

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
FLORIDA FAMILY LAW FORMS

CASE NO:

PETITION OF THE FAMILY COURT STEERING COMMITTEE
TO AMEND THE FLORIDA FAMILY LAW FORMS

The Family Court Steering Committee (“the Steering Committee”), through its chair, Circuit Judge Karen K. Cole, submits this Petition of the Family Court Steering Committee in Response to the Court’s Decision of December 3, 1998. In *Amendments to Florida Family Law Rules of Procedure*, 724 So.2d 1159 (Fla. 1998), this Court directed the Steering Committee to conform the numbering of the Florida Family Law Forms to its decision. The Court also assigned the Steering Committee responsibility for ongoing review of the Florida Supreme Court Approved Family Law Forms.

This petition: (1) proposes the renumbering and renaming of the Florida Family Law Forms; (2) recommends changes to the form injunctions for domestic violence and repeat violence; and (3) seeks appointment by this Court of a committee which would be responsible for future review of the Florida Supreme Court Approved Family Law Forms.

I. RENUMBERING AND RENAMING

In *Amendments to Florida Family Law Rules of Procedure*, 724 So.2d 1159 (Fla. 1998), this Court adopted the recommendation of the Family Law Rules Committee of The Florida Bar and the recommendation of the Steering Committee regarding organization of the forms. The committees recommended that certain forms be retained as “rule forms” and be amended through the rulemaking process and that the majority of the forms be “Supreme Court Approved Forms” that could be amended by opinion. The Court noted that in light of this arrangement the forms might need to be renumbered.

The Steering Committee and the Family Law Rules Committee of The Florida Bar have worked together to develop a common proposal for renumbering and renaming of the forms to accomplish this goal. Under the proposal, the existing numbering system (“12.9–”)¹ would be retained but the forms would be renamed to reflect the type of form involved. The forms which would remain rule forms would be called *Florida Family Law Rule of Procedure Forms*, e.g., Florida Family Law Rule of Procedure Form 12.913(b). All other forms would be

¹ The number 12 represents the chapter in the Florida Family Law Rules. The number 9 represents the section that contains the forms.

called *Florida Supreme Court Approved Family Law Forms*, e.g., Florida Supreme Court Approved Family Law Form 12.902(j).

Some renumbering of the forms would also be required in order to allow for better organization of the forms, for example, to separate “petitions” from “supporting documents” and “answers.” Appendix A contains the forms as renamed and renumbered.

Consistent with this Court’s opinion, the Steering Committee has not proposed rule changes to implement this system; instead, it defers to the Family Law Rules Committee of The Florida Bar to do so. The Family Law Rules Committee will separately submit to this Court a revised Florida Family Law Rule of Procedure 12.000, Preface, and a new Florida Family Law Rule of Procedure 12.015, Family Law Forms. The Preface and the new Rule, if approved, would implement the renaming and renumbering system.

II. DOMESTIC VIOLENCE FORMS

In *Amendments to the Florida Family Law Rules of Procedure*, 713 So.2d 1 (Fla. 1998), this Court adopted mandatory forms for judges to use when issuing domestic violence and repeat violence injunctions. After that opinion issued, attorneys, judges, legal services organizations and other affected individuals and groups raised a number of concerns about the forms. The Domestic Violence

Subcommittee of the Steering Committee carefully reviewed those concerns in developing the recommendations in this petition.

Florida Family Law Rule of Procedure 12.610(c)(2)(A) allows each chief judge to adopt additions to the mandatory form injunctions in the “other special provisions” section of the injunction. The additional provisions adopted by the chief judges were also reviewed by the Domestic Violence Subcommittee and several of the additional provisions are included in the recommended changes to the injunction forms. The Steering Committee recommends the form changes attached as Appendix A.

The most significant proposed change to the form injunctions is the creation of separate forms for domestic violence cases involving children and domestic violence cases not involving children. Under the current system, even where no children are involved, blank pages devoted to inapplicable child custody, support and visitation provisions must nevertheless be attached to the injunction. The proposed change would shorten the form injunctions in the “no child” cases.

