

Supreme Court of Florida

No. SC11-40

IN RE: AMENDMENTS TO THE FLORIDA FAMILY LAW RULES OF PROCEDURE.

March 15, 2011

REVISED OPINION

PER CURIAM.

The Family Law Rules Committee (Committee) filed its regular-cycle report proposing amendments to the Florida Family Law Rules of Procedure and forms. We have jurisdiction. See art. V, § 2(a), Fla. Const. The Committee's proposals were published for comment in February 2011. One comment was filed with the Court, relating only to the proposed amendment to rule 12.070, and the Committee filed a response. Oral argument in this matter was held on June 7, 2011.

Upon consideration of the Committee's Report, the comment filed and the Committee's response thereto, and the parties' presentations at oral argument, we adopt the amendments to forms 12.913(a) (Notice of Action for Dissolution of Marriage), 12.913(b) (Affidavit of Diligent Search and Inquiry), and 12.913(c)

(Affidavit of Diligent Search) as proposed by the Committee.¹ We also adopt new form 12.913(a)(2) (Notice of Action for Family Cases With Minor Child).

However, due to the substantial concerns raised by the comment and at oral argument in this case, we decline to adopt the proposed amendment to rule 12.070 (Process).

The Committee also proposed new rule 12.745 (Collaborative Process Rule) setting forth a protocol for participation in the “collaborative law process.” In its report, the Committee explains that the collaborative law process is a contractual, voluntary, nonadversarial dispute resolution process used in dissolution of marriage cases. While we commend the Committee for its study of the collaborative law process and its work in proposing this rule, we decline to adopt the proposed rule at this time. Given the possibility of legislative action addressing the use of the collaborative law process in Florida and the fact that certain foundations, such as training or certification of attorneys for participation in the process, have not yet been laid, we conclude that the adoption of a court rule on the subject at this time would be premature.

Accordingly, the Florida Family Law Rules of Procedure Forms and the Florida Supreme Court Approved Family Law Forms are hereby amended as set

1. Because, as noted below, we decline to adopt the proposed amendment to rule 12.070 concerning constructive service, we have modified the instructions to new form 12.913(a)(2).

forth in the appendix to this opinion. The new and amended forms are fully engrossed. These amendments are effective, nunc pro tunc, January 1, 2012, at 12:01 a.m.

It is so ordered.

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

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – The Family Law Rules Committee

Steven P. Combs, Chair, Family Law Rules Committee, Jacksonville, Florida, and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioner

Richard A. Motley, Bay Area Legal Services, Inc., New Port Richey, Florida,

Responding with comments

APPENDIX

INSTRUCTIONS FOR 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)

When should this form be used?

This form may be used to obtain **constructive service** (also called service by publication) in a **dissolution of marriage** case that does not involve a minor child or financial support if you do not know where your **spouse** lives or if your spouse lives outside Florida and you are unable to obtain **personal service**. Constructive notice will allow the court to dissolve the marriage, but personal service is required before a court can order payment of financial support, such as **spousal support (alimony)** or costs. If you are asking the court to decide how real or personal property located in Florida should be divided, the **Notice of Action** must include a specific description of the property. If you use constructive service, the court can grant only limited relief because its jurisdiction is limited. This is a complicated area of the law and you should consult an attorney before using constructive service.

You should complete this form by typing or printing the appropriate information in black ink. You should insert your spouse's name and last known address and then **file** this form with the **clerk of the circuit court** in the county where your petition for dissolution of marriage was filed. You must also complete and file an **Affidavit of Diligent Search and Inquiry**, Florida Family Law Rules of Procedure Form 12.913(b). You should keep a copy for your records.

