PUBLICATION UPDATE

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Florida Family Law Practice Manual

Publication 80643 Release 80 April 2018

HIGHLIGHTS

Rules:

- New Family Law Rule 12.4501—*Judicial Notice*.
- Amended Family Law Rules 12.130—*Documents Supporting Action or Defense*; 12.200—*Case Management and Pretrial Conferences*; and 12.400—*Confidentiality of Records and Proceedings*.

Forms

- Amended Florida Supreme Court Approved Form 12.961, *Notice of Hearing on Motion for Contempt/Enforcement*.
- Amended Family Law Rules of Procedure Form 12.902(f)(3), *Marital Settlement Agreement for Simplified Dissolution of Marriage*.

Cases

Florida Supreme Court:

- **Validity of Marriage—**Ward whose right to contract has been removed may obtain court approval of marriage after marriage ceremony. (*Smith v. Smith*)

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- **Modification of Alimony—**Date on which marital settlement agreement (MSA) was entered-into by parties is date from which court must determine whether substantial change in circumstances has occurred. (*Dogoda v. Dogoda*)
- **Restricted Timesharing—**First District certifies conflict with Second and Fourth District Courts of Appeal regarding whether trial courts must set forth specific conditions that parents may satisfy to obtain removal of restrictions on their timesharing. (*Dukes v. Griffin*)
- **Imputed Income—**Fourth District addresses as matter of first impression whether party's decision to postpone receipt of Social Security retirement benefits warrants imputation income to him or her. (*Huertas Del Pino v. Huertas Del Pino*)
- **Attorneys' Fees—**Second District certifies conflict with Fourth District regarding whether motion for fees served under Section 57.105

safe-harbor provision must be served by email. (*Isla Blue Dev., LLC v. Moore*); Fifth District recedes from prior decision and rules that temporary appellate fees may be awarded in paternity proceedings. (*McNulty v. Bowser*)

Rules

Family Law Rules of Procedure

New Rule 12.4501, *Judicial Notice*

This release covers a new family law rule concerning judicial notice that was adopted by the Florida Supreme Court to reflect a statutory provision regarding judicial notice in family cases. Both the new rule, Florida Family Law Rule of Procedure 12.4501, and the statute, Florida Statutes Section 90.204(4), authorize judges in family cases to take judicial notice of court records without prior notice to the parties if imminent danger to persons or property has been alleged and it is impractical to give prior notice of the court's intent to take judicial notice [*see* Fla. Stat. § 90.204(4); Fla. Fam. L. R. P. 12.4501]. With regard to specific procedures, both Rule 12.4501 and Section 90.204(4) provide that if a trial court takes such judicial notice, then the court may wait until after judicial action has been taken to provide the parties with an opportunity to present evidence concerning the propriety of taking judicial notice. However, within two business days from the date the court takes judicial notice, it must file a notice of the matters that were judicially noticed [*compare* Fla. Stat. § 90.204(1), (4) *with* Fla. Fam. L. R. P. 12.4501].

Notably, both Rule 12.4501 and Section 90.204(4) provide that the term "family cases" has the same meaning as provided in the Rules of Judicial Administration [*compare* Fla. Stat. § 90.204(4) *with* Fla. Fam. L. R. P. 12.4501; *see* Fla. R. Jud. Admin. 2.545(2) (defining term "family cases")]. Also, the rule and statute both provide that the proper subjects of judicial notice by trial courts in family law cases are the records listed in Florida Statutes Section 90.202(6) [*compare* Fla. Stat. § 90.204(4) *with* Fla. Fam. L. R. P. 12.4501; *see* Fla. Stat. § 90.202(6) (setting forth following records as proper subjects of judicial notice: (1) records of any Florida court; (2) records of any court of record of United States; or (3) records of any court of record of any state, territory, or jurisdiction of United States)].

New Rule 12.4501 was adopted in a Florida Supreme Court opinion issued on October 5, 2017 and took effect on January 1, 2018 [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017)].

Amended Rules

Overview. This release covers amendments to the Florida Family Law Rules of Procedure that were adopted by the Florida Supreme Court in an opinion issued October 5, 2017 and took effect on January 1, 2018 [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017)]. The release (1) replaces the text of all the affected rules in Volume 3 with the current, amended text; and (2) adds discussion of the amended rules to pertinent chapters of the **FLORIDA FAMILY LAW PRACTICE MANUAL**.

