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Florida Family Law Practice Manual

Publication 80643 Release 75 September 2015

HIGHLIGHTS

- **Amendment to FFLRP 12.560—Discovery in Aid of Execution** (judgment-debtor is no longer required to file notice of compliance with court clerk after completing fact information sheet and serving it on judgment-creditor).
- **Brooks v. Brooks** (Second District certifies conflict with First District regarding whether parents who do not possess majority timesharing must file petition and obtain court order to relocate under relocation statute).
- **Wix v. Wix** (trial court in contempt proceedings must consider obligor’s 401k or IRA funds as part of his or her ability to pay in determining whether obligor willfully refused to pay his or her alimony obligation and should be found in contempt).
- **Amendments to Family Law Forms** (numerous forms have been amended to reflect electronic filing and service requirements).

Case Law

Alimony

- **Cohabitation of Obligee**—The Second District Court of Appeal examined dictionary definitions and case-law concerning the meaning of the term “cohabitation” to help the court determine whether a provision in a marital settlement agreement that allowed termination of alimony on cohabitation applied to the obligee-wife’s renting a room in her home to a third person for \$400 per month. On reviewing the authority, the Second District first concluded that cohabitation clauses in MSAs should be interpreted as primarily having an economic purpose. The court then held that in the instant case, record evidence concerning the wife’s agreement and interactions with the renter demonstrated that their living arrangement did not constitute cohabitation within the meaning of the parties’ MSA, and therefore, the trial court erred in terminating alimony on that ground [*see Atkinson v. Atkinson*, 157 So. 3d 473 (Fla. 2d

DCA 2015); *see also* ch. 15, *Modification*].

Note: The discussion of cohabitation and statutory supportive relationships in Chapter 10, *Spousal Support*, has been updated and rewritten. However, the primary discussion of statutory supportive relationships continues to appear in Chapter 15, *Modification*.

Child Support

• **Automatic Reduction**—Addressing an issue of first impression, the Fifth District Court of Appeal has held that an order for the support of multiple children must contain a provision that automatically reduces child support when each child attains the age of majority or is under age 19 and still in high school [*see Henderson v. Henderson*, 162 So. 3d 203 (Fla. 5th DCA 2015)] (noting that Florida Statutes Section 61.13(1)(a)1.a. only expressly requires order to terminate support for single child when he or she attains age of 18 or is under age 19 and still in high school; interpreting statute to impose similar requirement on order for support of multiple children)].

• **Gross Income**—In a case in which an obligor-husband owned a political consulting firm and his income in a presidential election year was four times the amount it had been two years earlier, the Fourth District Court of Appeal held that the income “spike” the husband experienced during the election year was similar to a bonus that is not regular and continuous. Therefore, the district court held, the entire amount of the 2012 income should not have been included in the husband’s gross income for child support purposes [*see Rudnick v. Harman*, 162 So. 3d 116 (Fla. 4th DCA 2015)]. In another case, the Fifth District Court of Appeal ruled that a parent’s Supplemental Security Income (SSI) must be included in his or her gross income for purposes of determining the parties’

relative incomes and calculating the other parent’s child support obligation [*see Kemper v. Kemper*, 159 So. 3d 303, 304–305 (Fla. 5th DCA 2015)]; *see also* ch. 9, *Child Support*].

Note: A new section discussing the inclusion of disability income in a parent’s gross income for child support purposes has been added to Chapter 9, *Child Support*, in this release.

Enforcement

• **Contempt**—The Second District Court of Appeal has ruled that a trial court in contempt proceedings must consider an obligor’s 401k or IRA funds as part of his or her ability to pay in determining whether the obligor willfully refused to pay his or her alimony obligation and should be found in contempt. The Second District also indicated in dicta that a trial court may properly order an alimony obligor to pay alimony arrearage from a 401k or an IRA, even if the court does not find the obligor to be in contempt [*see Wix v. Wix*, 159 So. 3d 312 (Fla. 2d DCA 2015)]; *see also* ch. 14, *Enforcement*].

• **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**—According to the Fifth District Court of Appeal, a child custody determination is not rendered unenforceable under the UCCJEA on the ground it violates Florida’s public policy. For example, an order of another state’s court that grants visitation privileges to a child’s grandparents is not unenforceable in Florida on the ground the other state’s order violates the child-rearing autonomy guaranteed to parents under the Florida Constitution. However, the Fifth District certified conflict with the Fourth District’s decision in *M.S. v. D.C., Jr.*, in which the court ruled that the Full Faith and Credit Clause of the United States Constitution does not trump Florida’s public

policy of a guaranteed fundamental right of privacy in child-rearing [Ledoux-Nottingham v. Downs, 163 So. 3d 560 (Fla. 5th DCA 2015); see M.S. v. D.C., 763 So. 2d 1051 (Fla. 4th DCA 1999); see also ch. 8, *Parental Responsibility and Timesharing*].