After the **Affidavit of Diligent Search and Inquiry**, Florida Family Law Rules of Procedure Form 12.913(b), is filed, the clerk will sign this form. The form must then be given to a qualified local newspaper in the county where the case is pending to be published once each week for four consecutive weeks. When in doubt, ask the clerk which newspapers in your area are "qualified." The newspaper will charge you for this service. If you cannot afford to pay the cost of publication of this notice in a qualified newspaper, you may ask the clerk to post the notice at a place designated for such postings. You will need to file an **Application for Determination of Civil Indigent Status**, which you can obtain from the clerk. If the clerk determines that you cannot afford these costs, the clerk will post the notice of action.

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. For further information, see rule 12.070, Florida Family Law Rules of Procedure, and chapter 49, Florida Statutes.

Special notes...

If the other party fails to respond to your **petition** within the time limit stated in the notice of action that is published or posted, you are entitled to request a **default**. (See **Motion for Default**, Florida Supreme Court Approved Family Law Form 12.922(a), and **Default**, Florida Supreme Court Approved Family Law Form 12.922(b).)

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 **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 ACTION FOR DISSOLUTION OF MARRIAGE
(NO CHILD OR FINANCIAL SUPPORT)**

TO: *{name of Respondent}* _____
{Respondent's last known address} _____

YOU ARE NOTIFIED that an action for dissolution of marriage has been filed against you and that you are required to serve a copy of your written defenses, if any, to it on *{name of Petitioner}*

_____,
whose address is _____
on or before *{date}* _____, and file the original with the clerk of this Court at *{clerk's address}*

_____,
before service on Petitioner or immediately thereafter. **If you fail to do so, a default may be entered against you for the relief demanded in the petition.**

The action is asking the court to decide how the following real or personal property should be divided: *{insert "none" or, if applicable, the legal description of real property, a specific description of personal property, and the name of the county in Florida where the property is located}*

Copies of all court documents in this case, including orders, are available at the Clerk of the Circuit Court's office. You may review these documents upon request.

You must keep the Clerk of the Circuit Court's office notified of your current address. (You may file Notice of Current Address, Florida Supreme Court Approved Family Law Form 12.915.) Future papers in this lawsuit will be mailed to the address on record at the clerk's office.

WARNING: Rule 12.285, Florida Family Law Rules of Procedure, requires certain automatic disclosure of documents and information. Failure to comply can result in sanctions, including dismissal or striking of pleadings.

Dated: _____ . CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

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

**INSTRUCTIONS FOR FLORIDA SUPREME COURT APPROVED FAMILY LAW
FORM 12.913(a)(2), NOTICE OF ACTION FOR FAMILY CASES WITH
MINOR CHILD(REN) (01/12)**

When should this form be used?

This form may be used to obtain **constructive service** (also called service by publication) in an action involving a parenting plan for a minor child under chapter 61, Florida Statutes; an action to determine temporary custody by extended family under chapter 751, Florida Statutes; and termination of a legal father's parental rights when another man is alleged to be the biological father. "Parenting plan" means a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child. Section 61.046(14), Florida Statutes. You may use constructive service if you do not know where the other party lives or if the other party lives outside Florida and you are unable to obtain **personal service**. Constructive notice will allow the court to grant the relief requested, but personal service is required before a court can order payment or termination of **child support**, spousal support (**alimony**), or costs. If you are asking the court to decide how real or personal property located in Florida should be divided, the **Notice of Action** must include a specific description of the property. If you use constructive service, the court can grant only limited relief because its jurisdiction is limited. This is a complicated area of the law and you should consult an attorney before using constructive service.

You should complete this form by typing or printing the appropriate information in black ink. You must insert the other party's name and last known address and then **file** this form with the **clerk of the circuit court** in the county where your petition was filed. You must also complete and file an **Affidavit of Diligent Search and Inquiry**. Use Florida Family Law Rules of Procedure Form 12.913(b) unless you are serving the legal father in a paternity case where another man is alleged to be the biological father, in which case, you must use Form 12.913(c). You should keep a copy for your records.

