

PREPARATION OF THE FINANCIAL AFFIDAVIT

The financial affidavit prepared in connection with a dissolution of marriage case often presents difficult questions. Since the Court will rely heavily on the affidavit in awarding child support, alimony and other monetary relief, careful attention must be devoted to it. It must be signed under oath, which means the penalties for perjury will lie for any knowing false statement.

All of the figures set out in your affidavit should be based on reliable data. In order to convince the Court and opposing counsel of your income, assets, liabilities, expenses and needs, we will have to point to an established financial history to the extent possible. Cancelled checks and receipts present the best evidence of past expenses. Thus, during the pendency of the case, you should accumulate as many receipts as possible in the interest of presenting a more detailed financial affidavit.

This initial financial affidavit is used primarily for determining temporary alimony, child support, and attorney fees early in the case. This financial affidavit should reflect income and deductions as they are at present. Well before trial, another financial affidavit will be prepared reflecting the increased income taxes expected to be paid by a single person. This affidavit will address questions of income necessary to define permanent relief.

In order to arrive at income figures, look to pay stubs, tax returns, and other records for accurate information. If pay varies by season or for some other reason, determine the gross income for the past six months or year to reach a monthly average. Deductions should be averaged as well.

The affidavit seeks information on a monthly basis. Each month contains 4.3 weeks. Some bills, such as credit cards, usually are paid on a monthly basis and present no problem. Others, like food, are paid on a weekly or occasional basis. Care should be taken to multiply all weekly expenses by 4.3 in order to arrive at a monthly total.

Doubling of expenses must be avoided. For example, if clothes are purchased with a credit card, the same amounts should not be reflected under "affiant's clothing." In that case, the amount set out for your clothing should be nothing if all of those expenses are also incurred under payments to creditors.

Assets and liabilities give rise to somewhat different questions. To some extent, the affidavit requires a determination of which party is entitled to assets or liable for debts. Generally speaking, Florida Law provides that marital assets and liabilities consist of those acquired during the marriage, regardless of whether the asset or liability is titled in one party's name only. For example, a car acquired during the term of the marriage and titled in the name of the husband is a joint asset and, if some amount is owed on it, a joint liability as well. Thus, the affidavit should reflect the fair market value of the car divided equally between husband and wife while any debt owed on it should be allocated the same way

Please note any asset or liability which was acquired before the marriage or under circumstances which suggest to you that it is not joint. We should discuss these assets and liabilities in detail to insure that the financial affidavit correctly reflects our legal position.

Please complete a rough draft of the affidavit in pencil. Take as much time as necessary to complete an accurate and detailed financial affidavit. Discuss it with your CPA. This is a very important *document* in your divorce. We must be accurate and complete in its preparation. If you have any questions, we should discuss them before the affidavit is prepared in its final form.