to appoint an attorney/special master to preside over depositions and rule on objections. It also provides for the assessment of suit monies and allows for the filing of cross-exceptions.

Committee Note

2004 Amendment. In accordance with Chapter 2004-11, Laws of Florida, all references to special master were changed to special magistrate.

RULE 12.500. DEFAULTS AND FINAL JUDGMENTS THEREON

(a) By the Clerk. When a party against whom affirmative relief is sought has failed to file or serve any document in the action, the party seeking relief may have the clerk enter a default against the party failing to serve or file such document.

(b) By the Court. When a party against whom affirmative relief is sought has failed to plead or otherwise respond as provided by these rules or any applicable statute or any order of court, the court may enter a default against such party provided that if such party has filed or served any document in the action, that party must be served with notice of the application for default.

(c) Right to Plead. A party may plead or otherwise respond at any time before default is entered. If a party in default files any document after the default is entered, the clerk must notify the party of the entry of the default. The clerk must make an entry on the docket showing the notification.

(d) Setting Aside Default. The court may set aside a default, and if a final judgment on it has been entered, the court may set it aside in accordance with rule 12.540(b).

(e) Final Judgment. Final judgments after default may be entered by the court at any time, but no judgment may be entered against a minor or incapacitated person unless represented in the action by a general guardian, guardian ad litem, attorney ad litem, committee, conservator, or other representative who has appeared

in it or unless the court has made an order under rule 12.210(b) providing that no representative is necessary for the minor or incapacitated person. If it is necessary to take an account or to determine the amount of damages or to establish the truth of any allegation by evidence or to make an investigation of any other matter to enable the court to enter judgment or to effectuate it, the court may receive affidavits, make referrals, or conduct hearings as it deems necessary and must accord a right of trial by jury to the parties when required by the Constitution or any statute.

RULE 12.510. SUMMARY JUDGMENT

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.

A motion for summary judgment and the notice setting hearing must contain the following statement in all capital letters and in the same size type, or larger, as the type the remainder of the motion:

> A RESPONSE TO THE MOTION FOR SUMMARY JUDGMENT MUST BE MADE IN WRITING, FILED WITH THE COURT, AND SERVED ON THE OTHER PARTY NO LESS THAN TWENTY DAYS PRIOR TO THE HEARING DATE. YOUR RESPONSE MUST INCLUDE YOUR SUPPORTING FACTUAL POSITION. IF YOU FAIL TO RESPOND, THE COURT MAY ENTER ORDERS GRANTING THE SUMMARY JUDGMENT OR FINDING FACTS TO BE UNDISPUTED.

(b) Time to File a Motion. A party may move for summary judgment at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. However, no motion for summary judgment may be filed while the movant's responses to mandatory disclosures are pending. The movant must serve the motion for summary judgment at least 40 days before the time fixed for the hearing.

(c) Procedures.

(1) *Supporting Factual Positions*. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence*. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited*. The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations*. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(5) *Timing for Supporting Factual Positions.* At the time of filing a motion for summary judgment, the movant must also serve the movant's supporting factual position as provided in subdivision (1) above. At least 20 days before the time fixed for the hearing, the nonmovant must serve a response that includes the nonmovant's supporting factual position as provided in subdivision (1) above.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by rule 1.510(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

Commentary

2021 Amendment. This rule is amended to correspond with Florida Rule of Civil Procedure 1.510, which was recently amended to adopt almost all the text of Federal Rule of Civil Procedure 56.

Committee Notes

2012 Amendment. This rule is amended to state who the adverse party serves and provide for service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.520. VIEW

Upon motion of either party or on the court's own motion, the trier of fact may view the premises or place in question or any property, matter, or thing relating to the controversy between the parties when it appears that view is necessary to a just decision.

Commentary

1995 Adoption. This rule replaces Florida Rule of Civil Procedure 1.520 and eliminates the advancement of costs imposed by rule 1.520.

RULE 12.530. MOTIONS FOR NEW TRIAL AND REHEARING; AMENDMENTS OF JUDGMENTS

(a) Jury and Non-Jury Actions. A new trial or rehearing may be granted to all or any of the parties and on all or a part of the issues. To preserve for appeal a challenge to the failure of the trial court to make required findings of fact in the final judgment, a party must raise that issue in a motion for rehearing under this rule. On a motion for a rehearing of matters heard without a jury, including summary judgments, the court may open the judgment if one has been entered, take additional testimony, and enter a new judgment.

(b) Time for Motion. A motion for new trial or for rehearing must be served not later than 15 days after the return of the verdict in a jury action or the date of filing of the judgment in a non-jury action. A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.

(c) Time for Serving Affidavits. When a motion for a new trial or rehearing is based on affidavits, the affidavits must be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 15 days after entry of judgment or within the time of ruling on a timely motion for a rehearing or a new trial made by a party, the court of its own initiative may order a rehearing or a new trial for any reason for which it might have granted a rehearing or a new trial on motion of a party.

(e) When Motion Is Unnecessary; Non-Jury Case. When an action has been tried by the court without a jury, the sufficiency of the evidence to support the judgment may be raised on appeal whether or not the party raising the question has made any objection to it in the trial court or made a motion for rehearing, for new trial, or to alter or amend the judgment.

(f) Hearing on Motion. When any motion for rehearing or new trial is filed, the court must initially make a determination if a hearing on the motion is required. If a hearing is required, the court must provide notice of the hearing on the motion for rehearing or new trial. If the court determines that a hearing is not required, then the court must enter an order granting or denying the motion in accordance with this rule.

(g) Order Granting to Specify Grounds. All orders granting a new trial or rehearing must specify the specific grounds for it. If such an order is appealed and does not state the specific grounds, the appellate court must relinquish its jurisdiction to the trial court for entry of an order specifying the grounds for granting the new trial or a rehearing.

(h) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment must be served not later than 15 days after entry of the judgment, except that this rule does not affect the remedies in rule 12.540(b).

Court Commentary

2022 Amendments. The amendment to subdivision (a) does not address or affect, by negative implication, any other instance in which a motion for rehearing is or might be necessary to preserve an issue for appellate review.

RULE 12.540. RELIEF FROM JUDGMENT, DECREES, OR ORDERS

(a) Clerical Mistakes. Clerical mistakes in judgments or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own

initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the record on appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and on such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing;

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) that the judgment is void; or

(5) that the judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion must be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was entered or taken; except that there will be no time limit for motions based on fraudulent financial affidavits in marital or paternity cases. The motion and any attachment or exhibit to it must be in compliance with Florida Rule of General Practice and Judicial Administration 2.425. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action or supplemental proceeding to relieve a party

from a judgment, order, or proceeding or to set aside a judgment for fraud on the court.

Commentary

1995 Adoption. Under this provision, Florida Rule of Civil Procedure 1.540 applies to all family law issues involving relief from judgment, decrees, or orders, except that there shall be no time limit for motions filed under rule 1.540(b) based on fraudulent financial affidavits in marital or paternity cases. Rule 1.540 was expanded to include marital cases through the rule making procedure subsequent to the Florida Supreme Court's decision in *DeClaire v. Yohanan*, 453 So.2d 375 (Fla. 1984).

RULE 12.550. EXECUTIONS AND FINAL PROCESS

(a) Issuance. Executions on judgments shall issue during the life of the judgment on the oral request of the party entitled to it or that party's attorney. No execution or other final process may issue until the judgment on which it is based has been recorded nor within the time for serving a motion for new trial or rehearing, and if a motion for new trial or rehearing is timely served, until it is determined. Execution or other final process may be issued on special order of the court at any time after judgment.

(b) Stay. The court before which an execution or other process based on a final judgment is returnable may stay such execution or other process and suspend proceedings on it for good cause on motion and notice to all adverse parties.

RULE 12.560. DISCOVERY IN AID OF EXECUTION

(a) In General. In aid of a judgment, decree, or execution the judgment creditor or the successor in interest, when the interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) Fact Information Sheet. In addition to any other discovery available to a judgment creditor under this rule, the court, at the request of the judgment creditor, shall order the

judgment debtor or debtors to complete Florida Rules of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, within 45 days of the order or such other reasonable time as determined by the court.

(c) Final Judgment Enforcement Paragraph. In any final judgment which awards money damages, the judge shall include the following enforcement paragraph if requested at the final hearing or a subsequently noticed hearing by the prevailing party or attorney:

> "It is further ordered and adjudged that the judgment debtor(s) shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed.
>
> "Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney."

(d) Information Regarding Assets of Judgment Debtor's Spouse. In any final judgment which awards money damages, if requested by the judgment creditor at a duly noticed hearing, the court shall require all or part of the additional Spouse Related Portion of the fact information sheet to be filled out by the judgment debtor only upon a showing that a proper predicate exists for discovery of separate income and assets of the judgment debtor's spouse.

Committee Notes

2000 Amendment. Subdivisions (b)–(e) were added to the Florida Rules of Civil Procedure and adopted with amendments into

the Family Law Rules of Procedure. The amendments to the Civil Rules were patterned after Florida Small Claims Rule 7.221(a) and Form 7.343. Although the judgment creditor is entitled to broad discovery into the judgment debtor's finances (Fla. R. Civ. P. 1.280(b); *Jim Appley's Tru-Arc, Inc. v. Liquid Extraction Systems*, 526 So.2d 177, 179 (Fla. 2d DCA 1988)), in family law cases inquiry into the individual assets of the judgment debtor's spouse must be precluded until a proper predicate has been shown. *Tru-Arc, Inc.*, 526 So.2d at 179; *Rose Printing Co. v. D'Amato*, 338 So.2d 212 (Fla. 3d DCA 1976).

2015 Amendment. Subdivision (e) was deleted because the filing of 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 should not be filed with the clerk of the court.

RULE 12.570. ENFORCEMENT OF JUDGMENTS

(a) Money Judgments. Final process to enforce a judgment solely for the payment of money shall be by execution, writ of garnishment, or other appropriate process or proceedings. Money judgments shall include, but not be limited to, judgments for alimony, child support, equitable distribution payments, attorneys' fees, suit money, and costs.