After the **Affidavit of Diligent Search and Inquiry**, Family Law Rules of Procedure Form 12.913(b) or 12.913(c), is filed, the clerk will sign this form. You will need to publish notice once each week for four consecutive weeks in a "qualified" newspaper in the county where the case is pending. When in doubt, ask the clerk which newspapers are "qualified." The newspaper will charge you for this service. If you cannot afford to pay the cost of publishing this notice, you may ask the clerk to post the notice at a place designated for such postings. You will need to file an **Application for Determination of Civil Indigent Status**, which you can obtain from the clerk. If the clerk determines that you cannot afford these costs, the clerk will post the notice of action. If your case involves termination of a legal father's parental rights when another man is alleged to be the biological father, you need to publish the notice only in the county where the legal father was last known to have resided. You are responsible for locating a "qualified" newspaper in the county where the other party last resided and paying the cost of publication.

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. For further information, see rule 12.070, Florida Family Law Rules of Procedure, rule 1.070, Florida Rules of Civil Procedure, sections 61.501–61.542, Florida Statutes and chapter 49, Florida Statutes.

Special notes...

If the other party fails to respond to your **petition** within the time limit stated in the notice of action that is published or posted, you are entitled to request a **default**. (See **Motion for Default**, Florida Supreme Court Approved Family Law Form 12.922(a), and **Default**, Florida Supreme Court Approved Family Law Form 12.922(b).)

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 **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 ACTION FOR

{Specify action} _____

TO: *{name of Respondent}* _____
{Respondent's last known address} _____

YOU ARE NOTIFIED that an action for *{identify the type of case}* _____ has been filed against you and that you are required to serve a copy of your written defenses, if any, to it on *{name of Petitioner}* _____, whose address is _____ on or before *{date}* _____, and file the original with the clerk of this Court at *{clerk's address}* _____

before service on Petitioner or immediately thereafter. **If you fail to do so, a default may be entered against you for the relief demanded in the petition.**

{If applicable, insert the legal description of real property, a specific description of personal property, and the name of the county in Florida where the property is located} _____

Copies of all court documents in this case, including orders, are available at the Clerk of the Circuit Court's office. You may review these documents upon request.

You must keep the Clerk of the Circuit Court's office notified of your current address. (You may file Notice of Current Address, Florida Supreme Court Approved Family Law Form 12.915.) Future papers in this lawsuit will be mailed to the address on record at the clerk's office.

WARNING: Rule 12.285, Florida Family Law Rules of Procedure, requires certain automatic disclosure of documents and information. Failure to comply can result in sanctions, including dismissal or striking of pleadings.

Dated: _____.

CLERK OF THE CIRCUIT COURT

By: _____
Deputy Clerk

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, located at {street} _____, {city} _____,
{state} _____, {phone} _____, helped {name} _____
who is the petitioner, fill out this form.

INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.913(b), AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY (01/12)

When should this form be used?

This form is to be used with **Notice of Action for Dissolution of Marriage (No Child or Financial Support)**, Florida Supreme Court Approved Family Law Form 12.913(a)(1) and **Notice of Action For Family Cases With Minor Child(ren)**, Form 12.913(a)(2), to obtain constructive service (also called service by publication).

The other party is entitled to actual notice of the proceedings when possible. When it is necessary to use constructive notice, it must be given in a way that is likely to provide actual notice. You must disclose the last known address of the other party. A last known address cannot be unknown. This form includes a checklist of places you can look for information on the location of the other party. While you do not have to look in all of these places, the court must believe that you have made a very serious effort to get information about the other party's location and that you have followed up on any information you received.

This form should be typed or printed in black ink. After completing this form, you should sign the form before a notary public or deputy clerk. You should file the original and a **Notice of Action for Dissolution of Marriage (No Child or Financial Support)**, Florida Supreme Court Approved Family Law Form 12.913(a)(1), or **Notice of Action For Family Cases With Minor Child(ren)**, Form 12.913(a)(2), with the clerk of the circuit court in the county where your petition is filed. You should keep a copy for your records.

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. For further information, see rule 12.070, Florida Family Law Rules of Procedure and chapter 49, 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 **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.

AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, {full legal name} _____, being sworn, certify that the following information is true:

1. I have made diligent search and inquiry to discover the name and current residence of Respondent: {Specify details of search} **Refer to checklist below and identify all actions taken (any additional information included such as the date the action was taken and the person with whom you spoke is helpful) (attach additional sheet if necessary):**

[Check **all** that apply]

- _____ United States Post Office inquiry through Freedom of Information Act for current address or any relocations.
- _____ Last known employment of Respondent, including name and address of employer. You should also ask for any addresses to which W-2 Forms were mailed, and, if a pension or profit-sharing plan exists, then for any addresses to which any pension or plan payment is and/or has been mailed.
- _____ Unions from which Respondent may have worked or that governed his or her particular trade or craft.
- _____ Regulatory agencies, including professional or occupational licensing.
- _____ Names and addresses of relatives and contacts with those relatives, and inquiry as to Respondent's last known address. You are to follow up any leads of any addresses where Respondent may have moved. Relatives include, but are not limited to: parents, brothers, sisters, aunts, uncles, cousins, nieces, nephews, grandparents, great-grandparents, former in-laws, stepparents, stepchildren.
- _____ Information about the Respondent's possible death and, if dead, the date and location of the death.
- _____ Telephone listings in the last known locations of Respondent's residence.
- _____ Internet at <http://www.switchboard.com> or other Internet databank locator service. Please indicate if a public library assisted you in your search.
- _____ Law enforcement arrest and/or criminal records in the last known residential area of Respondent.

- _____ Highway Patrol records in the state of Respondent's last known address.
 - _____ Department of Motor Vehicle records in the state of Respondent's last known address.
 - _____ Department of Corrections records in the state of Respondent's last known address.
 - _____ Title IV-D (child support enforcement) agency records in the state of Respondent's last known address.
 - _____ Hospitals in the last known area of Respondent's residence.
 - _____ Utility companies, which include water, sewer, cable TV, and electric, in the last known area of Respondent's residence.
 - _____ Letters to the Armed Forces of the U.S. and their response as to whether or not there is any information about Respondent. (See Memorandum for Certificate of Military Service, Florida Supreme Court Approved Family Law Form 12.912(a)).
 - _____ Tax Assessor's and Tax Collector's Office in the area where Respondent last resided.
 - _____ Other: *{explain}* _____
-
-
-
-

2. The age of Respondent is [Choose only **one**] () known *{enter age}* _____ or () unknown.

3. Respondent's current residence

[Choose only **one**]

- a. _____ Respondent's current residence is unknown to me.
- b. _____ Respondent's current residence is in some state or country other than Florida.

- c. _____ The Respondent, having residence in Florida, has been absent from Florida for more than 60 days prior to the date of this affidavit, or conceals him (her)self so that process cannot be served personally upon him or her, and I believe there is no person in the state upon whom service of process would bind this absent or concealed Respondent.

4. **Respondent's last known address** as of *{date}* _____, was:
 Address _____ City _____ State _____ Zip _____
 Telephone No. _____ Fax No. _____.

Respondent's last known employment, as of *{date}* _____, was
 Name of Employer _____
 Address _____ City _____ State _____ Zip _____
 Telephone No. _____ Fax No. _____.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of Petitioner

Printed Name: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____

Fax Number: _____

STATE OF FLORIDA
COUNTY OF

Sworn to or affirmed and signed before me on _____ by _____.

NOTARY PUBLIC or DEPUTY CLERK

[Print, type, or stamp commissioned name of notary or clerk.]

____ Personally known

____ Produced identification

Type of identification produced _____

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, located at *{street}* _____ *{city}* _____,

{state} _____, *{phone}* _____, helped *{name}* _____,

who is the petitioner, fill out this form.

INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.913(c), AFFIDAVIT OF DILIGENT SEARCH (01/12)

When should this form be used?

