

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA
FAMILY LAW RULES OF PROCEDURE

CASE NO:

TWO-YEAR CYCLE REPORT OF THE FAMILY LAW RULES COMMITTEE

Michael P. Walsh, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this two-year cycle report of the Family Law Rules Committee under *Fla. R. Jud. Admin.* 2.130(c). As required by *Rule* 2.130(c)(3), the proposed amendments have been reviewed by the Board of Governors of The Florida Bar. The voting records for the committee and the Board of Governors are included on the attached table of contents. As required by *Rule* 2.130(c)(2), the proposals have also been published in *The Florida Bar News*, with a request for comments. No comments were received by the committee chair. The proposed amendments are attached to this report.

The substantive reasons for the proposed amendments are as follows:

Rule 12.200: A grammatical correction has been made in subdivision (a)(2)(D) to delete the “s” after section and a statutory citation has been corrected. See §31, ch. 2001-3, Laws of Fla. See also Appendix A.

Rule 12.280: For clarity, an “or” has been added between subdivisions (a)(1) and (a)(2).

Rule 12.285: Subdivision (i) has been amended to add a sentence stating that only the financial affidavit and child support guidelines worksheet should be filed with the court. *Fla. Fam. L. R. P.* 12.285(b)(1) and (b)(2) state that the documents required for mandatory disclosure “shall be served on the other party for inspection and copying.” *Rules* 12.285(c)(1) and (d)(1) require that financial affidavits be filed with the court and *Rule* 12.285(j) requires that the child support guidelines worksheet be filed with the court. This amendment clarifies those requirements, particularly for pro se litigants, and prevents mandatory disclosure documents, which may contain sensitive information, from being included in the court file and open for public inspection.

Rule 12.340: An editorial change has been made in subdivision (b) to conform to the court-approved style.

Rule 12.380: This amendment is made in response to a proposed amendment to *Fla. R. Civ. P.* 1.380, which is being submitted to the court as part of the Civil Procedure Rules Committee's two-year cycle report. See Appendix B. The civil rule is incorporated by reference in the Family Law Rules by *Rule* 12.380. The amendment creates a new subdivision (b) to *Rule* 12.380, providing that when assessing expenses for failure to admit the court may wait until the conclusion of the matter in controversy. In family law cases, the award of fees under section 61.16, Florida Statutes, is most often on the basis of need and ability to pay, and not on the basis of prevailing party or fault. This amendment also takes into consideration the presence of pro se litigants in many family law cases, who may not be aware of the rule's requirements.

An editorial change has also been made in subdivision (a).

Rule 12.400: This amendment adds a new subdivision (c), which creates a procedure for conditional sealing of financial information in court files and for requests to open files that have been conditionally sealed.

The committee on several occasions in the past has unsuccessfully asked the court to approve rules regarding sealing of financial information. However, in *Amendments to Florida Family Law Rules of Procedure*, 723 So. 2d 208, 210 (Fla. 1998), the court offered a procedure that was referred to as "conditional sealing," that would meet the requirement for public access to judicial records in *Fla. R. Jud. Admin.* 2.051. In recognizing this type of sealing, the court stated: "This clarification should alleviate some of the committees' concerns because it explains that trial judges have the ability to protect the privacy interests of parties that could be adversely affected by new technology." 723 So. 2d at 210.

The type of notice required by *Rule* 2.051(c)(9)(D) for a conditional sealing was not addressed by the court. Therefore, the committee has proposed a notice procedure that previously has been approved by the District Court of Appeal, First District, in *State ex rel. Tallahassee Democrat, Inc. v. Cooksey*, 371 So. 2d 207 (Fla. 1st DCA 1979), and *Florida Freedom Newspapers, Inc. v. Sirmons*, 508 So. 2d 462 (Fla. 1st DCA 1987). The notice procedure requires the filing of an order sealing financial information and posting of the order on the bulletin board or front door of the courthouse for a period of 15 days following rendition.

Finally, the proposed amendment addresses the procedure for handling a request to open a file that has been conditionally sealed. This is done by filing of a motion to unseal the records, providing notice to the parties, and conducting a hearing to determine if the motion should be granted.

Rule 12.490: A correction has been made in subdivision (a) to conform to the court-approved style. In subdivision (d)(2) the reference to *Fla. R. Jud. Admin.* 2.070 has been corrected to conform to a previous amendment to the judicial rule. See *Amendments to Florida Rules of Judicial Administration*, 780 So. 2d 819, 829 (Fla. 2000).

An Editor's Note has been added preceding the commentary. The commentary does not appear in West's *Rules of Court*, but should be included. See *Amendments to the Florida Family Law Rules of Procedure and Family Law Forms*, 810 So. 2d 1, 26 (Fla. 2001).

Rule 12.491: A correction has been made in subdivision (e)(2) to the reference to *Fla. R. Jud. Admin.* 2.070 to conform to a previous amendment to the judicial rule. See *Amendments to Florida Rules of Judicial Administration*, 780 So. 2d 819, 829 (Fla. 2000).

Rule 12.610: Changes have been made throughout the rule to add references to "dating violence," in conformity with amendments to sections 784.06–784.08, Florida Statutes, in sections 21–23 of chapter 2002-55, Laws of Florida. See Appendix C.

Subdivisions (b)(1)(A) and (b)(1)(B) have been amended to remove specific requirements for issuance of an injunction and substitute "as provided by law." This amendment obviates the need to amend the rule each time the statute is amended.