Additional proposed changes are:

Evidence for the final hearing

The Steering Committee proposes that the Temporary Injunction for Protection Against Domestic Violence be amended to include a paragraph which

advises the parties that any witnesses and documentary evidence (including documentation of finances if support is at issue) should be brought to the final hearing. This will clarify for the parties that the final hearing is evidentiary in nature and will make it more likely that a court asked to establish support will have a sufficient evidentiary basis upon which to do so.

The Steering Committee proposes that a similar sentence be added to the form Temporary Injunction for Protection Against Repeat Violence. The sentence would differ from that in the domestic violence injunction form only in that it would make no reference to evidence of finances since repeat violence cases, unlike domestic violence cases, do not involve the issue of support.

Standard for Temporary Injunction

The existing Temporary Injunction for Protection Against Domestic Violence form recites that the temporary injunction is issued because the Court has concluded that “irreparable harm and injury will probably occur in the form of violence to Petitioner.” The Steering Committee proposes that the form be changed to conform to the current statutory standard for issuance of a temporary domestic violence injunction. The current standard requires that there be “an immediate and present danger of domestic violence.” See section 741.30(5)(a), Florida Statutes.

The existing Temporary Injunction for Protection Against Repeat Violence form correctly recites that it is issued in response to “an immediate and present danger” of violence. The Steering Committee proposes, however, that the form be amended to clarify that the temporary injunction is issued in response to an immediate and present danger of “repeat violence.”

Length of injunction

The Steering Committee proposes a restructuring in the Final Injunction for Protection Against Domestic Violence and in the Final Injunction for Protection Against Repeat Violence of the paragraph regarding the duration of the injunction. The restructuring would better enable the trial judge to indicate whether the injunction is effective for a stated period only or is effective until further order of court.

Notice to respondent of criminal acts

The Steering Committee recommends the inclusion in all domestic violence and repeat violence forms of a paragraph which advises that the respondent may be charged with a crime if he or she commits certain acts. The proposed revised language more clearly apprises the respondent of the acts which may result in criminal charges.

No contact by third parties

The Steering Committee proposes the addition to all domestic violence and repeat violence forms of a sentence which prohibits the respondent from contacting petitioner's employer or school to inquire about the petitioner. The proposed sentence would also prohibit the respondent from having a third party contact the petitioner. This change would clarify that, if "no contact" is ordered, the respondent may not do indirectly what he or she is prohibited from doing directly.

No contact with automobile

The Steering Committee recommends the addition to all domestic violence and repeat violence injunction forms of a sentence that prohibits the respondent from knowingly coming within 100 feet of the petitioner's automobile. Generally, the petitioner's vehicle is essential for transportation, employment and safety needs. In many domestic violence cases, the respondent's harassment of the petitioner involves the petitioner's vehicle. For example, the respondent may vandalize or disable the vehicle; may use the vehicle as a mode of communication by leaving abusive or obsessive notes on the windshield; or may stalk the petitioner by following the vehicle in another vehicle. The Steering Committee felt that use of a "no contact" provision did not sufficiently address these problems as vehicle contact (such as vandalism or notes left on windshields) often occurred at a time

when the petitioner was not physically near the vehicle. The additional sentence is recommended to permit the Court to more directly address this type of abuse.

Other provisions regarding contact

The Steering Committee recommends the inclusion in all domestic violence and repeat violence forms of a section entitled “other provisions regarding contact.” In this section, a judge may include other contact instructions and limitations. Although the existing “no contact” paragraph begins: “[u]nless otherwise provided. . .”, the current form does not include a place for the judge to modify the paragraph. This inclusion of the recommended section will remedy that omission.

Time for complying with the court order

The current form of Final Injunction for Protection Against Domestic Violence requires the respondent to enroll in a batterers’ intervention program within 10 days and to provide proof of enrollment to the Clerk of the Court within 30 days. This portion of the form is restructured to allow a court to require a respondent to enroll in a batterers’ intervention program in fewer than 10 days and to report to the Clerk in fewer than 30 days. Some jurisdictions have the resources to provide batterers’ intervention program enrollment more promptly than 10 days.