Following is a description of the amendments and the chapters in which the amendments are discussed:

12.130, *Documents Supporting Action or Defense Previously*, Rule 12.130 stated that a copy of a bond, note, bill of exchange, contract, account, or other document must be incorporated into or attached to the pleadings if doing so was essential to

state a cause of action. Amendments to the rule omit the references to specific types of documents (bonds, notes, bills of exchange, contracts, and accounts) and instead state simply that documents essential to state a cause of action must be incorporated into or attached to the pleadings. The amended rule also requires the incorporation into or attachment of documents to pleadings if doing so is "otherwise required by law." Finally, amended Rule 12.130 permits copies of documents to be utilized "when otherwise required" [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017), Appendix (amendments to Florida Family Law Rule of Procedure 12.130(a))].

This release reflects the amendment to Rule 12.130 in Chapter 4, *Initiating the Dissolution*.

Rule 12.200, ***Case Management and Pretrial Conferences.*** An amendment to Florida Family Law Rule of Procedure 12.200 affects adoption proceedings by changing the status of case management conferences from mandatory to optional. In the Supreme Court's opinion adopting the amendment, the Court acknowledged that Rule 12.200 was amended in 1998 to require case management conferences in adoption proceedings [*see* In re Amends. to Fla. Family Law Rules, 713 So. 2d 1, 8 (Fla. 1998)]. However, the Court explained, the current practice in adoption proceedings is to treat case management conferences as optional. Also, the Court said that current statutory provisions pertaining to adoption render it unnecessary to mandate case management conferences in adoption proceedings [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017); *see also* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017), Appendix (amendments to Florida Family Law Rule of Procedure 12.200(a)(2))].

This release reflects the amendment to Rule 12.200 in Chapter 18, *Adoption*.

Rule 12.400, ***Confidentiality of Records and Proceedings.*** The Supreme Court adopted a new rule provision that expressly requires all documents filed in family law proceedings and containing sensitive information to be filed in conformity with Florida Rule of Judicial Administration 2.425. Rule 2.425 sets forth procedures to minimize the inclusion of sensitive information in documents that are filed with the court [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017) (Rule 12.400 amendment is intended to raise awareness of requirements of Rule 2.425)].

The new family law rule provision that requires filed documents to comply with Rule 2.425 is set forth in subsection (b) of Florida Family Law Rule of Procedure 12.400. Previous subsections (b) and (c) of Rule 12.400 have been renumbered as subsections (c) and (d), respectively [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017), Appendix (amendments to Florida Family Law Rule of Procedure 12.400(a)(2))].

This release reflects the amendment to Rule 12.400 in Chapter 4, *Initiating the Dissolution*, and Chapter 13, *Dissolution Trial/Final Judgment*.

Rule 12.490, ***General Magistrates.*** Rule 12.490 has been amended to correct a cross-reference. Specifically, subsection (d)(2) of Rule 12.490, which authorizes the making of electronic records of hearings before general magistrates, has been

amended to cross-refer to subsection (4) of Florida Rule of Judicial Administration 2.535, which details the requirements of administrative orders that authorize electronic recording and transcription of court proceedings conducted without court reporters [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017), Appendix (amendments to Florida Family Law Rule of Procedure 12.490(d)(2))].

This release reflects the amendment to Rule 12.490 in Chapter 13, *Dissolution Trial/Final Judgment*.

Forms

Amended Forms

Overview. This release covers amendments to standard family law forms that were adopted by the Florida Supreme Court in late 2017. The release replaces the affected forms and their accompanying instructions in Volume 4 with the current, amended forms and instructions.

Florida Supreme Court Approved Form 12.961, *Notice of Hearing on Motion for Contempt/Enforcement.* In an opinion issued December 14, 2017, the Supreme Court approved various amendments to Florida Supreme Court Approved Form 12.961, *Notice of Hearing on Motion for Contempt/Enforcement*. Those amendments took effect immediately on issuance of the Court's opinion, subject to comments submitted during a 60-day period that ended on February 12, 2018 [*see* In re Amendments to the Fla. Supreme Court Approved Family Law Forms-Form 12.961, 42 Fla. L. Weekly S 960, ___ So. 3d ___, 2017 Fla. LEXIS 2486 (Fla. Dec. 14, 2017)].