This form is to be used with **Notice of Action For Family Cases With Minor Child(ren)**, Florida Supreme Court Approved Family Law Form 12.913(a)(2), to obtain **constructive service** (also called service by publication) on the legal father in any action or proceeding to determine paternity which may result in termination of the legal father's parental rights.

The legal father is entitled to actual notice of the proceedings when possible. When it is necessary to use constructive notice, it must be given in a way that is likely to provide actual notice. You must disclose the last known address of the legal father. A last known address cannot be unknown. This form includes a checklist of places you must look for information on the location of the legal father. You have to look in all of these places, and the court must believe that you have made a very serious effort to get information about the person's location and that you have followed up on any information you received.

This form should be typed or printed in black ink. After completing this form, you should sign the form before a **notary public** or **deputy clerk**. You should **file** the original and a **Notice of Action For Family Cases With Minor Child(ren)**, Florida Supreme Court Approved Family Law Form 12.913(a)(2), with the **clerk of the circuit court** in the county where your petition for dissolution of marriage is filed. You should keep a copy for your records.

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. For further information, see rule 12.070, Florida Family Law Rules of Procedure, chapter 49, Florida Statutes, and section 409.257, 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 **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.

AFFIDAVIT OF DILIGENT SEARCH

I, {full legal name} _____, being sworn, certify that the following information is true:

1. The last known address of the child(ren)'s legal father {name} _____, as of {date} _____, was:
Address _____ City _____ State _____ Zip _____
Telephone No. _____ Fax No. _____.

His last known employment, as of {date} _____, was:

Name of Employer _____
Address _____ City _____ State _____ Zip _____
Telephone No. _____ Fax No. _____

2. The legal father is over the age of 18.
3. The legal father's current residence is not known and cannot be determined, although I have made a diligent search and inquiry to locate him through the following:

You must search ALL of the following sources of information and state the results.

____ United States Post Office inquiry through the Freedom of Information Act for the legal father's current address or any previous address.

Result of search: _____

____ Last known employment of the legal father, including name and address of employer.

Result of search: _____

____ Regulatory agencies, including professional or occupational licensing, in the area where the legal father last resided.

Result of search: _____

Florida Family Law Rules of Procedure Form 12.913(c), Affidavit of Diligent Search (01/12)

- _____ Names and addresses of relatives to the extent such can be reasonably obtained from the petitioner or other sources, contacts with those relatives and inquiry as to the legal father's last known address. You are to follow up any leads of any addresses where the legal father may have moved.
Result of search: _____
- _____ Information about the legal father's possible death and, if dead, the date and location.
Result of search: _____
- _____ Telephone listings in the area where the legal father last resided.
Result of search: _____
- _____ Law enforcement agencies in the area where the legal father last resided.
Result of search: _____
- _____ Highway Patrol records in the state where the legal father last resided.
Result of search: _____
- _____ Department of Corrections records in the state where the legal father last resided.
Result of search: _____
- _____ Hospitals in the last known area of the legal father's residence.
Result of search: _____
- _____ Records of utility companies, which include water, sewer, cable TV, and electric in the last known area of the legal father's residence.
Result of search: _____
- _____ Records of the Armed Forces of the U.S. and their response as to whether or not there is any information about the legal father. (See Florida Supreme Court Approved Family Law Forms 12.912(a)).
Result of search: _____
- _____ Records of the tax assessor's and tax collector's office in the area where the legal father last resided.
Result of search: _____
- _____ Search of one Internet databank locator service.
Result of search: _____
- _____ Title IV-D (child support enforcement) agency records in the state of the legal father's last known address.
Result of search: _____

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of Petitioner
Printed Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Fax Number: _____

STATE OF FLORIDA
COUNTY OF _____

Sworn to or affirmed and signed before me on _____ by _____.

NOTARY PUBLIC or DEPUTY CLERK
[Print, type, or stamp commissioned name of notary or deputy clerk.]

- Personally known
- Produced identification
- Type of identification produced _____

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