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# Florida Family Law Practice Manual

Publication 80643 Release 67

November 2011

## HIGHLIGHTS

### 2011 Legislation

- 2011 Legislation May Tighten Availability of Permanent Alimony [see Ch. 10, *Alimony*].
- Florida Enacts UIFSA Provisions That Address International Support Orders [see Ch. 14, *Enforcement*].

### United States Supreme Court Decision

- U.S. Supreme Court held that in a civil contempt proceeding brought against an indigent respondent for failure to pay child support, the respondent does not automatically have a right to appointed counsel, even though he or she may be incarcerated as a result of the proceeding [see Ch. 11, *Marital Settlement Agreements*].

### Florida Supreme Court Decision

- Florida Supreme Court Resolves Conflict and Holds That Beneficiary Designation in Policy or Account Trumps Allocation of Policy or Account to Owner-Spouse [see

Ch. 11, *Marital Settlement Agreements*].

### New and Amended Rules Address Confidentiality of Filed Documents:

- New Rule of Judicial Administration 2.425, Which Limits “Sensitive” Information That May Be Included in Documents Filed with Court, Is Incorporated into Family Law Rules [see Chs. 4, 7, 13].

### Amended Family Law Forms

- Most Recent Income Deduction Order Form 12.996(a) Is Set Forth in Volume 4.
- 25 Family Law Forms Have Been Amended to Reflect New Rule of Judicial Administration 2.425.

### Chapter 4, Initiating the Dissolution

### Chapter 7, Discovery

New Florida Rule of Judicial Administration 2.425, which limits the inclusion of “sensitive” information in documents filed with courts, is discussed in Chapters 4 and 7. Also discussed in each chapter are relevant Florida Family Law Rules of Proce-

ture that have been amended to incorporate the requirements of Rule 2.425. Further, Chapters 4 and 7 each include discussion of Florida Rule of Judicial Administration 2.420, which governs maintenance of certain court records as confidential, and requires that a party filing a document with a court either notify the court clerk that the document contains confidential information or file a motion asking the court to determine whether the document contains confidential information. Finally, grounds for a court to impose sanctions for violations of either Rule 2.425 or 2.420 are discussed in Chapters 4 and 7. New Rule 2.425 and the Supreme Court's recent amendments to the family law rules have also been incorporated into Chapters 13 and 14 [see *In re Implementation of Comm. on Privacy & Court Records Recommendations*, 36 Fla. L. Weekly S 331, \_\_\_ So. 3d \_\_\_, 2011 Fla. LEXIS 1532 (Fla. June 30, 2011)].

## **Chapter 8, Parental Responsibility and Timesharing**

### **Legislation**

Discussion regarding temporary modification of a military parent's timesharing is updated with 2011 legislation that prohibits a trial court from granting a petition to modify a servicemember's timesharing based solely on temporary disruption to the child caused by the service [see 2011 Fla. Laws, ch. 2011-188, § 1, amending Fla. Stat. § 61.13002(1)].

### **DCA Cases**

*Denker v. Denker*, 60 So. 3d 1104, 1106 (Fla. 4th DCA 2011) (differentiating judgment entered after full hearing from default judgment, and holding that so long as both parents receive notice and opportunity to be heard, one parent's failure to attend hearing and present evidence does not require reversal of judgment if it is based on substan-

tial, competent evidence presented by other parent at hearing).

*Mudafort v. Lee*, 62 So. 3d 1196 (Fla. 4th DCA 2011) (legislation enacted in 2008 and 2009 has eliminated Florida courts' longstanding presumption against rotating custody [see, e.g., Fla. Stat. § 61.13(2)(c)1. (there is no presumption for or against any timesharing schedule)]).

*Sarpel v. Eflanli*, 65 So. 3d 1080, 2011 Fla. App. LEXIS 8086, 36 Fla. L. Weekly D1181 (Fla. 4th DCA June 1, 2011) (under Florida's UCCJEA Section 61.514, trial court has subject matter jurisdiction if, at any time during six months preceding filing of petition, Florida qualified as child's "home state," which means that court has jurisdiction if, looking backwards over six months preceding filing of custody proceeding, there is at least one day during which child lived in Florida and, for six consecutive months preceding that day, child lived in Florida).

## **Chapter 9, Child Support**

*Turner v. Rogers*, 564 U.S. \_\_\_, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011) (United States Supreme Court holds that in civil contempt proceeding brought against indigent respondent for failure to pay child support, respondent does not automatically have due-process right to appointed counsel, even though he or she may be incarcerated as result of proceeding if (1) support is owed to other parent rather than to state, (2) opposing parent is not represented by counsel, and (3) there are adequate substitute procedural safeguards).

*Laussermair v. Laussermair*, 55 So. 3d 705 (Fla. 4th DCA 2011) (agreement to substitute payments to college fund in place of obligor's regular, periodic child support payments did not violate public policy).