The most significant amendments to Form 12.961 add language that clearly notifies an alleged contemnor that his or her present ability to pay is a critical issue in the proceeding, and that he or she will be provided an opportunity during the contempt hearing to respond to allegations and questions about his or her financial status. The Florida Supreme Court explained that those amendments were needed to reflect the United States Supreme Court's decision in *Turner v. Rogers* [*see* In re Amendments to the Fla. Supreme Court Approved Family Law Forms-Form 12.961, 42 Fla. L. Weekly S 960, ___ So. 3d ___, 2017 Fla. LEXIS 2486 (Fla. Dec. 14, 2017); *see also* Turner v. Rogers, 564 U.S. 431, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011)]. *Turner* addressed a child support obligor's right to counsel in a civil contempt proceeding that may result in his or her incarceration, and set forth substitute procedural safeguards that may be used in lieu of appointing counsel to represent the alleged contemnor [*see* Turner v. Rogers, 564 U.S. 431, 447–448, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011)].

Other amendments to Form 12.961 include one in which the alleged contemnor is advised whether the court will provide electronic recording of the proceedings or a court reporter. This amendment reflects a requirement of Florida Family Law Rule of Procedure 12.615, the Florida Supreme Court noted [*see* In re Amendments to the Fla. Supreme Court Approved Family Law Forms-Form 12.961, 42 Fla. L. Weekly S 960, ___ So. 3d ___, 2017 Fla. LEXIS 2486 (Fla. Dec. 14, 2017)].

Florida Family Law Rules of Procedure Form 12.902(f)(3), ***Marital Settlement Agreement for Simplified Dissolution of Marriage***. In an opinion issued October 5, 2017, the Florida Supreme Court approved some relatively minor amendments to Florida Family Law Rules of Procedure Form 12.902(f)(3), *Marital*

Settlement Agreement for Simplified Dissolution of Marriage. The amended form took effect on January 1, 2018 [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017)].

The amendments to Form 12.902(f)(3) consist of the following [*see* In re Amendments to the Fla. Family Law Rules of Procedure-2017 Regular-Cycle Report, 227 So. 3d 115 (Fla. 2017), Appendix; *see also* Fla. R. Jud. Admin. 2.425]: (1) deletion of language that required the filing of a family law financial affidavit, because in a simplified dissolution of marriage proceeding, such a filing is not required [*see* Fla. Fam. L. R. P. 12.285(c)]; and (2) deletion of language advising litigants that they were not required to provide account numbers and in its place, addition of a directive to state the last four digits of account numbers.

Case Law

Florida Supreme Court

Marriage, Ch. 1

A discussion in Chapter 1 concerning the requirements for a valid marriage includes coverage of the requirement that parties to a marriage possess sufficient mental capacity to agree or consent to the marriage contract [*see* Mahan v. Mahan, 88 So. 2d 545 (Fla. 1956)]. If a person is determined by a court to be incapacitated and the court orders that his or her right to enter into a contract be removed, then the person's right to marry is subject to court approval [*see* Fla. Stat. § 744.3215(2)(a)]. This release covers a decision by the Florida Supreme Court in which the Court answered a certified question regarding whether the marriage of a ward whose right to contract has been removed is void or voidable if the ward fails to obtain prior court approval of the marriage. The Court ruled that such a marriage is neither void nor voidable. If the marriage is subsequently ratified by a court, then the marriage is given legal effect. In other words, the ward possesses a right to marry that he or she may exercise through ceremonial marriage without prior court approval, and the marriage becomes legally valid if court approval is later obtained. Thus, unlike a voidable marriage, which is good for every purpose until it is challenged and good *ab initio* if it is not challenged within the parties' lifetimes, a marriage that is entered into by an incompetent person whose right to contract has been judicially removed has no legal effect until and unless court approval is obtained [Smith v. Smith, 224 So. 3d 740, 748 (Fla. 2017)].

