

It Is Time To Make Financial Affidavits And Other Documents Private In Family Matters

The following article was written by Robert J. Merlin and published in the [Winter Edition of the Florida Bar Magazine](#).

In most dissolution of marriage and paternity matters, financial affidavits and many other documents are automatically filed with the court, thereby making them subject to public scrutiny. The time has come to further limit the documents that become part of the public record in family matters, because the public disclosure of many documents serves no public purpose, but does expose the family, especially children, to unnecessary risks. Given the huge problems with identity theft and abuse of children, the risk of harm to parties and their children far outweighs the benefit of public disclosure of private information.

Rule 12.285 of the Florida Family Law Rules of Procedure requires the filing of a Certificate of Compliance with Mandatory Disclosure, but the rule does not require the actual filing of any documents other than financial affidavits and child support guideline worksheets. Rule 12.285(e)(1) specifically requires the filing of the financial affidavit. However, Rule 12.285 does not apply to simplified dissolution actions, so financial affidavits are not required to be filed in those actions. Rule 12.285(a)(1) prohibits a court or the parties from modifying the rule with respect to financial affidavits and child support guidelines worksheets. There is no good reason why financial affidavits and other documents related to a dissolution of marriage or paternity action should be required to be filed with the court in certain circumstances but not in others.

There is a long-standing philosophy in the United States that court proceedings should be open to the public, and especially open to the press. An excellent discussion of that common law principle can be found in *Barron v. Florida Freedom Newspapers*, 531 So.2d 113 (Fla. 1988). It should be a given that an open judicial system is critical to preserve our form of democracy. But even in the seminal *Barron* decision, the Court recognized that there are circumstances under which court proceedings should not be open to the public. Most appellate decisions that address the issue of public access to courts refer to "court proceedings," meaning hearings and trials, e.g., *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17, 100 S.Ct. 2814, 2829 n. 17 (1980), but in *Barron*, the Florida Supreme Court made specific reference to proceedings or records. *Barron* at 118.

Our existing statutes refer to certain proceedings being closed to the public, such as adoptions (Florida Statutes §63.022(4)(i) and 63.162); paternity matters (Florida Statutes 742.031, at the discretion of the judge); and juvenile proceedings (Florida Statutes §39.00145). Florida Statutes §119.071 identifies certain public records that are exempt from disclosure. That statute specifically recognizes the risk of disclosing Social Security numbers and states, "The Legislature recognizes that the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual." Florida Statutes §119.071(5)(b). Thus, Social Security numbers are to be kept confidential. It is time for attorneys and judges, as advocates for the well-being of the public, to make more private information confidential in the dissolution of marriage and paternity cases that we handle. The Florida Legislature has the power to deem certain information to be exempt from public disclosure. The Florida Supreme Court also has the power to deem certain court records to be exempt

from public access. Rule 2.420 of the Florida Rules of Judicial Administration sets forth the process for keeping certain information confidential. That rule should be expanded to protect financial affidavits and marital settlement agreements from public disclosure.

The comment to Rule 12.000 of the Florida Family Law Rules of Procedure recognizes that family law cases are different from other civil matters. We have our own family law rules of procedure for that reason. Justice Rosemarie Barkett recognized in her specially concurring opinion in *Barron* that dissolution matters are entitled to special considerations. "By their very nature, dissolution cases always involve significant privacy rights. Thus, the privacy interests in those cases must be given greater consideration than, perhaps, in other kinds of civil litigation." *Barron* at 120. And Justice Parker Lee McDonald stated in his dissenting opinion that, "In my opinion, the rights of the public to information contained in a domestic relations lawsuit is minimal, if existent at all." *Barron* at 121.

At the very least, financial affidavits should be automatically treated as confidential, as other confidential information is treated in Rule 2.420 of the Florida Rules of Judicial Administration. There is no public interest in having an individual's financial affidavit open to public scrutiny. Just as the rest of the documents that are exchanged with a Certificate of Compliance with Mandatory Disclosure are not filed with the court, the parties' financial affidavits should not be automatically filed with the court either. As long as the financial affidavits are exchanged between the parties, they will be available for temporary relief hearings, trials and post-judgment modification and enforcement hearings as needed, rather than automatically being part of the public record.

Similarly, there is no good reason for marital settlement agreements to be required to be filed with the court. If the parties agree that they do not want their agreement to be filed with the court, they should not be required to make the agreement part of the public record. Parties should have the right to restrict what information is made public about their private lives. If either party needs to enforce, modify or interpret a marital settlement agreement, the document can be filed at that time. As Justice Barkett wrote in her specially concurring opinion in *Barron*, "[T]here may be grave danger that the litigants' personal rights or those of third parties will be harmed by scandalmongering, the sole effect of which is to undermine reputation, privacy or justice." *Barron* at 120. Many marital settlement agreements incorporate parenting plans in which details of where a child goes to school and the child's extra-curricular activities are disclosed. Under no circumstance should such information be made available to the public, thereby exposing the child to unnecessary risks. Similarly, marital settlement agreements often refer to specific bank, investment and retirement accounts and other assets. A party who is dissolving a marriage or is involved in a paternity matter should not have to pay the penalty of having personal financial information made public, thereby exposing the party to nefarious conduct by others who would take advantage of the mere public disclosure of such information.

When I was Chair of The Florida Bar Family Law Rules Committee in 2017, we created a sub-committee to look at all aspects of the financial affidavits that we use in our family matters. That sub-committee is capably chaired by Cory Brandfon, Esquire, from Miami. The sub-committee created a survey that has been distributed to judges, magistrates and attorneys throughout Florida. One of the subjects that is addressed in the survey is whether financial affidavits should be exempt from public records disclosure. Once the sub-committee completes its work, it will make recommendations to the Family Law Rules Committee. If the Family Law Rules Committee believes that financial affidavits should be exempt from public disclosure or that the financial affidavit forms should be changed, the amended rules and forms

would be presented to the Florida Supreme Court for consideration. At that time, the proposed amendments would be open for public comments.

I hope that the Family Law Section and the individual attorneys who practice family law in Florida will support an amendment to the existing Florida Family Law Rules of Procedure to no longer require that financial affidavits be filed with the court and an amendment to the Florida Rules of Judicial Procedure to exempt financial affidavits and marital settlement agreements from disclosure if they are filed with the court.