

IN THE SUPREME COURT OF FLORIDA

IN RE AMENDMENTS TO THE FLORIDA
FAMILY LAW RULES OF PROCEDURE

CASE NO.: 1999-2

RESPONSE OF THE FAMILY LAW RULES COMMITTEE
TO THE PETITION OF THE FAMILY COURT STEERING COMMITTEE

Larry K. Coleman, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this report with the court in response to the Family Court Steering Committee's petition in the above case of December 3, 1999.

As noted in the Committee's report filed in the above case on December 11, 1999, the Family Court Steering Committee and the Family Law Rules Committee are in agreement on most issues contained in their reports. This response addresses only three proposals not addressed in the Family Law Rules Committee's original report.

Amendment to Fla. Fam. L. R. P. 12.610. In its petition, the Steering Committee proposed that rule 12.610(c)(2)(A) be amended to allow the chief judge of each circuit to add changes to domestic violence injunctions at the end of each section. The current rule allows local changes to be added only in the "other local provisions" section of the injunction form. The Rules Committee voted to amend rule 12.610(c)(2)(A) as requested by a vote of 17-2-1. The text of the amendment is shown on the attachment.

Amendments to Domestic Violence forms. The Steering Committee proposed a number of amendments to the domestic violence forms. The Rules Committee is in general agreement with these proposals, but offers the following comments for the court's consideration:

1. Form 12.980(d)(1): It is suggested that the temporary injunction form needs to provide more options for contact allowed between the respondent and the minor children between issuance of the temporary and the permanent injunction. The current form states that there shall be no contact, when supervised or telephonic contact may be appropriate in some cases. Committee vote: 19-1-1.

2. Forms 12.980(d)(1), (d)(2), (e)(1), (e)(2): The committee, by a vote of 17-4-1, questioned the amendment that bars any third-party contact between the respondent and petitioner. While recognizing that such contact may be used by the respondent to harass or intimidate the petitioner, there may be legitimate reasons for third-party contact, such as arranging for visitation.

3. Forms 12.980(d)(1), (d)(2), (e)(1), (e)(2): Under "Temporary Exclusive Use and Possession of Home," item 4, the court may enjoin either the respondent or petitioner from removing articles from the home. The committee is uncertain about the court's jurisdiction to enjoin the petitioner from removing items from the home [??if the petitioner has been placed in possession of the home??].

4. Service of injunction: The committee raised a concern that ??? [Larry -- my notes don't show a vote on this.]

Creation of new forms committee: In its December 1998 order, the court adopted the proposals of the Steering Committee and Rules Committee to divide responsibility for the forms found in the family law rules. The Rules Committee would retain responsibility for forms specifically required for use in the rules and the Steering Committee would assume responsibility for the remainder of the forms, largely those intended for use by pro se litigants. In addition, the court agreed that forms under the auspices of the Steering Committee would be adopted by opinion, outside the provisions of *Fla. R. Jud. Admin.* 2.130. In its December 1999 petition, the Steering Committee proposed creating a separate committee to assume responsibility for the "non-rule" forms. The Rules Committee voted 21-0-0 to support this proposal. The Rules Committee recommends that staffing for this new committee be provided by the Office of the State Courts Administrator. The Rules Committee also reiterates its position that the forms specifically connected to the rules, and identified on its previous filing in this case, should be retained in the Family Law Rules of Procedure and updated by the Rules Committee.

Respectfully submitted _____.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been provided by mail to Hon. Karen K. Cole, Chair, Family Court Steering Committee, 330 East Bay Street, Room 200, Jacksonville, Florida 32202-2921, and B. Elaine New, Office of the State Courts Administrator, 500 South Duval Street, Tallahassee, Florida 32399.

RULE 12.610. INJUNCTIONS FOR DOMESTIC AND REPEAT 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. 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 if they certify under oath that

(i) the party filing the injunction and the party against whom the injunction is sought are spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, or persons who have a child in common regardless of whether they have been married or have resided together at any time;

(ii) the party filing the petition was the victim of, or has reasonable cause to believe he or she is in imminent danger of becoming the victim of an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death perpetrated by the party against whom the injunction is sought; and

(iii) the specific facts and circumstances upon the basis of which relief is sought are true.

(B) **Repeat Violence.** Any person may file a petition for an injunction for protection against repeat violence if they certify under oath that

(i) two incidents of violence, defined as any assault, battery, sexual battery or stalking, one of which must have occurred within 6 months of the filing of the petition, have been committed by the person against whom the injunction is sought against the petitioner or the petitioner's immediate family member; and

(ii) the specific facts and circumstances upon the basis of which relief is sought are true.

