

**THIS BOOKLET CONTAINS THE
FILING INSTRUCTIONS AND PUBLICATION UPDATE**

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Florida Family Law

Publication 513 Release 33

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HIGHLIGHTS

Unbundled Legal Services

- Chapter 50: New rules explained and analyzed; retainer agreement and other forms added.

Florida Family Law Rules of Procedure and Forms

- Chapter 57, Confidentiality and Financial Disclosure
- Chapter 70, Motions for Civil Contempt
- Chapter 57, Financial Affidavit Form

Florida Rules of Civil Procedure

- Chapter 58, Requests for Admission Limited
- Chapter 61, Date of Filing Satisfies Time Limitations

New and Expanded Coverage

- Chapters 31 and 33, Ordering Security for Support
- Chapters 31 and 54, Modifying Temporary Alimony Award in Final Judgment

- Chapters 32 and 33, Visitation Transportation Costs
- Chapter 50, Therapeutic Justice
- Chapter 12, Criminal Conduct Following Issuance of Domestic Violence Injunction

Recent Legislative and Judicial Developments Added

- All relevant judicial decisions, many concerning equitable distribution and enforcement, rule changes, and legislative enactments have been analyzed and incorporated in the appropriate topical coverage throughout the set, a few of which are noted below.

Unbundled Legal Services, Chapter 50

New procedural and ethical rules adopted by the Florida Supreme Court regarding “unbundled legal services” (also known as “limited representation”) in the family law context are covered in Chapter 50. New forms for use in notifying the court and opposing party regarding the commencement and termination of limited representation, as well as a retainer contract for limited representation and a form of consent to be

executed by the client are all set forth in Chapter 50.

Financial Disclosure, Chapter 57

Confidentiality and Financial Disclosure: Several rules that increase the confidentiality protections extended to documents produced pursuant to the mandatory financial disclosure rule were approved in 2003, and are covered in this release. The disclosure rule, Florida Family Law Rule of Procedure 12.285, was revised to provide that except for the financial affidavit and child support guidelines worksheet, no documents produced under it may be filed in the court without a court order. In addition, Florida Family Law Rule of Procedure 12.400 regarding confidentiality of records and proceedings was amended to provide for conditional sealing of financial information produced under Rule 12.285.

Financial Affidavit Form: The newest version of Florida Supreme Court Approved Family Law Form 12.902(c), the financial affidavit for persons with income of \$50,000 or more, is set forth in this release. Minor corrections and renumbering to the form were approved by the Supreme Court in late 2003.

Florida Rules of Civil Procedure:

A new rule limiting requests for admission to 30 is covered in this release [*see* Fla. R. Civ. P. 1.370(a); *see also* Ch. 58].

Florida Rule of Civil Procedure 1.540(b) has been amended to clarify that the time limitations imposed by it are satisfied by if a motion is *filed* within the stated time limits [*see* Ch. 61].

Enforcement of Alimony and Child Support, Chapter 70

Motions for Civil Contempt: An amendment to Florida Family Law Rule of Procedure 12.615 requires a notice of motion for civil contempt to clarify whether a court reporter will be provided by the court.

New and Expanded Coverage:

Ordering Security for Support: Coverage of statutory provisions and Florida Supreme Court and district court pronouncements concerning grounds for ordering life insurance or other security for an award of support [*see, e.g., Sobelman v. Sobelman; Ruberg v. Ruberg; Layeni v. Layeni; see also* §§ 61.08(3), 61.13(1)(c), Fla. Stat.; Chs. 31 & 33].

Modifying Temporary Alimony Award in Final Judgment: Discussion regarding possible conflict among Supreme Court and district court decisions regarding modifiability of temporary alimony orders [*see Bush v. Bush; Dent v. Dent; see also* Chs. 31 & 54].

Visitation Transportation Costs: Discussion of statutory and case law concerning costs of transporting parties' child for visitation. In sum, current law provides that such costs should be shared by parents like any other childcare expense, and allocated in accordance with the child support guidelines. This principle is supported by public policy to foster continuing, meaningful relationships between noncustodial parents and their children [*see, e.g., Christ v. Christ; see also* § 61.13(2)(d)4., Fla. Stat.; Chs. 32 & 33].

Therapeutic Justice: Definition of therapeutic justice and discussion about apparent trend to incorporate therapeutic justice into traditional justice process in family courts, including recent case illustrating due process restrictions on therapeutic justice endeavors [*see* Cobb, Stanton L., Commentary, FLORIDA FAMILY LAW REPORTER, No. 9, pp. 297–298 (September 2003) (Matthew Bender); *see also* D'Amato; Ch. 50].