- **Florida Enforcement of Foreign Judgments Act (FEFJA)**—Florida’s 20-year statute of limitations for actions on Florida judgments applies to enforcement of a foreign judgment under FEFJA in Florida [Hess v. Patrick, ___ So. 3d ___, ___ Fla. L. Weekly D ___, 2015 Fla. App. LEXIS 7595 (Fla. 2d DCA May 20, 2015); see ch. 14, *Enforcement*].

Equitable Distribution

- **Distribution of Marital Debt**—If a trial court allocates an asset like a home or vehicle that is encumbered by jointly held debt to one spouse, the court should order the recipient-spouse to attempt to refinance the encumbered asset within a reasonable time, and should include a hold-harmless provision in the final judgment of dissolution to protect the other spouse if the recipient-spouse is unable to obtain refinancing [see Patel v. Patel, 162 So. 3d 165 (Fla. 5th DCA 2015)]. Other case-law issues concerning distribution of marital debt are discussed in this release, including issues addressed by the First District Court of Appeal in *McDuffie v. McDuffie* [155 So. 3d 1234, 1237 (Fla. 1st DCA 2015)]. All of the coverage of this topic is located in Chapter 10B, *Equitable Distribution of Marital Assets*. See Ch. 10B.

Imputed Income

This release discusses two cases in which the First District Court of Appeal addressed the issue of what constitutes circumstances beyond a party’s control that will justify his or her unemployment or underemployment and preclude imputation of income to him

or her for purposes of determining child support and alimony. In each case, the First District held that the circumstances cited by the obligee-wife to justify her unemployment or underemployment, respectively, did not qualify as circumstances beyond her control and therefore income could rightly be imputed to her under the child support guidelines statute [see Fla. Stat. § 61.30(2)(b)]. In one case, the First District reversed and remanded awards of child support and alimony that had been calculated after imputing income to the wife. The district court agreed with the lower court that the wife was underemployed and income was therefore rightly imputed to her, but held that the amount imputed was not supported by substantial, competent evidence [see *McDuffie v. McDuffie*, 155 So. 3d 1234, 1237 (Fla. 1st DCA 2015)]. In the other case, the First District reversed and remanded child support and alimony awards that had been made to the wife, to whom income had been imputed but was ordered to not take effect until six months following entry of the final judgment. The district court ordered the trial court to immediately impute income to the wife and thereafter recalculate the husband’s child support and alimony obligations if necessary [see *Cameron v. Cameron*, 154 So. 3d 1230 (Fla. 1st DCA 2015); see also ch. 9, *Child Support*].

Note: The discussions concerning voluntary unemployment or unemployment of a parent pursuant to the child support statute, the factors a trial court must consider in deciding the amount of income to impute, and the findings required to support imputation of income, have been expanded in this release to include more detailed discussion of pertinent provisions of the child support guidelines statute as well as recent case law [see Fla. Stat. § 61.30(2)(b); *McDuffie v. McDuffie*, 155 So. 3d 1234,

1237 (Fla. 1st DCA 2015); *see* Cameron v. Cameron, 154 So. 3d 1230 (Fla. 1st DCA 2015); *see also* ch. 9, *Child Support*].

Parental Responsibility and Timesharing

• **Non-English Language Restriction**—A restriction on the language that may be spoken by a parent to his or her child during the parent’s supervised timesharing with the child is valid only if there is evidence that the restriction is necessary for the child’s welfare. There must be evidence that the parent has spoken the language sought to be restricted for inappropriate purposes such as alienation of the child from the other parent, and even if such evidence is shown with regard to a parent’s native language, the proper remedy will generally not be restriction of the parent’s speaking that language to the child, but rather will be the appointment of a third-party timesharing supervisor who can understand and speak the language [*see* Perez v. Fay, 160 So. 3d 459, 466 (Fla. 2d DCA 2015); *see also* ch. 8, *Parental Responsibility and Timesharing*].

