

Title 5. Family and Juvenile Rules

Rule 5.1. Title

The rules in this title may be referred to as the Local Family and Juvenile Rules.

Rule 5.1 adopted effective January 1, 2008.

Division 1. Family Rules

Chapter 1. General Provisions

Rule 5.5. Division title

The rules in this division may be referred to as the Local Family Rules.

Rule 5.5 adopted effective January 1, 2008.

Rule 5.10. Office of the Family Law Facilitator

In addition to the services and duties the family law facilitator must perform to comply with the requirements of state law, the family law facilitator will also perform the services set out in Family Code section 10005, consistent with funding restrictions and priorities for service that are periodically set by the court.

Rule 5.10 amended and renumbered effective January 1, 2008; adopted as rule 11.11 effective May 19, 1998; previously amended effective January 1, 2004.

Rule 5.15. Declaration of notice on application for emergency orders

Parties may use the *Declaration Regarding Notice of Application for Emergency Order* (Local Form ALA FL-010) to provide the required declaration regarding notice of an application for emergency orders.

Rule 5.15 amended effective January 1, 2013; adopted as rule 11.0.1 effective May 19, 1998; previously amended effective July 1, 1999, January 1, 2004, July 1, 2004, January 1, 2006, and January 1, 2007; previously amended and renumbered effective January 1, 2008; previously amended January 1, 2009.

Rule 5.17. Service of notice of initial status conference

The court will issue a notice of initial status conference upon the filing of any petition for dissolution, legal separation, or nullity, or in any parentage action. The petitioner must serve a copy of the notice of initial status conference on respondent together with the petition and summons.

Rule 5.17 adopted effective January 1, 2012.

Rule 5.20. Child visitation by a nonprofessional supervisor

In any proceeding in which a party seeks an order that child visitation be supervised by a nonprofessional supervisor, the party must provide a copy of the *Guidelines for Child Visitation Supervision (Local Form ALA FL-015-INFO)* to the proposed supervisor(s) and thereafter file an *Agreement For Child Visitation Supervision (Local Form ALA FL-015)* signed by the nonprofessional supervisor(s) before any visit occurs.

Rule 5.20 amended effective January 1, 2009; adopted effective January 1, 2008.

Rule 5.25. Requests to set settlement conferences and trial dates

(a) Request for trial

Either party may request that a trial date be set by serving and filing a *Request for Case Resolution Conference (Local Form ALA FL-050)*. Upon filing a request for trial, a case resolution conference will be calendared by the clerk.

(b) Motion to set

Either party may serve and file a notice of motion to set a settlement conference and trial date or to set a trial date without a settlement conference. Trial dates will not be set without settlement conference dates unless the court determines that the matter will proceed as an uncontested matter, or unless a settlement conference has already been conducted by the court. At the time of the hearing on the motion to set, a court may make orders concerning proceeding to trial as the court deems appropriate. The only other relief that can be requested as part of a motion to set is:

- (1) Relief that would result in the matter proceeding as a default.
- (2) Relief regarding the other party's failure to serve a preliminary disclosure declaration.

(c) Request for voluntary settlement conference

The parties may request in writing that the entire matter is ready for settlement conference and trial or that certain issues are ready for bifurcated settlement conference and trial. If the request is granted, the matter will be set and the parties notified of the date, time, and place of the voluntary settlement conference. The parties must use the *Stipulation*

and Order for Voluntary Settlement Conference (Local Form ALA FL-045)
to make their request.

Rule 5.25 amended effective January 1, 2012; adopted as rules 11.0.4 and 11.0.5 effective May 19, 1998; previously amended effective January 1, 2004; previously amended and renumbered to Rule 5.25 effective January 1, 2008.

Rule 5.30. Motions and hearings

(a) Duty to meet and confer

- (1) Before court hearing on a request for order, order to show cause, or motion

Unless the court orders another time period, no later than five days before a hearing on a request for order, order to show cause, or motion, the parties must meet and confer, in person or by telephone, to discuss all pending issues and, to the extent not previously served and filed, exchange all documents and information relevant to such issues.

