

# FLORIDA FAMILY LAW RULES OF PROCEDURE

**2005 Edition**

Rules reflect all changes through 29 FLW S734. Subsequent amendments, if any, can be found at [www.floridasupremecourt.org/decisions/index.shtml](http://www.floridasupremecourt.org/decisions/index.shtml).

THE FLORIDA BAR

CONTINUING LEGAL EDUCATION PUBLICATIONS

Distributed by LexisNexis®  
1275 Broadway, Albany, NY 12204-2694  
800/833-9844 • FAX: 800/643-1280  
*www.lexisnexis.com*



LexisNexis®

## The Florida Bar and LexisNexis

working together for Florida's Lawyers

Through a joint publishing relationship, The Florida Bar and LexisNexis have combined their expertise to best serve the information needs of those practicing law in Florida. The Florida Bar Continuing Legal Education staff writes and edits the publications; LexisNexis provides printing, CD duplication, distribution and customer service support.

If you have any questions:

### Contact The Florida Bar

For questions regarding content, authors, CLE schedules, member benefits, and other Bar matters.

The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300  
Phone: 850/561-5600  
Fax: 850/561-5826  
[www.flabar.org](http://www.flabar.org)  
[clebooks@flabar.org](mailto:clebooks@flabar.org)

### Contact LexisNexis

For questions regarding billing, subscriptions, purchases, or other Florida Bar products.

LexisNexis  
1275 Broadway  
Albany, NY 12204-2694  
Phone: 800/833-9844  
Fax: 800/643-1280  
[www.lexisnexis.com](http://www.lexisnexis.com)  
[customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

International Standard Book Number 0-8205-8477-0

The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300

©2005 by The Florida Bar. All rights reserved

Published 2005

Printed in the United States of America

2276914

(Pub. No. 22769)

## 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 12.980(d)–(e), 12.947(b), 12.948(b), 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 forms 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; amended 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), 12.903(b), 12.903(c)(1), 12.903(e), 12.904(a), 12.905(a), 12.940(d), 12.941(a), 12.941(d), 12.941(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), 12.983(b), 12.983(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; amended 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 12.980(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), 12.980(q)–(s).
Effective 9-15-04:	883 So.2d 1285.	Amended rule 12.015; added forms 12.900(b)–(f).
Effective 10-1-04:	29 FLW S554.	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:	29 FLW S734.	Amended forms 12.982(a), 12.982(c), 12.982(f).

NOTE TO USERS: Rules in this pamphlet are current through 29 FLW S734. Subsequent amendments, if any, can be found at [www.floridasupremecourt.org](http://www.floridasupremecourt.org), click “Court Decisions & Rules” and then “Supreme Court”).

### TABLE OF CONTENTS

FLORIDA FAMILY LAW RULES OF PROCEDURE

12.000. PREFACE

SECTION I. RULES

12.005. TRANSITION RULE  
12.010. SCOPE, PURPOSE, AND TITLE  
12.015. FAMILY LAW FORMS  
12.020. APPLICABILITY OF FLORIDA RULES OF CIVIL PROCEDURE  
12.030. NONVERIFICATION OF PLEADINGS  
12.040. ATTORNEYS  
12.050. WHEN ACTION COMMENCED  
12.060. TRANSFERS OF ACTIONS  
12.070. PROCESS  
12.080. SERVICE OF PLEADINGS AND PAPERS  
12.090. TIME  
12.100. PLEADINGS AND MOTIONS  
12.105. SIMPLIFIED DISSOLUTION PROCEDURE  
12.110. GENERAL RULES OF PLEADING  
12.120. PLEADING SPECIAL MATTERS  
12.130. DOCUMENTS SUPPORTING ACTION OR DEFENSE  
12.140. DEFENSES  
12.150. SHAM PLEADINGS  
12.160. MOTIONS  
12.170. COUNTERCLAIMS AND CROSSCLAIMS  
12.180. THIRD-PARTY PRACTICE  
12.190. AMENDED AND SUPPLEMENTAL PLEADINGS  
12.200. CASE MANAGEMENT AND PRETRIAL CONFERENCES  
12.210. PARTIES  
12.230. INTERVENTIONS  
12.240. INTERPLEADER  
12.250. MISJOINDER AND NONJOINDER OF PARTIES  
12.260. SURVIVOR; SUBSTITUTION OF PARTIES  
12.270. CONSOLIDATION; SEPARATE TRIALS  
12.280. GENERAL PROVISIONS GOVERNING DISCOVERY  
12.285. MANDATORY DISCLOSURE  
12.287. FINANCIAL AFFIDAVITS IN ENFORCEMENT AND CONTEMPT PROCEEDINGS  
12.290. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL  
12.300. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN  
12.310. DEPOSITIONS UPON ORAL EXAMINATION  
12.320. DEPOSITIONS UPON WRITTEN QUESTIONS  
12.330. USE OF DEPOSITIONS IN COURT PROCEEDINGS  
12.340. INTERROGATORIES TO PARTIES  
12.350. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON  
LAND FOR INSPECTION AND OTHER PURPOSES  
12.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION  
12.360. EXAMINATION OF PERSONS  
12.363. EVALUATION OF MINOR CHILD  
12.365. EXPERT WITNESSES  
12.370. REQUESTS FOR ADMISSION  
12.380. FAILURE TO MAKE DISCOVERY; SANCTIONS  
12.390. DEPOSITIONS OF EXPERT WITNESSES  
12.400. CONFIDENTIALITY OF RECORDS AND PROCEEDINGS  
12.407. TESTIMONY AND ATTENDANCE OF MINOR CHILD  
12.410. SUBPOENA