(b) Property Recovery. Final process to enforce a judgment for the recovery of property shall be by a writ of possession for real property and by a writ of replevin, distress writ, writ of garnishment, or other appropriate process or proceedings for other property.

(c) Performance of an Act. If judgment is for the performance of a specific act or contract:

(1) the judgment must specify the time within which the act must be performed. If the act is not performed within the time specified, the party seeking enforcement of the judgment shall make an affidavit that the judgment has not been complied with within the prescribed time and the clerk shall issue a writ of

attachment against the delinquent party. The delinquent party shall not be released from the writ of attachment until that party has complied with the judgment and paid all costs accruing because of the failure to perform the act. If the delinquent party cannot be found, the party seeking enforcement of the judgment shall file an affidavit to this effect and the court shall issue a writ of sequestration against the delinquent party's property. The writ of sequestration shall not be dissolved until the delinquent party complies with the judgment;

(2) the court may hold the disobedient party in contempt; or

(3) the court may appoint some person, not a party to the action, to perform the act insofar as practicable. The performance of the act by the person appointed has the same effect as if performed by the party against whom the judgment was entered.

(d) Parental Responsibility. Actions for enforcement of issues related to parental responsibility may be brought by motion.

(e) Vesting Title. If the judgment is for a conveyance, transfer, release, or acquittance of real or personal property, the judgment has the effect of a duly executed conveyance, transfer, release, or acquittance that is recorded in the county where the judgment is recorded. A judgment under this subdivision will be effective notwithstanding any disability of a party.

Commentary

1995 Adoption. Nothing in this rule or Florida Rule of Civil Procedure 1.570 should be read to preclude the use of other remedies to enforce judgments.

RULE 12.580. WRIT OF POSSESSION

(a) Issuance. When a judgment or order is for the delivery of possession of real property, the judgment or order shall direct the

clerk to issue a writ of possession. The clerk must issue the writ immediately and deliver it to the sheriff for execution.

(b) Third-Party Claims. If a person other than the party against whom the writ of possession is issued is in possession of the property, that person may retain possession of the property by filing with the sheriff an affidavit that the person is entitled to possession of the property, specifying the nature of the claim. The sheriff must then desist from enforcing the writ and must serve a copy of the affidavit on the party causing issuance of the writ of possession. The party causing issuance of the writ may apply to the court for an order directing the sheriff to complete execution of the writ. The court will determine the right of possession in the property and may order the sheriff to continue to execute the writ or may stay execution of the writ, if appropriate.

RULE 12.590. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

Every person who is not a party to the action who has obtained an order, or in whose favor an order has been made, may enforce obedience to such order by the same process as if that person were a party, and every person, not a party, against whom obedience to any order may be enforced is liable to the same process for enforcing obedience to such orders as if that person were a party.

RULE 12.600. DEPOSITS IN COURT

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party may deposit all or any part of such sum or thing with the court on notice to every other party and by leave of court. Money paid into court under this rule shall be deposited and withdrawn by order of court. The party depositing money or depositing the thing capable of delivery shall pay any fee imposed by the clerk of the court, unless the court orders otherwise.

Commentary

1995 Adoption. The addition to Florida Rule of Civil Procedure 1.600 included in this rule is intended to clarify responsibility for the payment of clerk's fees.

RULE 12.605. INJUNCTIONS

(a) Temporary Injunction.

(1) This rule does not apply to relief sought under rule 12.610.

(2) A temporary injunction may be granted without written or oral notice to the adverse party only if:

(A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant or movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

(3) No evidence other than the affidavit or verified pleading may be used to support the application for a temporary injunction unless the adverse party appears at the hearing or has received reasonable notice of the hearing. Every temporary injunction granted without notice must be endorsed with the date and hour of entry and must be filed immediately in the clerk's office and must define the injury, state findings by the court why the injury may be irreparable, and give the reasons why the order was granted without notice if notice was not given. The temporary injunction shall remain in effect until the further order of the court.

(b) Bond. No temporary injunction may be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined. When any injunction is issued on the pleading of a municipality or the state or any officer, agency, or political subdivision of it, the court may

require or dispense with a bond, with or without surety, and conditioned in the same manner, having due regard for the public interest. No bond shall be required for issuance of a temporary injunction issued solely to prevent physical injury or abuse of a natural person.

(c) Form and Scope. Every injunction must specify the reasons for entry, must describe in reasonable detail the act or acts restrained without reference to a pleading or another document, and must be binding on the parties to the action, their officers, agents, servants, employees, and attorneys and on those persons in active concert or participation with them who receive actual notice of the injunction.

(d) Motion to Dissolve. A party against whom a temporary injunction has been granted may move to dissolve or modify it at any time. If a party moves to dissolve or modify, the motion must be heard within 5 days after the movant applies for a hearing on the motion.

Committee Note

2017 Adoption. The case law related to Florida Rule of Civil Procedure 1.610 shall be applicable to this rule.

RULE 12.610. INJUNCTIONS FOR PROTECTION AGAINST DOMESTIC, REPEAT, DATING, AND SEXUAL VIOLENCE, AND STALKING

(a) Application. This rule shall apply only to temporary and permanent injunctions for protection against domestic violence and temporary and permanent injunctions for protection against repeat violence, dating violence, or sexual violence, and stalking. All other injunctive relief sought in cases to which the Family Law Rules apply shall be governed by Florida Rule of Civil Procedure 1.610.

(b) Petitions.

(1) *Requirements for Use.*

(A) Domestic Violence. Any person may file a petition for an injunction for protection against domestic violence as provided by law.

(B) Repeat Violence. Any person may file a petition for an injunction for protection against repeat violence as provided by law.

(C) Dating Violence. Any person may file a petition for an injunction for protection against dating violence as provided by law.

(D) Sexual Violence. Any person may file a petition for an injunction for protection against sexual violence as provided by law.

(E) Stalking. Any person may file a petition for an injunction for protection against stalking as provided by law.

(2) *Service of Petitions.*

(A) Domestic Violence. Personal service by a law enforcement agency is required. The clerk of the court shall furnish a copy of the petition for an injunction for protection against domestic violence, financial affidavit (if support is sought), Uniform Child Custody Jurisdiction and Enforcement Act affidavit (if custody is sought), temporary injunction (if one has been entered), and notice of hearing to the appropriate sheriff or law enforcement agency of the county where the respondent resides or can be found for expeditious service of process.

(B) Repeat Violence, Dating Violence, Sexual Violence and Stalking. Personal service by a law enforcement agency is required. The clerk of the court shall furnish a copy of the petition for an injunction for protection against repeat violence, dating violence, sexual violence, or stalking, temporary injunction (if one has been entered), and notice of hearing to the appropriate sheriff or law enforcement agency of the county where the respondent resides or can be found for expeditious service of process.

(C) Additional Documents. Service of pleadings in cases of domestic, repeat, dating, or sexual violence, or stalking other than petitions, supplemental petitions, and orders granting injunctions shall be governed by rule 12.080, except that service of a motion to modify or vacate an injunction should be by notice that is reasonably calculated to apprise the nonmoving party of the pendency of the proceedings.

(3) *Consideration by Court.*

(A) Domestic Violence and Stalking Injunctions. Upon the filing of a petition, the court shall set a hearing to be held at the earliest possible time. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence or stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with these rules.

(B) Repeat, Dating, or Sexual Violence Injunctions. Upon the filing of a petition, the court shall set a hearing to be held at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition or otherwise be heard in person on any petition consistent with these rules.

(4) *Forms.*

(A) Provision of Forms. The clerk of the court or family or injunctions for protection intake personnel shall provide simplified forms, including instructions for completion, for any person whose circumstances meet the requirements of this rule and shall assist the petitioner in obtaining an injunction for protection against domestic, repeat, dating, or sexual violence, or stalking as provided by law.

(B) Confidential Filing of Address. A petitioner's address may be furnished to the court in a confidential filing separate from a petition or other form if, for safety reasons, a petitioner believes that the address should be concealed. The ultimate determination of a need for confidentiality must be made by the court as provided in Florida Rule of General Practice and Judicial Administration 2.420.

(c) Orders of Injunction.

(1) *Consideration by Court.*

(A) Temporary Injunction.

(i) Domestic, Repeat, Dating, or Sexual Violence. For the injunction for protection to be issued ex parte, it must appear to the court that an immediate and present danger of domestic, repeat, dating, or sexual violence exists. In an ex parte hearing for the purpose of obtaining an ex parte temporary injunction, the court may limit the evidence to the verified pleadings or affidavits for a determination of whether there is an imminent danger that the petitioner will become a victim of domestic, repeat, dating, or sexual violence. If the respondent appears at the hearing or has received reasonable notice of the hearing, the court may hold a hearing on the petition. If a verified petition and affidavit are amended, the court shall consider the amendments as if originally filed.

(ii) Stalking. For the injunction for protection to be issued ex parte, it must appear to the court that stalking exists. In an ex parte hearing for the purpose of obtaining an ex parte temporary injunction, the court may limit the evidence to the verified pleadings or affidavits for a determination of whether stalking exists. If the respondent appears at the hearing or has received reasonable notice of the hearing, the court may hold the hearing on the petition. If a verified petition and affidavit are amended, the court shall consider the amendments as if originally filed.

(B) Final Judgment of Injunction for Protection Against Repeat, Dating, or Sexual Violence or Stalking. A hearing shall be conducted.

(C) Final Judgment of Injunction for Protection Against Domestic Violence. The court shall conduct a hearing and make a finding of whether domestic violence occurred or whether imminent danger of domestic violence exists. If the court determines that an injunction will be issued, the court shall also rule on the following:

(i) whether the respondent may have any contact with the petitioner, and if so, under what conditions;

(ii) exclusive use of the parties' shared residence;

(iii) petitioner's temporary time-sharing with the minor child or children;

(iv) whether respondent will have temporary time-sharing with the minor child or children and whether it will be supervised;

(v) whether temporary child support will be ordered;

(vi) whether temporary spousal support will be ordered; and

(vii) such other relief as the court deems necessary for the protection of the petitioner.