- (2) Before settlement conference or trial

Unless the court orders another time period, no later than five days before a settlement conference or trial, the parties must meet and confer, in person or by telephone, to discuss all pending issues and, to the extent not previously served and filed, must exchange all documents and information relevant to such issues.

(b) Attaching order or judgment if modification is requested

In any proceeding to modify or enforce an existing order or judgment, a copy of the order or judgment must be attached to the moving papers. Any order or judgment required by this rule that is not attached to the moving papers must be attached to the responsive papers.

(c) Declaration of unresolved issues required

If a hearing on a request for order, order to show cause, or motion is continued for more than 60 days, each party must serve and file a declaration setting forth the issues that remain unresolved. Parties must use the *Summary of Contested and Resolved Issues (Local Form ALA FL-030)* for this purpose.

(d) No appearance on application for emergency orders

No personal appearance is permitted or required on presentation of an application for emergency orders, unless otherwise ordered by the court.

Rule 5.30 amended effective January 1, 2013; adopted effective January 1, 2008; previously amended January 1, 2012.

Rule 5.35. Stipulated continuance of short-cause hearing

The hearing on a motion that is set on the court's short-cause calendar may be continued by submitting a written stipulation between the parties filed with the court and stating all of the following:

- (1) The title of the motion.
- (2) The date the motion was filed.
- (3) The date and time proposed for the continued hearing.
- (4) The reasons for the requested continuance.
- (5) The agreement of the parties that any temporary order previously issued by the court at the time of the filing of such motion will remain in effect until the motion or order is decided.
- (6) The clerk of the department in which the motion is pending has confirmed the date and time proposed for the continued hearing is available for the rescheduling.
- (7) A copy of the stipulation has been served on all parties.

The signed stipulation must be received by the clerk in the department in which the motion is pending before noon on the court day prior to the date then scheduled for hearing. A stipulation submitted in conformance with this rule will be deemed approved unless the courtroom clerk notifies the parties otherwise. Any required fee must be paid to the clerk of the court before the motion is heard.

The parties must use the *Application and Order for Continuance of Hearing, Status Conference, or Case Resolution Conference (Local Form ALA FL-035)* form to submit this request.

Rule 5.35 amended effective January 1, 2012; adopted effective January 1, 2008.

Rule 5.37. Application and Order for Telephone Appearance

(a) Application

This rule applies to all family law cases, including those brought under the Domestic Violence Prevention Act, except Title IV-D child support hearings and conferences.

(b) General provision regarding telephone appearance at family law status conferences, family centered case resolution conferences, and hearings to review the dismissal of an action

Telephone appearances by a party or an attorney for a party may be authorized for appearances at family law status conferences, family centered case resolution conferences, and hearings to review the dismissal of an action.

(c) Required personal appearances

A personal appearance is required for hearings, conferences, and proceedings not listed in subsection (b), including the following:

- (1) Trials and hearings at which witnesses are expected to testify;
- (2) Settlement conferences, whether mandatory or voluntary;
- (3) Hearings on motions in limine;
- (4) Hearings on an order to show cause why sanctions should not be imposed for violation of a court order or rule, provided that the personal appearance is required only of the person to whom the order is directed;
- (5) Persons ordered to appear in any order or citation issued under the Probate Code.

(d) Court discretion to deny or grant an individual request

Notwithstanding the provisions of subsections (b) and (c) above, the court may deny or grant a request to appear by telephone if the court determines that it is appropriate to do so in an individual case.

(e) Need for personal appearance

If, at any time during a hearing, conference, or proceedings conducted while any person is appearing by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

(f) Notice by party

- (1) A party or attorney who wishes to appear by telephone at a family law proceeding must file and serve an *Application and Order for Telephone Appearance (ALA FL-037)* at least 12 court days before the date set for the proceedings.
- (2) Service of the *Application and Order for Telephone Appearance (ALA FL-037)* must be made by personal delivery, fax transmission, express mail, or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day.
- (3) If, after receiving notice from another party or attorney provided under subsection (1), a party or attorney that has not given notice also decides to request authorization to appear by telephone, that party must file and serve an *Application and Order for Telephone Appearance (ALA FL-037)* no later than noon on the court day before the conference or hearing. Service of the *Application and Order for Telephone Appearance (ALA FL-037)* must be made by personal delivery, fax transmission, express mail, or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day.