• **Relocation**—There is a conflict between the First and Second District Courts of Appeal concerning whether parents who do not possess majority timesharing must file a petition and obtain a court order to relocate under the relocation statute. According to the Second District, a parent must file a petition to relocate prior to moving regardless of whether he or she possesses majority timesharing [*see* Brooks v. Brooks, 164 So. 3d 162 (Fla. 2d DCA 2015)]. The Second District certified conflict with the First District, which has interpreted the statute to set forth requirements that only a parent with majority timesharing, which the court referred to as a “primary residential parent,” must follow before relocating [*see* Raulerson v. Wright,

60 So. 3d 487, 489 (Fla. 1st DCA 2011); *see also* Brooks v. Brooks, 164 So. 3d 162 (Fla. 2d DCA 2015) (certifying conflict); *see also* ch. 8, *Parental Responsibility and Timesharing*].

Procedural Rule Amendments

Discovery in Aid of Execution. Amendments to Florida Family Law Rule of Procedure 12.560 have eliminated the previous requirement that a judgment-debtor file a notice of compliance with the court clerk after completing a fact information sheet and serving it on the judgment-creditor [*see* Fla. R. Civ. P. Form 1.977(a), *Fact Information Sheet*]. Changes have been made to the text of Chapter 14, *Enforcement*, to reflect the fact that filing a notice of compliance is no longer required. In addition, the amended rule is set forth in Volume 3 of this set. *See* Ch. 14.

Production of Electronically Stored Information (ESI). An amendment to the procedural rule governing case management conferences expressly permits courts to consider any agreements, objections, or issues concerning forms of production of ESI at case management conferences [*see* Fla. Fam. L. R. P. 12.200(a)(1)(P)]. The amendment is incorporated into pertinent coverage in Chapter 7, *Discovery*. The text of amended rule 12.200 is set forth in Volume 3 of this set. *See* Ch. 7.

Testimony by Audio or Video Equipment. The Florida Supreme Court has adopted a new family law rule that is modeled on Florida Rule of Civil Procedure 1.451. New Florida Family Law Rule of Procedure 12.451, like Rule 1.451, permits witnesses to testify at hearings or trials through contemporaneous audio or video equipment, either on agreement of the parties or good cause shown by a requesting party. Committee Notes accompanying Rule 12.451 contain a list of factors that

may be considered in determining whether good cause has been shown. The Committee Notes also state that in considering whether good cause exists to allow audio testimony, a trial court may consider the cost and availability of video testimony. New Rule 12.451 is discussed in Chapter 13, *Dissolution Trial/Final Judgment*, and is set forth in Volume 3 of this set. See Ch. 13.

Amended Family Law Forms

Numerous Family Law Forms Are Amended to Reflect Electronic Filing and Service Requirements. The Florida Supreme Court adopted amendments to numerous family law forms and the instructions to those forms, to reflect electronic service and electronic filing requirements [see Fla. R. Jud. Admin. 2.516 (e-service), 2.525 (e-filing)]. According to the Court, the amendments (1) add explanations of e-service and e-filing to the instructions preceding the forms; and (2) in forms of documents that are not required to be personally served, expand the certificates of service by adding electronic mail (“e-mail”) as a method of service. The amended forms are subject to change in response to comments received by the court between the date of its opinion and May 25, 2015 [see *In re* Amendments to the Fla. Supreme Court Approved Family Law Forms, 40 Fla. L. Weekly S 163, ___ So. 3d ___, 2015 Fla. LEXIS 583 (Fla. Mar. 26, 2015)].

The amended forms and their instructions have been substituted for their predecessors in Volume 4 of this set. The amended forms and instructions are as follows:

Florida S. Ct. Approved Fam. L. Form 12.901(b)(1), *Petition for Dissolution of Marriage with Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.901(b)(2), *Petition for Dissolution of Marriage with Property But No Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.901(b)(3), *Petition for Dissolution of Marriage with No Dependent or Minor Child(ren) or Property*

Florida S. Ct. Approved Fam. L. Form 12.902(d), *Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit*

Florida S. Ct. Approved Fam. L. Form 12.902(f)(1), *Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.902(f)(2), *Marital Settlement Agreement for Dissolution of Marriage with Property But No Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.902(i), *Affidavit of Corroborating Witness*

Florida S. Ct. Approved Fam. L. Form 12.902(j), *Notice of Social Security Number*

Florida S. Ct. Approved Fam. L. Form 12.903(a), *Answer, Waiver, and Request for Copy of Final Judgement of Dissolution of Marriage*

Florida S. Ct. Approved Fam. L. Form 12.903(b), *Answer to Petition for Dissolution of Marriage*