12.420. DISMISSAL OF ACTIONS  
12.430. DEMAND FOR JURY TRIAL; WAIVER  
12.431. TRIAL JURY  
12.440. SETTING ACTION FOR TRIAL  
12.450. EVIDENCE  
12.460. CONTINUANCES  
12.470. EXCEPTIONS UNNECESSARY  
12.480. MOTION FOR A DIRECTED VERDICT  
12.481. VERDICTS  
12.490. GENERAL MAGISTRATES  
12.491. CHILD SUPPORT ENFORCEMENT  
12.492. SPECIAL MAGISTRATES  
12.500. DEFAULTS AND FINAL JUDGMENTS THEREON  
12.510. SUMMARY JUDGMENT  
12.520. VIEW  
12.530. MOTIONS FOR NEW TRIAL AND REHEARING;  
AMENDMENTS OF JUDGMENTS  
12.540. RELIEF FROM JUDGMENT, DECREES, OR ORDERS  
12.550. EXECUTIONS AND FINAL PROCESS  
12.560. DISCOVERY IN AID OF EXECUTION  
12.570. ENFORCEMENT OF JUDGMENTS  
12.580. WRIT OF POSSESSION  
12.590. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES  
12.600. DEPOSITS IN COURT  
12.610. INJUNCTIONS FOR DOMESTIC, REPEAT, AND DATING VIOLENCE  
12.611. CENTRAL GOVERNMENTAL DEPOSITORY  
12.615. CIVIL CONTEMPT IN SUPPORT MATTERS  
12.620. RECEIVERS  
12.625. PROCEEDINGS AGAINST SURETY ON JUDICIAL BONDS  
12.630. EXTRAORDINARY REMEDIES  
12.650. OVERRIDE OF FAMILY VIOLENCE INDICATOR  
12.740. FAMILY MEDIATION  
12.741. MEDIATION RULES  
12.750. FAMILY SELF-HELP PROGRAMS

## **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 12.005. TRANSITION RULE**

These rules shall apply to all family law cases effective January 1, 1996. Any action taken in a family law case before January 1, 1996, 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 12.010. SCOPE, PURPOSE, AND TITLE**

#### **(a) Scope.**

(1) These rules apply to all actions concerning family matters, including actions concerning domestic and repeat violence, 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, custodial care of or access to children (except as otherwise provided by the Florida Rules of Juvenile Procedure), adoption, proceedings for emancipation of a minor, declaratory judgment actions related to premarital, marital, or post-marital agreements (except as otherwise provided, when applicable, by the Florida Probate Rules), injunctions for domestic and repeat violence, and all proceedings for modification, enforcement, and civil contempt of these actions.

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

#### **(b) Purpose.**

(1) These rules shall be construed to secure the just, speedy, and inexpensive determination of the procedures covered by them and shall be construed to secure simplicity in procedure and fairness in administration.

(2) Nothing shall prohibit any intake personnel in family law divisions from assisting in the preparation of papers 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 12.015. FAMILY LAW FORMS**

(a) **Forms Adopted as Rules.** The forms listed in this rule shall be adopted by the rulemaking process in Fla. R. Jud. Admin. 2.130. The Family Law Rules Committee of The Florida Bar shall 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) 12.901(a), Petition for Simplified Dissolution of Marriage;
- (8) 12.902(b), Family Law Financial Affidavit (Short Form);
- (9) 12.902(c), Family Law Financial Affidavit;
- (10) 12.902(e), Child Support Guidelines Worksheet;
- (11) 12.902(f)(3), Marital Settlement Agreement for Simplified Dissolution of Marriage;
- (12) 12.910(a), Summons: Personal Service on an Individual;
- (13) 12.913(b), Affidavit of Diligent Search and Inquiry;
- (14) 12.920(a), Motion for Referral to General Magistrate;
- (15) 12.920(b), Order of Referral to General Magistrate;
- (16) 12.920(c), Notice of Hearing Before General Magistrate;
- (17) 12.930(a), Notice of Service of Standard Family Law Interrogatories;
- (18) 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings;
- (19) 12.930(c), Standard Family Law Interrogatories for Modification Proceedings;
- (20) 12.932, Certificate of Compliance with Mandatory Disclosure; and
- (21) 12.990(a), Final Judgment of Simplified Dissolution of Marriage.