(g) Response to notice

- (1) If, after receiving notice from another party or attorney provided under subsection (1), a party or attorney that has not given notice also decides to request authorization to appear by telephone, that party must file and serve an *Application and Order for Telephone Appearance (ALA FL-037)* no later than noon on the court day before the conference or hearing. Service of the *Application and Order for Telephone Appearance (ALA FL-037)* must be made by personal delivery, fax transmission, express mail, or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day.
- (2) If, after receiving notice from another party or attorney provided under subsection (1), a party or attorney that has not given notice objects to the request, that party must file and serve an objection to the request. The objection may be filed by using pleading paper or the Judicial Council form MC-030 and must be labeled Objection to Application and Order for Telephone Appearance. Any objection must state the reasons for objecting to the requested telephone appearance. An objection must be filed and served at least seven court days before the date set for the proceedings.

(h) Provision of telephone appearance services

The provisions for telephone appearances that apply to general civil actions, including provisions concerning the method, fees to appear by telephone and collection of those fees, effect of fee waivers, audibility procedures, reporting of proceedings during which a party or attorney appears by telephone, apply to telephone appearances in family law matters.

Rule 5.37 adopted effective January 1, 2013.

Rule 5.40. Requests to continue status, case resolution, and settlement conferences and trials

Status and case resolution conferences may be continued by stipulation in the same manner as hearings, provided that the stipulation is received by the courtroom clerk in the assigned department by noon on the day before the date then scheduled for the status or case resolution conference. Settlement conferences, long-cause hearings, and trials may only be continued upon approval of the court assigned to conduct the settlement conference, long-cause hearing, or trial. The parties must use the *Joint Application and Order for Continuance of Settlement Conference, Long Cause Hearing, or Trial (Local Form ALA FL-055)* form to make this request.

Rule 5.40 amended effective January 1, 2012; adopted effective January 1, 2008.

Rule 5.45. Conduct of case resolution conferences and settlement conferences

Unless otherwise ordered by the court, the following provisions apply to all case resolution conferences and settlement conferences held in family law cases.

(a) Case resolution conferences

Four days prior to any case resolution conference, each party must serve and file a description of the current status of the matter. The parties must use the *Case Resolution Conference Questionnaire (Local Form ALA FL-041)* form for this purpose. At the case resolution conference, the court may set the matter for further case resolution conference, for settlement conference and trial, or make such other orders the judge determines are appropriate.

(b) Settlement conference (voluntary and mandatory)

At least fifteen days before any settlement conference, all attorneys and

all parties must conduct a face to face meeting to confer in good faith in an effort to settle all issues in the case. This meeting must be scheduled by counsel or self-represented parties at the time the settlement conference is set to assure that the meeting takes place in a timely manner. If a restraining order prohibits face to face contact between the parties, the parties may attend the meeting by telephone or in separate locations. At least ten days before any settlement conference, each party must provide the other party a written offer of sufficient specificity to be enforceable that, if accepted, would resolve all issues remaining in dispute; a copy of this offer must be brought to the settlement conference. At least five days before any settlement conference, each party must serve and file a settlement conference statement that must contain the information set forth below:

- (1) A summary of all contested and uncontested issues, including a brief description of the terms of any stipulations, agreements, or settlements.
- (2) A statement describing all efforts made by the parties prior to the settlement conference to settle the remaining contested issues, including a summary of the face to face settlement meeting or a detailed statement indicating why the face to face meeting did not occur.
- (3) **Statistical facts:**
 - (a) Date of marriage or registration of domestic partnership; date of separation; length of marriage or partnership in years and months.
 - (b) Names and ages of minor children.
 - (c) Ages of parties.
 - (d) Disputed issues as to statistical facts.
 - (e) All material facts upon which a party relies regarding any disputed issues as to statistical facts.
- (4) **Child custody and visitation:**
 - (a) Terms of existing custody and visitation orders and agreements.
 - (b) A detailed proposal for custody and visitation orders and all material facts in support of the proposal.

