

SUPREME COURT OF FLORIDA

In re Amendments to the Supreme Court Approved Family Law Forms

50 So. 3d 595 (Fla. 2010) · No. SC10-1947 · Decided December 2, 2010

OPINION

PER CURIAM.

50 So.3d 595 (2010) In re AMENDMENTS TO THE SUPREME COURT APPROVED FAMILY LAW FORMS. No. SC10-1947. Supreme Court of Florida. December 2, 2010. PER CURIAM. Pursuant to the procedures approved by this Court in Amendments to the Florida Family Law Rules of Procedure & Family Law Forms, 810 So.2d 1, 14 (Fla.2000), this Court has internally reviewed the Florida Supreme Court Approved Family Law Forms and has determined that a new form for a writ of bodily attachment in connection with a court-ordered support obligation and minor amendments to existing forms 12.912(a) and 12.912(b), relating to parties in military service, should be adopted.

Input on these issues was received *596 from the Advisory Workgroup on the Florida Supreme Court Approved Family Law Forms, which provided valuable assistance. We have jurisdiction. See art. V, § 2(a), Fla. Const. New form 12.962, Writ of Bodily Attachment, fills the need for a standard form in this area of the law and satisfies the requirements of section 61.11, Florida Statutes (2010).

The amendments to existing form 12.912(a), Memorandum for Certificate of Military Service, correct contact information contained in the form and instructions that is outdated or incorrect and update the reference to the Servicemembers Civil Relief Act, formerly known as the Soldiers and Sailors Civil Relief Act of 1940. Email addresses and websites as well as explanatory language in the instructions to the form are also added.

The amendments to form 12.912(b) update the reference to the Servicemembers Civil Relief Act and change the title of the form to "Affidavit of Military Service." Explanatory language is also added to the instructions, and the language of the form itself is revised.

The new and amended forms are adopted as set forth in the appendix to this opinion, fully engrossed, effective for immediate use. The forms may also be accessed and downloaded from the Florida State Court's website at www.flcourts.org/gen_public/family/forms_rules/index.shtml. By adoption of the new and amended forms, we express no opinion as to their correctness or applicability.

We also direct that the new and amended forms be published for comment. Interested persons shall have sixty days from the date of this opinion to file comments with the Court.[1] It is so ordered. CANADY, C.J., and PARIENTE, LEWIS, QUINCE, POLSTON, LABARGA, and PERRY, JJ., concur. APPENDIX INSTRUCTIONS FOR FLORIDA SUPREME COURT APPROVED FAMILY LAW FORM 12.912(a), MEMORANDUM FOR CERTIFICATE OF MILITARY SERVICE (12/10) When should this form be used?

This form should be used if you KNOW OR DO NOT KNOW whether the other party in your case is on active duty in a branch of the military service of the United States. "Active duty" includes reserve personnel of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and members of the Florida National Guard who have been called to active duty for more than thirty (30) days.

Even if you believe that the other party has never or would never join the military, you must show the court proof that he or she is not a member of the military. Therefore, you may need to use this form to provide the court with such proof. See the instructions for an Affidavit of Military Service, Florida Supreme Court Approved Family Law Form 12.912(b), for additional information.

Servicemembers Civil Relief Act (SCRA) Certificates To obtain certificates of service or nonservice under the Servicemembers Civil *597 Relief Act (formerly known as Soldiers' and Sailors' Civil Relief Act of 1940) you may use the public website: <https://www.dmdc.osd.mil/scra/owa/home>. This website will provide you with the current active military status of an individual enlisted in the Army, Navy, Air Force, and Marines.

You can also receive certificates from the individual services by sending your correspondence to the appropriate military office listed below. Fill out this form and mail one copy to each of the military offices at the addresses on the form. You may be charged a service fee by each military service branch for their response.

To assist you in determining the amount of each military branch's fee, phone numbers are listed below. You will need to call each number to find out their fee for this search. COAST GUARD: USCG Commander, Personnel Service Center, Attn: PSD-MR, 4200 Wilson Blvd., Suite 1100, Arlington VA 22203, Phone (202) 493-1200 Arlington Va. 22203, Phone: (202) 493-1200, NOTE: All requests must be in writing. www.uscg.mil/hq/cgpc/home/locator/html.