(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 2.130. 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.

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.

### **RULE 12.020. APPLICABILITY OF FLORIDA RULES OF CIVIL PROCEDURE**

The Florida Rules of Civil Procedure are applicable in all family law matters except as otherwise provided in these rules. These rules shall govern in cases where a conflict with the Florida Rules of Civil Procedure may occur. Whenever the Florida Rules of Civil Procedure apply to family matters, the use of the words plaintiff, defendant, and complaint within the context of the civil rules shall be interchangeable, where appropriate, with the words, petitioner, respondent, and petition, respectively.

#### Commentary

**1995 Adoption.** To avoid confusion among members of the bar who practice in both family law and civil law areas, it is intended that as much uniformity as possible be maintained between the Florida Family Law Rules of Procedure and the Florida Rules of Civil Procedure. To assist in this effort, the Florida Supreme Court determined that the Florida Rules of Civil Procedure were to apply except as set forth herein. Exceptions and additions to the Florida Rules of Civil Procedure are contained in Florida Family Law Rules of Procedure that are numbered to correspond to their civil rule counterparts. For example, exceptions to Florida Rule of Civil Procedure 1.080 are contained in Florida Family Law Rule of Procedure 12.080.

### **RULE 12.030. NONVERIFICATION OF PLEADINGS**

Verification of pleadings shall be governed by Florida Rule of Civil Procedure 1.030.

### **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.** 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 and telephone number of the attorney and the name, address and telephone number of the party. At the conclusion of such proceeding or matter, the attorney’s role

terminates without the necessity of leave of court, upon the attorney filing 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.

(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.

(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 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.

(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.

#### **RULE 12.050. WHEN ACTION COMMENCED**

Commencement of actions shall be governed by Florida Rule of Civil Procedure 1.050.

#### **RULE 12.060. TRANSFERS OF ACTIONS**

Transfers of actions shall be governed by Florida Rule of Civil Procedure 1.060.

#### **RULE 12.070. PROCESS**

(a) **Service of Initial Process.** Upon the commencement of all family law actions, including proceedings to modify a final judgment, service of process shall be as set forth in Florida Rule of Civil Procedure 1.070.

(b) **Summons.** The summons, cross-claim summons, and third-party summons in family law matters shall be patterned after Florida Family Law Rules of Procedure Form 12.910(a) and shall 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.

(c) **Constructive Service.** For constructive service of process, an affidavit of diligent search and inquiry, in substantial conformity with Florida Family Law Rules of Procedure Form 12.913(b), must be filed.

(d) **Domestic and Repeat Violence Proceedings.** This rule does not govern service of process in domestic and repeat violence proceedings.

#### **RULE 12.080. SERVICE OF PLEADINGS AND PAPERS**

(a) **Service.**

(1) **Family Law Actions Generally.** Service of pleadings and papers after commencement of all family law actions except domestic and repeat violence shall be as set forth in Florida Rule of Civil Procedure 1.080, except that rule 1.080 shall 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.

(2) **Domestic and Repeat Violence Actions.** Service of pleadings and papers regarding domestic and repeat violence actions shall be governed by Florida Family Law Rule of Procedure 12.610, where it is in conflict with this rule.

(b) **Service and Preparation of Orders and Judgments.** A copy of all orders or judgments involving family law matters except domestic and repeat violence shall 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 shall furnish the court with stamped, addressed envelopes to all parties for service of the recommended order, order, or judgment. The court also may 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 shall be served in the manner provided for service of summons contained in Florida Rule of Civil Procedure 1.070.

(2) Notice of final hearings or trials and court orders shall be served on defaulted parties in the manner provided for service of pleadings and papers contained in Florida Rule of Civil Procedure 1.080.

(3) Final judgments shall be served on defaulted parties as set forth in Florida Rule of Civil Procedure 1.080(h)(2).

#### 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.

#### **RULE 12.090. TIME**

Time shall be governed by Florida Rule of Civil Procedure 1.090.

#### **RULE 12.100. PLEADINGS AND MOTIONS**

Pleadings and motions shall be governed by Florida Rule of Civil Procedure 1.100.

#### 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.

#### **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) there are no minor or dependent children of the parties 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) **Financial Affidavit and Settlement Agreement.** The parties must each file a financial affidavit (Florida Family Law Rules of Procedure Form 12.902(b) or 12.902(c)), and a marital settlement agreement (Florida Family Law Rules of Procedure Form 12.902(f)(3)).

(d) **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).

(e) **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**

The general rules of pleading in Florida Rule of Civil Procedure 1.110 shall apply to these proceedings except that proceedings to modify a final judgment in a family law matter shall be initiated only pursuant to rule 1.110(h) and not by motion.

#### **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**

Pleading of special matters shall be governed by Florida Rule of Civil Procedure 1.120.