Subdivision (b)(1)(C) has been created to reference injunctions for protection against dating violence, in conformity with amendments to sections 784.06–784.08, Florida Statutes, in sections 21–23 of chapter 2002-55, Laws of Florida. See Appendix C.

Subdivision (b)(2)(A) and the commentary have been amended to change the statutory reference to the Uniform Child Custody Jurisdiction and Enforcement Act. This amendment conforms to amendments to chapter 61, Florida Statutes, in

section 5 of chapter 2002-65, Laws of Florida. See Appendix D.

Editorial corrections have been made in subdivisions (c)(2)(A) and (c)(6).

The commentary to the rule has been amended in various places to conform citations to current statutory provisions effective January 1, 2003, and numbering of the forms. See §13, ch. 2002-55, Laws of Fla.; *Amendments to the Florida Family Law Rules of Procedure and Forms*, 810 So.2d 1, 366 (Fla. 2000). See Appendix E.

Rule 12.615: In subdivision (b), the sentence requiring the motion to recite the essential facts constituting contempt has been moved to the beginning of the subdivision for emphasis. Also in subdivision (b), a sentence has been added requiring that the notice of hearing state whether electronic recording or a court reporter will be provided by the court or must be provided by a party. This change conforms this rule to *Rule 12.490(b)(3)* and *Form 12.920(c)* (general masters) and *Form 12.980(c)(1)* (injunctions for protection), which require similar notice. A recommendation for a companion amendment to *Form 12.961* has been forwarded to the Forms Workgroup.

Editorial corrections have been made in subdivisions (c)(2) and (d)(2).

Rule 12.750: Editorial changes to conform to the rules style guide have been made in subdivisions (b)(5) and (l).

An Editor's Note has been added preceding the commentary. The commentary does not appear in West's *Rules of Court*, but should be included. See *Amendments to the Florida Family Law Rules of Procedure and Family Law Forms*, 810 So. 2d 1, 35 (Fla. 2001).

Form 12.902(b): Sections III.A. and III.B. of the short form financial affidavit have been amended to advise parties not to give account numbers when listing assets and liabilities. This amendment is intended to limit sensitive financial information in court files, which are public records.

Section III.B. has also been amended to provide line items to list first and second mortgages on the home and other mortgages. The change clarifies the information that should be included in this section.

Form 12.902(c): As with the short form affidavit, the long form financial affidavit has been amended in sections III.A. and III.B. to advise parties not to include account numbers when listing assets and liabilities.

Section III.B. of the affidavit has also been amended to provide line items to list first and second mortgages on the home and other mortgages.

Section III.E. of the financial affidavit, regarding responsibility for debts, has been deleted. Because financial affidavits are filed early in the dissolution proceeding, it is not expected that an agreement would have been reached at this point. The provision may also place a litigant in an unfair position if he or she determines that, based on the amounts of support that must be paid, he or she can no longer assume responsibility for a debt. This information is more appropriate for a marital settlement agreement than for a financial affidavit.

Form 12.930(a): The instructions to the notice of service of standard interrogatories form has been amended to advise the parties that answers to the interrogatories are to be provided only to the requesting party and not filed with the court as provided by *Fla. R. Civ. P. 1.340(a)* and *Fla. Fam. L. R. P. 12.340*. As with the amendments to the financial affidavits, this change is intended to limit sensitive information in court files. Pro se litigants, in particular, may be confused by these requirements. This amendment draws their attention to the requirements of the rule.

Forms 12.930(b) and (c): As with *Form 12.930(a)*, the instructions to the standard interrogatory forms have been amended to advise the parties to provide answers only to the requesting party and not to file them with the court.

Because of the addition of interrogatory 4d, interrogatory 4c. has been amended to add retirement accounts to the list of items not covered by this question. A requirement to disclose information on deferred compensation accounts has been added. This amendment is intended to ensure disclosure of these accounts, which may be a significant asset.

A new interrogatory 4d. regarding retirement accounts has been added. Such accounts are often one of the largest marital assets to be equitably distributed. See §§ 61.075(5)(a)4 and 61.076, Fla. Stat. (2002). This amendment ensures provision of adequate information to the other party.

Form 12.932: The instructions to the certificate of compliance with mandatory disclosure have been amended to specify that, of the items listed on the form, only the financial affidavit and child support guidelines worksheet are to be filed with the court. This amendment is in conformity with *Rules* 12.285(c)(1), (d)(1), and (j), which require filing of the financial affidavit and child support guidelines worksheet, and *Rules* 12.285(b), (c), and (d), which specify that other items required for mandatory disclosure should be served on the other party. Pro se litigants, in particular, may be confused by these requirements and file all mandatory disclosure documents with the court. This amendment draws the parties' attention to the rule's requirements. By this amendment, the committee is also seeking to limit sensitive information in court files, which are public records.

The committee respectfully requests that the court amend the Family Law Rules of Procedure as proposed in this report.

Respectfully submitted _____.

MICHAEL P. WALSH
Chair
Family Law Rules Committee
501 South Flagler Drive; Suite 306
West Palm Beach, FL 33401-5911
561/659-3989
FLORIDA BAR NO.: 283126

JOHN F. HARKNESS, JR.
Executive Director
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300
850/561-5600
FLORIDA BAR NO.: 123390