

Supreme Court of Florida

No. SC12-618

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

[July 3, 2013]

PER CURIAM.

Previously in this case, the Court adopted new form 12.996(d), Florida Addendum to Income Withholding Order. In Re: Amendments to Florida Family Law Rules of Procedure—Form 12.996(d), 94 So. 3d 558 (Fla. 2012).¹ This new form is intended to supplement a federally approved income withholding form, “Income Withholding for Support,” OMB 0970-0154, in order to comply with Florida statutory requirements that the federal form does not satisfy. Id. at 559. After adoption of the form, interested persons were permitted a comment period. Id. Two comments were filed, and the Committee filed its response.

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

Upon consideration of the comments and the Committee’s response, we amend the instructions to form 12.996(d) to provide further information to attorneys and pro se litigants to assist in filling out the federal form that form 12.996(d) is meant to accompany. Specifically, language is added to the instructions to explain the terms “Remittance Identifier” and “FIPS code”—terms that are used in the federal form—and a list of FIPS and County Codes is added.²

The comments filed in this case and the Committee’s response raise multiple issues with regard to the usage of the federal form and the Florida forms relating to income deduction, and according to the Committee’s response, in some instances, certain forms are rejected by some circuit courts. The issues with regard to the usage of the federal form and the Florida forms are beyond the scope of the Court’s consideration in this matter, which involves only the adoption of form 12.996(d). Accordingly, we refer these issues back to the Committee for further study and recommendations. We also emphasize that all forms adopted by this Court must be accepted in all Florida courts.

Form 12.996(d), Florida Addendum to Income Withholding Order, is hereby amended as reflected in the appendix to this opinion. The form is fully engrossed

2. A typographical error in the note above paragraph 17 of the form is corrected. We decline to amend paragraph 13 of the form as shown in the legislative format version of the proposed amendments attached to the Committee’s response to the comments.

and ready for use. The amended form will also be available on the Florida State Courts website at www.flcourts.org/gen_public/family/forms_rules/index.shtml. The amendments to the form shall become effective immediately upon release of this opinion.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, 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
Matthew Burns Capstraw, Chair, Longwood, Florida,

for Petitioner

APPENDIX

INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.996(d), FLORIDA ADDENDUM TO INCOME WITHHOLDING ORDER (07/13)

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...

When filling out an Income Withholding for Support form, please note the following additional instructions for that form:

1. The Remittance Identifier is the County Code for the county the case was heard in followed by the Case Number. A list of county codes is included with these instructions.
2. The FIPS code may be found on the attached list. Use the code for the County in which the case is pending.

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 Instructions for Florida Family Law Rules of Procedure Form 12.996(d), Florida Addendum to Income Withholding Order (07/13)

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.

FIPS and County Codes

<u>COUNTY</u>	<u>FIPS</u>	<u>COUNTY CODE</u>	<u>COUNTY</u>	<u>FIPS</u>	<u>COUNTY CODE</u>
ALACHUA	12001	01	LAKE	12069	35
BAKER	12003	02	LEE	12071	36
BAY	12005	03	LEON	12073	37
BRADFORD	12007	04	LEVY	12075	38
BREVARD	12009	05	LIBERTY	12077	39
BROWARD	12011	06	MADISON	12079	40
CALHOUN	12013	07	MANATEE	12081	41
CHARLOTTE	12015	08	MARION	12083	42
CITRUS	12017	09	MARTIN	12085	43
CLAY	12019	10	MONROE	12087	44
COLLIER	12021	11	NASSAU	12089	45
COLUMBIA	12023	12	OKALOOSA	12091	46
DADE	12025	13	OKEECHOBEE	12093	47
DESOTO	12027	14	ORANGE	12095	48
DIXIE	12029	15	OSCEOLA	12097	49
DUVAL	12031	16	PALM BEACH	12099	50
ESCAMBIA	12033	17	PASCO	12101	51
FLAGLER	12035	18	PINELLAS	12103	52
FRANKLIN	12037	19	POLK	12105	53
GADSDEN	12039	20	PUTNAM	12107	54
GILCHRIST	12041	21	ST. JOHNS	12109	55
GLADES	12043	22	ST. LUCIE	12111	56
GULF	12045	23	SANTA ROSA	12113	57
HAMILTON	12047	24	SARASOTA	12115	58
HARDEE	12049	25	SEMINOLE	12117	59
HENDRY	12051	26	SUMTER	12119	60
HERNANDO	12053	27	SUWANNEE	12121	61
HIGHLANDS	12055	28	TAYLOR	12123	62
HILLSBOROUGH	12057	29	UNION	12125	63
HOLMES	12059	30	VOLUSIA	12127	64
INDIAN RIVER	12061	31	WAKULLA	12129	65
JACKSON	12063	32	WALTON	12131	66
JEFFERSON	12065	33	WASHINGTON	12133	67
LAFAYETTE	12067	34			

Instructions for Florida Family Law Rules of Procedure Form 12.996(d), Florida Addendum to Income Withholding Order (07/13)

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 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 1-888-883-0743.
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).
Child 1 (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>	
Child 2 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>	
Child 3 Initials & year of birth:	<i>After the date set forth in the row above until the</i>		<i>child support for Child 3 and all other younger child(ren) should be paid in the</i>	

	<i>following date:</i>		<i>following monthly amount:</i>	
Child 4 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>	
Child 5 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 page 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.

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}* _____.