The court, with the consent of the parties, may refer the parties to mediation by a certified family mediator to attempt to resolve the details as to the above rulings. This mediation shall be the only alternative dispute resolution process offered by the court. Any agreement reached by the parties through mediation shall be reviewed by the court and, if approved, incorporated into the final judgment. If no agreement is reached the matters referred shall be

returned to the court for appropriate rulings. Regardless of whether all issues are resolved in mediation, an injunction for protection against domestic violence shall be entered or extended the same day as the hearing on the petition commences.

(2) *Issuing of Injunction.*

(A) Standarized Forms. The temporary and permanent injunction forms approved by the Florida Supreme Court for domestic, repeat, dating, and sexual violence, and stalking injunctions shall be the forms used in the issuance of injunctions under chapters 741 and 784, Florida Statutes. Additional standard provisions, not inconsistent with the standarized portions of those forms, may be added to the special provisions section of the temporary and permanent injunction forms, or at the end of each section to which they apply, on the written approval of the chief judge of the circuit, and upon final review and written approval by the chief justice. Copies of such additional standard provisions, once approved by the chief justice, shall be sent to the chair of the Family Law Rules Committee of The Florida Bar, the chair of the Steering Committee on Families and Children in the Court, and the chair of The Governor's Task Force on Domestic and Sexual Violence.

(B) Bond. No bond shall be required by the court for the entry of an injunction for protection against domestic, repeat, dating, or sexual violence, or stalking. The clerk of the court shall provide the parties with sufficient certified copies of the order of injunction for service.

(3) *Service of Injunctions.*

(A) Temporary Injunction. A temporary injunction for protection against domestic, repeat, dating, or sexual violence, or stalking must be personally served. When the respondent has been served previously with the temporary injunction and has failed to appear at the initial hearing on the temporary injunction, any subsequent pleadings seeking an extension of time may be served on the respondent by the clerk of the court by certified mail in lieu of personal service by a law

enforcement officer. If the temporary injunction was issued after a hearing because the respondent was present at the hearing or had reasonable notice of the hearing, the injunction may be served in the manner provided for a permanent injunction.

(B) Permanent Injunction.

(i) Party Present at Hearing. The parties may acknowledge receipt of the permanent injunction for protection against domestic, repeat, dating, or sexual violence, or stalking in writing on the face of the original order. If a party is present at the hearing and that party fails or refuses to acknowledge the receipt of a certified copy of the injunction, the clerk shall cause the order to be served by mailing certified copies of the injunction to the parties who were present at the hearing at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subdivision, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and within 24 hours shall forward a copy of the injunction and the clerk's affidavit of service to the sheriff with jurisdiction over the residence of the petitioner. This procedure applies to service of orders to modify or vacate injunctions for protection against domestic, repeat, dating, or sexual violence, or stalking.

(ii) Party not Present at Hearing. Within 24 hours after the court issues, continues, modifies, or vacates an injunction for protection against domestic, repeat, dating, or sexual violence, or stalking the clerk shall forward a copy of the injunction to the sheriff with jurisdiction over the residence of the petitioner for service.

(4) *Duration.*

(A) Temporary Injunction. Any temporary injunction shall be effective for a fixed period not to exceed 15 days. A full hearing shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the temporary injunction and of the full hearing for

good cause shown by any party, or upon its own motion for good cause, including failure to obtain service.

(B) Permanent Injunction. Any relief granted by an injunction for protection against domestic, repeat, dating, or sexual violence, or stalking shall be granted for a fixed period or until further order of court. Such relief may be granted in addition to other civil and criminal remedies. Upon petition of the victim, the court may extend the injunction for successive periods or until further order of court. Broad discretion resides with the court to grant an extension after considering the circumstances. No specific allegations are required.

(5) *Enforcement.* The court may enforce violations of an injunction for protection against domestic, repeat, dating, or sexual violence, or stalking in civil contempt proceedings, which are governed by rule 12.570, or in criminal contempt proceedings, which are governed by Florida Rule of Criminal Procedure 3.840, or, if the violation meets the statutory criteria, it may be prosecuted as a crime under Florida Statutes.

(6) *Motion to Modify or Vacate Injunction.* The petitioner or respondent may move the court to modify or vacate an injunction at any time. Service of a motion to modify or vacate injunctions shall be governed by subdivision (b)(2) of this rule. However, for service of a motion to modify to be sufficient if a party is not represented by an attorney, service must be in accordance with rule 12.070, or in the alternative, there must be filed in the record proof of receipt of this motion by the nonmoving party personally.

(7) *Forms.* The clerk of the court or family or injunction for protection intake personnel shall provide simplified forms including instructions for completion, for the persons whose circumstances meet the requirements of this rule and shall assist in the preparation of the affidavit in support of the violation of an order of injunction for protection against domestic, repeat, dating, or sexual violence, or stalking.

Commentary

2003 Amendment. This rule was amended to emphasize the importance of judicial involvement in resolving injunction for protection against domestic violence cases and to establish protections if mediation is used. In performing case management, court staff may interview the parties separately to identify and clarify their positions. Court staff may present this information to the court along with a proposed order for the court's consideration in the hearing required by subdivision (b). The first sentence of (c)(1)(C) contemplates that an injunction will not be entered unless there is a finding that domestic violence occurred or that there is imminent danger of domestic violence. Subdivision (c)(1)(C) also enumerates certain rulings that a judge must make after deciding to issue an injunction and before referring parties to mediation. This is intended to ensure that issues involving safety are decided by the judge and not left to the parties to resolve. The list is not meant to be exhaustive, as indicated by subdivision (c)(1)(C)(vii), which provides for "other relief," such as retrieval of personal property and referrals to batterers' intervention programs. The prohibition against use of any "alternative dispute resolution" other than mediation is intended to preclude any court-based process that encourages or facilitates, through mediation or negotiation, agreement as to one or more issues, but does not preclude the parties through their attorneys from presenting agreements to the court. All agreements must be consistent with this rule regarding findings. Prior to ordering the parties to mediate, the court should consider risk factors in the case and the suitability of the case for mediation. The court should not refer the case to mediation if there has been a high degree of past violence, a potential for future lethality exists, or there are other factors which would compromise the mediation process.

1995 Adoption. A cause of action for an injunction for protection against domestic violence and repeat violence has been created by section 741.30, Florida Statutes (Supp.1994) (modified by chapter 95 195, Laws of Florida), and section 784.046, Florida Statutes (Supp. 1994), respectively. This rule implements those provisions and is intended to be consistent with the procedures set out in those provisions except as indicated in this commentary. To the extent a domestic or repeat violence matter becomes criminal or

is to be enforced by direct or indirect criminal contempt, the appropriate Florida Rules of Criminal Procedure will apply.

The facts and circumstances to be alleged under subdivision 12.610(b)(1)(A) include those set forth in Florida Supreme Court Approved Family Law Form 12.980(b). An injunction for protection against domestic or repeat violence may be sought whether or not any other cause of action is currently pending between the parties. However, the pendency of any such cause of action must be alleged in the petition. The relief the court may grant in a temporary or permanent injunction against domestic violence is set forth in sections 741.30(5)–(6).

The facts and circumstances to be alleged under subdivision (b)(1)(B) include those set forth in Florida Supreme Court Approved Family Law Form 12.980(g). The relief the court may grant in a temporary or permanent injunction against repeat violence is set forth in section 784.046(7), Florida Statutes.

Subdivision (b)(4) expands sections 741.30(2)(c)1 and (2)(c)2, Florida Statutes, to provide that the responsibility to assist the petitioner may be assigned not only to the clerk of court but also to the appropriate intake unit of the court. Florida Supreme Court Approved Family Law Form 12.980(b) provides the form for a petition for injunction against domestic violence. If the custody of a child is at issue, a Uniform Child Custody Jurisdiction and Enforcement Act affidavit must be provided and completed in conformity with Florida Supreme Court Approved Family Law Form 12.902(d). If alimony or child support is sought a Financial Affidavit must be provided and completed in conformity with Florida Family Law Rules of Procedure Form 12.902(b) or 12.902(c).

Subdivision (c)(1)(A) expands chapter 95 195, Laws of Florida, and section 784.046(6)(b), Florida Statutes, to make the limitation of evidence presented at an ex parte hearing permissive rather than mandatory given the due process concerns raised by the statutory restrictions on the taking of evidence.

Unlike traditional injunctions, under subdivision (c)(2), no bond will be required for the issuance of injunctions for protection against domestic or repeat violence. This provision is consistent

with the statutes except that, unlike the statutes, it does not set a precise number of copies to be provided for service.

Subdivision (c)(3)(A) makes the procedure for service of a temporary order of injunction for protection against domestic violence and repeat violence consistent. This is intended to replace the differing requirements contained in sections 741.30(8)(a)1 and (8)(c)1 and 784.046(8)(a)1, Florida Statutes.

Subdivision (c)(3)(B) makes the procedure for service of a permanent order of injunction for protection against domestic violence and repeat violence consistent. This is intended to replace the differing requirements contained in sections 741.30(8)(a)3 and (8)(c)1 and 784.046(8)(c)1, Florida Statutes, and to specifically clarify that service of the permanent injunction by mail is only effective upon a party who is present at the hearing which resulted in the issuance of the injunction.

Subdivision (c)(4)(A) restates sections 741.30(5)(c) and 784.046(6)(c), Florida Statutes, with some expansion. This subdivision allows the court upon its own motion to extend the protection of the temporary injunction for protection against domestic or repeat violence for good cause shown, which shall include, but not be limited to, failure to obtain service. This subdivision also makes the procedures in cases of domestic and repeat violence identical, resolving the inconsistencies in the statutes.