This change will allow those circuits with available resources to require more prompt compliance but retains the outside parameters currently established.

Transfer of possession of the home

The Steering Committee recommends the inclusion in all domestic violence forms of a sentence regarding transfer of possession of the home. This sentence, if checked by the trial judge, would direct law enforcement authorities to put the party awarded use and possession of the home into possession of the home.

No parallel provision is recommended for the repeat violence forms because the parties in such actions generally do not share the same home. See section 741.28, Florida Statutes.

Removal of personal items from the home

The Steering Committee recommends the inclusion in all domestic violence forms of a paragraph regarding removal of personal items from the home. The recommended paragraph would permit the judge to either designate a time for removal of the personal items or direct that such time be coordinated with law enforcement authorities. In some jurisdictions law enforcement authorities may not have the resources to be at a residence at a specific time designated in the court's order.

The paragraph would also direct law enforcement authorities to ensure that the party removing personal items from the home remove only personal clothing, toiletries, tools of the trade, and any item specifically authorized by the court to be removed. This change is made to assist law enforcement authorities in determining what items may properly be removed from the shared home.

Going to the home without law enforcement

The Steering Committee recommends changed language in all domestic violence forms to clarify the statement in the existing forms that provides: “Going to the home without a law enforcement officer is a violation of this injunction.” Two matters require clarification. First, the existing forms do not clearly advise that if the respondent is given possession of the home, it is not a violation of the injunction for the respondent to go to the home without law enforcement authorities. Second, the existing language implies that the petitioner may violate the injunction if the petitioner goes to the home without law enforcement authorities. Both of these concerns are remedied by the following proposed language: “If the respondent is not awarded possession of the home and goes to the home without a law enforcement officer, it is a violation of this injunction.”

Damaging or removing furnishings

The Steering Committee recommends that a new paragraph be added to the temporary domestic violence injunction forms to prohibit the petitioner or respondent from damaging or removing furnishings or fixtures from the premises that the parties previously shared. This paragraph is only included in the temporary injunction form and not in the final injunction form so that the party who is put in possession of the home through a final injunction can control the furnishings and fixtures.

Law enforcement's duty regarding temporary custody

In the existing Temporary and Final Injunction for Protection Against Domestic Violence, law enforcement authorities are directed to use reasonable force to deliver the minor children to the custodial parent. Law enforcement authorities have requested that their duty be limited to those situations where the custodial parent requests their assistance. A phrase is added to the "with children" forms to accomplish this.

Exchange of minor children

The existing Final Injunction for Protection Against Domestic Violence form lacks a means by which the judge may direct that exchange of the children shall occur at school or day care. The Steering Committee recommends that the Final

Injunction for Protection Against Domestic Violence with Minor Children be restructured so that the judge may elect one of these locations for child exchange.

Notice of Social Security Number

The Steering Committee recommends that the Final Injunction for Protection Against Domestic Violence with Minor Children form include a paragraph which incorporates Florida Supreme Court Approved Family Law Form 12-902(j), Notice of Social Security Number. If child support is ordered, the social security numbers of the parties may be separately filed and then attached to the order. See section 61.13(10), Florida Statutes.

Method of payment

The Steering Committee recommends that the Final Injunction for Protection Against Domestic Violence with Minor Children form refer to the State Disbursement Unit. This reference would be consistent with section 61.1824, Florida Statutes.

Arrest without a warrant

The Steering Committee recommends that all form injunctions, as part of the directions to law enforcement, include language specifying that law enforcement authorities are authorized to arrest without warrant pursuant to section 901.15, Florida Statutes. This will clarify for the law enforcement officer

the scope of his or her arresting authority.

Dissolving the temporary injunction

The existing form final injunctions dissolve the temporary injunctions which preceded them. This dissolution is effective upon the signing of the final injunction. This can result in a gap in protection where the respondent is not immediately served with a copy of the final injunction. This gap is eliminated by a proposed language change in both domestic violence and repeat violence injunction forms to the effect that the temporary injunction remains in effect until the respondent is served with the final injunction.