*Maslow v. Edwards*, \_\_\_ So. 3d \_\_\_, 2011 Fla. App. LEXIS 1074, 36 Fla. L.

Weekly D266 (Fla. 5th DCA Feb. 4, 2011) (like social security benefits that arise from parent's disability, benefits paid by Veterans' Administration (VA) to assist disabled parent's child must be included in parent's income, along with any VA disability benefits received by disabled parent for himself or herself).

### **Chapter 10, Alimony**

Recent legislation addressing durational and permanent alimony, as well as awards of alimony that leave payors with significantly less net income than payees, is covered in this release [see 2011 Fla. Laws, ch. 2011-92, § 79]. The legislation, which applies to all initial awards of alimony entered after July 1, 2011, and to any modifications of those awards [see 2011 Fla. Laws, ch. 2011-92, § 80], may render awards of permanent alimony harder to obtain by expanding the availability of durational alimony and by imposing new restrictions on awards of permanent alimony. In addition, the 2011 legislation heightens requirements concerning findings that will justify awards of permanent alimony. Finally, the legislation mandates that an award of alimony not leave the payor with significantly less net income than the net income of the recipient, unless there are written findings of exceptional circumstances [see 2011 Fla. Laws, ch. 2011-92, § 79, amending Fla. Stat. § 61.08].

### **Chapter 10B, Equitable Distribution of Marital Assets**

*Randall v. Randall*, 56 So. 3d 817 (Fla. 2d DCA 2011) (engagement ring is non-marital property, and trial court is not authorized to categorize ring differently in equitable distribution based on fact that ring is heirloom of donor-spouse's family).

*Konz v. Konz*, 63 So. 3d 845 (Fla. 4th DCA 2011) (husband who failed to establish value of his nonmarital residence or lot

on which residence stood when parties were married failed to satisfy his burden of proof to show he had nonmarital interest in new marital residence constructed on lot after nonmarital residence was torn down).

### **Chapter 11, Marital Settlement Agreements**

*Crawford v. Barker*, 64 So. 3d 1246 (Fla. 2011) (if marital settlement agreement allocates account, policy, or plan that pays death benefits to owner-spouse and he or she does not change designation of other spouse as beneficiary, then beneficiary designation controls following dissolution of marriage and nonowner-spouse is entitled to proceeds or benefits on death of owner-spouse).

### **Chapter 13, Dissolution Trial/Final Judgment**

Chapter 13 has been updated with discussion of new Florida Rule of Judicial Administration 2.425. Specifically, Chapter 13 addresses Rule 2.425's exception of orders regarding parental responsibility, timesharing, or child support from its requirement that minor children's names be stated only as initials in filed court documents [see "Chapter 4, *Initiating the Dissolution . . .*" (above)].

### **Chapter 14, Enforcement**

#### **Pending Amended Statutes**

In 2011, Florida became one of the first states to enact legislation that addresses international support orders as part of the Uniform Interstate Family Support Act (UIFSA) [see 2011 Fla. Laws, ch. 2011-92, §§ 1-75, amending Fla. Stat. §§ 88.1011-88.9031; see also Fla. Stat. §§ 88.1011-88.9051]. However, the legislation will not take effect until specified federal action is taken by Congress or by the United States Office of Child Support Enforcement (OCSE) [see 2011 Fla. Laws, ch. 2011-92,

§ 81]. This release supplements Chapter 14's discussion of UIFSA with discussion of the pending amendments concerning international orders.

## Cases

*Turner v. Rogers*, 564 U.S. \_\_\_, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011) [see Chapter 9, *Child Support* (above)].

*Ferguson v. Ferguson*, 54 So. 3d 553 (Fla. 3d DCA 2011) (changes in economy do not constitute unanticipated circumstance that will support impossibility defense).

*Elliot v. Bradshaw*, 59 So. 3d 1182 (Fla. 4th DCA 2011) (obligor's ability to immediately sell home, especially in distressed housing market, was speculative and therefore could not support finding of present ability to pay).

*Baker v. Storfer*, 51 So. 3d 652 (Fla. 4th DCA 2011) (interpreting Florida Statutes Section 77.0305 to include commissions as "wages" subject to continuing garnishment).

## Volume 3: Text of Amended Family Law Statutes and Rules

### Amended Statutes

**Alimony:** The text of Florida Statutes Section 61.08 as it was amended in 2011 is set forth in Volume 3 [see 2011 Fla. Laws, ch. 2011-92, § 79; see also "Chapter 10, *Alimony*" (above)].

**Temporary Modification of Military Parent's Timesharing:** Florida Statutes Section 61.13002, as it was amended in 2011, is set forth in Volume 3 [see 2011 Fla. Laws, ch. 2011-188, § 1, amending Fla. Stat. § 61.13002(1); see also "Chapter 8, *Parental Responsibility and Timesharing*" (above)].