(5) Child support:

- (a) Terms of existing child support orders and agreements.
- (b) Proposal for child support orders.
- (c) All material facts in support of any special circumstances regarding income, expenses, ability to earn, or other facts relevant to child support.
- (d) A DissoMaster or other approved printout setting forth all proposed findings regarding child support.

(6) Spousal support:

- (a) Terms of existing spousal support orders.
- (b) Proposal for spousal support orders.
- (c) A full item-by-item analysis of all material facts as they relate to the factors set forth in Family Code section 4320.
- (d) A DissoMaster or other approved printout showing the tax consequences of the party's proposed spousal support order.

(7) Contested assets:

- (a) The date the asset was acquired.
- (b) The manner in which title of the asset is currently vested and, if different, was vested at time of acquisition.
- (c) The character of the asset as community, separate, or quasi-community property, or a combination thereof.
- (d) All material facts in support of the party's characterization of the asset.
- (e) The current fair market value, the nature, extent, and terms of any encumbrances against the asset, and the current net equity in the asset.
- (f) A complete statement setting forth the factual and legal basis for apportionment or reimbursement, the formula for

apportionment or reimbursement, and the calculated value of each party's community and separate interests in the asset.

(8) Debts or obligations:

- (a) A list of all debts or obligations of the parties that are claimed to be community liabilities or separate liabilities of the parties with a description of all facts and legal authority that support the claim that each such debt or obligation is community or separate.
- (b) For each such debt or obligation, the name of the creditor, the balance due on the date of separation, the current balance due, and the nature, extent, and terms of any security for the debt.
- (c) If there is a claim for reimbursement, the name of the creditor, the total amount paid on the debt, and the date and source of each payment for which reimbursement is sought.
- (d) A summary of existing orders regarding payment of debts or obligations and reimbursement thereof.

(9) Attorney's fees, expert's fees, and costs:

- (a) A summary of existing orders.
- (b) A list of all amounts paid by each party on account of the other party's attorney's fees, expert's fees, and costs, and the balance due, if any.
- (c) A list of all amounts paid by each party on account of his or her own attorney's fees, expert's fees, and costs, and the balance due, if any.

(10) Documents, schedules, summaries, appraisals, and expert reports:

- (a) Copies of all appraisals and reports of experts that will or may be offered at trial.
- (b) A list with a description and summary of the contents of all documents, schedules, and summaries that will or may be offered at trial with copies attached if relevant to any significant contested issues.

- (c) The name, business address, and telephone number of any expert witness whom a party intends to call as a trial witness, with a brief statement setting forth the substance of the expert's testimony.

(11) Other witnesses:

The name, address, and telephone number of any non-expert witness, other than the parties, whom a party intends to call as a trial witness, and a brief summary of the anticipated testimony of the witness.

(12) Points and authorities:

All points and authorities and legal argument upon which a party intends to rely must be set forth in the appropriate section of the settlement conference statement.

(13) Income and expense declaration:

A current Income and Expense Declaration on the appropriate Judicial Council form, with all required attachments, must be attached. A party may not rely on a previously filed Income and Expense Declaration.

(14) Schedule of Assets and Debts:

A current Schedule of Assets and Debts on the appropriate Judicial Council form, with all required attachments, must be attached. A party may not rely on a previously filed Schedule of Assets and Debts.

(15) Settlement proposals:

Each party must bring to the settlement conference a written offer that would settle all issues remaining in dispute. The parties may request that such written offers be held in confidence by the court.

(c) Consequences of noncompliance

In the discretion of the trial judge, the consequences of noncompliance with this rule may include imposition of any sanction or order authorized by law including, without limitation, restricting evidence, continuing the trial, excluding an exhibit, precluding the testimony of a witness, or imposing monetary sanctions.

Rule 5.45 amended effective January 1, 2012; adopted effective January 1, 2008; previously amended effective July 1, 2009.

Rule 5.50. Conduct of trials

Unless otherwise ordered, the local civil rules governing the conduct of trials will apply to any issue set for trial or for a hearing of longer than one hour.

Rule 5.50 adopted effective January 1, 2008.