Florida District Courts

Parental Responsibility and Timesharing, Ch. 8

Timesharing Restrictions. This release adds discussion of timesharing restrictions to Chapter 8 and Chapter 15, *Modification*. A conflict between the Second and Fourth District Courts of Appeal, and the First District Court of Appeal, is covered. The Second and Fourth Districts have ruled that if trial courts impose restrictions in timesharing orders, they must also set forth conditions that, if satisfied, will allow the affected parents to obtain elimination of the restrictions or restoration of reduced timesharing [*see* Witt-Bahls v. Bahls, 193 So. 3d 35 (Fla. 4th DCA 2016); Perez v. Fay, 160 So. 3d 459 (Fla. 2d DCA 2015)]. However, the First District has ruled to the contrary, noting that it could not find a statutory or other legal basis for requiring trial courts to provide such guidance [*see* Dukes v. Griffin, 230 So. 3d 155, 156–157 (Fla. 1st DCA 2017)]. Petitioning for a modification of timesharing is the proper and exclusive means for a parent to obtain a change in timesharing arrangements, the

First District ruled [*see* Dukes v. Griffin, 230 So. 3d 155, 157 (Fla. 1st DCA 2017) (citing Fla. Stat. § 61.13(3))]. The First District certified conflict with the Second and Fourth District Courts of Appeal in *Perez v. Fay* [160 So. 3d 459, 466–467 (Fla. 2d DCA 2015)] and *Witt-Bahls v. Bahls* [193 So. 3d 35, 38–39 (Fla. 4th DCA 2016)], and other, similar decisions of the Second and Fourth Districts [*see* Dukes v. Griffin, 230 So. 3d 155, 157 (Fla. 1st DCA 2017)].

***Child Support,* Ch. 9**

Imputed Income. In this release, the discussion about what constitutes voluntary unemployment or underemployment that will support imputation of income to a parent has been expanded to clarify that Florida courts focus on the actions of a parent after his or her previous employment has terminated, and not whether the termination itself was voluntary or involuntary, in determining whether the parent is voluntarily unemployed or underemployed for child support purposes. Relevant case law is discussed. Additionally, a recent Fourth District opinion that is supportive generally of parents who establish small businesses and whose income is decreased as a result is covered. In that case, the Fourth District held that a trial court did not abuse its discretion in refusing to find that an entrepreneur-father was underemployed. The district court held that the trial court properly considered a number of factors in deciding the underemployment issue and was not required to focus on the unprofitable status of the husband's business since its establishment in 2004. If profitability were the focus of underemployment determinations, the appeals court stated, the analysis would "strangle" small businesses that "struggle at their inception" [*see* Gillette v. Gillette, 226 So. 3d 958, 962 (Fla. 4th DCA 2017)].

Paternity Issues. Evidence of a developed relationship between a putative father and the child is the most important factor in deciding whether common sense and reason would be outraged by application of the presumption of legitimacy to bar a paternity suit brought by a putative father [*see* M.L. v. Dep't of Children & Families, 227 So. 3d 142, 145 (Fla. 4th DCA 2017) (circumstances of instant established that common sense and reason would be outraged if presumption barred putative father's suit; those circumstances were as follows: (1) it was undisputed that putative father was child's biological father, (2) child was given putative father's surname, (3) mother represented that she was divorced or was obtaining divorce at time she gave birth to child, (4) putative father had financially supported child, and (5) putative father had strong relationship with child and was committed to continuing relationship)].

***Alimony,* Ch. 10**

Imputed Income. As a matter of first impression, the Fourth District Court of Appeal considered whether a party who is eligible to receive Social Security retirement benefits in a reduced amount but has opted to defer application for benefits until he or she is eligible for a higher amount of benefits, may properly be (1) deemed to have voluntarily reduced his or her income; and (2) subjected to imputation of income in the amount of the reduced benefits. The district court ruled that a party's choice to defer application for Social Security retirement benefits to a later date when the benefits will be larger does not constitute a voluntary reduction in income unless there is evidence of a motivation other than the desire to receive the higher amount of benefits. In contrast, the Fourth District explained, a trial court may properly find that a party has voluntarily reduced his or

her income based on the party's deferral of Social Security retirement benefits if the evidence shows that the current and future amounts of the Social Security benefits will be the same. However, the trial court must find no compelling reason that will justify a refusal to impute the deferred benefits [*see* Huertas Del Pino v. Huertas Del Pino, 229 So. 3d 838, 841–842 (Fla. 4th DCA 2017)].