Criminal Conduct Following Issuance of Domestic Violence Injunction: Discussion of how harassment and cyberstalking of a person who has previously obtained an injunction against domestic, repeat, or dating violence against the perpetrator constitutes

the felony offense of criminal aggravated stalking. Relevant statutory terms, including the term “cyberstalking” that was added by the Florida legislature in 2003, are defined [see § 784.048, Fla. Stat.; see also Ch. 12].

Florida Rules of Judicial Administration, Chapter 54

The presumptively reasonable 14-day time period for completion of temporary support and enforcement of support hearings has been omitted from the Rules [see Fla. R. Jud. Admin. 2.085(e)(1)(C)].

Miscellaneous Nonsubstantive Changes

Miscellaneous nonsubstantive changes adopted in 2003 to the Florida Rules of Judicial Administration, Florida Family Law Rules of Procedure, and the Florida Rules of Civil Procedure have been incorporated into the set.

A Few of the Many New Court Decisions Analyzed and Added this Release:

- **Alimony.** In *en banc* opinion applying the principle of *stare decisis* in textbook fashion, the Fourth District Court of Appeal challenged a half-century old rule established by the Florida Supreme Court in *Bredin v. Bredin* [89 So. 2d 353 (Fla. 1956)] that prohibited awards of lump-sum alimony in actions for support unconnected with dissolution of marriage. The Fourth District ruled that lump-sum alimony may be awarded in a separate maintenance action, and that *Bredin's* rule no longer controls because it was based on old, fault-based divorce statutes and an interpretation of the term “lump-sum alimony” as an award of vested property rights [see *Coltea v. Coltea*; see also Ch. 4].
- **Imputed Income.** Evidence of the availability of a specific job is not necessary to impute income to a party who has not made efforts to secure employment. This is in contrast to a case in which a party has made efforts to secure employment but has been unsuccessful. In such a case, the burden of proof shifts to the other party to demonstrate the existence of a specific employer who is willing to hire the unemployed party [see *Solomon v. Solomon*; see also Ch. 31].
- **Attorney’s Fees.** Attorney is not liable for fees imposed pursuant to Florida Statutes Section 57.105 if party requesting fees does not ask that they be awarded against the attorney, and the attorney’s client waives the issue by failing to raise it with the trial court; Section 57.105 appears to create an inherent conflict of interest in attorneys by not requiring or encouraging them to inform their clients about the dual responsibility for fees under Section 57.105 [see *Kerzner v. Lerman*; see also Ch. 37].
- **Child Support.** Primary custodial parent is required to exercise his or her best efforts to earn income from work outside the home to help support child while maintaining the flexibility that he or she needs as the primary residential parent [see *Mitchell v. Mitchell*; see also Ch. 33]. Mandatory adjustment for substantial visitation that is set forth in the child support guidelines statute must be applied in an action for reduction in child support even if the noncustodial parent previously failed to exercise his or her visitation amounting to 40% of overnights [see *Migliore*; see also Ch. 33]. Custodial parent may release the federal income tax dependency exemption to

the noncustodial parent regardless of whether they have ever been married [see *Jeffrey R. and Sabrina M. King v. Commissioner*; see also Chs. 3, 33 & 90].

- **Equitable Distribution.** Marital improvements to nonmarital property that are merely cosmetic and that increase the value of the property only negligibly do not render the enhanced value of the property a marital asset [see *Mitchell*; see also Ch. 34]. Pursuant to general principles of equity, as well as language in the equitable distribution statute that allows courts to use any remedy available to them to do equity between the parties [see § 61.075(1), Fla. Stat.], a trial court has continuing jurisdiction to equitably distribute an estimated federal income tax payment that is remitted to the Internal Revenue Service from marital funds, but is omitted from equitable distribution in the final judgment and is therefore held by the parties as

tenants in common [see *Demorizi v. Demorizi*; see also Ch. 34]. Second District extends rule that antenuptial agreement must specifically exclude a spouse's salary earned during the marriage from equitable distribution to immunize the salary from distribution; district court holds that in addition, any property acquired during the marriage with marital funds or marital labor is subject to distribution if it is not clearly and specifically excluded from equitable distribution in an antenuptial agreement, and the enhanced value of nonmarital property that is due to a contribution of marital funds or labor is subject to equitable distribution unless specifically excluded [see *Worley v. Worley*; see also Chs. 20 & 34]. Military reenlistment bonus is subject to equitable distribution so long as (1) it vests on reenlistment, and (2) the servicemember reenlisted prior to the time the petition for dissolution of his or her marriage was filed [see *Marcell*; see also Chs. 34 & 50A].

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