Rule 5.60. Preparation of orders after hearing [Repealed]

Rule 5.60 repealed effective January 1, 2012; adopted effective January 1, 2008.

Rule 5.65. Attorney's fees and expert's fees [Repealed]

Rule 5.65 repealed effective January 1, 2012; adopted as rule 11.0.8.C effective May 19, 1998; previously amended effective July 1, 1999, January 1, 2004, July 1, 2004, January 1, 2006, and January 1, 2007; previously amended and renumbered to Rule 5.65 effective January 1, 2008.

Rule 5.70. Guideline for spousal or partner support

The following discretionary guideline is adopted for temporary spousal support or partner support in marital and domestic partnership dissolution cases.

(a) Non-child support cases

In cases where there is no child support, the guideline spousal or partner support is 40% of the net income of the payor or minus 50% of the net income of the payee.

(b) Child support cases

In cases where there is to be child support, the guideline spousal or partner support uses the components set forth in Family Code sections 4055 through 4069 in the following formula:

$$SS = [HN-(HN) (M) (K) (1+H \%)] [.35] - [LN-(LN) (M) (K) (1+H \%)] [.4]$$

(If H% is greater than 50%, use 2-H% instead of 1+H%)
(M = Fam. Code §4055(b)(4) child multiplier.)

(c) Adjustment for tax consequences

In domestic partnership cases, the court will adjust the formula to account

for tax treatment under state and federal laws if necessary.

Rule 5.70 amended and renumbered effective January 1, 2008; adopted as rule 11.2 effective May 19, 1998;

Rule 5.72. Judgments involving child custody, child support, or spousal support

A judgment for child custody, child support, or spousal support must set forth all of its terms in full including those terms required by law. Judgments for child or spousal support must include the commencement and termination dates.

Rule 5.72 adopted effective July 1, 2010.

Rule 5.75. Child custody recommending counseling

(a) Complaints regarding child custody recommending counselors

- (1) A person having a complaint regarding the professional conduct of a child custody recommending counselor may make the complaint orally or in writing with the Family Court Services Program Supervisor no later than 20 days after discovering the conduct giving rise to the complaint. The program supervisor will review the matter, confer with the child custody recommending counselor, and resolve the complaint directly with the person making the complaint.
- (2) If the person making the complaint is not satisfied with the response of the Family Court Services Program Supervisor, he or she may appeal the program supervisor's action in writing to the Bureau Chief of the Families & Children's Bureau within 30 days after receipt of the program supervisor's response. The Bureau Chief will acknowledge receipt of the appeal to the person who made the complaint in writing. The Bureau Chief may refer the complaint to an internal committee for review and recommendation or respond to the appeal without such referral. The response of the Bureau Chief on appeal will be provided to the person making the complaint in writing.
- (3) If the person making the complaint is not satisfied with the response of the Bureau Chief, he or she may appeal in writing to the Court Executive Officer within 30 days of receiving the response from the bureau chief. The action of the Court Executive Officer on the appeal will be provided to the person making the complaint in writing and will be final.

(b) Ex parte communications with child custody recommending counselors

There must be no ex parte communications between any court appointed child custody recommending counselor and any attorney or party involved in the case except as provided in Family Code section 216. No attorney or party to the action may provide the child custody recommending counselor with documents about the case without first giving the other party, and minor's counsel if any, a copy of the documents.

Rule 5.75 amended effective January 1, 2012; adopted as rules 11.3.4 and 11.4.7 effective May 19, 1998; previously amended effective January 1, 2004, July 1, 2006, and January 1, 2007; previously amended and renumbered to Rule 5.75 effective January 1, 2008.

Rule 5.80. Child custody evaluation

(a) Challenge of the evaluator

No peremptory challenge of a child custody evaluator appointed by the court is permitted.

(b) Withdrawal by evaluator

An evaluator may make application to the court for an order permitting the evaluator to withdraw from a case by noticed motion and may submit an ex parte application for an order shortening time for the service and hearing of such a motion.

