

# Supreme Court of Florida

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No. SC12-618

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## **IN RE: AMENDMENTS TO THE FLORIDA FAMILY LAW RULES OF PROCEDURE—FORM 12.996(d).**

[June 28, 2012]

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to the Florida Family Law Rules of Procedure and Forms. We have jurisdiction. See art. V, § 2(a), Fla. Const.

The Family Law Rules Committee (Committee) filed an “Emergency Petition to Adopt Florida Family Law Rules of Procedure Form 12.996(d).” Proposed form 12.996(d) is a Florida addendum to a federally approved income withholding form, “Income Withholding for Support,” OMB 0970-0154. The Committee also proposes the addition of form 12.996(d) to the list of family law forms contained in rule 12.015 (Family Law Forms). The Committee’s proposals were reviewed under the Committee’s fast-track procedures and were unanimously

approved by the Committee and the Executive Committee of The Florida Bar Board of Governors.

Upon consideration, Florida Family Law Rules of Procedure Form 12.996(d) (Florida Addendum to Income Withholding Order) is hereby adopted as set forth in the appendix to this petition, fully engrossed.<sup>1</sup> The form may also be accessed and downloaded from the Florida State Court's website at [www.flcourts.org/gen\\_public/family/forms\\_rules/index.shtml](http://www.flcourts.org/gen_public/family/forms_rules/index.shtml). By adoption of this form, we express no opinion as to its correctness or applicability. Florida Family Law Rule of Procedure 12.015 is also amended to add this new form to the list of forms contained therein. New language is underlined, and deleted language is stricken through. The amended rule and the new form shall become effective immediately upon the release of this opinion. Additionally, because the amendment and the new form were not published for comment prior to adoption, interested persons shall have sixty days from the date of this opinion in which to file comments with the Court.<sup>2</sup>

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1. Minor corrections and editorial revisions were made to the form as proposed by the Committee.

2. An original and nine paper copies of all comments must be filed with the Court on or before August 27, 2012, with a certificate of service verifying that a copy has been served on the Committee Chair, Ashley J. McCorvey Myers, 1912 Hamilton St. Ste. 204, Jacksonville, Florida 32210-2078, and on the Bar Staff Liaison to the Committee, Ellen Sloyer, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, as well as a separate request for oral argument if the person

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 Proceedings – The Florida Family Law Rules Committee

John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, and  
Ashley McCorvey Myers, Chair, McCorvey & Myers, Jacksonville, Florida,

for Petitioner

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filing the comment wishes to participate in oral argument, which may be scheduled in this case. The committee chair has until September 18, 2012 to file a response to any comments filed with the Court. Electronic copies of all comments also must be filed in accordance with the Court's administrative order In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

## **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;
- (25) 12.984, Response by Parenting Coordinator;
- (26) 12.990(a), Final Judgment of Simplified Dissolution of Marriage;
- (27) 12.996(a), Income Deduction Order;
- (28) 12.996(b), Notice to Payor;
- (29) 12.996(c), Notice of Filing Return Receipt; ~~and~~

(30) 12.996(d), Florida Addendum to Income Withholding Order;  
and

(301) 12.998, Order of Referral to Parenting Coordinator.

(b) [No Change]

**Commentary**

[No Change]

## **INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.996(d), FLORIDA ADDENDUM TO INCOME WITHHOLDING ORDER 06/12**

### **When should this form be used?**

This form should be used when the court has ordered that support be paid by income deduction and OMB Form 0970-0154, Income Withholding for Support, has been used. This form must be added to the OMB form to provide provisions required for income deduction orders by Florida law.

This form should be typed or printed in black ink. It should be attached to the OMB form and **filed** with the clerk of the circuit court in the county in which your action is pending.

### **What should I do next?**

A copy of this form and a copy of the OMB Income Withholding for Support form, signed by the judge, should be sent to the **obligor's** payor by certified mail, return receipt requested. The return receipt should be sent to the person who prepared this form, so that it can be filed with the court with Florida Family Law Rules of Procedure Form 12.996(c), **Notice of Filing Return Receipt**.

### **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 sections 61.13 and 61.1301, Florida Statutes.

### **Special Instructions...**

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.

### FLORIDA ADDENDUM TO INCOME WITHHOLDING ORDER

**THE PAYOR**, {name}\_\_\_\_\_, **IS HEREBY NOTIFIED** that, under sections 61.13 and 61.1301, Florida Statutes, you have the responsibilities and rights set forth below with regard to the Income Withholding Order/Notice for Support.