### Amended Rules

**Florida Family Law Rules of Procedure**

**12.105**, 12.130, 12.280, 12.285, 12.287, 12.340, 12.363, 12.370, 12.410, 12.440, 12.540, 12.560, 12.620: These rules have been amended to incorporate new Florida Rule of Judicial Administration 2.425, which limits "sensitive" information that may be set forth in court-filed documents [see Fla. R. Jud. Admin. 2.425; see also "Chapter 4, *Initiating the Dissolution. . .*" (above)].

## Volume 4: Revised Family Law Forms

**Income Deduction Form 12.996(a).** In the last release, a revised version of the income deduction order for use in non-Title IV-D cases, Florida Family Law Rule of Procedure Form 12.996(a), was set forth in Volume 4 [see Fla. Fam. L. R. P. 12.996(a)]. In a 2010 opinion adopting the revised order, the Florida Supreme Court directed that it be subject to a 60-day comment period [see *In re Amendments to the Fla. Family Law Rules of Procedure*, 48 So. 3d 25 (Fla. 2010)]. Subsequently, in an opinion dated June 16, 2011, the Supreme Court explained that it was adopting revised instructions to the order. The revised instructions clarify that orders for immediate income deduction must be paid through the State Disbursement Unit. The form itself remains the same, and retains the "Child Support Reduction/Termination Schedule" adopted by the Court in 2010 [see *In re Amendments to the Fla. Family Law Rules of Procedure*, 2011 Fla. LEXIS 1344, 36 Fla. L. Weekly S 267, \_\_\_ So. 3d \_\_\_ (June 16, 2011); see also Fla. Fam. L. R. P. Form 12.996(a)].

**Other Recently Amended Forms:** New Florida Rule of Judicial Administration 2.425 regarding reduction of sensitive information in filings with the courts was adopted by the Supreme Court in 2011. Simultaneously, the Court adopted amendments to various existing procedural rules

and forms to reflect the requirements of new Rule 2.425, including amendments to 8 Florida Family Law Rules of Procedure Forms and 17 Florida Supreme Court Approved Family Law Forms. All of the amendments took effect on October 1, 2011 [*see In re Implementation of Comm. on Privacy & Court Records Recommendations*, 36 Fla. L. Weekly S 331, \_\_\_ So. 3d \_\_\_, 2011 Fla. LEXIS 1532 (Fla. June 30, 2011)]. The amended forms are not included in this release because at the time it was being prepared, the forms were not yet available for downloading at the Court's website, [www.flcourts.org/gen\\_public/family/forms\\_rules/index.shtml](http://www.flcourts.org/gen_public/family/forms_rules/index.shtml). Pending inclusion of the amended forms in the next revision of Volume 4, customers are encouraged to review the following complete list of forms that are affected, and check the website for the amended versions:

#### **Florida Family Law Rules of Procedure Forms**

12.901(a)—Petition for Simplified Dissolution of Marriage

12.902(b)—Family Law Financial Affidavit (Short Form)

12.902(c)—Family Law Financial Affidavit

12.902(e)—Child Support Guidelines Worksheet

12.930(b)—Standard Family Law Interrogatories for Original or Enforcement Proceedings

12.930(c)—Standard Family Law Interrogatories for Modification Proceedings

12.930(d)—Notice of Service of Answers to Interrogatories

12.932—Certificate of Compliance With Mandatory Disclosure

#### **Florida Supreme Court Approved Family Law Forms**

12.901(b)(1)—Petition for Dissolution of Marriage with Dependent or Minor Child(ren)

12.901(b)(2)—Petition for Dissolution of Marriage with Property but No Dependent or Minor Child(ren)

12.901(b)(3)—Petition for Dissolution of Marriage with No Dependent or Minor Child(ren)

12.903(c)(1)—Answer to Petition and Counterpetition for Dissolution of Marriage with Dependent or Minor Child(ren)

12.903(c)(2)—Answer to Petition and Counterpetition for Dissolution of Marriage with Property but No Dependent or Minor Child(ren)

12.904(a)—Petition for Support Unconnected With Dissolution of Marriage With Dependent or Minor Child(ren)

12.904(b)—Petition for Support Unconnected with Dissolution of Marriage with No Dependent or Minor Child(ren)

12.905(d)—Supplemental Petition for Temporary Modification of Parenting Issues for Child(ren) of Parent Activated, Deployed, or Temporarily Assigned to Military Service

12.943—Motion to Deviate from Child Support Guidelines

12.947(a)—Motion for Temporary Support and Timesharing with Dependent or Minor Child(ren)

12.947(b)—Temporary Order of Support and Timesharing with Dependent or Minor Child(ren)

12.947(c)—Motion for Temporary Support with No Dependent or Minor Child(ren)

12.947(d)—Temporary Support Order

with No Dependent or Minor Child(ren)

12.983(a)—Petition to Determine Paternity and for Related Relief

12.983(c)—Answer to Petition and Counterpetition to Determine Paternity and for Related Relief

12.995(a)—Parenting Plan

12.995(b)—Supervised/Safety-Focused Parenting Plan

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