

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE FLORIDA  
FAMILY LAW RULES OF PROCEDURE –  
12.285, 12.902(k), 12.902(l)**

**CASE NO.:SC22-1738**

**THE FAMILY LAW RULES COMMITTEE’S RESPONSE TO  
COMMENTS**

Michael Andriano, Chair of the Family Law Rules Committee (“committee”), and Joshua E. Doyle, Executive Director of The Florida Bar, file this response to comments.

The Family Law Rules Committee (the “Committee”) respects the Associate of Florida Magistrates and Hearing Officers (“the Association”) and the Family Law Section (the “Section”) and their comments regarding SC22-1738, but the Committee disagrees with their analysis and affirms its steadfast support for the proposed changes.

Initially, the Committee wants to reiterate that the proposed changes simply provide for an elective, mutual waiver of the filing of a financial affidavit. Parties are not required to execute Form 12.902(k) (Notice of Joint Verified Waiver of Filing Financial Affidavits) and if they do, they explicitly may file their own financial affidavit or that of the other party without leave (or motion or request, etc.) at any time because a financial issue needs to be litigated, or for any or no reason at all. The proposal does not in any way obviate the exchange of fully executed financial affidavits. In fact, to the contrary, the proposal requires, as a prerequisite to waiving of filing, that both parties swear to an exchange of completed financial affidavits.

As proposed, the rule prohibits the court from compelling or requiring the filing of a financial affidavit where both parties have sworn compliance with proposed Form 12.902(k) and where there are children, sworn compliance with Form 12.902(i) (Affidavit of Income for Child Support). This proposal simply allows parties to prioritize their privacy (without running afoul of laws governing open access to court records) over the minimal risk of being otherwise unable to

establish their own financial circumstances or that of the other party in court if the same were to be necessary.

The concerns of the Association and the Section that the proposal will negatively affect modifiability of judgments requires an assumption that necessary baseline information will not be contained with a settlement agreement, final judgment, or order of modification, and, further, that both parties will lose the fully executed financial affidavits which they have sworn to maintain pursuant to Form 12.902(k). The Committee does not make that assumption on any broad level. To the extent it does consider the possibility of a self-imposed detriment, the Committee is reminded of the myriad cases that hold that it is not in the court's purview to relieve a party from a bad bargain (i.e., a mistake) that was entered into freely and knowledgably. *See generally Casto v. Casto*, 508 So. 2d 330 (Fla. 1987).

The Association and the Section also express concern about the court file missing the financial affidavit as a crucial piece of information. The proper use of a financial affidavit is as evidence in limited ways and under limited exceptions to the general prohibition on the use of hearsay. The Committee is concerned with any implication that a financial affidavit, without accompanying in-court testimony swearing to the truth and completeness of the affidavit, is or should be relied upon to establish findings in cases governed by the Family Law Rules of Procedure.

In any event, the best evidence of one's financial condition is the underlying financial records required by mandatory disclosure under Rule 12.285, and the mechanisms to ensure these disclosures (e.g., motions to compel mandatory disclosure) are available to be used by the many couples who mutually prefer to keep their *entire* financial picture out of the public record and rely on more limited financial information than the broad disclosures contemplated by the financial affidavit. It is also important to note that mandatory financial disclosures have always been kept out of the court file unless they are entered through evidence.

Finally, the Committee does not share the Association or Section's concerns regarding an increase in motions for relief from

judgment based on a fraudulent financial affidavit pursuant to Rule 12.540. As is, such a motion may be filed and given an evidentiary hearing based upon an alleged fraudulent *draft* (even if never sworn to and even if never filed in the court file). *See generally Engstrom v. Engstrom*, 258 So. 3d 507 (Mem) (Fla. 3d DCA 2018). In other words, the possibility of such motions being filed relating to unfiled financial affidavits already exists. Furthermore, the courts are well equipped and often adjudicate disputes regarding authenticity.

The Committee concedes that somebody somewhere may be adversely affected by the execution of Form 12.902(k), when they appear at a hearing without having filed a financial affidavit, for example, or that somebody may lose a financial affidavit at some point in time to their own detriment, but the tremendous benefits of permitting countless parties to maintain the privacy of their financial information vastly outweighs the speculative negative impacts of the proposal raised by the Association and the Section.

The Committee has no opposition to the stylistic changes recommended by the Association and the Section but does not believe they are necessary.

Respectfully submitted on March 21, 2023,

/s/ Michael Andriano  
Michael Andriano  
Chair; Family Law Rules  
Committee  
Career Law Clerk to the  
Honorable Keith F. White  
Sixth District Court of Appeal  
811 E. Main Street  
Lakeland, FL 33801  
(863) 274-9765 (Teams)  
[andrianom@flcourts.org](mailto:andrianom@flcourts.org)  
Florida Bar No. 127260

/s/ Joshua E. Doyle  
Joshua E. Doyle  
Executive Director  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-  
6584  
850/561-5600  
[jdoyle@flabar.org](mailto:jdoyle@flabar.org)  
Florida Bar No. 25902

**CERTIFICATE OF SERVICE**

I certify that a copy was furnished by e-mail, on March 21, 2023, to:

K. Beth Luna  
PO Box 380047  
Jacksonville, FL 32205-0547  
Office: 904-387-3334  
[blunajd@gmail.com](mailto:blunajd@gmail.com)  
Florida Bar No. 244340

Kristin R.H. Kirkner  
Kirkner Family Law Group, P.A.  
707 W Swann Ave  
Tampa, FL 33606-2729  
Office: 813-254-0156  
[kristin@kirknerfamilylaw.com](mailto:kristin@kirknerfamilylaw.com)  
Florida Bar No. 725463

Healthier L. Apicella  
Gladstone & Weissman, P.A.  
101 N Federal Hwy Ste 702  
Boca Raton, FL 33432-3969  
Office: 561-447-2274  
[hla@gwpa.com](mailto:hla@gwpa.com)  
Florida Bar No. 25524

Ralph B. Fisher  
Fisher's Law Office, PA  
575 Cypress Ln  
Lutz, FL 33548-4500  
Office: 813-949-2749  
[ralphfisher@yahoo.com](mailto:ralphfisher@yahoo.com)  
Florida Bar No. 371580

Mark F. Baseman  
Felix, Felix & Baseman  
3714 W Horatio St  
Tampa, FL 33609-3972  
Office: 813-773-5550  
Cell: 813-773-5550  
[mbaseman@felixbasemanlaw.com](mailto:mbaseman@felixbasemanlaw.com)  
Florida Bar No. 93183

Diane M. Kirigin  
Florida Association of Magistrates  
And Hearing Officers  
Fifteenth Judicial Circuit  
South County Courthouse  
200 West Atlantic Avenue  
Delray Beach, Florida 33444  
Office: [561-274-1077](tel:561-274-1077)  
[dkirigin@pbcgov.org](mailto:dkirigin@pbcgov.org)  
Florida Bar No. 441546

Keith Marshall Schenck  
General Magistrate - Fifth Judicial Circuit  
110 N Apopka Ave  
Inverness, FL 34450-4231  
Office: 352-341-7000  
[kschenck@circuit5.org](mailto:kschenck@circuit5.org)  
Florida Bar No. 745995

Robert J. Merlin  
95 Merrick Way, Ste. 420  
Coral Gables, FL 33134-5310  
305/448-1555  
[rmerlin@merlinlaw.com](mailto:rmerlin@merlinlaw.com)  
Florida Bar No. 274445