

Supreme Court of Florida

No. SC08-2358

IN RE: AMENDMENTS TO FLORIDA FAMILY LAW RULES OF PROCEDURE—FORMS 12.996(a), 12.996(b), AND 12.996(c).

[March 4, 2010]

PER CURIAM.

The Family Law Rules Committee (Committee) has filed an out-of-cycle report under Florida Rule of Judicial Administration 2.140(e), proposing three new family law forms—an Income Deduction Order, a Notice to Payor, and a Notice of Filing Return Receipt.¹ The report states that the Family Law Section of The Florida Bar recognized the need for these forms, collected various forms and orders in use around the state, and submitted a draft of the forms to the Family Law Rules Committee. The forms were approved by the Committee and the Board of Governors of The Florida Bar. The forms were published by the Committee for

1. We have jurisdiction. See art. V, § 2(a), Fla. Const.

comment before they were submitted to the Court. No comments were received. After submission to the Court, the forms were again published for comment, and two comments were received. The Committee filed a response to the comments.

The three new forms are meant to enable an individual to implement an income deduction order to obtain court-ordered child support, alimony, and attorney fees. Despite the fact that section 61.1301, Florida Statutes (2009), requires income deduction, no court-approved forms currently exist to fill this need. A self-represented party may be in desperate need of the ordered support but not have the knowledge or expertise to prepare an income deduction order or a notice to payor for submission to the court. These forms will fill that need. Also, over time, employers receiving a standardized form may come to more readily recognize it as a court-approved form, thereby minimizing delay in processing the required deductions.

Upon consideration of the Committee's proposals, the comments, and the Committee's responses thereto, we adopt these new forms with one minor modification. Section 61.1301 requires that when the State Disbursement Unit becomes operational, the income deduction order must direct that all payments be made to the State Disbursement Unit. § 61.1301(1)(b)(8), Fla. Stat. (2009). The State Disbursement Unit is now operational. Thus, the proposed income deduction order directs the payor to "pay the deducted amount to the 'State of Florida

Disbursement Unit.”” However, the proposed notice to payor form instructs the payor to pay the deducted amount “to the obligee or to the depository.” This mirrors the current language of section 61.1301(2)(e)(2) and (4), Florida Statutes (2009), but could be confusing to the payor. Accordingly, we adopt a modified version of the notice to payor form that, consistent with the income deduction order, directs the payor to pay the deducted amount to the “State of Florida Disbursement Unit.”

Accordingly, new Family Law Rule of Procedure Forms 12.996(a), 12.996(b), and 12.996(c) are hereby adopted as set forth in the appendix to this opinion, fully engrossed and ready for immediate use. Additionally, Florida Family Law Rule of Procedure 12.015 (Family Law Forms) is amended to add these three new forms to the list of Florida Family Law Rules of Procedure Forms. New language is underlined; deleted language is struck through. The forms and the amendment to rule 12.015 shall become effective immediately upon issuance of this opinion.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA,
and PERRY, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND
IF FILED, DETERMINED.

Original Proceeding – Florida Family Law Rules Committee

Jack A. Morning, Chair, Family Law Rules Committee, Crystal River, Florida, and
John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioner

Laura E. Roth, Attorney, Seventh Judicial Circuit, Deland, Florida, on behalf of
Diane M. Matousek, Clerk of the Circuit Court in and for Volusia County; and
Joan K. Koch, Chief Counsel, Florida Department of Revenue, Tallahassee,
Florida,

Responding with comments

APPENDIX

RULE 12.015. FAMILY LAW FORMS

(a) **Forms Adopted as Rules.** The forms listed in this rule shall be adopted by the rulemaking process in Fla. R. Jud. Admin. 2.140. The Family Law Rules Committee of The Florida Bar shall propose amendments to these forms and any associated instructions. These forms shall be designated “Florida Family Law Rules of Procedure Forms.” Forms coming under this provision are:

