

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
FLORIDA FAMILY LAW RULE OF
PROCEDURE 12.407**

CASE NO.:SC18-

**JOINT OUT-OF-CYCLE REPORT OF THE
FAMILY LAW RULES COMMITTEE, JUVENILE COURT RULES
COMMITTEE, AND THE STEERING COMMITTEE ON CHILDREN AND
FAMILIES IN THE COURT**

Robert Joseph Merlin, Chair of the Family Law Rules Committee (“FLRC”), Kara Ann Fenlon, Chair of the Juvenile Court Rules Committee (“JCRC”), Honorable Christine Hissam Greider, Chair of the Steering Committee on Children and Families in the Court (“Steering Committee”), and Joshua E. Doyle, Executive Director of The Florida Bar, respectfully file this Joint Out-of-Cycle Report under Florida Rule of Judicial Administration 2.140(f). The amendments to Florida Family Law Rule of Procedure 12.407 (Testimony and Attendance of Minor Child) have been approved by the FLRC Committee by a vote of 14-3-0 and, as required by Rule 2.140(b)(3), approved by the Board of Governors by a vote of 49-0-0.

The proposed amendments to Rule 12.407 are found in Appendix A (full-page format). Rule 12.407 is also found in Appendix B in two-column format. The amendments are filed in response to the Court’s direction and pursuant to Florida Rule of Judicial Administration 2.140(f), were not published in *The Florida Bar News* as it is not required and due to time limitations. (See Appendix C correspondence from the Court.)

The FLRC respectfully submits proposed amendments to Rule 12.407 for this Court’s consideration for the following reasons and in the following ways:

RULE 12.407. TESTIMONY AND ATTENDANCE OF MINOR CHILD

On October 13, 2017, the Court requested that the FLRC, JCRC, and Steering Committee work together to address the concerns raised in *In re Amendments to the Florida Family Law Rules of Procedure—2017 Regular-Cycle Report*, 217 So. 3d 115 (2017). The Court expressed concerns that the previous proposed amendment to Rule 12.407 might produce the unintended consequences

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of prohibiting children from entering a courthouse building and conflicting with Florida Rule of Juvenile Procedure 8.255, especially in the context of Unified Family Court proceedings. The FLRC, JCRC, and Steering Committee formed a joint subcommittee to address these concerns. The joint subcommittee met on several occasions and made recommendations that were then accepted by the respective committees. The committees only recommend amendments to Florida Family Law Rule of Procedure 12.407.

The committees suggest adding subdivision titles “Prohibition,” “Related Proceedings,” and “Uncontested Adoption” to Rule 12.407 for clarity for the reader. The committees suggest substantial rewording of Rule 12.407 to address the Court’s concerns.

In subdivision (a), the committees recommend adding the following language at the beginning of the sentence: “Unless otherwise provided by law or another rule of procedure, children who are witnesses, potential witnesses, or related to a family case, are prohibited from being . . .” The first portion of the clause, “unless otherwise provided by law or another rule of procedure,” provides guidance to the reader to consider other rules of procedure and laws that may address the child’s appearance before applying subdivision (a). The second portion of the clause, “children who are witnesses, potential witnesses, or related to a family law case,” clarifies which children are subject to this rule. The Committee recommends deleting “no minor child shall be” and “brought to court to appear as a witness or to attend a hearing, or” to accommodate the rephrasing of the rule. The phrase “from being” is added prior to “subpoenaed” for clarity for the reader. Towards the end of the subdivision, “hearing” is deleted and is replaced with “any family law proceeding or from attending any family law proceedings” to emphasize that the child is prohibited from all family law proceedings. In subdivision (a), “unless in an emergency situation,” is deleted to simply require a court order prior to a child’s appearance in family law proceedings which limits the litigants’ discretion to determine whether an emergency exists. The committees recommend these changes to Rule 12.407(a) to prevent the harmful, unnecessary involvement of children in family law proceedings.

The Committees suggest a new subdivision (b) to address any potential conflict with the Florida Rules of Juvenile Procedure. The sentence provides that the Florida Rules of Juvenile Procedure will govern as to the child’s appearance in court when a family law proceeding is held concurrently with a juvenile dependency or delinquency proceeding.

In the newly numbered subdivision (c), the committees suggest replacing “provision” with “rule” and “shall” with “does” in the last sentence of the rule for clarity for the reader.

Last, the committees recommend a Committee Note to further explain which children are prohibited from being involved in family law proceedings without a court order.

MINORITY VIEWS

Some members of the Steering Committee recommended that a provision be added to Rule 12.407 that would mandate that a motion for a child to appear in the family law proceeding under Rule 12.407 be considered on an emergency basis. The members of the Steering Committee believed that such a provision should be included in Rule 12.407 to ensure that the determination of whether the child would appear be made well in advance of the proceeding in question. In addition, members of the Steering Committee believed that the provision would ensure that the child was adequately prepared to appear in the family law case and that there would be no undue delay of the conclusion of the family law case due to waiting for a preliminary ruling on the child’s appearance in the family law proceeding. However, this suggestion was not accepted by the joint subcommittee or the Family Law Rules Committee. The joint subcommittee and the Family Law Rules Committee did not accept the suggestion as the majority believed that a court has the ability to hear emergency or urgent motions regarding any matter and the court can make a determination if those procedures are necessary on a case-by-case basis.

In addition, there was a minority view in the FLRC against Rule 12.407 for a different reason. The minority did not agree with removing the clause “unless in an emergency situation” and not providing an exception to Rule 12.407 when a litigant requires the child’s appearance or testimony for hearings regarding verified allegations of domestic violence. The minority believed that Rule 12.407 as proposed could deter litigants from filing an injunction in domestic violence cases as often the only witnesses to the violence is the petitioner and the children in the home. The minority believed that Rule 12.407 places an unnecessary burden on victims of domestic violence to file a motion prior to bringing child witness to court. However, the majority of the FLRC believed it was important to protect the child from litigation in all cases and allow the court, not the litigants, to be the gatekeeper, as to whether the child’s appearance or testimony is necessary.

WHEREFORE, the undersigned respectfully requests that the Court amend the Florida Family Law Rules of Procedure 12.407 as outlined in this Joint Out-of-Cycle Report.

Respectfully submitted on May 31, 2018.

/s/ Robert Joseph Merlin

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CERTIFICATE OF COMPLIANCE

I certify that the rule has been read against Thomson Reuters' *Florida Rules of Court, Vol. I — State* (2018 edition).

I certify that this document meets the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Mikalla Andies Davis

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