Findings: A trial court must make explicit findings of fact regarding a nonrequesting spouse's ability to pay alimony, even if during the parties' marriage, their income largely consisted of funds gifted to the parties by the nonrequesting spouse's parents. Merely finding that a spouse lacks the ability to pay due to his or her living expenses is insufficient. Particularly in a case involving a long-term marriage and a requesting spouse whose primary contribution to the marriage was as a homemaker, the trial court must (1) apply the presumption favoring permanent alimony to the spouse of a long-term marriage, and (2) make explicit findings with regard to whether the spouse from whom alimony is sought has the ability to pay permanent alimony [*see* Hua v. Tsung, 222 So. 3d 584 (Fla. 4th DCA 2017)]. In addition, if a court awards alimony conditioned on the occurrence of an event such as the sale of the marital home to provide the payor-spouse with funds to pay alimony, or the requesting spouse's completion of a rehabilitative plan, the court must set forth an alternative alimony award that will take effect if the condition is not met [*see* Hua v. Tsung, 222 So. 3d 584 (Fla. 4th DCA 2017)].

***Equitable Distribution of Marital Assets,* Ch. 10B**

Nonmarital Assets. A trial court erred in failing to identify shares of stock that were transferred solely to a husband by his father during the parties' marriage as the husband's nonmarital assets that were available to pay support. Although both the husband and his father testified that the shares were transferred to allow the father to avoid tax consequences to his estate on his death, a desire to circumvent tax obligations by placing the shares in the husband's name did not permit circumvention of marital dissolution law by exempting the shares from inclusion among the husband's financial resources. The husband and father were estopped from disavowing the consequences of transferring the shares into the husband's name [*see* Hua v. Tsung, 222 So. 3d 584 (Fla. 4th DCA 2017)].

***Marital Settlement Agreements Negotiated by the Parties,* Ch. 11**

Mutual Release of Claims. A mutual release of claims that is incorporated into a final judgment dissolving a husband's and wife's marriage does not preclude a former marital corporation from maintaining a postjudgment suit concerning alleged civil theft from the corporation, if the corporation was not a party to the execution and signing of the release [*see* Doctor Rooter Supply & Serv. v. McVay, 226 So. 3d 1068, 1075 (Fla. 5th DCA 2017) (reversing summary judgment granted in favor of former wife who was defendant in postjudgment civil theft suit brought by husband and corporation that had been awarded to husband in final judgment of dissolution as part of his share of marital assets; corporation had not waived its right to sue because it did not join husband and wife in executing mutual release of claims; district court also rejected argument that husband's execution of release constituted waiver of his right to bring postjudgment suit for theft, holding that because parties' mutual release of claims encompassed only claims that could have been resolved during dissolution proceedings, and issue of fact existed as to when husband discovered

alleged theft, no waiver by husband could be found on motion for summary judgment; similarly, issue of when alleged theft was discovered would have prevented summary judgment from properly being entered against corporation even if it had executed release, because there was conflicting evidence as to when corporation learned of theft)].

***Temporary Relief,* Ch. 12**

Imminent Danger of Domestic Violence. The discussion of temporary injunctions for protection against domestic violence in Chapter 12 is currently supplemented with discussion of the procedures for obtaining a permanent injunction when a temporary injunction expires. Also mentioned with regard to permanent injunctions is the following statutory standard for obtaining such an injunction [*see* Fla. Stat. § 741.30(1)(a); *see also* Fla. Stat. § 741.30(6)(a)]: any family or household member who is the victim of any act of domestic violence or who has reasonable cause to believe he or she is in imminent danger of becoming the victim of domestic violence has standing in the circuit court to file a sworn petition for such an injunction. In this release, coverage of the standard has been expanded to incorporate a Third District opinion in which the court held that a wife had established reasonable cause to believe she was in imminent danger of becoming a victim of domestic violence because she presented evidence that her estranged husband had angrily left his car and approached her in a parking lot while using profanity, and had then told her that he was going to "destroy [her] life" and her parents were going to "cry." These facts demonstrated a threat by the husband to be violent toward the wife, the district court held, and therefore showed an imminent danger to her. Additionally, the court held that the wife's fear was objectively reasonable because the husband had (1) physically struck her as recently as one year prior to the injunction hearing; (2) restricted her departures from their home; (3) controlled her contacts with family and friends; (4) attempted to take her immigration documents; and (5) threatened to take away her car, license, and money. Finally, the court held that an assurance by the husband to the wife that she was safe because she was the mother of his child did not render her fear of violence less reasonable, because that fact had not previously stopped the husband from engaging in violent, abusive, and controlling conduct [*see* Leal v. Rodriguez, 220 So. 3d 543 (Fla. 3d DCA 2017)].