- (1) 12.900(a), Disclosure From Nonlawyer;
- (2) 12.900(b), Notice of Limited Appearance;
- (3) 12.900(c), Consent to Limited Appearance by Attorney;
- (4) 12.900(d), Termination of Limited Appearance;
- (5) 12.900(e), Acknowledgment of Assistance by Attorney;
- (6) 12.900(f), Signature Block for Attorney Making Limited Appearance;
- (7) 12.900(g), Agreement Limiting Representation;
- (8) 12.900(h), Notice of Related Cases;
- (9) 12.901(a), Petition for Simplified Dissolution of Marriage;
- (10) 12.902(b), Family Law Financial Affidavit (Short Form);
- (11) 12.902(c), Family Law Financial Affidavit;
- (12) 12.902(e), Child Support Guidelines Worksheet;
- (13) 12.902(f)(3), Marital Settlement Agreement for Simplified Dissolution of Marriage;
- (14) 12.910(a), Summons: Personal Service on an Individual;

- (15) 12.913(b), Affidavit of Diligent Search and Inquiry;
 - (16) 12.913(c), Affidavit of Diligent Search;
 - (17) 12.920(a), Motion for Referral to General Magistrate;
 - (18) 12.920(b), Order of Referral to General Magistrate;
 - (19) 12.920(c), Notice of Hearing Before General Magistrate;
 - (20) 12.928, Cover Sheet for Family Court Cases;
 - (21) 12.930(a), Notice of Service of Standard Family Law Interrogatories;
 - (22) 12.930(b), Standard Family Law Interrogatories for Original or Enforcement Proceedings;
 - (23) 12.930(c), Standard Family Law Interrogatories for Modification Proceedings;
 - (24) 12.932, Certificate of Compliance with Mandatory Disclosure;
- and
- (25) 12.990(a), Final Judgment of Simplified Dissolution of Marriage;
 - (26) 12.996(a), Income Deduction Order;
 - (27) 12.996(b), Notice to Payor; and
 - (28) 12.996(c), Notice of Filing Return Receipt.
- (b) [No change]

Commentary
[No change]

INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.996(a), INCOME DEDUCTION ORDER (3/10)

When should this form be used?

This form should be used in non-Title IV-D cases when the court has ordered that support be paid by the **obligor's payor** through an income deduction order.

This form includes several blanks that must be filled in as applicable. The obligor is the person who is obligated to pay the support ordered by the court and the **obligee** is the person entitled to receive the support awarded by the court.

In Paragraph 1, one of the three lines must be checked off. The court order that establishes the support award and/or the settlement or mediation agreement entered into between the parties should state the effective date of the **Income Deduction Order**. The appropriate effective date should be checked off in Paragraph 1.

The blank lines in Paragraph 2 should be completed tracking the same terms of support as are in the court order that establishes the support award and/or the settlement or mediation agreement. The first blank in each line should state the amount of the support payment and the second blank in each line should state the time period that covers said support award. For example, if the child support is \$100 per month the first blank would say \$ "100" and the second blank in that line would say "month". Similarly, if the payments are to be payable weekly, then the second blank would say "week". If there are any arrearages owed at the time the **Income Deduction Order** is entered, they must be included in the line for arrearages, along with the amount and frequency of the payments due for the arrearages, which shall be no less than 20% of the current support obligation. If the payments are to be payable through the State Disbursement Unit, the actual dollar amount of the service fee for the support awarded in your case (4% of each payment not to exceed \$5.25 per payment) should be included on the appropriate line.

Paragraph 6 must be completed to show what percentage, if any, of a one-time payment made to the obligor should be applied to any arrearage in support that may be due to the obligee.

What should I do next?