(c) Complaints about evaluator performance

- (1) For purposes of this process, "action" means the family law proceeding wherein the evaluator was appointed by the court.
- (2) A party to the action, including a guardian ad litem, and any counsel appointed to represent a minor may file a complaint about the performance of an evaluator.
- (3) A party who wishes to complain about the performance of an evaluator must do so in writing and serve the original of the complaint on the evaluator no later than 20 days after the event giving rise to the complaint or within 20 days of receipt of the evaluator's report, whichever is later.
- (4) No later than ten court days after the receipt of a complaint, the evaluator must serve the complainant with a written response to the complaint. Without conceding the accuracy of the contents of

the complaint, an evaluator may ask the court to relieve him or her of the appointment and, if appropriate, appoint another evaluator.

- (5) If the response served by the evaluator does not resolve the complaint, the complainant must serve a copy of the complaint and the response of the evaluator, if any, on the presiding judge for family law matters whose decision concerning the complaint, which may include removing the evaluator from the panel of child custody evaluators used by the court, will be final.

(d) Confidentiality of reports

In any proceeding involving the custody or visitation of minor children, any written report or recommendation must be marked and kept confidential and unavailable to any person except the court, minor's counsel, the parties, their attorneys and any person to whom the court expressly grants access by written order made with prior notice to all parties. No person who has gained access to this type of a confidential report may make copies of it or disclose its contents to any child or any other third party absent an order that provides for disclosure.

(e) Ex parte communications with evaluators

There must be no ex parte communications between the court appointed child custody evaluator and any attorney or party involved in the case except as provided in Family Code section 216. No attorney or party to the action may provide the evaluator with documents about the case without first giving the other party, and minor's counsel if any, a copy of the documents. Nothing in this rule prohibits the evaluator from contacting any person the evaluator determines is necessary to consult in order to complete the report.

Rule 5.80 amended and renumbered effective January 1, 2008; adopted as rules 11.4 and 11.6 effective May 19, 1998; previously amended effective January 1, 2004, July 1, 2006, and January 1, 2007.

Rule 5.82. Complaints regarding court-appointed counsel for a child

In a family law proceeding in which the court has appointed counsel for a minor child or children, any party or counsel or minor child may present a complaint about the performance of appointed counsel. The complaint must be in writing and served on all counsel and self-represented parties, and the original complaint must be delivered to the courtroom clerk for the presiding judge of family law with a copy delivered to the courtroom clerk of the assigned bench officer in the case. The presiding judge of family law may refer the complaint to the assigned bench officer or handle the matter directly and may do any or all of the following:

- (1) Respond to the complaint;
- (2) Request a written response or written comments;
- (3) Investigate the complaint; or,
- (4) Set a hearing on the complaint.

A written response will be provided to the person presenting the complaint and all counsel and self-represented parties, with a copy sent to the assigned bench officer in the case. All material reviewed in connection with responding to the complaint shall be maintained by the court in accordance with the court's record retention policy.

Rule 5.82 adopted effective July 1, 2010.

Rule 5.85. Private mediation by stipulation

A stipulation for appointment of a private recommending mediator may be made by submission of the *Stipulation and Order Appointing Private Child Custody Recommending Mediator (Local Form ALA FL-002)*.

Rule 5.85 adopted effective January 1, 2008.

Rule 5.95. Title IV-D commissioners

All Title IV-D cases will be heard in the George E. McDonald Hall of Justice or the Hayward Hall of Justice. Cases originating in the Gale/Schenone Courthouse will be assigned to a commissioner sitting in the Hayward Hall of Justice for all purposes so long as the Department of Child Support Services is engaged in an enforcement action.

Rule 5.95 amended effective January 1, 2012; adopted as rule 11.10 effective May 19, 1998; previously amended effective January 1, 2004; previously amended and renumbered to Rule 5.95 effective January 1, 2008.

Rule 5.100. Sanctions

Any party or attorney who fails to comply with the provisions of this chapter or who fails to make a timely appearance at any hearing, conference, or trial, is subject to the imposition of sanctions against that party or attorney, including but not limited to summary determination of any contested issues in accordance with the other party's papers, the assessment of attorney's fees and costs, or the taking of appropriate calendar action.

Rule 5.100 amended and renumbered effective January 1, 2008; adopted as rule 11.7 effective May 19, 1998.