Subdivision (c)(4)(B) makes the procedures in cases of domestic and repeat violence identical, resolving inconsistencies in the statutes. As stated in section 741.30(1)(c), Florida Statutes, in the event a subsequent cause of action is filed under chapter 61, Florida Statutes, any orders entered therein shall take precedence over any inconsistent provisions of an injunction for protection against domestic violence which addresses matters governed by chapter 61, Florida Statutes.

Subdivision (c)(5) implements a number of statutes governing enforcement of injunctions against domestic or repeat violence. It is intended by these rules that procedures in cases of domestic and repeat violence be identical to resolve inconsistencies in the

statutes. As such, the procedures set out in section 741.31(1), Florida Statutes, are to be followed for violations of injunctions for protection of both domestic and repeat violence. Pursuant to that statute, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred to obtain information regarding enforcement.

Subdivision (c)(7) expands sections 741.30(2)(c)1 and (2)(c)2, Florida Statutes, to provide that the responsibility to assist a petitioner may not only be assigned to the clerk of court but also to the appropriate intake unit of the court. This subdivision makes the procedures in cases of domestic and cases of repeat violence identical to resolve inconsistencies in the statutes.

Committee Note

1997 Amendment. This change mandates use of the injunction forms provided with these rules to give law enforcement a standardized form to assist in enforcement of injunctions. In order to address local concerns, circuits may add special provisions not inconsistent with the mandatory portions.

RULE 12.611. CENTRAL GOVERNMENTAL DEPOSITORY

(a) Administrative Order. If the chief judge of the circuit by administrative order authorizes the creation of a central governmental depository for the circuit or county within the circuit to receive, record, and disburse all support alimony or maintenance payments, as provided in section 61.181, Florida Statutes (1983), the court may direct that payment be made to the officer designated in the administrative order.

(b) Payments to Public Officer.

(1) If the court so directs, the payments shall be made to the officer designated.

(2) The officer shall keep complete and accurate accounts of all payments received. Payments shall be made by cash, money order, cashier's check, or certified check. The officer shall promptly disburse the proceeds to the party entitled to receive them under the judgment or order.

(3) Payment may be enforced by the party entitled to it or the court may establish a system under which the officer issues a motion for enforcement and a notice of hearing in the form approved by the supreme court. The motion and notice shall be served on the defaulting party in accordance with Florida Rule of Judicial Administration 2.516. At the hearing the court shall enter an appropriate order based on the testimony presented to it.

Commentary

1995 Adoption. This rule is a remnant of Florida Rule of Civil Procedure 1.611, which contained several unrelated issues. Those issues are now governed by separate rules for automatic disclosure, simplified dissolution procedure, and this rule for central governmental depository.

2012 Amendment. Subdivision (b)(3) is amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.615. CIVIL CONTEMPT IN SUPPORT MATTERS

(a) Applicability. This rule governs civil contempt proceedings in support matters related to family law cases. The use of civil contempt sanctions under this rule shall be limited to those used to compel compliance with a court order or to compensate a movant for losses sustained as a result of a contemnor's willful failure to comply with a court order. Contempt sanctions intended to punish an offender or to vindicate the authority of the court are criminal in nature and are governed by Florida Rules of Criminal Procedure 3.830 and 3.840.

(b) Motion and Notice. Civil contempt may be initiated by motion. The motion must recite the essential facts constituting the

acts alleged to be contemptuous. No civil contempt may be imposed without notice to the alleged contemnor and without providing the alleged contemnor with an opportunity to be heard. The civil contempt motion and notice of hearing may be served in accordance with Florida Rule of General Practice and Judicial Administration 2.516 provided notice is reasonably calculated to apprise the alleged contemnor of the pendency of the proceedings. The notice must specify the time and place of the hearing and must contain the following language: "FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP TO 48 HOURS BEFORE A HEARING IS HELD." This notice must also state whether electronic recording or a court reporter is provided by the court or whether a court reporter, if desired, must be provided by the party.

(c) Hearing. In any civil contempt hearing, after the court makes an express finding that the alleged contemnor had notice of the motion and hearing:

(1) the court shall determine whether the movant has established that a prior order directing payment of support was entered and that the alleged contemnor has failed to pay all or part of the support set forth in the prior order; and

(2) if the court finds the movant has established all of the requirements in subdivision (c)(1) of this rule, the court shall,

(A) if the alleged contemnor is present, determine whether the alleged contemnor had the present ability to pay support and willfully failed to pay such support.

(B) if the alleged contemnor fails to appear, set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a writ of bodily attachment and direct that, upon execution of the writ of bodily attachment, the alleged contemnor be brought before the court within 48 hours for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful.

(d) Order and Sanctions. After hearing the testimony and evidence presented, the court shall enter a written order granting or denying the motion for contempt.

(1) An order finding the alleged contemnor to be in contempt shall contain a finding that a prior order of support was entered, that the alleged contemnor has failed to pay part or all of the support ordered, that the alleged contemnor had the present ability to pay support, and that the alleged contemnor willfully failed to comply with the prior court order. The order shall contain a recital of the facts on which these findings are based.

(2) If the court grants the motion for contempt, the court may impose appropriate sanctions to obtain compliance with the order including incarceration, attorneys' fees, suit money and costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law provided the order includes a purge provision as set forth in subdivision (e) of this rule.

(e) Purge. If the court orders incarceration, a coercive fine, or any other coercive sanction for failure to comply with a prior support order, the court shall set conditions for purge of the contempt, based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding. The court may grant the contemnor a reasonable time to comply with the purge conditions. If the court orders incarceration but defers incarceration for more than 48 hours to allow the contemnor a reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the movant shall file an affidavit of noncompliance with the court. If payment is being made through the Central Governmental Depository, a certificate from the depository shall be attached to the affidavit. The court then may issue a writ of bodily attachment. Upon incarceration, the contemnor must be brought before the court within 48 hours for a determination of whether the contemnor continues to have the present ability to pay the purge.

(f) Review after Incarceration. Notwithstanding the provisions of this rule, at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and modify any prior orders.

(g) Other Relief. Where there is a failure to pay support or to pay support on a timely basis but the failure is not willful, nothing in this rule shall be construed as precluding the court from granting such relief as may be appropriate under the circumstances.

Commentary

1998 Adoption. This rule is limited to civil contempt proceedings. Should a court wish to impose sanctions for criminal contempt, the court must refer to Florida Rules of Criminal Procedure 3.830 and 3.840 and must provide the alleged contemnor with all of the constitutional due process protections afforded to criminal defendants. This rule is created to assist the trial courts in ensuring that the due process rights of alleged contemnors are protected. A court that adjudges an individual to be in civil contempt must always afford the contemnor the opportunity to purge the contempt.

Committee Notes

2012 Amendment. This rule is amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.620. RECEIVERS

(a) Notice. The notice provisions of rule 12.605 apply to applications for the appointment of receivers.

(b) Report. Every receiver must file in the clerk's office a true and complete inventory under oath of the property coming under the receiver's control or possession under the receiver's appointment within 20 days after appointment. Every 3 months

unless the court otherwise orders, the receiver must file in the same office an inventory and account under oath of any additional property or effects which the receiver has discovered or which may have come to the receiver's hands since appointment, and of the amount remaining in the hands of or invested by the receiver, and of the manner in which the same is secured or invested, stating the balance due from or to the receiver at the time of rendering the last account and the receipts and expenditures since that time. When a receiver neglects to file the inventory and account, the court must enter an order requiring the receiver to file such inventory and account and to pay out of the receiver's own funds the expenses of the order and the proceedings on it within not more than 20 days after being served with a copy of such order.

(c) Bond. The court may grant leave to put the bond of the receiver in suit against the sureties without notice to the sureties of the application for such leave.

(d) Contents of Inventory. Any inventory filed with the court must be in compliance with Florida Rule of General Practice and Judicial Administration 2.425.

RULE 12.625. PROCEEDINGS AGAINST SURETY ON JUDICIAL BONDS

When any rule or statute requires or permits giving of bond by a party in a judicial proceeding, the surety on the bond submits to the jurisdiction of the court when the bond is approved. The surety must furnish the address for the service of documents affecting the surety's liability on the bond to the officer to whom the bond is given at that time. The liability of the surety may be enforced on motion without the necessity of an independent action. The motion must be served on the surety at the address furnished to the officer. The surety must serve a response to the motion within 20 days after service of the motion, asserting any defenses in law or in fact. If the surety fails to serve a response within the time allowed, a default may be taken. If the surety serves a response, the issues raised must be decided by the court on reasonable notice to the parties. The right to jury trial may not be abridged in any such proceedings.

RULE 12.630. EXTRAORDINARY REMEDIES

(a) Applicability. This rule applies to actions for the issuance of writs of mandamus, prohibition, quo warranto, and habeas corpus.

(b) Initial Pleading. The initial pleading must be a petition. It must contain:

(1) the facts on which the petitioner relies for relief;

(2) a request for the relief sought; and

(3) if desired, argument in support of the petition with citations of authority.

The caption must show the action filed in the name of the petitioner in all cases and not on the relation of the state. When the petition seeks a writ directed to a lower court or to a governmental or administrative agency, a copy of as much of the record as is necessary to support the petitioner's petition must be attached.

(c) Time. A petition must be filed within the time provided by law.

(d) Process. If the petition shows a prima facie case for relief, the court may issue:

(1) an order nisi in prohibition;

(2) an alternative writ in mandamus that may incorporate the petition by reference only;

(3) a writ of quo warranto; or

(4) a writ of habeas corpus.

The writ must be served in the manner prescribed by law.

(e) Response. Respondent must respond to the writ as provided in rule 12.140, but the answer in quo warranto must show

better title to the office when the writ seeks an adjudication of the right to an office held by the respondent.

Committee Note

2012 Amendment. This rule is amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.

RULE 12.650. OVERRIDE OF FAMILY VIOLENCE INDICATOR

(a) Application. This rule shall apply only to proceedings instituted pursuant to 42 U.S.C. § 653, which authorizes a state court to override a family violence indicator and release information from the Federal Parent Locator Service notwithstanding the family violence indicator.

(b) Definitions.