For this order to be effective, it must be signed by the **judge**. This form should be typed or printed in black ink. After completing this form, you must first send a copy to the other **party** or his or her **attorney**, if he or she is represented by an attorney, for approval or objection to the form before you send it to the judge assigned to your case. If the opposing party or his or her attorney, if represented, approves the form order, you may send the original proposed order and two copies to the judge assigned to your case with a letter telling the judge that you have first sent a copy of this proposed order to the opposing counsel or party, if unrepresented, and that they have no objection to the judge signing

Instructions for Florida Family Law Rules of Procedure Form 12.996(a), Income Deduction Order (3/10)

this order. If the other party or his or her attorney, if represented, has an objection to the proposed order as completed by you, you must tell the judge that you have sent a copy of this proposed order to the opposing party or his or her counsel, if represented, and that they specifically object to the entry of the proposed form **Income Deduction Order**. You must also send stamped self-addressed envelopes to the judge addressed to you and the opposing party or his or her attorney, if represented. You should keep a copy for your own records. If the judge signs the **Income Deduction Order**, the judge will mail you and the opposing party (or their attorney) copies of the signed order in the envelopes you provide to the court.

Where can I look for more information?

Before proceeding, you should read “General Information for Self-Represented Litigants” found at the beginning of these forms. The words that are in “**bold underline**” in these instructions are defined there. For further information see section 61.1301, Florida Statutes.

Special Instructions...

When the **Income Deduction Order** becomes effective (either immediately or delayed until arrearage), you must then also send a copy of the **Income Deduction Order** to the obligor’s employer along with a **Notice to Payor**, Florida Family Law Rules of Procedure Form 12.996(b), for the **Income Deduction Order** to take effect.

It is your responsibility to determine what extra steps and/or forms, if any, must be taken, supplied, and/or filed to insure the **Income Deduction Order** is implemented.

Remember, a person who is NOT an attorney is called a nonlawyer. If a nonlawyer helps you fill out these forms, that person must give you a copy of a **Disclosure from Nonlawyer**, Florida Family Law Rules of Procedure Form 12.900(a), before he or she helps you. A nonlawyer helping you fill out these forms also **must** put his or her name, address, and telephone number on the bottom of the last page of every form he or she helps you complete.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No: _____
Division: _____

_____,
Petitioner,
And
_____,
Respondent.

INCOME DEDUCTION ORDER (Non-Title IV Case)

TO: ANY PRESENT OR SUBSEQUENT EMPLOYERS/PAYORS OF OBLIGOR
{name} _____

YOU ARE HEREBY ORDERED to make regular deductions from all income due and payable to the above-named obligor in accordance with the terms of this order as follows:

1. This Income Deduction Order shall be effective
[Choose only one]

- immediately.
- upon a delinquency in the amount of \$ _____ but not to exceed one month's payment, pursuant to the order establishing, enforcing, or modifying the obligation.
- beginning {date} _____.

2. You shall deduct:

\$ _____ per _____ for child support
\$ _____ per _____ for permanent alimony
\$ _____ per _____ for rehabilitative alimony
\$ _____ per _____ for _____ arrears totaling \$ _____

The deduction for arrears shall be no less than 20% of the current support obligation. After the full amount of any arrears is paid, you shall deduct for attorneys' fees and costs owed until the full amount is paid.

\$ _____ per _____ for attorneys' fees and costs totaling \$ _____

\$ _____ per _____ for State of Florida Disbursement Unit fee
(4% of each payment not to exceed \$5.25 per payment)