### **RULE 12.130. DOCUMENTS SUPPORTING ACTION OR DEFENSE**

Attachment of documents supporting an action or defense shall be governed by Florida Rule of Civil Procedure 1.130.

### **RULE 12.140. DEFENSES**

Defenses shall be governed by Florida Rule of Civil Procedure 1.140.

### **RULE 12.150. SHAM PLEADINGS**

Sham pleadings shall be governed by Florida Rule of Civil Procedure 1.150.

### **RULE 12.160. MOTIONS**

Motions shall be governed by Florida Rule of Civil Procedure 1.160.

### **RULE 12.170. COUNTERCLAIMS AND CROSSCLAIMS**

Counterclaims and crossclaims shall be governed by Florida Rule of Civil Procedure 1.170.

### **RULE 12.180. THIRD-PARTY PRACTICE**

Third-party practice shall be governed by Florida Rule of Civil Procedure 1.180.

#### **RULE 12.190. AMENDED AND SUPPLEMENTAL PLEADINGS**

Amended and supplemental pleadings shall be governed by Florida Rule of Civil Procedure 1.190.

#### **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 papers;
- (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, or dating violence that would compromise the process is involved in the case;
- (J) refer the parties to mediation if no significant history of domestic, repeat, or dating violence 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, or dating violence 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, or dating violence 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 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; and
- (O) schedule other conferences or determine other matters that may aid in the disposition of the action.

(2) **Adoption Proceedings.** A case management conference shall 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 shall 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) of this rule.

(c) **Notice.** Reasonable notice shall be given for a case management conference, and 20 days' notice shall 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 shall be specified in the order. Orders setting pretrial conferences shall 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 shall 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**

Parties to an action filed under the Florida Family Law Rules of Procedure shall be governed by Florida Rule of Civil Procedure 1.210, except that rule 1.210 shall not be read to require that a child is an indispensable party for a dissolution of marriage or child custody proceeding.

#### **RULE 12.230. INTERVENTIONS**

Interventions shall be governed by Florida Rule of Civil Procedure 1.230.

#### **RULE 12.240. INTERPLEADER**

Interpleaders shall be governed by Florida Rule of Civil Procedure 1.240.

#### **RULE 12.250. MISJOINDER AND NONJOINDER OF PARTIES**

Misjoinder and nonjoinder of parties shall be governed by Florida Rule of Civil Procedure 1.250.

#### **RULE 12.260. SURVIVOR; SUBSTITUTION OF PARTIES**

Survivors and the substitution of parties shall be governed by Florida Rule of Civil Procedure 1.260.

#### **RULE 12.270. CONSOLIDATION; SEPARATE TRIALS**

Consolidation or separation of trials shall be governed by Florida Rule of Civil Procedure 1.270.

#### **RULE 12.280. GENERAL PROVISIONS GOVERNING DISCOVERY**

Florida Rule of Civil Procedure 1.280 shall govern general provisions concerning discovery in family law matters with the following exceptions:

(a) **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.

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

(c) **Documents Considered Confidential.** A determination as to the confidentiality of a court record shall be made in accordance with Florida Rule of Judicial Administration 2.051.

(d) **Sealing of Records.** Records found to be confidential under Florida Rule of Judicial Administration 2.051 shall be sealed on request of a party.

#### **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 12.285. MANDATORY DISCLOSURE**

### **(a) Application.**

(1) **Scope.** This rule shall apply to all proceedings within the scope of these rules except proceedings involving adoption, simplified dissolution, enforcement, contempt, injunctions for domestic, repeat, or dating violence, 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 financial affidavits and 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, shall be produced for inspection upon request. Parties shall not be required to serve duplicates of documents previously served.

### **(b) Time for Production of Documents.**

(1) **Temporary Financial Hearings.** Any document required under this rule in any temporary financial relief proceeding shall be served on the other party for inspection and copying as follows.

(A) The party seeking relief shall serve the required documents on the other party with the notice of temporary financial hearing, unless the documents have been served under subdivision (b)(2) of this rule.

(B) The responding party shall serve the required documents on the party seeking relief on or before 5:00 p.m., 2 business days before the day of the temporary financial hearing if served by delivery or 7 days before the day of the temporary financial hearing if served by mail, unless the documents have been received previously by the party seeking relief under subdivision (b)(2) of this rule. A responding party shall be given no less than 12 days to serve the documents required under this rule, unless otherwise ordered by the court. If the 45-day period for exchange of documents provided for in subdivision (b)(2) of this rule will occur before the expiration of the 12 days, the provisions of subdivision (b)(2) control.

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

(c) **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 shall 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. The affidavit also must be filed with the court.

(2) All federal and state income tax returns, gift tax returns, and intangible personal property tax returns filed by the party or on the party's behalf for the past year. A party may file a transcript of the tax return as provided by Internal Revenue Service Form 4506 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.

(4) Pay stubs or other evidence of earned income for the 3 months prior to service of the financial affidavit.