(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 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.** 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, 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 or repeat 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 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 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 or repeat 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 or repeat 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 or may receive additional testimony under oath if necessary for a determination of whether an immediate and present danger of domestic or repeat violence exists. If the respondent appears at the hearing or has received reasonable notice of the hearing, the court may hold a hearing on the petition.

(B) **Permanent Injunction.** A full evidentiary hearing shall be conducted.

(2) **Issuing of Injunction.**

(A) **Standardized Forms.** The temporary and permanent injunction forms in these rules for repeat and domestic violence injunctions shall be the forms used in the issuance of injunctions under chapters 741 and 784, Florida Statutes. 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, or at the end of each section to which they apply, 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.

(B) **Bond.** No bond shall be required by the court for the entry of an injunction for protection against domestic or repeat 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 or repeat 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 or repeat 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 or repeat violence.

(ii) **Party not Present at Hearing.** Within 24 hours after the court issues, continues, modifies, or vacates an injunction for protection against domestic or repeat 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 or repeat 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 or repeat 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 12.610(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 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 or repeat 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 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 section 741.30(6).

The facts and circumstances to be alleged under subdivision (b)(1)(B) include those set forth in Florida Family Law Form 12.980(d). 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. 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 Act affidavit must be provided and completed in conformity with Family Law Form 12.901(f). If alimony or child support is sought a Financial Affidavit must be provided and completed in conformity with Family Law Form 12.901(d) or 12.901(e).

Subdivision (c)(1)(A) expands chapter 95-195, Laws of Florida, and section 784.046(6)(a), 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(7)(b)3 and (7)(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(7)(a)3 and (7)(c)1 and 784.046(8)(c)1, Florida Statutes, and to specifically clarify that service of the permanent injunction by mail is only effective upon a party who is present at the hearing which resulted in the issuance of the injunction.

Subdivision (c)(4)(A) restates sections 741.30(5)(c) and 784.046(6)(c), Florida Statutes, with some expansion. This subdivision allows the court upon its own motion to extend the protection of the temporary injunction for protection against domestic or repeat violence for good cause shown, which shall include, but not be limited to, failure to obtain service. This subdivision also makes the procedures in cases of domestic and repeat violence identical, resolving the inconsistencies in the statutes.

Subdivision (c)(4)(B) makes the procedures in cases of domestic and repeat violence identical, resolving inconsistencies in the statutes. As stated in section 741.30(1)(c), Florida Statutes, in the event a subsequent cause of action is filed under chapter 61, Florida Statutes, any orders entered therein shall take precedence over any inconsistent provisions of an injunction for protection against domestic violence which addresses matters governed by chapter 61, Florida Statutes.

Subdivision (c)(5) implements a number of statutes governing enforcement of injunctions against domestic or repeat violence. It is intended by these rules that procedures in cases of domestic and repeat violence be identical to resolve inconsistencies in the statutes. As such, the procedures set out in section 741.31(1), Florida Statutes, are to be followed for violations of injunctions for protection of both domestic and repeat violence. Pursuant to that statute, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred to obtain information regarding enforcement.

Subdivision (c)(7) expands sections 741.30(2)(c)1 and (2)(c)2, Florida Statutes, to provide that the responsibility to assist a petitioner may not only be assigned to the clerk of court but also to the appropriate intake unit of the court. This subdivision makes the procedures in cases of domestic and cases of repeat violence identical to resolve inconsistencies in the statutes.

Committee Note

1997 Amendment. This change mandates use of the injunction forms provided with these rules to give law enforcement a standardized form to assist in enforcement of injunctions. In order to address local concerns, circuits may add special provisions not inconsistent with the mandatory portions.

Proposed rule

Reasons for change

RULE 12.610. INJUNCTIONS FOR DOMESTIC AND REPEAT VIOLENCE

(a) [no change]

(b) [no change]

(c) **Orders of Injunction.**

(1) **Consideration by Court.**

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This amendment is made at the request of the Family Court Steering Committee to allow the chief judge of the circuit to authorize addition of local provisions at the end of each section of a domestic violence injunction, rather than only at the end of the form.

(B) [no change]

(3) [no change]

(4) [no change]

(5) [no change]

(6) [no change]

(7) [no change]

Court Commentary

[no change]

Committee note

[no change]