\$ _____ Total amount of income to be deducted each pay period

3. You shall pay the deducted amount to the "State of Florida Disbursement Unit", and mail it to the State of Florida Disbursement Unit P.O. Box 8500, Tallahassee, FL 32314-8500, (tel.) (877) 769-0251. All payments must include the obligor's name (last, middle, first), obligor's social security number, obligee's name (last, middle, first), name of county where court order originated, and case number. All payments must be made by check, money order, cashier's check, certified check, or through the Internet with access provided by the State of Florida www.floridasdu.com. No credit will be given for any payments made directly to the obligee without a court order permitting direct payments.
4. If a delinquency accrues after the order establishing, modifying, or enforcing the obligation has been entered and there is no order for repayment of the delinquency or a preexisting arrearage, a payor shall deduct an additional 20 percent of the current support obligation or other amount agreed to by the parties until the delinquency and any attorneys' fees and costs are paid in full. No deduction may be applied to attorneys' fees and costs until the delinquency is paid in full.
5. You shall not deduct in excess of the amounts allowed under the Consumer Credit Protection Act, 15 U.S.C. §673(b), as amended.
6. You shall deduct (Choose only one) () the full amount, () _____%, or () none of the income which is payable to the obligor in the form of a bonus or other similar one-time payment, up to the amount of arrearage reported in the Income Deduction Order or the remaining balance thereof, and forward the payment to the State of Florida Disbursement Unit. For purposes of this subparagraph, "bonus" means a payment in addition to an obligor's usual compensation and which is in addition to any amounts contracted for or otherwise legally due and shall not include any commission payments due an obligor.
7. This Income Deduction Order shall remain in effect so long as the underlying order of support is effective or until further order of the court.

STATEMENT OF OBLIGOR'S RIGHTS, REMEDIES, AND DUTIES

8. The obligor is required to pay all amounts and fees specified within this Income Deduction Order.
9. The amounts deducted may not be in excess of that allowed under the Consumer Credit Protection Act, 15 U.S.C. §1673(b) as amended.
10. This income deduction order applies to all of the obligor's current and subsequent payors and periods of employment.
11. A copy of the Income Deduction Order will be served upon the obligor's payor or payors.
12. Enforcement of the Income Deduction Order may only be contested on the ground of mistake of fact regarding the amount owed pursuant to the order establishing, enforcing, or modifying the obligation, the arrearages, or the identity of the obligor, the payor, or the obligee.
13. The obligor is required to notify the obligee and, when the obligee is receiving IV-D services, the IV-D agency, within 7 days of any changes in the obligor's address, payors, and the addresses of the obligor's payors.

14. In a Title IV-D case, if an obligation to pay current support is reduced or terminated due to emancipation of a child and the obligor owes an arrearage, retroactive support, delinquency, or costs, income deduction continues at the rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of withholding is modified.

ORDERED on _____.

CIRCUIT JUDGE

COPIES TO:

Obligee

Obligor

Other: _____

INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.996(b), NOTICE TO PAYOR (3/10)

When should this form be used?

This form should be used for when an **Income Deduction Order** has been entered by the Court which is to take effect immediately.

This form should be typed or printed in black ink. After completing this form, the original of this form should be **filed** with the **clerk of the circuit court** in the county in which the action is pending. You should keep a copy for your own records.

What should I do next?

A copy of this form, and a copy of the Income Deduction Order, must be sent to the **obligor's** payor by certified mail, return receipt requested. The return receipt should be sent to the person that prepared this form so that it can be filed with the clerk along with Florida Family Law Rules of Procedure Form 12.996(c) **Notice of Filing Return Receipt**.

A copy of this form must also be mailed or hand delivered to the other party or his or her attorney.

Where can I look for more information?

Before proceeding, you should read "General Information for Self-Represented Litigants" found at the beginning of these forms. The words that are in "**bold underline**" in these instructions are defined there. See Florida Statute section 61.1301.

Special Instructions...

The Obligor's social security number must be written on the copy of the Notice to Payor that is mailed to the Obligor's Payor. The social security number should not be written on the copy of the Notice to Payor filed with the court.

Remember, a person who is NOT an attorney is called a nonlawyer. If a nonlawyer helps you fill out these forms, that person must give you a copy of a **Disclosure from Nonlawyer**, Florida Family Law Rules of Procedure Form 12.900(a), before he or she helps you. A nonlawyer helping you fill out these forms also **must** put his or her name, address, and telephone number on the bottom of the last page of every form he or she helps you complete.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No: _____
Division: _____

_____,
Petitioner,
And
_____,
Respondent.

NOTICE TO PAYOR

TO:
Name of Obligor's Payor: _____
Payor's Address: _____

RE:	Obligor	Obligee
Name:	_____	_____
Address:	_____	_____
	_____	_____

Obligor's social security number: _____.