(1) "Authorized person" means a person as defined in 42 U.S.C. § 653(c) and § 663(d)(2). It includes any agent or attorney of the Title IV-D agency of this or any other state, the court that has authority to issue an order or to serve as the initiating court in an action to seek an order against a parent or other person obligated to pay child support, or any agent of such court, the parent or other person entitled to receive child support, legal guardian, attorney, or agent of a child (other than a child receiving assistance under 42 U.S.C. §§ 601 et seq.), and any state agency that administers a child welfare, family preservation, or foster care program. It also includes any agent or attorney of this or any other state who has the duty or authority under the law of such state to enforce a child custody or visitation determination or order establishing a parenting plan; the court that has jurisdiction to make or enforce such a child custody or visitation determination or order establishing a parenting plan, or any agent of such court; and any agent or attorney of the United States, or of a state, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(2) "Authorized purpose" means a purpose as defined in 42 U.S.C. § 653(a)(2) and § 663(b). It includes establishing

parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing child custody or visitation orders or orders establishing parenting plans. It also includes enforcing any state or federal law with respect to the unlawful taking or restraint of a child.

(3) "Department" means the Florida Department of Revenue as the state's Title IV-D agency.

(4) "Family violence indicator" means a notation in the Federal Parent Locator Service that has been placed on a record when a state has reasonable evidence of domestic violence or child abuse as defined by that state.

(5) "Federal Parent Locator Service" means the information service established by 42 U.S.C. § 653.

(6) "Petitioner" means an authorized person or an individual on whose behalf an authorized person has requested a Federal Parent Locator Service search and who has been notified that the information from the Federal Parent Locator Service cannot be released because of a family violence indicator.

(7) "Respondent" means the individual whose record at the Federal Parent Locator Service includes a family violence indicator and ordinarily does not want his or her location information disclosed. The department, the Florida Department of Law Enforcement, or the state entity that placed the family violence indicator on the record may be required to respond to an order to show cause; however, they are not considered respondents in these proceedings.

(c) Initiating Proceedings. When an authorized person has attempted to obtain information from the Federal Parent Locator Service and has been notified by the Federal Parent Locator Service that it has location information but cannot disclose the information because a family violence indicator has been placed on the record, a petitioner may institute an action to override the family violence indicator. An action is instituted by filing a sworn complaint in the circuit court. The complaint must:

(1) allege that the petitioner is an authorized person or an authorized person has requested information on his or her behalf from the Federal Parent Locator Service and must include the factual basis for the allegation;

(2) allege that the petitioner is requesting the information for an authorized purpose and state the purpose for which the information is sought;

(3) include the social security number, sex, race, current address, and date of birth of the petitioner and any alias or prior name used by the petitioner;

(4) include the social security number and date of birth of the respondent and any children in common between the petitioner and the respondent, if known;

(5) disclose any prior litigation between the petitioner and the respondent, if known;

(6) disclose whether the petitioner has been arrested for any felony or misdemeanor in this or any other state and the disposition of the arrest; and

(7) include notice from the Federal Parent Locator Service that location information on the respondent cannot be released because of a family violence indicator.

(d) Initial Court Review. When a complaint is filed, the court shall review the complaint ex parte for legal sufficiency to determine that it is from an authorized person or an individual on whose behalf an authorized person requested information from the Federal Parent Locator Service, is for an authorized purpose, and includes the information required in subdivision (c). If the complaint is legally sufficient, the court shall order the department to request the information from the Federal Parent Locator Service and order the department to keep any information received from the Federal Parent Locator Service in its original sealed envelope and provide it to the court within 45 days in the manner described in subdivision

(e) Receipt of Information. When sealed information from the Federal Parent Locator Service is obtained, the department shall file the information with the court. The information from the Federal Parent Locator Service shall remain in its original sealed envelope and the outside of the envelope shall be clearly labeled with the case number and the words "sealed information from Federal Parent Locator Service." The clerk of the court shall ensure that the sealed information from the Federal Parent Locator Service is not disclosed to any person other than those specifically authorized by the court. Court files in these proceedings shall be separately secured in the Clerk's office in accordance with the requirements of subdivision (i).

(f) Review of Information by the Court. The court shall conduct an in-camera examination of the contents of the sealed envelope from the Federal Parent Locator Service.

(1) If the information from the sealed envelope does not include an address for the respondent or an address for the respondent's employer, the petitioner and the department will be notified that no information is available and no further action will be taken. The name of the state that placed the family violence indicator on the record will not be released.

(2) If the information from the sealed envelope includes an address for the respondent or the respondent's employer, the court shall issue an order to show cause to the respondent, the department, the Florida Department of Law Enforcement (FDLE), and the state entity that placed the family violence indicator on the record. The order to show cause shall

(A) give the respondent at least 45 days to show cause why the location information should not be released to the petitioner;

(B) clearly state that the failure to respond may result in disclosure of the respondent's location information;

(C) direct the parties to file with the court all documentary evidence which supports their respective positions, including any prior court orders;

(D) direct the department to search its child support enforcement statewide automated system and case file for the presence of a Florida family violence indicator, for any other information in that system or file that is relevant to the issue of whether release of the respondent's location information to the petitioner could be harmful to the respondent or the child, and whether an application for good cause under section 414.32, Florida Statutes, is pending or has been granted and if so, file documentation with the court within 30 days;

(E) unless the FDLE is the petitioner, direct the FDLE to conduct a search of its Florida criminal history records on the petitioner, including information from the Domestic and Repeat Violence Injunction Statewide Verification system, and file it with the court within 30 days; and

(F) set a hearing date within 60 days.

(3) The order to show cause shall be served as follows:

(A) By regular mail and by certified mail, return receipt requested, to the respondent. If a receipt is not returned or a responsive pleading is not filed, the court may extend the time for response and provide for personal service on the respondent. The petitioner also may request that the respondent be initially served by personal service, and if so, the petitioner shall pay into the registry of the court the cost of effecting personal service.

(B) By certified mail, return receipt requested, to the department, the FDLE, and the state entity that placed the family violence indicator on the record.

(C) A copy of the order to show cause shall be provided to the petitioner. However, the copy shall not include any information that may identify the respondent's location, including

but not limited to the name or address of the state entity that placed the family violence indicator on the record.

(g) Providing Information to Court.

(1) *Information from Department.* The department shall submit the information it obtains in response to the order to show cause by filing the information with the court in a sealed envelope. The outside of the envelope shall be clearly labeled with the case number and the words "sealed information from the Department of Revenue." Any information that may reveal the location of the respondent should be distinctly noted so that this information is not inadvertently disclosed.

(2) *Information from FDLE.* When it has searched its records in response to the order to show cause, the FDLE shall file a report with the court. The report shall include the case number and results of the search of its records.

(h) Hearing on Order to Show Cause.

(1) At the hearing on the order to show cause, the court shall determine whether release of the respondent's location information to the petitioner could be harmful to the parent or the child. The petitioner has the burden of proof to show that release of information to the petitioner would not be harmful to the parent or the child.

(A) If the court finds that release of the location information could be harmful, the information shall not be released and the petition shall be denied.

(B) If the court finds that release of the location information would not be harmful, the court shall disclose the location information to the petitioner. The disclosure of the location information shall be made only to the petitioner, and the court shall require that the petitioner not disclose the information to other persons. The disclosure of location information to the petitioner in these proceedings does not entitle the petitioner to future disclosure of the respondent's location information.

(C) The court may deny the request for location information if the respondent agrees to designate a third party for service of process for proceedings between the parties.

(2) Notwithstanding the provisions of Florida Rule of General Practice and Judicial Administration 2.530, the court may conduct a hearing on the order to show cause by means of communications equipment without consent of the parties and without a limitation on the time of the hearing. The communications equipment shall be configured to ensure that the location of the respondent is not disclosed.

(i) Confidentiality. The clerk of the court shall ensure that all court records in these proceedings are protected according to the requirements of this rule. Court records in these proceedings shall be segregated and secured so that information is not disclosed inadvertently from the court file. All court records in these proceedings are confidential and are not available for public inspection until the court issues a final judgment in the case. After the court issues a final judgment in the case, the location information from the Federal Parent Locator Service and any other information that may lead to disclosure of the respondent's location, including but not limited to the respondent's address, employment information, the name or address of the state that placed the family violence indicator on the record, and the telephone number of the respondent, shall remain confidential and not available for public inspection unless otherwise ordered by the court. After the court issues a final judgment in the case, the court shall release nonconfidential information upon motion.

Commentary

This rule implements the requirements of 42 U.S.C. § 653, providing for a state court to override a family violence indicator on a record at the Federal Parent Locator Service. It does not apply to any other proceeding involving family violence or any other court records. The limitations on access to the Federal Parent Locator Service and this override process are governed by federal law.

Proceedings under this rule would arise when an authorized

person has attempted to obtain information from the Federal Parent Locator Service but has been notified that the information cannot be released because of a family violence indicator. For example, a petitioner may be a noncustodial parent who has attempted to serve the custodial parent in an action to enforce visitation but was unable to effect service of process on the custodial parent. The court may have authorized access to the Federal Parent Locator Service in order to locate the custodial parent for purposes of service of process. If the report from the Federal Parent Locator Service indicates that the information cannot be released because of a family violence indicator, the noncustodial parent would be authorized to petition the court pursuant to this rule to override the family violence indicator.

The purpose of these proceedings is to determine whether to release location information from the Federal Parent Locator Service notwithstanding the family violence indicator. The court must determine whether release of the location information to the petitioner would be harmful to the respondent. If the court determines that release of the location information would not be harmful, the information may be released to the petitioner. If the respondent agrees to designate a third party for service of process, the court may deny the request for location information. In these circumstances, the designation of a third party for service of process is procedural only and does not provide a separate basis for jurisdiction over the respondent.

The court must use care to ensure that information from the Federal Parent Locator Service or other location information in the court record is not inadvertently released to the petitioner, thus defeating any interest of the respondent in maintaining nondisclosure.

