

-----Original Message-----

From: fred@hunterlawgroup.com [mailto:fred@hunterlawgroup.com]

Sent: Tuesday, November 07, 2017 4:21 PM

To: carolyn@commer.net

Cc: Kimberly Berg <Kimberly.Berg@floridarevenue.com>; Bobby York

<Bobby.York@floridarevenue.com>

Subject: User Comment From FLRules.com

FLRules.com comment:

Name: Frederick Pollack

Email: [fred@hunterlawgroup.com](mailto:fred@hunterlawgroup.com)

Title: Comment & request for revisions to proposed revisions to Rules 12E-1.030 and 12E-1.036

Comment: My name is Fred Pollack, and I am an attorney in the Tampa Bay area who regularly handles a significant number of Title IV-D cases and teaches CLEs on a regular basis on handling administrative and traditional judicial IV-D support actions. I have previously worked for the IV-D Agency in another state, I have worked as an attorney representing DOR as a Title IV-D legal service provider (1998 – 2000), and I previously served as a contract child support hearing officer.

Given that experience, my comments and requested revisions to the proposed rules (12E-1.030 and 12E-1.036) are on two issues.

FIRST - The proposed rules purport to incorporate newly proposed form CS-OA250, the Standard IV-D Parenting Time Plan form – which I do not believe I have otherwise seen published for public review and comment. As the Department has provided me with a copy of the proposed form, I understand it to “in essence” be a “cut-and-paste” of newly enacted §409.25633, Fla. Stat.

While I understand the simplicity of this method, I believe it will cause more harm than good in-so-much-as it will cause the Department’s Revenue Specialists, DOAH ALJs and judicial Child Support Hearing Officers & Judges confusion by not providing any enlightenment as to the actual agreed upon overnight time-sharing schedule, which will cause same to need to be explored at virtually every hearing even when the Standard IV-D Parenting Time Plan has been “signed off” on by both parents. This is because the form does not make clear if:

(1) the parties are agreeing that the alternating weekend timesharing pursuant to §409.25633(3)(a), Fla. Stat. concludes on Sundays at 6pm or on Monday mornings; and

(2) the parties are agreeing that the Thanksgiving timesharing pursuant to §409.25633(3)(c), Fla. Stat. flows from 6p Wed – 6p Sunday or from release from school until return to school; and

(3) the parties are agreeing that the Winter Break timesharing pursuant to §409.25633(3)(d), Fla. Stat. concludes at 6pm the night before school resumes or upon return to school; and

(4) the parties are agreeing that the Spring Break timesharing pursuant to §409.25633(3)(e), Fla. Stat., concludes at 6pm the night before school resumes or upon return to school.

If the form would instead be revised to provide a check list of those options for the parties to initial or use, there would be substantially less question as to the “number of overnights” the payor parent will be afforded, and would allow the calculation of guidelines pursuant to §61.30(11)(b), Fla. Stat. and *Dillion v. Department of Revenue*, 189 So.3d 353, 354 (Fla. 4th DCA, 2016) in cases where the overnight count crosses the “substantial” threshold of 72 vs 73 overnights per year – something clearly impacted

by if the alternating weekend timesharing is 2 vs 3 nights each time (as  $24 \times 2 = 48$  but  $24 \times 3 = 72$ , without any consideration of all of the other overnights afforded the payor under the plan). Accordingly, I would request that Form CS-OA250 be revised to provide for more easier to interpret selections so there is no confusion as to what the parties are agreeing upon and it makes it easier for Revenue Specialists, ALJs, Hearing Officers, Judges, attorneys, and the parties to calculate child support guidelines.

SECOND – I would request that 12E-1.030(6)(b) and 12E-1.036(6)(b)(2) each be revised to provide that a respondent request to opt out of the administrative support process within 20 days of receipt of the initial notice, with the calculation of same NOT dependent upon DOR physically receiving the request within 20 days of the date of the notice, rather with the same to be postmarked by the 20th day. Currently there is a conflict between the time that a party can effectively “opt out” of the process under provisions 12E-1.030(6)(a) vs. (b) from above as well as under 12E-1.036(6)(b)(1) vs. (2) from above – since a party can “OPT OUT” by “serving” DOR via mailing DOR a copy of a Petition in Circuit Court that’s postmarked on the 20th day and timely “opt out” pursuant to 12E-1.030(6)(a) or 12E-1.036(6)(b)(1) – in accordance with §409.2563(4)(o), Fla. Stat. , Fla. R.J.A. 2.516(b)(1)(c) and 2.516(b)(2) and Johnson v. State, 200 So.3d 802 (Fla. 1st DCA, 2016), whereas a simple letter requesting the DOR proceed in circuit court must actually be received by DOR on that 20th day, so it likely improperly provides parties who have the option (and financial standing or opportunity) of obtaining counsel more time to opt out than a party who cannot afford or who does not have counsel.

Applying the same bright line rule of “the request must be post marked” by the 20th day would clean up the issue and prevent disparity of treatment.

Accordingly, I ask that you please consider reviewing and amending the proposed rules to incorporate or address the above requested revisions. If you have any questions, or need any additional information from me, please do not hesitate to contact me at [fred@hunterlawgroup.com](mailto:fred@hunterlawgroup.com) or via telephone at (813) 287-2227.

Thank you, in advance for your courtesies, and consideration of my comments.

Sincerely,  
Frederick L. Pollack, Esq., FBN: 156175

**Joan Koch**

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**From:** Joan Koch  
**Sent:** Monday, November 27, 2017 1:03 PM  
**To:** Frederick Pollack (Fred@hunterlawgroup.com)  
**Subject:** Comments on proposed administrative rules on parenting plans 12E-1.030 and 12E-1.036 [unsecure]

**Dear Mr. Pollack:**

**Thank you for submitting comments on the Department of Revenue's (Department) above-referenced proposed rules. The Department will take your comments under consideration.**

**Sincerely,**

**Joan K. Koch  
Chief Counsel  
Child Support Program  
Department of Revenue  
Office of the General Counsel  
(850) 617-8608**