NOTE: The Obligor's social security number should be placed on the copy of the Notice to Payor that is mailed to the Obligor's Payor. This line should be left blank on the original Notice to Payor filed with the court.

YOU, THE PAYOR, ARE HEREBY NOTIFIED that, under section 61.1301, Florida Statutes, you have the responsibilities and rights set forth below with regard to the accompanying Income Deduction Order and/or any attachment(s):

1. You are required to deduct from the obligor's income the amount specified in the income deduction order, and in the case of a delinquency the amount specified in the notice of delinquency, and to pay that amount to the State of Florida Disbursement Unit. The amount actually deducted plus all administrative charges shall not be in excess of the amount allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. §1673(b) as amended.
2. You must implement income deduction no later than the first payment date which occurs more than 14 days after the date the income deduction order was served on you, and you shall conform the amount specified in the income deduction order or, in Title IV-D cases, income deduction notice to the obligor's pay cycle. The court should request at the time of the order that the payment cycle will reflect that of the obligor.

3. You must forward, within 2 days after each date the obligor is entitled to payment from you, to the State of Florida Disbursement Unit, the amount deducted from the obligor's income, a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order, or in Title IV-D cases, income deduction notice, and the specific date each deduction is made. If the IV-D agency is enforcing the order, you shall make these notifications to the agency.
4. If you fail to deduct the proper amount from the obligor's income, you are liable for the amount you should have deducted, plus costs, interest, and reasonable attorneys' fees.
5. You may collect up to \$5 against the obligor's income to reimburse you for administrative costs for the first income deduction and up to \$2 for each deduction thereafter.
6. The notice to payor, or, in Title IV-D cases, income deduction notice, and in the case of a delinquency, the notice of delinquency, are binding on you until further notice by the obligee, IV-D agency, or the court or until you no longer provides income to the obligor.
7. When you no longer provide income to the obligor, you shall notify the obligee and provide the obligor's last known address and the name and address of the obligor's new payor, if known. If you violate this provision, you are subject to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation. If the IV-D agency is enforcing the order, you shall make these notifications to the agency instead of the obligee. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order.
8. You shall not discharge, refuse to employ, or take disciplinary action against an obligor because of the requirement for income deduction. A violation of this provision subjects you to a civil penalty not to exceed \$250 for the first violation or \$500 for any subsequent violation. Penalties shall be paid to the Obligee or the IV-D agency, whichever is enforcing the income deduction, if any alimony or child support obligation is owing. If no alimony or child support obligation is owing, the penalty shall be paid to the obligor.
9. The obligor may bring a civil action in the courts of this state against a payor who refuses to employ, discharges, or otherwise disciplines an obligor because of income deduction. The obligor is entitled to reinstatement of all wages and benefits lost, plus reasonable attorneys' fees and costs incurred.
10. The requirement for income deduction has priority over all other legal processes under state law pertaining to the same income and that payment, as required by the notice to payor or the income deduction notice, is a complete defense by the payor against any claims of the obligor or his or her creditors as to the sum paid.
11. When you receive notices to payor or income deduction notices requiring that the income of two or more obligors be deducted and sent to the same depository, the payor may combine the amounts that are to be paid to the depository in a single payment as long as the payments attributable to each obligor are clearly identified.
12. If you receive more than one notice to payor or income deduction notice against the same obligor, the payor shall contact the court or, in Title IV-D cases, the Title IV-D agency for further instructions.