The name of the state that placed the family violence indicator on the record may assist the petitioner in obtaining access to the respondent. If the name of the state that placed the family violence indicator on the record is supplied from the Federal Parent Locator Service, but an address for the respondent is not provided, the court should not release the name of the state to the petitioner. Disclosure of this information could assist the petitioner in locating

the respondent, may place the respondent in danger, and does not give the respondent an opportunity to be heard by the court prior to release of the information.

Because the interest of the respondent is to keep location information from the petitioner, having both the petitioner and respondent appear at a hearing at the same time may also result in the petitioner obtaining location information about the respondent. If a hearing must be held where both the petitioner and respondent are present, the court should use whatever security measures are available to prevent inadvertent disclosure of the respondent's location information.

Each state establishes its own criteria, consistent with federal law, for placing a family violence indicator on a record. Some states require a judicial determination of domestic violence or child abuse before a family violence indicator is placed on a record. The criteria for a family violence indicator in Florida are in section 61.1825, Florida Statutes.

The records in these proceedings are confidential under 42 U.S.C. §§ 653 and 654. Florida Rule of Judicial Administration 2.051 [renumbered as 2.420 in 2006] also exempts from public disclosure any records made confidential by federal law.

Committee Note

2008 Amendment. Chapter 2008-61, Laws of Florida, effective October 1, 2008, eliminated such terms as "custodial parent," "noncustodial parent," and "visitation" from Chapter 61, Florida Statutes. Instead, the court adopts or establishes a parenting plan that includes, among other things, a time-sharing schedule for the minor children. These statutory changes are reflected in the amendments to the definitions in this rule. However, because 42 *U.S.C.* § 653 includes the terms "custody" and "visitation," these terms have not been excised from the remainder of the rule.

RULE 12.740. FAMILY MEDIATION

(a) Applicability. This rule governs mediation of family matters and related issues.

(b) Referral. Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort must be made to expedite mediation of family issues. The referral, or written stipulation of the parties, may provide for mediation or arbitration in person, remotely via audio or audio-video communication technology, or a combination thereof. Absent direction in the order of referral, mediation or arbitration must be conducted in person, unless the parties stipulate or the court, on its own motion or on motion by a party, otherwise orders that the proceeding be conducted by communication technology or by a combination of communication technology and in-person participation.

(c) Limitations on Referral to Mediation.

(1) Parties must advise the court if there is an injunction for domestic violence or a conviction of a crime of domestic violence between the parties, or if the court finds there has been a history of violence between the parties that would compromise the mediation process. In those cases, the court may in its discretion, waive mediation entirely or enter appropriate orders to protect the mediation process and the parties' safety.

(2) The following actions may not be referred to mediation absent a finding of good cause by the court or consent of the parties:

(A) Title IV-D;

(B) post-judgment contempt and enforcement; and

(C) extensions or modifications of injunctions between the parties.

(3) Unless otherwise agreed by the parties, family matters and issues may be referred to a mediator or mediation program which charges a fee only after the court has determined that the parties have the financial ability to pay a fee. This determination may be based on the parties' financial affidavits or other financial information available to the court. When the mediator's fee is not established under section 44.108, Florida Statutes, or when there is no written agreement providing for the mediator's compensation, the mediator must be compensated at an hourly rate set by the presiding judge in the referral order. The presiding judge may also determine the reasonableness of the fees charged by the mediator. When appropriate, the court may apportion mediation fees between the parties and state each party's share in the order of referral. Parties may object to the rate of the mediator's compensation within 15 days of the order of referral by serving an objection on all other parties and the mediator.

(d) Appearances. A party is deemed to appear if the named party is physically present at the mediation conference or, if permitted by court order or written stipulation of the parties, present via communication technology. In the discretion of the mediator and with the agreement of the parties, family mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(e) Completion of Mediation. Mediation must be completed within 75 days of the first mediation conference unless otherwise ordered by the court.

(f) Report on Mediation.

(1) If agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, the agreement must be reduced to writing, signed by the parties, and submitted to the court unless the parties agree otherwise. By stipulation of the parties, the agreement may be electronically or stenographically recorded and made under oath or affirmed. In that event, an appropriately signed transcript may be filed with the court. Signatures may be original, electronic, or facsimile, and may be in counterparts.

(2) After the agreement is filed, the court must take action as required by law. When court approval is not necessary, the agreement becomes binding on filing. When court approval is necessary, the agreement becomes binding on approval. In either event, the agreement must be made part of the final judgment or order in the case.

(3) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator must report the lack of an agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

Commentary

1995 Adoption. This rule is similar to former Florida Rule of Civil Procedure 1.740. All provisions concerning the compensation of the mediator have been incorporated into this rule so that all mediator compensation provisions are contained in one rule. Additionally, this rule clarifies language regarding the filing of transcripts, the mediator's responsibility for mailing a copy of the agreement to counsel, and counsel's filing of written objections to mediation agreements.

2022 Amendment. The phrase "audio or audio-video communication technology" is added to the rule to make the rule consistent with amendments to the Rules of General Practice and Judicial Administration.

RULE 12.741. MEDIATION RULES

(a) Discovery. Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.

(b) General Procedures.

(1) *Interim or Emergency Relief*. A party may apply to the court for interim or emergency relief at any time. Mediation

shall continue while such a motion is pending absent a contrary order of the court, or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods when mediation is interrupted pending resolution of such a motion.

(2) *Sanctions.* If a party fails to appear at a duly noticed mediation conference without good cause, or knowingly and willfully violates any confidentiality provision under section 44.405, Florida Statutes, the court upon motion shall impose sanctions, including an award of mediator and attorneys' fees and other costs, against the party.

(3) *Adjournments.* The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference.

(4) *Counsel.* Counsel shall be permitted to communicate privately with their clients. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation.

(5) *Communication with Parties.* The mediator may meet and consult privately with any party or parties or their counsel.

(6) *Appointment of the Mediator.*

(A) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:

(i) a certified mediator, other than a senior judge presiding over civil cases as a judge in that circuit; or

(ii) a mediator, other than a senior judge, who is not certified as a mediator but who, in the opinion of the parties and upon review by the pre-siding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(B) If the parties cannot agree upon a mediator within 10 days of the order of referral, the plaintiff or petitioner shall so notify the court within 10 days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

(C) If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

Commentary

1995 Adoption. This rule combines and replaces Florida Rules of Civil Procedure 1.710, 1.720, and 1.730. The rule, as combined, is substantially similar to those three previous rules, with the following exceptions. This rule deletes subdivisions (a) and (b) of rule 1.710 and subdivisions (b) and (c) of rule 1.730. This rule compliments Florida Family Law Rule of Procedure 12.740 by providing direction regarding various procedures to be followed in family law mediation proceedings.

RULE 12.742. PARENTING COORDINATION

(a) Applicability. This rule applies to parenting coordination.

(b) Qualification Process. Each judicial circuit shall establish a process for determining that a parenting coordinator is qualified in accordance with the requirements established in the parenting coordination section of Chapter 61, Florida Statutes.

(c) Order Referring Parties to Parenting Coordinator. An order referring the parties to a parenting coordinator must be in substantial compliance with Florida Family Law Rules of Procedure

Form 12.984(a). The order must specify the role, responsibility, and authority of the parenting coordinator.

(d) Appointment of Parenting Coordinator. The parties may agree in writing on a parenting coordinator subject to the court's approval. If the parties cannot agree on a parenting coordinator, the court shall appoint a parenting coordinator qualified by law.

(e) Response by Parenting Coordinator. The parenting coordinator must file a response accepting or declining the appointment in substantial compliance with Florida Family Law Rules of Procedure Form 12.984(b).

(f) Term of Service. The term of the parenting coordinator shall be as specified in the order of appointment or as extended by the court. The initial term of service shall not exceed two years. The court shall terminate the service on:

(1) The parenting coordinator's resignation or disqualification; or

(2) A finding of good cause shown based on the court's own motion or a party's written motion. Good cause includes, but is not limited to the occurrence of domestic violence; circumstances that compromise the safety of any person or the integrity of the process; or a finding that there is no longer a need for the service of the parenting coordinator. The motion and notice of hearing shall also be served on the parenting coordinator.

(g) Removal of Parenting Coordinator. The court shall remove the parenting coordinator if the parenting coordinator becomes disqualified under the parenting coordination section of Chapter 61, Florida Statutes, or if good cause if shown.

(h) Appointment of Substitute Parenting Coordinator. If a parenting coordinator cannot serve or continue to serve, a substitute parenting coordinator may be chosen in the same manner as the original.

(i) Authority with Consent. The parenting coordinator may have additional authority with express written consent. If there has been a history of domestic violence the court must find that consent has been freely and voluntarily given.

(1) With the express written consent of both parties, the parenting coordinator may

(A) have temporary decision-making authority to resolve specific non-substantive disputes between the parties until such time as a court order is entered modifying the decision; or

(B) make recommendations to the court concerning modifications to the parenting plan or time-sharing.

(2) With the express written consent of a party, a parenting coordinator may

(A) have access to confidential and privileged records and information of that party; or

(B) provide confidential and privileged information for that party to health care providers and to any other third parties.

(3) With the express approval of the court, the parenting coordinator may

(A) have access to a child's confidential and privileged records and information; or

(B) provide confidential and privileged information for that child to health care providers and to any other third parties.

(j) Limitation of Authority.

(1) A parenting coordinator shall not have decision making authority to resolve substantive disputes between the parties. A dispute is substantive if it would

(A) significantly change the quantity or decrease the quality of time a child spends with either parent; or

(B) modify parental responsibility.

(2) A parenting coordinator shall not make a substantive recommendation concerning parental responsibility or timesharing to the court unless the court on its own motion or a joint motion of the parties determines that:

(A) there is an emergency as defined by the parenting coordination section of Chapter 61, Florida Statutes,

(B) the recommendation would be in the best interest of the child, and

(C) the parties agree that any parenting coordination communications that may be raised to support or challenge the recommendation of the parenting coordinator will be permitted.

(k) Emergency Order.