Custody and visitation

Consistent with its recommendation that there be separate forms for “with children” cases and “without children” cases, the Steering Committee recommends that there be removed from the current domestic violence injunction forms the requirement that the judge indicate whether the injunction involves issues of custody or visitation.

Full faith and credit

Although the temporary and permanent injunctions for protection against domestic violence currently state that they are intended to be afforded full faith and credit, the temporary and final injunctions for protection against repeat violence do

not currently so state. The Steering Committee recommends the addition of a “full faith and credit” paragraph to the repeat violence forms to conform them to the domestic violence forms.

Valid and enforceable

The current domestic violence temporary and final injunction forms state that the injunctions are “valid and enforceable” in all counties in Florida. In contrast, the repeat violence forms state only that the injunction is “valid” in all counties in Florida. The Steering Committee recommends that this Court rectify this omission by adding the words “and enforceable” to the repeat violence injunction forms.

Mailing address

In 1998, the form Final Judgment for Protection Against Domestic Violence was amended to require the respondent to notify the Clerk of the Court of any change in the respondent’s mailing address. No corresponding amendment was made to the parallel repeat violence injunction form. The Steering Committee recommends that the repeat violence final injunction form be amended to reflect this requirement.

Rule change

In addition to these form changes, the Steering Committee recommends that Florida Family Law Rule 12.610(c)(2)(A) relating to the standardized injunction forms be modified. The rule currently provides in pertinent part:

Additional 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 on the written approval of the chief judge of the circuit. Copies of such additional provisions shall be sent to the Chief Justice, the chair of the Family Law Rules Committee of The Florida Bar, the chair of the Family Courts Steering Committee, and the Chair of The Governor's Task Force on Domestic and Sexual Violence.

The Steering Committee recommends that the chief judge of each circuit be permitted to add local provisions at the end of each section of the forms as well as in the "other special provisions" section of the forms. This would allow a local provision to be included in the portion of the injunction to which the local provision is relevant. If the local provision is not in the relevant section of the injunction, an unsophisticated reader may not put the two related provisions together and understand what is required.

If the recommended is adopted, information about the local batterers' intervention program may be printed on the form final injunctions, making it clear to the respondent where he or she must report and simultaneously eliminating the need for the judge to hand write this information on each of numerous injunctions.

Similarly, the firearms section might contain local directives on how and to whom to surrender a firearm. Permitting such limited local provisions in the forms will not change the general format of the forms. Florida will still have uniform injunctions that are understandable to law enforcement.

III. REVIEW OF FORMS

Previously, the Steering Committee requested that the Court assign the Steering Committee the responsibility for ongoing review and revision of the Florida Family Law Forms. This was consistent with the position of the Family Law Rules Committee of The Florida Bar.

The Steering Committee has since determined that it has insufficient time and resources to devote to the ongoing review of the forms if it is also to focus on the broader policy issues assigned to it by this Court. The Steering Committee therefore respectfully requests and recommends that this Court establish a separate committee to work with the Court to maintain the forms. The Steering Committee suggests that this separate committee be comprised of nine members, consisting of three members of the Steering Committee, three members of the Family Law Rules Committee of The Florida Bar and three members selected jointly by those original

six members. The committee's sole focus and assignment would be to review and recommend changes to existing family law forms.

IV. CONCLUSION

For the reasons stated above, the Family Court Steering Committee respectfully requests that this Court adopt the Florida Family Law Forms and instructions attached as Appendix A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing PETITION OF THE FAMILY COURT STEERING COMMITTEE TO AMEND THE FLORIDA FAMILY LAW FORMS, was provided by U.S. Mail to Mr. John F. Harkness, Jr., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida, 32399 and to Larry Coleman, Esquire, Chair, Family Law Rules Committee of The Florida Bar, 1111 3rd Avenue West, Suite 100, Bradenton, Florida, 34205-7834 this ____ day of December, 1999.

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