13. In a Title IV-D case, if an obligation to pay current support is reduced or terminated due to the emancipation of a child and the obligor owes an arrearage, retroactive support, delinquency, or costs, income deduction continues at the rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of withholding is modified.
14. All notices to the obligee shall be sent to the address provided in this notice to payor, or any place thereafter the obligee requests in writing.
15. An employer who employed 10 or more employees in any quarter during the preceding state fiscal year or who was subject to and paid tax to the Department of Revenue in an amount of \$20,000 or more shall remit support payments deducted pursuant to an income deduction order or income deduction notice and provide associated case data to the State Disbursement Unit by electronic means approved by the department. Payors who are required to remit support payments electronically can find more information on how to do so by accessing the State Disbursement Unit's website at www.floridasdu.com and clicking on "Payments." Payment options include Expert Pay, Automated Clearing House (ACH) credit through your financial institution, www.myfloridacounty.com, or Western Union. Payors may contact the SDU Customer Service Employer telephone line at 1-888-833-0743.
16. Additional information regarding the implementation of this Notice to Payor may be found at www.floridasdu.com.

I certify that a copy of this document was [Choose only one] () mailed () faxed and mailed () hand delivered to the person(s) listed below on *{date}* _____

Other party or his/her attorney:

Name: _____
 Address: _____
 City, State, Zip: _____
 Fax Number: _____

 Signature of Party or his/her attorney
 Printed Name: _____
 Address: _____
 City, State, Zip: _____
 Telephone Number: _____
 Fax Number: _____

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM, HE/SHE MUST FILL IN THE BLANKS BELOW:

[fill in **all** blanks]

I, *{full legal name and trade name of nonlawyer}* _____,
 a nonlawyer, whose address is *{street}* _____, *{city}* _____,

{state} _____, *{phone}* _____, helped *{name}* _____, who is the petitioner, fill out this form.

INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.996(c) NOTICE OF FILING RETURN RECEIPT (3/10)

When should this form be used?

This form should be used when an **Income Deduction Order**, Florida Family Law Rules of Procedure Form 12.996(a), is entered by the court and a **Notice to Payor**, Florida Family Law Rules of Procedure Form 12.996(b), has been sent by certified mail to the **obligor's payor**. When the post office returns the return receipt to you showing that the obligor's payor has received the **Notice to Payor**, you should type or print this form in black ink. After completing this form, you should sign it and attach the return receipt you received from the post office. The original of this form (and the attached return receipt) should be **filed** with the **clerk of the circuit court** in the county in which the action is pending. You should keep a copy for your own records.

What should I do next?

A copy of this form must be mailed or hand delivered to the other party or his or her attorney.

Where can I look for more information?

Before proceeding, you should read "General Information for Self-Represented Litigants" found at the beginning of these forms. The words that are in "**bold underline**" in these instructions are defined there. For further information, see section 61.1301, Florida Statutes.

Special notes...

Remember, a person who is NOT an attorney is called a nonlawyer. If a nonlawyer helps you fill out these forms, that person must give you a copy of a **Disclosure from Nonlawyer**, Florida Family Law Rules of Procedure Form 12.900(a), before he or she helps you. A nonlawyer helping you fill out these forms also **must** put his or her name, address, and telephone number on the bottom of the last page of every form he or she helps you complete.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No: _____
Division: _____

_____,
Petitioner,
And
_____,
Respondent.

NOTICE OF FILING RETURN RECEIPT

{Name} _____, the [Choose only one] () Petitioner () Respondent, files the attached Return Receipt in reference to the Notice to Payor sent by certified mail to {Payor's name} _____, the [Choose only one] () Petitioner's () Respondent's employer.

I certify that a copy of this document was [Choose only one] () mailed () faxed and mailed () hand delivered to the person(s) listed below on {date} _____

Other party or his/her attorney:

Name: _____
Address: _____
City, State, Zip: _____
Fax Number: _____

Signature of Party or his/her attorney
Printed Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Fax Number: _____

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM, HE/SHE MUST FILL IN THE BLANKS BELOW:

[fill in **all** blanks]

I, {full legal name and trade name of nonlawyer} _____,
a nonlawyer, whose address is {street} _____, {city} _____,

{state} _____, *{phone}* _____, helped *{name}* _____, who is the petitioner, fill out this form.