(1) *Consideration by the Court.* Upon the filing of an affidavit or verified report of an emergency by the parenting coordinator, the court shall determine whether the facts and circumstances contained in the report constitute an emergency and whether an emergency order needs to be entered with or without notice to the parties to prevent or stop furtherance of the emergency. Except for the entry of an ex parte order in accordance with (k)(2), the court shall set a hearing with notice to the parties to be held at the earliest possible time.

(2) *Ex Parte Order.* An emergency order may be entered without notice to the parties if it appears from the facts shown by the affidavit or verified report that there is an immediate and present danger that the emergency situation will occur before the parties can be heard. No evidence other than the affidavit or verified report shall be used to support the emergency being reported unless the parties appear at the hearing or have received notice of a

hearing. Every temporary order entered without notice in accordance with this rule shall be endorsed with the date and hour of entry, be filed forthwith in the clerk's office, and define the injury or potential injury, state findings by the court why the injury or potential injury may be irreparable, and give the reasons why the order was granted without notice. The court shall provide the parties and attorney ad litem, if one is appointed, with a copy of the parenting coordinator's affidavit or verified report giving rise to the ex parte order. A return hearing shall be scheduled if the court issues an emergency ex parte order.

(3) *Duration.* The emergency order shall remain in effect until further order.

(4) *Motion to Dissolve or Modify Ex Parte Order.* A motion to modify or dissolve an ex parte emergency order must be heard within 5 days after the movant applies for a hearing.

(*l*) Written Communication with Court. The parenting coordinator may submit a written report or other written communication regarding any nonconfidential matter to the court. Parenting coordinators was required, pursuant to the parenting coordination section of Chapter 61, Florida Statutes, to report certain emergencies to the court without giving notice to the parties. The parenting coordinator shall use a form in substantial compliance with Florida Family Law Rules of Procedure Form 12.984(c) when reporting any emergency to the court, whether or not notice to the parties is required by law. If the parenting coordinator is unable to adequately perform the duties in accordance with the court's direction, the parenting coordinator shall file a written request for a status conference and the court shall set a timely status hearing. The parenting coordinator shall use a form in substantial compliance with Florida Family Law Rules of Procedure Form 12.984(d) to request a status conference. When notice to the parties is required, the parenting coordinator must contemporaneously serve each party with a copy of the written communication.

(m) Testimony and Discovery. A parenting coordinator shall not be called to testify or be subject to the discovery rules of the

Florida Family Law Rules of Procedure unless the court makes a prior finding of good cause. A party must file a motion, alleging good cause why the court should allow the parenting coordinator to testify or be subject to discovery. The requesting party shall serve the motion and notice of hearing on the parenting coordinator. The requesting party shall initially be responsible for the parenting coordinator's fees and costs incurred as a result of the motion.

(n) Parenting Coordination Session. A parenting coordination session occurs when a party and the parenting coordinator communicate with one another. A parenting coordination session may occur in the presence or with the participation of persons in addition to a party and the parenting coordinator. Unless otherwise directed by the court, the parenting coordinator shall determine who may be present during each parenting coordination session including, without limitation, attorneys, parties, and other persons.

Committee Notes

2010 Adoption. The provisions of subdivision (k) do not abrogate the confidentiality provisions of section 61.125, Florida Statutes. An exception to confidentiality must apply before invoking this subdivision of the rule.

2014 Revision. Parties are more likely to comply with a parenting plan which has been voluntarily and mutually self-determined by the parties without undue outside influence. Courts therefore should consider referring parties to mediation prior to parenting coordination when a parenting plan has not been agreed to by the parties or adopted by the court. Courts are also encouraged to review what additional forms of alternative dispute resolution as well as social, psychological and educational interventions may best assist the parties in a timely manner. In cases where parties are referred to a parenting coordinator to adopt or create a parenting plan, the court should consider whether the parties would be better served by the court determining certain aspects of the parenting plan (such as parental responsibility, time sharing schedule, etc.) prior to referral to a parenting coordinator. New subdivisions (b), (g), (j)(2), (*l*), and (n) were added and others

were renumbered accordingly.

RULE 12.745. COLLABORATIVE LAW PROCESS

(a) Application. This rule governs all proceedings under chapter 61, part III, Florida Statutes.

(b) Collaborative Law Process.

(1) *Initiating Process.*

(A) A collaborative law process begins, regardless of whether a legal proceeding is pending, when the parties sign a collaborative law participation agreement.

(B) When a proceeding is pending before a court, the parties may sign a collaborative law participation agreement to seek to resolve a matter related to the proceeding. The parties shall promptly file with the court a notice of the agreement after it is signed and it shall operate as an application for a stay of the proceeding. A court in which a proceeding is stayed under this subdivision may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. The status report may only indicate whether the process is ongoing or concluded and no other information. The status report may not include a report, assessment, recommendation, finding, or other communication regarding a collaborative matter. A court shall provide notice to the parties and an opportunity to be heard before dismissing a proceeding, in which a notice of collaborative process is filed, based on delay or failure to prosecute. A court may not consider a communication made in violation of this subdivision.

(2) *Concluding and Terminating Process.* A collaborative law process is concluded by:

(A) the resolution of a collaborative matter as evidenced by a signed record;

(B) the resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process;

(C) a party unilaterally terminating the collaborative law process, with or without cause, by

(i) giving notice to other parties in a record that the process is ended,

(ii) beginning a contested proceeding related to a collaborative matter without the agreement of all parties, or

(iii) in a pending proceeding related to the matter:

a. initiating a pleading, motion, order to show cause, or request for a conference with the court;

b. requesting that the proceeding be put on the court's active calendar; or

c. taking similar action requiring notice to be sent to the parties; or

(D) except as otherwise provided by subdivision (b)(3), a party discharging a collaborative lawyer or a collaborative lawyer withdrawing from further representation of a party.

If a proceeding is pending before a court, the parties shall promptly file with the court notice in a record when a collaborative law process concludes. Any stay of the proceeding is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(3) *Discharge or Withdrawal from Representation.* A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal. If a proceeding was pending prior to the initiation of the collaborative process, the party's collaborative lawyer shall comply with the requirements of Florida Rule of General Practice and Judicial Administration 2.505. Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer is sent to the parties:

(A) the unrepresented party retains a successor collaborative lawyer; and

(B) in a signed record:

(i) the parties consent to continue the process by reaffirming the collaborative law participation agreement; and

(ii) the agreement is amended to identify the successor collaborative lawyer and the successor attorney signs the participation agreement.

(c) Approval of Interim Agreements. A collaborative law process does not conclude if, with the consent of the parties, a party requests a court to approve a written agreement resolving an issue in the collaborative matter while other issues remain pending.

(d) Alternative Dispute Resolution Permitted. Nothing in this rule shall be construed to prohibit the parties from using, by mutual agreement, any other permissible form of alternative dispute resolution to reach a settlement on any of the issues included in the collaborative process.

(e) Emergency Order. During a collaborative law process, a court may issue emergency orders to protect the health, safety,

welfare, or interest of a party or a family or household member as defined in section 741.28, Florida Statutes.

(f) Disqualification of Collaborative Lawyer and Lawyers in Associated Law Firm.

(1) Except as otherwise provided in subdivision (f)(3), a collaborative lawyer is disqualified from appearing before a court to represent a party in a proceeding related to the collaborative matter.

(2) Except as otherwise provided in subdivisions (b)(3) and (c), a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a court to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subdivision (f)(1).

(3) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(A) to ask a court to approve an agreement resulting from the collaborative law process; or

(B) to seek to defend an emergency order to protect the health, safety, welfare, or interest of a party, or a family or household member as defined in section 741.28, Florida Statutes, if a successor lawyer is not immediately available to represent that person, but only until the party or family or household member is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of that person.

RULE 12.750. FAMILY SELF-HELP PROGRAMS

(a) Establishment of Programs. A chief judge, by administrative order, may establish a self-help program to facilitate access to family courts. The purpose of a self-help program is to assist self-represented litigants, within the bounds of this rule, to achieve fair and efficient resolution of their family law case. The

purpose of a self-help program is not to provide legal advice to self-represented litigants. This rule applies only to programs established and operating under the auspices of the court pursuant to this rule.

(b) Definitions.

(1) "Family law case" means any case in the circuit that is assigned to the family law division.

(2) "Self-represented litigant" means any individual who seeks information to file, pursue, or respond to a family law case without the assistance of a lawyer authorized to practice before the court.

(3) "Self-help personnel" means lawyer and nonlawyer personnel in a self-help program.

(4) "Self-help program" means a program established and operating under the authority of this rule.

(5) "Approved form" means (A) Florida Family Law Rules of Procedure Forms or Florida Supreme Court Approved Family Law Forms or (B) forms that have been approved in writing by the chief judge of a circuit and that are not inconsistent with the Supreme Court approved forms, copies of which are to be sent to the chief justice, the chair of the Family Law Rules Committee of The Florida Bar, the chair of the Family Law Section of The Florida Bar, and the chair of the Family Court Steering Committee. Forms approved by a chief judge may be used unless specifically rejected by the Supreme Court.

(c) Services Provided. Self-help personnel may:

(1) encourage self-represented litigants to obtain legal advice;

(2) provide information about available pro bono legal services, low cost legal services, legal aid programs, and lawyer referral services;

(3) provide information about available approved forms, without providing advice or recommendation as to any specific course of action;

(4) provide approved forms and approved instructions on how to complete the forms;

(5) engage in limited oral communications to assist a person in the completion of blanks on approved forms;

(6) record information provided by a self-represented litigant on approved forms;

(7) provide, either orally or in writing, definitions of legal terminology from widely accepted legal dictionaries or other dictionaries without advising whether or not a particular definition is applicable to the self-represented litigant's situation;

(8) provide, either orally or in writing, citations of statutes and rules, without advising whether or not a particular statute or rule is applicable to the self-represented litigant's situation;

(9) provide docketed case information;

(10) provide general information about court process, practice, and procedure;

(11) provide information about mediation, required parenting courses, and courses for children of divorcing parents;

(12) provide, either orally or in writing, information from local rules or administrative orders;

(13) provide general information about local court operations;

(14) provide information about community services; and

(15) facilitate the setting of hearings.