(d) **Parties' Disclosure Requirements for Initial or Supplement Proceedings.** A party shall 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. The financial affidavits also must be filed with the court. 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).

(2) All federal and state income tax returns, gift tax returns, and intangible personal property tax returns filed by the party or on the party's behalf for the past 3 years.

(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.

(4) Pay stubs or other evidence of earned income for the 3 months prior to service of the financial affidavit.

(5) A statement by the producing party identifying the amount and source of all income received from any source during the 3 months preceding the service of the financial affidavit required by this rule if not reflected on the pay stubs produced.

(6) All loan applications and financial statements prepared or used within the 12 months preceding service of that party's financial affidavit required by this rule, whether for the purpose of obtaining or attempting to obtain credit or for any other purpose.

(7) All deeds within the last 3 years, all promissory notes within the last 12 months, and all present leases, in which the party owns or owned an interest, 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 any other person, or in someone else's name on the party's behalf.

(8) All periodic statements from the last 3 months for all checking accounts, and from the last 12 months 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 any other person, or in someone else's name on the party's behalf.

(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 any other person, or in someone else's name on the party's behalf.

(10) The most recent statement 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 alternate payee and the summary plan description for any retirement, profit sharing, or pension plan in which the party is a participant or an alternate payee. (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 declarations page, the last periodic statement, 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.

(12) 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 greater than or equal to 30%.

(13) All promissory notes for the last 12 months, 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 3 months, 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 any other person, or in someone else's name on the party's behalf.

(14) All written premarital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage. Additionally, in any modification proceeding, each party shall serve on the opposing party all written agreements entered into between them at any time since the order to be modified was entered.

(15) All documents and tangible evidence supporting the producing party's claim of special equity or nonmarital status of an asset or debt for the time period from the date of acquisition of the asset or debt to the date of production or from the date of marriage, if based on premarital acquisition.

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

**(e) 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 also shall serve any subsequently discovered or acquired documents supporting the amendments to the financial affidavit.

(f) **Sanctions.** Any document to be produced under this rule that is served on the opposing party fewer than 24 hours 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.

(g) **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 also may file, at least 5 days before the due date, a motion to enlarge the time for complying with mandatory disclosure. The court shall grant the request for good cause shown.

(h) **Objections to Mandatory Automatic Disclosure.** Objections to the mandatory automatic disclosure required by this rule shall be served in writing at least 5 days prior to 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 shall impose sanctions for the filing of meritless or frivolous objections.

(i) **Certificate of Compliance.** All parties subject to automatic mandatory disclosure shall 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. Except for the financial affidavit and child support guidelines worksheet, no documents produced under this rule shall be filed in the court file without a court order.

(j) **Child Support Guidelines Worksheet.** If the case involves child support, the parties shall file with the court at or prior to 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.

**(k) Place of Production.**

(1) Unless otherwise agreed by the parties or ordered by the court, all production required by this rule shall take 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 shall take 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 shall designate the place where production will occur pending determination of the venue issue.

**(l) 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.

### **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 file and 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 file and serve the requested financial affidavit 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**

Depositions before an action or pending an appeal shall be governed by Florida Rule of Civil Procedure 1.290.

### **RULE 12.300. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN**

Provisions regarding who may take depositions shall be governed by Florida Rule of Civil Procedure 1.300.

### **RULE 12.310. DEPOSITIONS UPON ORAL EXAMINATION**

Depositions upon oral examination shall be governed by Florida Rule of Civil Procedure 1.310.

### **RULE 12.320. DEPOSITIONS UPON WRITTEN QUESTIONS**

Depositions upon written questions shall be governed by Florida Rule of Civil Procedure 1.320.

#### **RULE 12.330. USE OF DEPOSITIONS IN COURT PROCEEDINGS**

Use of depositions in court proceedings shall be governed by Florida Rule of Civil Procedure 1.330.

#### **RULE 12.340. INTERROGATORIES TO PARTIES**

Interrogatories to parties shall be governed generally by Florida Rule of Civil Procedure 1.340, with the following exceptions.

##### **(a) Service of Interrogatories.**

(1) **Initial Interrogatories.** Initial interrogatories to parties in original and enforcement actions shall 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) as set forth in rule 1.340.

(2) **Modification Interrogatories.** Interrogatories to parties in cases involving modification of a final judgment shall 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) as set forth in rule 1.340.

(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.

##### **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 UPON LAND FOR INSPECTION AND OTHER PURPOSES**

Production of documents and things and entry upon land for inspection and other purposes shall be governed by Florida Rule of Civil Procedure 1.350.

#### **RULE 12.351. PRODUCTION OF DOCUMENTS AND THINGS WITHOUT DEPOSITION**

Production of documents and things without deposition shall be governed by Florida Rule of Civil Procedure 1.351.

