

## **RULE 12.285. MANDATORY DISCLOSURE**

### **(a) Application.**

- (1) Scope.** This rule applies to all proceedings within the scope of these rules except proceedings involving adoption, simplified dissolution, enforcement, contempt, injunctions for protection against domestic, repeat, dating, or sexual violence, or stalking, and uncontested dissolutions when the respondent is served by publication and does not file an answer. Additionally, no financial affidavit or other documents shall be required under this rule from a party seeking attorneys' fees, suit money, or costs, if the basis for the request is solely under section 57.105, Florida Statutes, or any successor statute. Except for the provisions as to financial affidavits and child support guidelines worksheets, any portion of this rule may be modified by order of the court or agreement of the parties.
- (2) Original and Duplicate Copies.** Unless otherwise agreed by the parties or ordered by the court, copies of documents required under this rule may be produced in lieu of originals. Originals, when available, must be produced for inspection upon request. Parties shall not be required to serve duplicates of documents previously served.
- (3) Documents Not to be Filed with Court; Sanctions.**

  - (A) Except for the financial affidavit and child support guidelines worksheet, no documents produced under this rule shall be filed in the court file without first obtaining a court order.
  - (B) References to account numbers and personal identifying information to be filed in the court file are governed by Florida Rule of Judicial Administration 2.425.
  - (C) Sanctions are governed by rule 12.380.

### **(b) Time for Production of Documents.**

- (1) Temporary Financial Relief Hearings.** Any document required under this rule in any temporary financial relief proceeding, whether an initial proceeding or supplemental proceeding, must be served on the other party for inspection and copying as follows.

  - (A) Any party seeking relief must serve the required documents on the other party at least ten days prior to the temporary financial hearing, unless the documents have already been served under subdivision (b)(2).
  - (B) The responding party, if not otherwise seeking relief, must serve the required documents on the party seeking relief at least five days prior to the temporary financial hearing, unless the documents have already been served under subdivision (b)(2) of this rule.

**(2) Initial and Supplemental Proceedings.** Any document required under this rule for any initial or supplemental proceeding must be served on the other party for inspection and copying within 45 days of service of the initial pleading on the respondent.

**(c) Exemption from Requirement to File and Serve Financial Affidavit.** The parties are not required to file and serve a financial affidavit under subdivisions (d) and (e) if they are seeking a simplified dissolution of marriage under rule 12.105, they have no minor children, have no support issues, and have filed a written settlement agreement disposing of all financial issues, or if the court lacks jurisdiction to determine any financial issues.

**(d) Disclosure Requirements for Temporary Financial Relief.** In any proceeding for temporary financial relief heard within 45 days of the service of the initial pleading or within any extension of the time for complying with mandatory disclosure granted by the court or agreed to by the parties, the following documents must be served on the other party:

(1) A financial affidavit in substantial conformity with Florida Family Law Rules of Procedure Form 12.902(b) if the party's gross annual income is less than \$50,000, or Florida Family Law Rules of Procedure Form 12.902(c) if the party's gross annual income is equal to or more than \$50,000. This requirement cannot be waived by the parties. The affidavit must also be filed with the court.

(2) All complete federal and state personal income tax returns, gift tax returns, and foreign tax returns filed by the party or on the party's behalf for the past 3 years, including all attachments, including Forms W-2, 1099, K-1, and all accompanying schedules and worksheets comprising the entire tax return. A party may file a transcript of the tax return as provided by Internal Revenue Service Form 4506 T in lieu of his or her individual federal income tax return for purposes of a temporary hearing.

(3) IRS forms W-2, 1099, and K-1 for the past year, if the income tax return for that year has not been prepared. If income tax returns have not been filed for any of the prior 2 years beyond the past year, then IRS forms W-2, 1099, and K-1 for those prior 2 years as well.

(4) Pay stubs or other evidence of earned income for the 6 months before compliance with these disclosure requirements for temporary financial relief.

**(e) Parties' Disclosure Requirements for Initial or Supplemental Proceedings.** A party must serve the following documents in any proceeding for an initial or supplemental request for permanent financial relief, including, but not limited to, a request for child support, alimony, equitable distribution of assets or debts, or attorneys' fees, suit money, or costs:

- (1) A financial affidavit in substantial conformity with Florida Family Law Rules of Procedure Form 12.902(b) if the party's gross annual income is less than \$50,000, or Florida Family Law Rules of Procedure Form 12.902(c) if the party's gross annual income is equal to or more than \$50,000, which requirement cannot be waived by the parties. The financial affidavits must also be filed with the court. A party may request, by using the Standard Family Law Interrogatories, or the court on its own motion may order, a party whose gross annual income is less than \$50,000 to complete Florida Family Law Rules of Procedure Form 12.902(c). All documents supporting the income, assets, and liabilities figures entered into the financial affidavit must also be produced.
- (2) All complete federal and state personal income tax returns, gift tax returns, and foreign tax returns filed by the party or on the party's behalf for the past 3 years, including all attachments, including Forms W-2, 1099, K-1, and all accompany schedules and worksheets comprising the entire tax return. A party may file a transcript of the tax return as provided by Internal Revenue Service Form 4506T in lieu of his or her individual federal income tax return for purposes of a temporary hearing.
- (3) IRS forms W-2, 1099, and K-1 for the past year, if the income tax return for that year has not been prepared. If income tax returns have not been filed for any of the prior 2 years beyond the past year, then IRS forms W-2, 1099, and K-1 for those prior 2 years as well.
- (4) Pay stubs or other evidence of earned income for the 6 months before compliance with these disclosure requirements for initial or supplemental proceedings.
- (5) A statement by the producing party identifying the amount and source of all income received from any source during the 6 months preceding the compliance with these disclosure requirements for initial or supplemental proceedings if not reflected on the pay stubs produced.
- (6) All loan applications, financial statements, credit reports, or any other form of financial disclosure, including financial aid forms, prepared or used within the 24 months preceding compliance with these disclosure requirements for initial or supplemental proceedings, whether for the purpose of obtaining or attempting to obtain credit or for any other purpose.
- (7) All deeds evidencing any ownership interest in property held at any time during the last 3 years, all promissory notes or other documents evidencing money owed to either party at any time within the last 24 months, and all leases, whether held in the party's name individually, in the party's name jointly with any other person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf wherein either the party:

(A) is receiving or has received payments at any time within the last 3 years for leased real or personal property, or

(B) owns or owned an interest.

- (8) All periodic statements from the last 12 months for all checking accounts, and for all other accounts (for example, savings accounts, money market funds, certificates of deposit, etc.), regardless of whether or not the account has been closed, including those held in the party's name individually, in the party's name jointly with any other person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf. For all accounts that have check-writing privileges, copies of canceled checks and registers, whether written or electronically maintained, shall also be produced, so that the payee and purpose of each individual instrument can be ascertained.
- (9) All brokerage account statements in which either party to this action held within the last 12 months or holds an interest including those held in the party's name individually, in the party's name jointly with any person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf. For all accounts that have check-writing privileges, copies of canceled checks and registers, whether written or electronically maintained, shall also be produced, so that the payee and purpose of each individual instrument can be ascertained.
- (10) The most recent statement and statements for the past 12 months for any profit sharing, retirement, deferred compensation, or pension plan (for example, IRA, 401(k), 403(b), SEP, KEOGH, or other similar account) in which the party is a participant or an alternate payee receiving payments and the summary plan description for any retirement, profit sharing, or pension plan in which the party is a participant or an alternate payee receiving payments. (The summary plan description must be furnished to the party on request by the plan administrator as required by 29 U.S.C. § 1024(b)(4).)
- (11) The most recent statement and statements for the past 12 months for any virtual currency transactions in which either party to this action participated within the last 12 months or holds an interest, including those held in the party's name individually, in the party's name jointly with any person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf. Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. A listing of all current holdings of virtual currency shall also be disclosed.
- (12) The declarations page, the last periodic statement, statements for the past 12 months, and the certificate for all life insurance policies insuring the party's life or the life of the party's spouse, whether group insurance or otherwise, and all current health

and dental insurance cards covering either of the parties and/or their dependent children.

(13) Corporate, partnership, and trust tax returns for the last 3 tax years if the party has an ownership or interest in a corporation, partnership, or trust.

(14) All promissory notes evidencing a party's indebtedness for the last 24 months, whether since paid or not, all credit card and charge account statements and other records showing the party's indebtedness as of the date of the filing of this action and for the last 24 months preceding compliance with these disclosure requirements, and all present lease agreements, whether owed in the party's name individually, in the party's name jointly with any other person or entity, in the party's name as trustee or guardian for a party or a minor or adult dependent child of both parties, or in someone else's name on the party's behalf.

(15) All written premarital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage, and all affidavits and declarations of non-paternity or judgments of disestablishment of paternity for any minor or dependent children born or conceived during the marriage. Additionally, in any modification proceeding, each party must serve on the opposing party all written agreements entered into between them at any time since the order to be modified was entered.

(16) All documents supporting the producing party's claim that an asset or liability is nonmarital, for enhancement or appreciation of nonmarital property, or for an unequal distribution of marital property. The documents produced must be for the time period from the date of acquisition of the asset or debt to the date of production or from the date of the marriage, if based on premarital acquisition.

(17) Any court orders directing a party to pay or receive spousal or child support.

**(f) Duty to Supplement Disclosure; Amended Financial Affidavit.**

(1) Parties have a continuing duty to supplement documents described in this rule, including financial affidavits, whenever a material change in their financial status occurs.