Florida S. Ct. Approved Fam. L. Form 12.903(c)(1), *Answer to Petition and Counterpetition for Dissolution of Marriage with Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.903(c)(2), *Answer to Petition and Counterpetition For dissolution of Marriage with Property but No Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.903(c)(3), *Answer to Petition and Counterpetition for Dissolution of Marriage with No Dependent or Minor Child(ren) or Property*

Florida S. Ct. Approved Fam. L. Form 12.903(d), *Answer to Counterpetition*

Florida S. Ct. Approved Fam. L. Form 12.9a03(e), *Answer to Supplemental Petition*

Florida S. Ct. Approved Fam. L. Form 12.904(a), *Petition for Support Unconnected with Dissolution of Marriage with Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.904(b), *Petition for Support Unconnected with Dissolution of Marriage with No Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.905(a), *Supplemental Petition to Modify Parental Responsibility, Visitation or Parenting Plan/ Time—Sharing Schedule and Other Relief*

Florida S. Ct. Approved Fam. L. Form 12.905(b), *Supplemental Petition for Modification of Child Support*

Florida S. Ct. Approved Fam. L. Form 12.905(c), *Supplemental Petition for Modification of Alimony*

Florida S. Ct. Approved Fam. L. Form 12.905(d), *Supplemental Petition for Temporary Modification of Parenting Issues for Child(ren) of Parent Activated, Deployed, or Temporarily Assigned to Military Service*

Florida S. Ct. Approved Fam. L. Form 12.910(b), *Process Service Memorandum*

Florida S. Ct. Approved Fam. L. Form 12.912(a), *Memorandum for Certificate of Military Service*

Florida S. Ct. Approved Fam. L. Form 12.912(b), *Affidavit of Military Service*

Florida S. Ct. Approved Fam. L. Form 12.913(a)(1), *Notice of Action for Dissolution of Marriage (No Child or Financial Support)*

Florida S. Ct. Approved Fam. L. Form 12.913(a)(2), *Notice of Action for Family Cases with Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.914, *Certificate of Service*

Florida S. Ct. Approved Fam. L. Form 12.915, *Designation of Current Mailing and E-Mail Address*

Florida S. Ct. Approved Fam. L. Form 12.921, *Notice of Hearing (Child Support Enforcement Hearing Officer)*

Florida S. Ct. Approved Fam. L. Form 12.922(a), *Motion for Default, and 12.922(B), Default*

Florida S. Ct. Approved Fam. L. Form 12.922(c), *Motion to Set Aside Default or Default Judgment*

Florida S. Ct. Approved Fam. L. Form 12.923, *Notice of Hearing (General)*

Florida S. Ct. Approved Fam. L. Form 12.924, *Notice for Trial*

Florida S. Ct. Approved Fam. L. Form 12.927, *Notice of Voluntary Dismissal*

Florida S. Ct. Approved Fam. L. Form 12.931(a), *Notice of Production From Nonparty and 12.931(B), Subpoena for Production of Documents From Nonparty*

Florida S. Ct. Approved Fam. L. Form 12.940(d), *Motion to Modify or Dissolve Temporary Injunction*

Florida S. Ct. Approved Fam. L. Form 12.941(a), *Verified Motion for Temporary Injunction to Prevent Removal of Minor Child(ren) and/or Denial of Passport Services*

Florida S. Ct. Approved Fam. L. Form

12.941(d), *Emergency Verified Motion for Child Pick-Up Order*

Florida S. Ct. Approved Fam. L. Form 12.942(a), *Motion for Appointment of Guardian Ad Litem*

Florida S. Ct. Approved Fam. L. Form 12.943, *Motion to Deviate From Child Support Guidelines*

Florida S. Ct. Approved Fam. L. Form 12.944(a), *Motion for Testimony and Attendance of Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.947(a), *Motion for Temporary Support, Time-Sharing, and Other Relief with Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.947(c), *Motion for Temporary Support and Other Relief with No Dependent or Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.950(a), *Agreement for Relocation with Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.950(b), *Motion for Order Permitting Relocation by Agreement*

Florida S. Ct. Approved Fam. L. Form 12.950(c), *Petition for Dissolution of Marriage with Dependent or Minor Child(ren) and Relocation*

Florida S. Ct. Approved Fam. L. Form 12.950(d), *Supplemental Petition to Permit Relocation with Minor Child(ren)*

Florida S. Ct. Approved Fam. L. Form 12.950(e), *Motion for Temporary Order Granting Relocation*