***Dissolution Trial/Final Judgment,* Ch. 13**

Motions for Rehearing. In this release, discussion about motions for rehearing under Florida Family Law Rule of Procedure 12.530 has been added to Chapter 13. The discussion includes coverage of a First District opinion in which the court interpreted Florida Rule of Civil Procedure 1.530, which has been incorporated verbatim into family law Rule 12.530. The First District ruled that if a trial court orders a rehearing on its own motion as authorized by Rule 1.530(d), the court may make corrections to the judgment and may do so without the participation of the parties so long as the court acts within the 15-day period set forth by the rule [*see* Bucsit v. Bucsit, 229 So. 3d 430, 433 (Fla. 1st DCA 2017) (interpreting Fla. R. Civ. P. 1.530(d)); *see also* Fla. Fam. L. R. P. 12.530(d) (this provision is identical to Rule 1.530(d))].

Excusable Neglect. The failure of a party's attorney to actively check the court's electronic docket despite having knowledge that the trial court would be issuing a

final order that was subject to appeal within jurisdictional time limits cannot constitute excusable neglect within the purview of Rule 12.540(b) [*see* Emerald Coast Util. Auth. v. Bear Marcus Pointe, LLC, 227 So. 3d 752, 758 (Fla. 1st DCA 2017) (independent monitoring of trial court's electronic docket, as well as use of email spam filter with adequate safeguards, are both required to discharge counsel's duty to have sufficient procedures and protocols in place to ensure timely notice of appealable orders)].

***Enforcement,* Ch. 14**

Full Faith and Credit. Relying on the Florida Supreme Court's 2017 decision in *LeDoux-Nottingham v. Downs*, the First District Court of Appeal held that a Florida trial court could not refuse to enforce a Michigan divorce judgment that contained a provision entitling the obligor-husband to interest on any child support that he prepaid. The Full Faith and Credit Clause required enforcement even if the provision violated Florida's public policy concerning a child's right to child support [*see* Pulkkinen v. Pulkkinen, 226 So. 3d 352, 353 (Fla. 1st DCA 2017); *see also* LeDoux-Nottingham v. Downs, 210 So. 3d 1217 (Fla. 2017) (enforcement of final grandparent-visitation judgment was not precluded in Florida on ground enforcement would offend mother's right of privacy under Florida Constitution, because there is no public-policy exception to Full Faith and Credit Clause that permits state court to refuse to enforce order of sister-state on ground enforcement would offend policy of forum state)].

Prejudgment Interest. A trial court may order prejudgment interest on support arrearage as a provision of a contempt order if the support is owed pursuant to an agreement between the parties and the trial court finds the obligor to be in arrears by a specific amount [*see* Kuchera v. Kuchera, 230 So. 3d 135 (Fla. 4th DCA 2017) (arrearage judgment was not necessary because parties had agreed to alimony as to which obligor-husband was in arrears and trial court stated specific arrearage amount in contempt order)].

***Modification,* Ch. 15**

Substantial Change in Circumstances. Date on which marital settlement agreement (MSA) was entered-into by parties is date from which court must determine whether substantial change in circumstances has occurred that will warrant modification of alimony [Dogoda v. Dogoda, ___ So. 3d ___, 2017 Fla. App. LEXIS 18228, 42 Fla. L. Weekly D2549 (Fla. 2d DCA 2017)].

Timesharing. This release adds discussion of timesharing restrictions to Chapter 15. Included in the new discussion is coverage of a conflict between the Second and Fourth District Courts of Appeal, and the First District Court of Appeal, regarding the issue of whether an order imposing such restrictions or reducing timesharing must also set forth specific conditions that the affected parent may satisfy to obtain removal of the restrictions or restoration of a larger share of timesharing [*see* Dukes v. Griffin, 230 So. 3d 155, 157 (Fla. 1st DCA 2017) (certifying conflict with *Witt-Bahls v. Bahls* [193 So. 3d 35 (Fla. 4th DCA 2016)] and *Perez v. Fay* [160 So. 3d 459 (Fla. 2d DCA 2015)])].