#### **RULE 12.360. EXAMINATION OF PERSONS**

Florida Rule of Civil Procedure 1.360 shall govern general provisions concerning the examination of persons in family law matters, except that examinations permitted under rule 1.360(a)(1) 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.

## 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 Mental Health Professional or Other Expert.**

(1) When the issue of visitation, parental responsibility, or residential placement of a child is in controversy, the court, on motion of any party or the court's own motion, may appoint a licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation. 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 the parties have agreed on the need for an expert and cannot agree on the selection, 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 a licensed mental health professional or other expert. The court upon hearing may permit the additional examination, evaluation, testing, or interview based on good cause shown 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 or investigator 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 the attorney for each party or the party, if unrepresented, 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 the attorney for each party or the party, if unrepresented, 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.

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

(c) **Testimony of Other Professionals.** 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 and their attorneys, 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. The report shall not be considered by the court before it is properly admitted into evidence.

#### 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 12.365. EXPERT WITNESSES**

(a) **Application.** The procedural requirements in this rule shall 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. Where in conflict, this rule shall supersede Florida Rule of Civil Procedure 1.360.

(b) **Communication with Court by Expert.** No expert may communicate with the court without prior notice to the parties and their attorneys, who shall 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, shall be done only with notice to all parties.

(c) **Use of Evidence.** The court shall 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 shall 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**

Requests for admission shall be governed by Florida Rule of Civil Procedure 1.370.

### **RULE 12.380. FAILURE TO MAKE DISCOVERY; SANCTIONS**

Florida Rule of Civil Procedure 1.380 shall govern the failure to make discovery in family law matters and related sanctions, with the following additions.

(a) A party may apply for an order compelling discovery in the manner set forth in rule 1.380 for the failure of any person to comply with any discovery request or requirement under the family law rules, including, but not limited to, the failure to comply with rule 12.285.

(b) In the case of rule 1.380(c), the court may defer ruling on the party's motion for sanctions until the conclusion

of the matter in controversy.

#### **RULE 12.390. DEPOSITIONS OF EXPERT WITNESSES**

Depositions of expert witnesses shall be governed by Florida Rule of Civil Procedure 1.390.

#### **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 Rule of Judicial Administration 2.051.

(b) **In Camera Inspection.** The court shall 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.

(c) **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 shall 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 shall be as required by Rule of Judicial Administration 2.051(c)(9)(D).

(3) Upon receipt of a motion to reopen conditionally sealed financial information, the court shall 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**

No minor child shall be deposed or brought to a deposition, brought to court to appear as a witness or to attend a hearing, or subpoenaed to appear at a hearing without prior order of the court based on good cause shown unless in an emergency situation. This provision shall 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.

#### **RULE 12.410. SUBPOENA**

Subpoenas shall be governed by Florida Rule of Civil Procedure 1.410.

#### **RULE 12.420. DISMISSAL OF ACTIONS**

Dismissal of actions shall be governed by Florida Rule of Civil Procedure 1.420, with the following two exceptions.

(a) **Voluntary Dismissal.** Unless otherwise specified in a notice or stipulation, a voluntary dismissal shall be without prejudice and shall not operate as an adjudication on the merits.

(b) **Costs.** Costs shall be assessed as provided in rule 1.420(d), except that the court shall not require the payment of costs of a previously dismissed claim, which was based upon or included the same claim against the same adverse party as the current action.

#### 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**

Demands for and waivers of jury trial shall be governed by Florida Rule of Civil Procedure 1.430.

### **RULE 12.431. TRIAL JURY**

Trials by jury shall be governed by Florida Rule of Civil Procedure 1.431.

### **RULE 12.440. SETTING ACTION FOR TRIAL**

Florida Rule of Civil Procedure 1.440 shall govern general provisions concerning setting an action for trial in family law matters, with the following exceptions and additions.

(a) **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. 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 Florida Family Law Rule of Procedure 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. This information should be served and filed no later than 72 hours before the pretrial conference or 30 days before the trial.

(b) **Sanctions.** The failure to comply with the requirements of the order setting the action for trial shall subject 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**

Adverse witnesses, the record of excluded evidence, and the filing of evidence shall be governed by Florida Rule of Civil Procedure 1.450.

### **RULE 12.460. CONTINUANCES**

Continuances shall be governed by Florida Rule of Civil Procedure 1.460.

### **RULE 12.470. EXCEPTIONS UNNECESSARY**

Exceptions shall be governed by Florida Rule of Civil Procedure 1.470 except that no exception shall be necessary to an adverse ruling other than as provided in rules 12.490 and 12.492.

#### 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**

Motions for directed verdict shall be governed by Florida Rule of Civil Procedure 1.480.

### **RULE 12.481. VERDICTS**

Verdicts shall be governed by Florida Rule of Civil Procedure 1.481.

### **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 shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the constitution and the oath shall be recorded before the magistrate discharges any duties of that office.