AIR FORCE: HQ AFPC/DPDXIDL, Attn: World Wide Locator, 550 C Street, West, Suite 50, Randolph AFB, TX 78150-4752, Phone: (210) 565-2660, NOTE: Requests will be taken by phone. www.afpc.randolph.af.mil/library/airforcelocator.asp NAVY: Bureau of Naval Personnel, PERS-312E, 5720 Integrity Drive, Millington, TN XXXXX-XXXX, Phone: (901) 874-3388 NOTE: Requests will be taken by phone.

MARINE CORPS: CMC HQ (MMSB17), 2008 Elliot Road, Room 201, Quantico, VA 22134, Phone (703) 784-3941 NOTE: All requests must be in writing. PUBLIC HEALTH SERVICE: Attn: Director, Division of Commissioned Corps Officer Support, http://dcp.psc.gov/ad_search.asp NOTE: Please direct all inquiries to the website. ARMY: Army World Wide Locator Service, Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN XXXXX-XXXX, Phone: (1-866) 771-6357, fax (317) 510-3685 NOTE: All requests must be in writing This form should be typed or printed in black ink.

You should complete this form for each branch of the United States' military listed above, and mail the form to each branch with a check for the appropriate amount and a stamped, self-addressed envelope. You should keep a copy of the form for your records.

After you have received a verification of military status from each branch, you will need to attach those verifications to an Affidavit of Military Service, Florida Supreme Court Approved Family Law Form 12.912(b), for filing with the clerk. 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: _____ *598 _____, Petitioner, and _____, Respondent.

MEMORANDUM FOR CERTIFICATE OF MILITARY SERVICE TO: () USCG Commander, Personnel Service Center, Attn: PSD-MR, 4200 Wilson Blvd, Suite 1100, Arlington, VA 22203 () HQ AFPC/DPDXIDL, Attn: World Wide Locator, 550 C. Street West, Suite 50, Randolph AFB, TX 78150-4752 () Bureau of Naval Personnel, PERS-312E, 5720 Integrity Drive, Millington, TN XXXXX-XXXX () CMC, HQ, (MMSB17), 2008 Elliot Road, Room 201, Quantico, VA 22134 () Public Health Service: Attn: Director, Division of Commissioned Corps Officer Support http://dcp.psc.gov/ad_search.asp () Army World Wide Locator Service, Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN XXXXX-XXXX RE: _____ {Name of Respondent} _____ {Respondent's Social Security Number} This case involves a family matter.

It is imperative that a determination be made whether the above-named individual, who has an interest in these proceedings, is presently in the military service of the United States, and the dates of induction and discharge, if any. This information is requested under the Servicemembers Civil Relief Act (formerly known as Soldiers' and Sailors' Civil Relief Act of 1940).

Please supply verification as soon as possible. My check for \$_____ for your search fee and a self-addressed, stamped envelope are enclosed. Dated: _____

Signature of Petitioner 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 SUPREME COURT APPROVED FAMILY LAW FORM 12.912(b), AFFIDAVIT OF MILITARY SERVICE (12/10) When should this form be used? An Affidavit of Military Service is required in every case where the Respondent has not filed an answer or appearance.

The purpose is to protect the men and women serving in the U.S. military from having a court judgment entered against them without first receiving notice of the lawsuit and a chance to defend the case. *599 You should use this form when ALL of the following statements are true: The other person in your case has been served, whether by personal service or constructive service. The other person in your case has not responded to your petition. You are requesting that the court enter a default judgment against the other person.

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 must file the original of this form with the clerk of the circuit court when you file your Motion for Default, Florida Supreme Court Approved Family Law Form 12.922(a). You must also attach copies of all verifications of nonmilitary service that you received from each branch of the United States' military service.

You should keep a copy for your records. 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 MILITARY SERVICE I, {full legal name} _____, am the Petitioner in this case.

