

PUBLICATION UPDATE

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Florida Family Law Practice Manual

Publication 80643 Release 68

July 2012

HIGHLIGHTS

- Case developments occurring since the last release have also been incorporated throughout the set. Key cases are listed below.
- Recent amendments to the Florida Family Law Rules of Procedure are incorporated into the Court Rules section in Volume 3.
- This release includes over 50 new and revised standard forms recently adopted by the Florida Supreme Court, including new constructive service forms, forms addressing privacy rules, and notices of hearing containing language addressed to disabled persons. Key forms are listed below.

Chapter 8, Parental Responsibility and Time Sharing

In *Cheek v. Hesik*, the First District Court of Appeal reversed a makeup timesharing order that required child to temporarily relocate from Florida to Illinois, because the trial court failed to consider whether the *manner* in which makeup timesharing was imposed was in the child's best interests,

and there was no evidence that could support a finding that the plan was in child's best interests.

In *Delivorias v. Delivorias*, the First District Court of Appeal affirmed an order modifying custody, despite the absence of findings by the trial court, when the parent who sought modification raised proper allegations and presented supporting testimony, and the record supported the result.

In *Wraight v. Wraight*, the Fifth District Court of Appeal upheld an order permitting the former wife to relocate to the United Kingdom with the parties' child, based on the trial court's determination that the child was well-settled in the United Kingdom and it was not in the best interests of the child to uproot her again. The Fifth District rejected the former husband's argument that the trial court impermissibly gave weight to the child's temporary relocation as a factor in reaching its decision, and instead concluded that it is necessary for a trial court to take into account the events of a temporary relocation in determining what is in the best interests of the child.

Chapter 9, Child Support

In *Hooks v. Quaintance*, the First District Court of Appeal held that paternity cannot be disestablished under Fla. Stat. § 742.18 without newly discovered evidence in addition to DNA test results establishing non-paternity, and that DNA test results could not be treated as newly discovered evidence when the man seeking to disestablish paternity knew that there was 50% chance that he was not the child's father at the time he voluntarily acknowledged paternity. Certifying conflict with the First District, the Second District held in *P.G. v. E.W.* that the results of DNA tests performed since the initial determination of paternity satisfy the statutory requirement for newly discovered evidence under Section 742.18.

Chapter 10, Alimony

In *Niederman v. Niederman*, the Fourth District Court of Appeal held that income from an annuity or IRA available to a spouse through use of an IRS Regulation 72(t) withdrawal plan can properly be imputed to the spouse for the purpose of determining spousal support, if the withdrawals do not invade the principal. An IRS Regulation 72(t) plan allows the taxpayer to withdraw money penalty-free from an IRA before the age of 59½, provided that the money is withdrawn in substantially equal periodic payments for a period of at least five years.

Chapter 10B, Equitable Distribution of Marital Assets

In *Jurasek v. Jurasek*, the Third District Court of Appeal held that evidence that a husband contributed nonmarital assets toward the purchase of the marital home was not enough to overcome the presumption that he intended to make a gift to the wife by placing title to the home in both parties' names.

Chapter 10B has been restructured, mak-

ing it easier for readers to locate the materials they need.

Chapter 17, Attorney's Fees

In *Diaz v. Diaz*, the Third District Court of Appeal held that although Family Code § 61.1301(a) authorizes an income deduction order to collect attorney's fees incurred as a result of securing and collecting child support and/or alimony, this does not mean that when an individual brings an action to secure and collect support or alimony, any and all attorney's fees can be automatically folded into the income deduction order. Fees incurred as a result of collateral matters, such as a dispute over timesharing, may not be collected through an income deduction order.

In *Jankowski v. Dey*, the Second District Court of Appeal held that when a final judgment of dissolution awarded attorney's fees to the wife, but did not direct the husband to pay them to the attorney or provide other means for the attorney to enforce the award, the attorney could not enforce the fee award and therefore lacked standing to bring an action to set aside the parties' joint stipulation for satisfaction of the judgment for attorney's fees.

Family Law Forms and Instructions

New and revised standard forms recently adopted by the Florida Supreme Court are included with this release, including new constructive service forms, forms addressing privacy rules, and notices of hearing containing language addressed to disabled persons. Key forms include:

1. Florida Supreme Court Approved Family Law Form 12.932, *Certificate of Compliance with Mandatory Disclosure* (01/12)
2. Florida Family Law Rules of Procedure Form 12.902(e), *Child Support Guidelines Worksheet* (01/12)

3. Florida Supreme Court Approved Family Law Form 12.913(a)(1), *Notice of Action for Dissolution of Marriage (No Child or Financial Support)* (01/12)
4. Florida Supreme Court Approved Family Law Form 12.913(a)(2), *Notice of Action for Family Cases with Minor Child(ren)* (01/12)
5. Florida Family Law Rules of Procedure Form 12.913(b), *Affidavit of Diligent Search and Inquiry* (01/12)
6. Florida Family Law Rules of Procedure Form 12.913(c), *Affidavit of Diligent Search* (01/12)
7. Florida Family Law Rules of Procedure Form 12.920(c), *Notice of Hearing Before General Magistrate* (9/11)
8. Florida Supreme Court Approved Family Law Form 12.921, *Notice of Hearing (Child Support Enforcement Hearing Officer)* (9/11)
9. Florida Supreme Court Approved Family Law Form 12.923, *Notice of Hearing (General)* (9/11)
10. Florida Supreme Court Approved Family Law Form 12.931(a), *Notice of Production from Nonparty*
11. Florida Supreme Court Approved Family Law Form 12.931(b), *Subpoena for Production of Documents from Nonparty* (9/11)
12. Florida Supreme Court Approved Family Law Form 12.941(b), *Temporary Injunction to Prevent Removal of Minor Child(ren) and/or Denial of Passport Services (ex parte)*
13. Florida Supreme Court Approved Family Law Form 12.941(e), *Order to Pick-up Minor Child(ren)*
14. Florida Supreme Court Approved Family Law Form 12.944(b), *Order for Testimony and Attendance of Minor Child(ren)*
15. Florida Supreme Court Approved Family Law Form 12.961, *Notice of Hearing on Motion for Contempt/Enforcement* (9/11)
16. Florida Family Law Rule of Procedure Form 12.920(a), *Motion for Referral to General Magistrate*
17. Florida Family Law Rule of Procedure Form 12.920(b), *Order of Referral to General Magistrate*
18. Florida Supreme Court Approved Family Law Form 12.962, *Writ of Bodily Attachment (Child Support)*
19. Florida Supreme Court Approved Family Law Form 12.970(a), *Petition for Temporary Custody by Extended Family* (04/11)
20. Florida Supreme Court Approved Family Law Form 12.970(b), *Petition for Concurrent Custody by Extended Family* (04/11)
21. Florida Supreme Court Approved Family Law Form 12.970(c), *Waiver of Service of Process and Consent for Temporary Custody by Extended Family* (04/11)
22. Florida Supreme Court Approved Family Law Form 12.970(d), *Waiver of Service of Process and Consent for Concurrent Custody by Extended Family* (04/11)
23. Florida Supreme Court Approved Family Law Form 12.970(e), *Order Granting Petition for Temporary Custody by Extended Family*
24. Florida Supreme Court Approved Family Law Form 12.970(f), *Order Granting Petition for Concurrent Custody by Extended Family*

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Publication 80643 Release 68

July 2012

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