(b) **Reference.**

(1) No matter shall be heard by a general magistrate without an appropriate order of reference 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 shall be in substantial conformity with Florida Family Law Rules of Procedure Form 12.920(b), and shall 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 MADE BEFORE 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 REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN RULE 12.490(f), FLA. FAM. L. R. P. A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, MAY BE REQUIRED TO SUPPORT THE EXCEPTIONS.

(3) The order of referral shall state with specificity the matter or matters being referred and the name of the general magistrate to whom the matter is referred. The order of referral also shall 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 reference 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 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 except those duties related to domestic, repeat, and dating violence. A general magistrate shall be empowered to administer oaths and conduct hearings, which may include the taking of evidence. All grounds for disqualification of a judge shall apply to general magistrates.

(d) **Hearings.**

(1) The general 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 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 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 general magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay.

(2) The general magistrate shall take testimony and establish a record which may be by electronic means as provided by Florida Rule of Judicial Administration 2.070(g)(3) or by a court reporter. The parties may not waive this requirement.

(3) The general magistrate shall have authority to examine under oath the parties and all witnesses upon all matters contained in the reference, to require production of all books, papers, 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 shall have the same powers as a circuit judge to utilize communications equipment as defined and regulated by Florida Rule of Judicial Administration 2.071.

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

**SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATION MADE BY THE GENERAL MAGISTRATE, YOU MUST FILE EXCEPTIONS IN ACCORDANCE WITH RULE 12.490(f), FLA. FAM. L. R. P. YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED IF NECESSARY FOR THE COURT'S REVIEW.**

(5) 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 also shall state that any party may provide a court reporter at that party's expense.

(e) **General Magistrate's Report.** The general magistrate shall file a report that includes findings of fact and conclusions of law, together with recommendations. If a court reporter was present, the report shall contain the name and address of the reporter.

(f) **Filing Report; Notice; Exceptions.** The general magistrate shall file the report and recommendations and serve copies on all parties. The parties may serve exceptions to the report within 10 days from the time it is served on them. Any party may file cross-exceptions within 5 days from the service 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 no exceptions are filed within that period, the court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party or the court.

(g) **Record.** For the purpose of the hearing on exceptions, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review if necessary for the court's review.

(1) The record shall consist of the court file, including the transcript of the relevant proceedings before the general magistrate and all depositions and evidence presented to the general magistrate.

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

(3) The cost of the original and all copies of the transcript of the proceedings shall 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 shall bear 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 Note

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

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

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

(b) **Scope.** This rule shall apply to proceedings for

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

(2) the enforcement of any support order for the custodial parent in conjunction with an ongoing child support or child support arrearage order,

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

(c) **Support Enforcement Hearing Officers.** The chief judge of each judicial circuit shall appoint such number of support enforcement hearing officers for the circuit or any county within the circuit as are necessary to expeditiously perform the duties prescribed by this rule. A hearing officer shall be a member of The Florida Bar unless waived by the chief justice and shall serve at the pleasure of the chief judge and a majority of the circuit judges in the circuit.

(d) **Referral.** Upon the filing of a cause of action or other proceeding for the establishment, enforcement, or modification of support to which this rule applies, the court or clerk of the circuit court shall refer such 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. Upon the receipt of a support proceeding, the support enforcement hearing officer shall:

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

(2) take testimony and establish a record, which record may be by electronic means as provided by Florida Rule of Judicial Administration 2.070(g)(3);

(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. Such order shall set forth findings of fact.

(f) **Entry of Order and Relief from Order.** Upon receipt of a recommended order, the court shall review the recommended order and shall enter an order promptly unless good cause appears to amend the order, conduct further proceedings, or refer the matter back to the hearing officer to conduct further proceedings. Any party affected by the order may move to vacate the order by filing a motion to vacate within 10 days from the date of entry. Any party may file a cross-motion to vacate within 5 days of service of a motion to vacate, provided, however, that the filing of a cross-motion to vacate shall not delay the hearing on the motion to vacate unless good cause is shown. A motion to vacate the order shall 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, shall be provided to the court by the party seeking review.

(1) The record shall consist 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 shall 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 shall 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 shall 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 shall 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.

The following notes and commentary have been carried forward from rule 1.491.

**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 domestic and repeat violence. 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 serve 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 service 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**

Defaults and final judgments thereon shall be governed by Florida Rule of Civil Procedure 1.500.

## **RULE 12.510. SUMMARY JUDGMENT**

Summary judgment shall be governed by Florida Rule of Civil Procedure 1.510.

## **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**

Motions for new trial and rehearing and amendments of judgments shall be governed by Florida Rule of Civil Procedure 1.530.

## **RULE 12.540. RELIEF FROM JUDGMENT, DECREES, OR ORDERS**

Florida Rule of Civil Procedure 1.540 shall govern general provisions concerning relief from judgment, decrees, or orders, except that there shall be no time limit for motions based on fraudulent financial affidavits in marital or paternity cases.