1. The Income Withholding Order/Notice for Support is enforceable against employers specifically listed upon the form as well as **all subsequent employers/payors** of Obligor, {name}\_\_\_\_\_, {address}\_\_\_\_\_.
2. You are required to deduct from the obligor's income the amount specified in the income withholding 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 section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(b), as amended.
3. You must implement the 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 withholding order 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.
4. 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 withholding order, 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.
5. 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.
6. You may collect up to \$5 against the obligor's income to reimburse you for the administrative costs for the first income deduction and up to \$2 for each deduction thereafter.



7. The Income Withholding Order/Notice for Support is binding on you until further notice by court order or until you no longer provide income to the obligor.
8. When you no longer provide income to the obligor, you shall notify the obligee, {name} \_\_\_\_\_, {address} \_\_\_\_\_, and provide the obligor's last known address and the name and address of the obligor's new payor, if known, utilizing the form contained within the Income Withholding Order/Notice for Support. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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](http://www.floridasdu.com) and clicking on "Payments." Payment options include Expert Pay, Automated Clearing House (ACH) credit through your financial institution, [www.myfloridacounty.com](http://www.myfloridacounty.com), or Western Union. Payors may contact the SDU Customer Service Employer telephone line at 1-888-883-0743.
14. The amount of arrears owed, if any, is \$\_\_\_\_\_. You must withhold an additional twenty percent (20%) or more of the ongoing periodic obligation towards same at the rate of \$\_\_\_\_\_

per \_\_\_\_\_ until full payment is made of any arrearage, attorneys' fees and costs—provided that no deduction shall be applied to attorneys' fees and costs until the full amount of any arrearage is paid. If a delinquency accrues after the order establishing, modifying, or enforcing support has been entered and there is no existing order for repayment of the delinquency or a pre-existing arrearage, a payor shall deduct \$\_\_\_\_\_ per \_\_\_\_\_ (which represents an additional twenty percent (20%) 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.

15. Pursuant to sections 61.13 and 61.1301, Florida Statutes, the amounts listed for payment on the Income Withholding Order must be varied by the employer/payor for bonus income, or similar one-time payment:

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.

16. Child Support Reduction/Termination Schedule. Child support amount listed on the IWO shall be automatically reduced or terminated as set forth in the following schedule:

Please list children by initials from eldest to youngest		Insert in this column the day, month, and year the child support obligation terminates for each designated child (see instructions)		Insert in this column the amount of child support for all minor children remaining (including designated child).
<b>Child 1</b> (Eldest) Initials & year of birth:	<i>From the effective date of this Income Deduction Order until the following date:</i>		<i>child support for Child 1 and all other younger child(ren) should be paid in the following monthly amount:</i>	
<b>Child 2</b> Initials & year of birth:	<i>After the date set forth in the row above until the following date:</i>		<i>child support for Child 2 and all other younger child(ren) should be paid in the following monthly amount:</i>	

<b>Child 3</b> Initials & year of birth:	<i>After the date set forth in the row above until the following date:</i>		<i>child support for Child 3 and all other younger child(ren) should be paid in the following monthly amount:</i>	
<b>Child 4</b> Initials & year of birth:	<i>After the date set forth in the row above until the following date:</i>		<i>child support for Child 4 and all other younger child(ren) should be paid in the following monthly amount:</i>	
<b>Child 5</b> Initials & year of birth:	<i>After the date set forth in the row above until the following date:</i>		<i>child support for Child 5 and all other younger child(ren) should be paid in the following monthly amount:</i>	

*(Continue on additional pages for additional children)*

NOTE: This change only relates to the amount of the child support obligation portion of the payments listed in the first pay of the Income Withholding Order. If there is a child support arrearage in a Title IV-D case, the amount will not be reduced due to the child no longer being eligible for support pursuant to paragraph 11 above.

17. Additional information regarding the implementation of income deduction may be found at [www.floridasdu.com](http://www.floridasdu.com).

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

[fill in all blanks] This form was prepared for the: *{choose only one}* ( ) Petitioner ( ) Respondent

This form was completed with the assistance of:

*{name of individual}* \_\_\_\_\_,

*{name of business}* \_\_\_\_\_,

*{address}* \_\_\_\_\_,

*{city}* \_\_\_\_\_, *{state}* \_\_\_\_\_, *{telephone number}* \_\_\_\_\_