***Attorney's Fees,* Ch. 17**

Award of Fees As Sanction under Florida Statutes Section 57.105. This release covers a conflict that has arisen between the Second and Fourth District Courts of Appeal regarding whether a party who seeks fees under the "safe-harbor" provision of Florida Statutes Section 57.105 must serve the motion requesting

fees by email under Florida Rule of Judicial Administration 2.516. According to the Second District, Rule 2.516 requires service by email only as to documents that are filed with the court [*see* Fla. R. Jud. Admin. 2.516(a) (every document "filed in any court proceeding" must be served by email)]. Because a Section 57.105 safe-harbor motion for fees is initially served but not filed, it need not be served by email, but may be mailed via the United States Postal Service [*see* Isla Blue Dev., LLC v. Moore, 223 So. 3d 1097 (Fla. 2d DCA 2017) (construing together Florida Rule of Judicial Administration 2.516(a) and (b)(1)); *see also* Fla. Stat. § 57.105(4)]. In contrast, the Fourth District has ruled that service by email is required because Because Florida Rule of Civil Procedure 1.080(a) requires every pleading after the initial pleading, and every other document filed in an action, to be served pursuant to Florida Rule of Judicial Administration 2.516 [*see* Matte v. Caplan, 140 So. 3d 686, 689–690 (Fla. 4th DCA 2014) (discussing Florida Rule of Civil Procedure 1.080(a) and Florida Rule of Judicial Administration 2.516(b)(1) (all documents required or permitted to be served on another party must be served by email, unless parties stipulate otherwise)]. The Second District has certified conflict with the Fourth District regarding the issue [*see* Isla Blue Dev., LLC v. Moore, 223 So. 3d 1097 (Fla. 2d DCA 2017)].

Temporary Appellate Fees. This release incorporates an *en banc* decision by the Fifth District Court of Appeal, in which the court receded from its prior decision in *Starkey v. Linn* [727 So. 2d 386 (Fla. 5th DCA 1999)] and ruled that temporary appellate attorneys' fees may be awarded in paternity proceedings under Florida Statutes Section 742.045. Section 742.045 is similar in wording to Florida Statutes Section 61.16(1) [*see* McNulty v. Bowser, ___ So. 3d ___, 2018 Fla. App. LEXIS 189, 43 Fla. L. Weekly D121 (Fla. 5th DCA 2018)].

Effect of Bankruptcy on Award of Attorneys' Fees: A debtor's discharge from all of her prepetition debts—including a debt for fees she owed to attorneys who represented her in state court dissolution of marriage proceedings—did not preclude the debtor from obtaining enforcement, following her bankruptcy discharge, of an award of fees made by the state court against her former husband in the final judgment of dissolution. Similarly, the failure of the debtor's attorneys to file a claim for their fees in her bankruptcy proceedings did not render the debtor's claim for the award of fees unenforceable by her against her former husband. Both the attorneys' failure to file a claim for the fees in the bankruptcy proceedings and the debtor's ultimate discharge from her prepetition debts merely rendered her obligation to pay the fees unenforceable by the attorneys; neither rendered the award of fees to the debtor unenforceable by her [*see* Chittim v. Chittim, ___ Fla. L. Weekly D ___, ___, 2017 Fla. App. LEXIS 17701So. 3d ___ (Fla. 2d DCA Nov. 29, 2017)].

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Florida Family Law Practice Manual

Publication 80643 Release 80 April 2018

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VOLUME 1

Revision

☐	Title page thru ix	Title page thru ix
☐	1-3 thru 1-4.1	1-3 thru 1-4.1
☐	4-1 thru 4-4.1	4-1 thru 4-4.1
☐	4-39	4-39

Tab Card

☐	Remove Chapter 8 "Child Custody" Tab Card	Insert Chapter 8 "Parental Responsibility & Timesharing" Tab Card

Revision

☐	8-82.1	8-82.1
☐	8-87	8-87 thru 8-88.1
☐	9-1 thru 9-2.1	9-1 thru 9-2.1
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Tab Card

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