### **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**

Executions and final process shall be governed by Florida Rule of Civil Procedure 1.550.

## **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, 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.

(e) **Notice of Compliance.** The judgment debtor shall file with the clerk of court a notice of compliance with the order to complete form 1.977, and serve a copy of the notice of compliance on the judgment creditor or the judgment creditor’s attorney.

#### 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).

### **RULE 12.570. ENFORCEMENT OF JUDGMENTS**

Enforcement of judgments shall be governed by Florida Rule of Civil Procedure 1.570. Money judgments, as governed by rule 1.570(a) shall include, but not be limited to, judgments for alimony, child support, attorneys’ fees, suit money, and costs, and equitable distribution.

#### 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**

Writs of possession shall be governed by Florida Rule of Civil Procedure 1.580.

### **RULE 12.590. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES**

Process in behalf of and against persons not parties shall be governed by Florida Rule of Civil Procedure 1.590.

### **RULE 12.600. DEPOSITS IN COURT**

Deposits in court shall be governed by Florida Rule of Civil Procedure 1.600, with the following addition. 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 12.610. INJUNCTIONS FOR DOMESTIC, REPEAT, AND DATING VIOLENCE**

(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 or dating violence. 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.

(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 and Dating 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 repeat violence or dating violence, 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, or dating violence 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.** 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, repeat, or dating violence, 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.

(4) **Forms.**

(A) **Provision of Forms.** The clerk of the court or family or domestic/repeat/dating violence 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, or dating violence 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 Judicial Administration 2.051.

(c) **Orders of Injunction.**

(1) **Consideration by Court.**

(A) **Temporary Injunction.** 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, or dating 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, or dating 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.

(B) **Final Judgment of Injunction for Protection Against Repeat Violence.** 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) temporary custody of minor children;
- (iv) whether temporary visitation will occur 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) **Standardized Forms.** The temporary and permanent injunction forms approved by the Florida Supreme Court for domestic, repeat, and dating violence 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 standardized 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, or dating violence. 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, or dating violence 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, or dating violence 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 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, or dating violence.

(ii) **Party not Present at Hearing.** Within 24 hours after the court issues, continues, modifies, or vacates an injunction for protection against domestic, repeat, or dating violence, 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, or dating violence 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, or dating violence 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 accord 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 domestic/repeat/dating violence 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, or dating violence.

**Commentary**

**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.

**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.

#### 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 person or by mail. 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.

### **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 by mail provided notice by mail 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.

#### **RULE 12.620. RECEIVERS**

Receivers shall be governed by Florida Rule of Civil Procedure 1.620.

## **RULE 12.625. PROCEEDINGS AGAINST SURETY ON JUDICIAL BONDS**

Proceedings against sureties on judicial bonds shall be governed by Florida Rule of Civil Procedure 1.625.

## **RULE 12.630. EXTRAORDINARY REMEDIES**

Extraordinary remedies shall be governed by Florida Rule of Civil Procedure 1.630.

## **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 noncustodial parent for the support and maintenance of a child, or any agent of such court, the resident parent, 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; the court that has jurisdiction to make or enforce such a child custody or visitation determination, 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. 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).

(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 Judicial Administration 2.071, 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 also exempts from public disclosure any records made confidential by federal law.

## **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 shall be made to expedite mediation of family issues.
- (c) **Limitation on Referral to Mediation.** 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 such a fee. This determination may be based upon the parties' financial affidavits or other financial information available to the court. When the mediator is compensated in whole or part by the parties, the presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the presiding judge in the referral order. When appropriate, the court shall apportion mediation fees between the parties and shall 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.** Unless otherwise stipulated by the parties, a party is deemed to appear at a family mediation convened pursuant to this rule if the named party is physically present at the mediation conference. 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 shall 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 shall be reduced to writing, signed by the parties and their counsel, if any and if present, 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 such event, an appropriately signed transcript may be filed with the court. If counsel for any party is not present when the agreement is reached, the mediator shall cause to be mailed a copy of the agreement to counsel within 5 days. Counsel shall have 10 days from service of a copy of the agreement to serve a written objection on the mediator, unrepresented parties, and counsel. Absent a timely written objection, the agreement is presumed to be approved by counsel and shall be filed with the court by the mediator.

(2) After the agreement is filed, the court shall take action as required by law. When court approval is not necessary, the agreement shall become binding upon filing. When court approval is necessary, the agreement shall become binding upon approval. In either event, the agreement shall 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 shall 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.

**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 for Failure to Appear.** If a party fails to appear at a duly noticed mediation conference without good cause, the court upon motion shall impose sanctions, including an award of mediator and attorneys' fees and other costs, against the party failing to appear.

(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; or

(ii) a mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and upon review by the presiding 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 12.750. 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 ABOGADO, 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 Judicial Administration 2.051.

(m) **Domestic Violence Exclusion.** Nothing in this rule shall restrict services provided by the clerk of the court or family or domestic/repeat/dating violence 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.