(2) If an amended financial affidavit or an amendment to a financial affidavit is filed, the amending party must also serve any subsequently discovered or acquired documents supporting the amendments to the financial affidavit.

**(g) Sanctions.** Any document to be produced under this rule that is not served on the opposing party within the time periods set forth in subdivision (b)(1), as applicable, before a nonfinal hearing or in violation of the court's pretrial order shall not be admissible in evidence at that hearing unless the court finds good cause for the delay. In addition, the court may impose other sanctions authorized by rule 12.380 as may be

equitable under the circumstances. The court may also impose sanctions upon the offending lawyer in lieu of imposing sanctions on a party.

- (h) Extensions of Time for Complying with Mandatory Disclosure.** By agreement of the parties, the time for complying with mandatory disclosure may be extended. Either party may also file, before the due date, a motion to enlarge the time for complying with mandatory disclosure. The court must grant the request for good cause shown.
- (i) Objections to Mandatory Automatic Disclosure.** Objections to the mandatory automatic disclosure required by this rule shall be served in writing at least 5 days before the due date for the disclosure or the objections shall be deemed waived. The filing of a timely objection, with a notice of hearing on the objection, automatically stays mandatory disclosure for those matters within the scope of the objection. For good cause shown, the court may extend the time for the filing of an objection or permit the filing of an otherwise untimely objection. The court must impose sanctions for the filing of meritless or frivolous objections.
- (j) Certificate of Compliance.** All parties subject to automatic mandatory disclosure must file with the court a certificate of compliance, Florida Family Law Rules of Procedure Form 12.932, identifying with particularity the documents which have been delivered and certifying the date of service of the financial affidavit and documents by that party. The party must swear or affirm under oath that the disclosure is complete, accurate, and in compliance with this rule, unless the party indicates otherwise, with specificity, in the certificate of compliance.
- (k) Child Support Guidelines Worksheet.** If the case involves child support, the parties must file with the court at or before a hearing to establish or modify child support a Child Support Guidelines Worksheet in substantial conformity with Florida Family Law Rules of Procedure Form 12.902(e). This requirement cannot be waived by the parties.
- (l) Place of Production.**
- (1) Unless otherwise agreed by the parties or ordered by the court, all production required by this rule takes place in the county where the action is pending and in the office of the attorney for the party receiving production. Unless otherwise agreed by the parties or ordered by the court, if a party does not have an attorney or if the attorney does not have an office in the county where the action is pending, production takes place in the county where the action is pending at a place designated in writing by the party receiving production, served at least 5 days before the due date for production.
  - (2) If venue is contested, on motion by a party the court must designate the place where production will occur pending determination of the venue issue.
- (m) Failure of Defaulted Party to Comply.** Nothing in this rule shall be deemed to preclude the entry of a final judgment when a party in default has failed to comply with this rule.

### **Commentary**

**1995 Adoption.** This rule creates a procedure for automatic financial disclosure in family law cases. By requiring production at an early stage in the proceedings, it is hoped that the expense of litigation will be minimized. See *Dralus v. Dralus*, 627 So.2d 505 (Fla. 2d DCA 1993); *Wrona v. Wrona*, 592 So.2d 694 (Fla. 2d DCA 1991); and *Katz v. Katz*, 505 So.2d 25 (Fla. 4th DCA 1987). A limited number of requirements have been placed upon parties making and spending less than \$50,000 annually unless otherwise ordered by the court. In cases where the income or expenses of a party are equal to or exceed \$50,000 annually, the requirements are much greater. Except for the provisions as to financial affidavits, other than as set forth in subdivision (k), any portion of this rule may be modified by agreement of the parties or by order of the court. For instance, upon the request of any party or on the court's own motion, the court may order that the parties to the proceeding comply with some or all of the automatic mandatory disclosure provisions of this rule even though the parties do not meet the income requirements set forth in subdivision (d). Additionally, the court may, on the motion of a party or on its own motion, limit the disclosure requirements in this rule should it find good cause for doing so.

### **Committee Notes**

**1997 Amendment.** Except for the form of financial affidavit used, mandatory disclosure is made the same for all parties subject to the rule, regardless of income. The amount of information required to be disclosed is increased for parties in the under-\$50,000 category and decreased for parties in the \$50,000-or-over category. The standard family law interrogatories are no longer mandatory, and their answers are designed to be supplemental and not duplicative of information contained in the financial affidavits.

**1998 Amendment.** If one party has not provided necessary financial information for the other party to complete a child support guidelines worksheet, a good faith estimate should be made.

**2005 Amendment.** The requirement that a party certify compliance with mandatory disclosure is intended to facilitate full disclosure and prevent a party from alleging that he or she did not know he or she had to provide documents required by this rule. This certification does not relieve the party of the duty to supplement disclosure.

**2012 Amendment.** Subdivision (b)(1)(B) is amended to provide for e-mail service in accordance with Florida Rule of Judicial Administration 2.516.