(d) Limitations on Services. Self-help personnel shall not:

(1) provide legal advice or recommend a specific course of action for a self-represented litigant;

(2) provide interpretation of legal terminology, statutes, rules, orders, cases, or the constitution;

(3) provide information that must be kept confidential by statute, rule, or case law;

(4) deny a litigant's access to the court;

(5) encourage or discourage litigation;

(6) record information on forms for a self-represented litigant, except as otherwise provided by this rule;

(7) engage in oral communications other than those reasonably necessary to elicit factual information to complete the blanks on forms except as otherwise authorized by this rule;

(8) perform legal research for litigants;

(9) represent litigants in court; and

(10) lead litigants to believe that they are representing them as lawyers in any capacity or induce the public to rely upon them for legal advice.

(e) Unauthorized Practice of Law. The services listed in subdivision (c), when performed by nonlawyer personnel in a self-help program, shall not be the unauthorized practice of law.

(f) No Confidentiality. Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, information given by a self-represented litigant to self-help personnel is not confidential or privileged.

(g) No Conflict. Notwithstanding ethics rules that govern attorneys, certified legal interns, and other persons working under the supervision of an attorney, there is no conflict of interest in providing services to both parties.

(h) Notice of Limitation of Services Provided. Before receiving the services of a self-help program, self-help personnel shall thoroughly explain the "Notice of Limitation of Services Provided" disclaimer below. Each self-represented litigant, after receiving an explanation of the disclaimer, shall sign an acknowledgment that the disclaimer has been explained to the self-represented litigant and that the self-represented litigant understands the limitation of the services provided. The self-help personnel shall sign the acknowledgment certifying compliance with this requirement. The original shall be filed by the self-help personnel in the court file and a copy shall be provided to the self-represented litigant.

NOTICE OF LIMITATION
OF SERVICES PROVIDED

THE PERSONNEL IN THIS SELF-HELP PROGRAM ARE NOT ACTING AS YOUR LAWYER OR PROVIDING LEGAL ADVICE TO YOU.

SELF-HELP PERSONNEL ARE NOT ACTING ON BEHALF OF THE COURT OR ANY JUDGE. THE PRESIDING JUDGE IN YOUR CASE MAY REQUIRE AMENDMENT OF A FORM OR SUBSTITUTION OF A DIFFERENT FORM. THE JUDGE IS NOT REQUIRED TO GRANT THE RELIEF REQUESTED IN A FORM.

THE PERSONNEL IN THIS SELF-HELP PROGRAM CANNOT TELL YOU WHAT YOUR LEGAL RIGHTS OR REMEDIES ARE, REPRESENT YOU IN COURT, OR TELL YOU HOW TO TESTIFY IN COURT.

SELF-HELP SERVICES ARE AVAILABLE TO ALL PERSONS WHO ARE OR WILL BE PARTIES TO A FAMILY CASE.

THE INFORMATION THAT YOU GIVE TO AND RECEIVE FROM SELF-HELP PERSONNEL IS NOT CONFIDENTIAL AND MAY BE SUBJECT TO DISCLOSURE AT A LATER DATE. IF ANOTHER PERSON INVOLVED IN YOUR CASE SEEKS ASSISTANCE FROM THIS SELF-HELP PROGRAM, THAT PERSON WILL BE GIVEN THE SAME TYPE OF ASSISTANCE THAT YOU RECEIVE.

IN ALL CASES, IT IS BEST TO CONSULT WITH YOUR OWN ATTORNEY, ESPECIALLY IF YOUR CASE PRESENTS SIGNIFICANT ISSUES REGARDING CHILDREN, CHILD SUPPORT, ALIMONY, RETIREMENT OR PENSION BENEFITS, ASSETS, OR LIABILITIES.

____ I CAN READ ENGLISH.
____ I CANNOT READ ENGLISH. THIS NOTICE WAS READ TO ME BY *{NAME}* _____ IN *{LANGUAGE}*
.

_____
SIGNATURE

AVISO DE LIMITACION
DE SERVICIOS OFRECIDOS

EL PERSONAL DE ESTE PROGRAMA DE AYUDA PROPIA NO ESTA ACTUANDO COMO SU ABOGADO NI LE ESTA DANDO CONSEJOS LEGALES.

ESTE PERSONAL NO REPRESENTA NI LA CORTE NI NINGUN JUEZ. EL JUEZ ASIGNADO A SU CASO PUEDE REQUERIR UN CAMBIO DE ESTA FORMA O UNA FORMA DIFERENTE. EL JUEZ NO ESTA OBLIGADO A CONCEDER LA REPARACION QUE USTED PIDE EN ESTA FORMA.

EL PERSONAL DE ESTE PROGRAMA DE AYUDA PROPIA NO LE PUEDE DECIR CUALES SON SUS DERECHOS NI SOLUCIONES LEGALES, NO PUEDE REPRESENTARLO EN CORTE, NI DECIRLE COMO TESTIFICAR EN CORTE.

SERVICIOS DE AYUDA PROPIA ESTAN DISPONIBLES A TODAS LAS PERSONAS QUE SON O SERAN PARTES DE UN CASO FAMILIAR.

LA INFORMACION QUE USTED DA Y RECIBE DE ESTE PERSONAL NO ES CONFIDENCIAL Y PUEDE SER DESCUBIERTA MAS ADELANTE. SI OTRA PERSONA ENVUELTA EN SU CASO PIDE AYUDA DE ESTE PROGRAMA, ELLOS RECIBIRAN EL MISMO TIPO DE ASISTENCIA QUE USTED RECIBE.

EN TODOS LOS CASOS, ES MEJOR CONSULTAR CON SU PROPIO ABOGA-DO, ESPECIALMENTE SI SU CASO TRATA DE TEMAS RESPECTO A NINOS, MANTENIMIENTO ECONOMICO DE NINOS, MANUTENCION MATRIMONIAL, RETIRO O BENEFICIOS DE PENSION, ACTIVOS U OBLIGACIONES.

___ YO PUEDO LEER ESPANOL.
___ YO NO PUEDO LEER ESPANOL. ESTE AVISO FUE LEIDO A MI POR *{NOMBRE}* _____ EN *{IDIOMA}*.

_____
FIRMA

If information is provided by telephone, the notice of limitation of services provided shall be heard by all callers prior to speaking to self-help staff.

(i) Exemption. Self-help personnel are not required to complete Florida Family Law Rules of Procedure Form 12.900(a), Disclosure From Nonlawyer, as required by rule 10-2.1, Rules Regulating The Florida Bar. The provisions in rule 10-2.1, Rules Regulating The Florida Bar, which require a nonlawyer to include the nonlawyer's name and identifying information on a form if the nonlawyer assisted in the completion of a form, are not applicable to self-help personnel unless the self-help personnel recorded the information on the form as authorized by this rule.

(j) Availability of Services. Self-help programs are available to all self-represented litigants in family law cases.

(k) Cost of Services. Self-help programs, as authorized by statute, may require self-represented litigants to pay the cost of services provided for by this rule, provided that the charge for persons who are indigent is substantially reduced or waived.

(l) Records. All records made or received in connection with the official business of a self-help program are judicial records and access to such records shall be governed by Florida Rule of General Practice and Judicial Administration 2.420.

(m) Domestic, Repeat, Dating, and Sexual Violence, and Stalking Exclusion. Nothing in this rule shall restrict services provided by the clerk of the court or family or in-junctions for protection intake personnel pursuant to rule 12.610.

Commentary

1998 Adoption. It should be emphasized that the personnel in the self-help programs should not be providing legal advice to self-represented litigants. Self-help personnel should not engage in any activities that constitute the practice of law or inadvertently create an attorney-client relationship. Self-help programs should consistently encourage self-represented litigants to seek legal advice from a licensed attorney. The provisions of this rule only apply to programs established by the chief judge.

Subdivision (b). This rule applies only to assistance offered in family law cases. The types of family law cases included in a family law division may vary based on local rule and it is anticipated that a local rule establishing a self-help program may also exclude types of family law cases from the self-help program. Programs may operate with lawyer personnel, nonlawyer personnel, or a combination thereof.

Subdivision (c)(2). The self-help program is encouraged to cooperate with the local bar to develop a workable system to provide this information. The program may maintain information about

members of The Florida Bar who are willing to provide services to self-represented litigants. The program may not show preference for a particular service, program, or attorney.

Subdivision (c)(3). In order to avoid the practice of law, the self-help personnel should not recommend a specific course of action.

Subdivision (c)(5). Self-help personnel should not suggest the specific information to be included in the blanks on the forms. Oral communications between the self-help personnel and the self-represented litigant should be focused on the type of information the form is designed to elicit.

Subdivision (c)(8). Self-help personnel should be familiar with the court rules and the most commonly used statutory provisions. Requests for information beyond these commonly used statutory provisions would require legal research, which is prohibited by subdivision (d)(8).

Subdivision (c)(9). Self-help personnel can have access to the court's docket and can provide information from the docket to the self-represented litigant.

Subdivision (f). Because an attorney-client relationship is not formed, the information provided by a self-represented litigant is not confidential or privileged.

Subdivision (g). Because an attorney-client relationship is not formed, there is no conflict in providing the limited services authorized under this rule to both parties.

Subdivision (h). It is intended that self-represented litigants who receive services from a self-help program understand that they are not receiving legal services. One purpose of the disclosure is to prevent an attorney-client relationship from being formed. In addition to the signed disclosure, it is recommended that each program post the disclosure in a prominent place in the self-help program. The written disclosure should be available and posted in the languages that are in prevalent use in the county.

Subdivision (i). This provision is to clarify that nonlawyer

personnel are not required to use Florida Family Law Rules of Procedure Form 12.900(a) because the information is included in the disclosure required by this rule. Self-help personnel are required to include their name and identifying information on any form on which they record information for a self-represented litigant.