Florida S. Ct. Approved Fam. L. Form 12.950(g), *Motion for Civil Contempt and/or Return of Child(ren)*

Fla. Fam. L. R. P. Form 12.951(a), *Petition to Disestablish Paternity and/or Terminate Child Support Obligation*

Florida S. Ct. Approved Fam. L. Form 12.96, *Motion for Civil Contempt/Enforcement*

Florida S. Ct. Approved Fam. L. Form 12.961, *Notice of Hearing on Motion for Contempt/Enforcement*

Florida S. Ct. Approved Fam. L. Form 12.970(a), *Petition for Temporary Custody by Extended Family*

Florida S. Ct. Approved Fam. L. Form 12.970(b), *Petition for Concurrent Custody by Expeded Family*

Florida S. Ct. Approved Fam. L. Form 12.970(c), *Waiver of Service of Process and Consent for Temporary Custody by Extended Family*

Florida S. Ct. Approved Fam. L. Form 12.970(d), *Waiver of Service of Process and Consent for Concurrent Custody by Extended Family*

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Florida S. Ct. Approved Fam. L. Form 12.980(f), *Petition for Injunction for Protection Against Repeat Violence*

Florida S. Ct. Approved Fam. L. Form 12.980(g), *Supplemental Affidavit in Support of Petition for Injunction for Protection Against Domestic Violence, Repeat Violence, Dating Violence, or Sexual Violence*

Florida S. Ct. Approved Fam. L. Form 12.980(h), *Petitioner's Request for Confidential Filing of Address*

Florida S. Ct. Approved Fam. L. Form 12.980(i), *Motion for Extension of Injunction for Protection Against Domestic Violence, Repeat Violence, Dating Violence, or Sexual Violence*

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junction for Protection Against Domestic Violence, Repeat Violence, Dating Violence, or Sexual Violence

Florida S. Ct. Approved Fam. L. Form 12.980(n), *Petition for Injunction for Protection Against Dating Violence*

Florida S. Ct. Approved Fam. L. Form 12.980(q), *Petition for Injunction for Protection Against Sexual Violence*

Florida S. Ct. Approved Fam. L. Form 12.981(a)(1), *Stepparent Adoption: Consent and Waiver by Parent*

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Florida S. Ct. Approved Fam. L. Form 12.981(a)(3), *Affidavit of Nonpaternity*

Florida S. Ct. Approved Fam. L. Form 12.981(a)(4), *Stepparent Adoption: Affidavit of Diligent Search*

Florida S. Ct. Approved Fam. L. Form 12.981(a)(5), *Indian Child Welfare Act Affidavit*

Florida S. Ct. Approved Fam. L. Form 12.981(a)(6), *Motion for Search of The Putative Father Registry*

Florida S. Ct. Approved Fam. L. Form 12.981(b)(1), *Joint Petition for Adoption by Stepparent*

Florida S. Ct. Approved Fam. L. Form 12.981(c)(1), *Petition for Adoption of Adult by Stepparent*

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sent of Adult Adoptee's Spouse

Florida S. Ct. Approved Fam. L. Form 12.981(d)(1), *Petition for Adoption Information*

Florida S. Ct. Approved Fam. L. Form 12.982(a), *Petition for Change of Name (Adult)*

Florida S. Ct. Approved Fam. L. Form 12.982(c), *Petition for Change of Name (Minor Child(ren))*

Florida S. Ct. Approved Fam. L. Form 12.982(d), *Consent for Change of Name (Minor Child(ren))*

Florida S. Ct. Approved Fam. L. Form 12.982(f), *Petition for Change of Name (Family)*

Florida S. Ct. Approved Fam. L. Form 12.983(a), *Petition to Determine Paternity and for Related Relief*

Florida S. Ct. Approved Fam. L. Form 12.983(b), *Answer to Petition to Determine Paternity and for Related Relief*

Florida S. Ct. Approved Fam. L. Form 12.983(c), *Answer to Petition and Counterpetition to Determine Paternity and for Related Relief*

Florida S. Ct. Approved Fam. L. Form 12.983(d), *Answer to Counterpetition*

Florida S. Ct. Approved Fam. L. Form 12.983(e), *Motion for Scientific Paternity Testing*

Florida S. Ct. Approved Fam. L. Form 12.995(b), *Supervised/Safety-Focused Parenting Plan*

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Florida Family Law Practice Manual

Publication 80643 Release 75

September 2015

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