To support my application for a default judgment and to comply with the Servicemembers Civil Relief Act (formerly known as Soldiers' and Sailors' Civil Relief Act of 1940), I swear or affirm that the following information is true: [please choose only one] 1. ____ I know of my own personal knowledge that the Respondent IS on active duty in the military service of the United States.

2. ____ I know of my own personal knowledge that Respondent IS NOT now on active duty in the military service of the United States, nor has the Respondent been on active military service of the United States within a period of thirty (30) days immediately before this date. "Active Service" includes reserve members of the Army, Navy, Air Force, Coast Guard, and Marines who have been ordered to report for active duty and members of the Florida National Guard who have been ordered to report to active duty for a period of more than thirty (30) days.

3. ____ I have contacted the military services of the United States and the U.S. Public Health Service and have obtained certificates showing that the Respondent is not on active duty status. These certificates are attached.

4. ____ I have attempted to determine the military status of the Respondent, *600 but do not have sufficient information. This is what I have done to determine whether or not Respondent is on active duty in the United States military: _____

_____ I have no reason to believe that s/he is on active duty at this time.

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, whose address is {street } _____, {city } _____, {state

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

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT, IN AND FOR _____ COUNTY, FLORIDA Case No: _____

Division: _____, Petitioner, and _____, Respondent. WRIT OF BODILY ATTACHMENT (Child Support) TO ALL AND SINGULAR SHERIFFS AND OTHER AUTHORIZED LAW ENFORCEMENT PERSONNEL OF THE STATE OF FLORIDA YOU ARE ORDERED to take into custody _____ (see attached Description Sheet) and confine him/her in the county jail.

The individual failed to appear before the court as ordered, failed to appear at a properly noticed hearing, and/or failed to comply with the previous order of the court which is attached and incorporated herein. *601 Service of this writ may be made on any day of the week and any time of the night or day, including Sunday and holidays. YOU ARE FURTHER DIRECTED to bring this person before the court within 48 hours of execution of the writ for a hearing to determine the individual's present ability to pay support and, if so, whether the failure to pay such support is willful, pursuant to Rule 12.615(c)(2)(B), Florida Family Law Rules of Procedure.

NOTICE OF EXECUTION OF THIS WRIT SHALL IMMEDIATELY BE GIVEN TO THE FOLLOWING: [choose all that apply] _____ The Office of the Judge/General Magistrate/Child Support _____ Hearing _____ Officer: _____

_____ Counsel for the Department of Revenue: _____ Department of Revenue: _____ Other: _____

IT IS FURTHER ORDERED that the individual may purge this contempt and be immediately released from custody at any time by the payment of the sum of \$_____, which includes (if applicable): \$_____, unpaid support, \$_____, Sheriff's fee, \$_____, Department of Revenue costs.

The court previously found in this proceeding that the individual had the ability to pay said sum. The Sheriff, or other authorized law enforcement personnel, executing this writ or having custody of the individual is authorized to assess and collect the actual costs associated with service of this writ and transportation of the individual pursuant to Section 61.11(2)(a), Florida Statutes.

PAYMENT SHALL BE MADE to the Sheriff of _____ County, Florida and shall be in the form of cash, cashier's check, certified funds, or money order. The purge payment clearly marked with the individual's name and case number, and denoted as a purge payment shall be remitted. [choose all that apply]: _____ The Office of the Clerk of Circuit Court

for _____, County, _____
_____ The State of Florida Disbursement Unit, P.O.

Box 8500, Tallahassee, FL XXXXX-XXXX. _____ Other _____ The Sheriff's office, or other authorized law enforcement personnel's office, receiving payment shall provide the individual with a written receipt acknowledging payment.

The receipt must be carried by the individual for a period of at least 30 days as proof of payment. If the individual pays the purge and secures his/her release, the Sheriff shall immediately notify:

_____ THIS ORDER SUPERSEDES ALL PRIOR
CONFLICTING ORDERS. DONE AND ORDERED in _____ County, Florida this _____ day
of _____, 20 _____. _____ CIRCUIT JUDGE *602

Copies furnished to: _____ NOTES [1] An original and nine paper copies of all comments must be filed with the Court on or before January 31, 2011, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case.

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).