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IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA FAMILY LAW RULE 12.901(a) **CASE NO.:SC17-**

OUT-OF-CYCLE REPORT OF THE FAMILY LAW RULES COMMITTEE

The Honorable Laurel Lee, Chair of the Family Law Rules Committee ("Committee"), and John F. Harkness, Jr., Executive Director of The Florida Bar, respectfully file this Out-of-Cycle Report of the Family Law Rules Committee under Florida Rule of Judicial Administration 2.140(f). The amendments to the form 12.901 have been approved by the full Committee by a vote of 19-1-0 and, as required by Rule 2.140(b)(3), approved by the Executive Committee of The Florida Bar Board of Governors by vote of 13-0-0.

The proposed amendments to Form 12.901(a) are found in Appendix A (full-page format). In order to preserve the unique formatting required for the footers of the Family Law Forms, the Committee has placed the page numbering for Appendix B in the upper right corner of the Appendix. Pursuant to *In re: Guidelines for Rules Submission*, No. AOSC06-14 (Fla. 2016), no two-column appendix is provided as amendments are to a form. The amendments are filed in response to the Court's direction and pursuant to Florida Rule of Judicial Administration 2.140(f) were not published as it is not required and due to time limitations. (*See* Appendix B correspondence from the Court.)

The Committee respectfully submits this form for this Court's Consideration for the following reasons and in the following ways:

FORM 12.901(a) PETITION FOR SIMPLIFIED DISSOLUTION OF MARRIAGE

On January 4, 2017, the Court requested that the Committee review whether notarization was required in certain family law forms. The Judicial Management Council (JMC) identified an issue with completion of forms 12.901(a), Petition for Simplified Dissolution of Marriage, and 12.901(b)(3), Petition for dissolution of marriage with no dependent children on the cloud based software tool for greater

access to justice for prose litigants as a part of the Do It Yourself Florida (DIY) initiative. The deadline for this report is June 30, 2017.

The Family Law Rules Committee conducted research analyzing the relevant Florida and Federal statutes and drafted an amendment to Form 12.901(a). The Committee supports the elimination of the notarization requirement in family law forms but does not support eliminating the notarization requirements in forms that effectuate a transfer of property. For instance, the Committee recommends Form 12.902(f)(3), Marital Settlement Agreement for Simplified Dissolution of Marriage, should continue to be notarized. Form 12.901(b)(3) is a Florida Supreme Court approved form not a rule of procedure form and is, thus, outside of the purview of this Committee. The Committee has forwarded the Court's letter to the appropriate contact regarding Form 12.901(b)(3).

The Committee believes that the notarization of pleadings is not required by statute, that §92.525(1)(c) and (2), Florida Statutes, expressly provide for verification of documents by written declaration without need of such notarization, and there is no other prohibition against same in the family law rules. Persons who knowingly make a false statement, including in a family law pleading, affidavit or other document, when the document is signed with such a written declaration are guilty of perjury whether or not the document is signed in front of a notary. The Committee supports the amendments to 12.901(a) as it will simplify and streamline the filing of pleadings for pro se litigants and increase access to legal services for low income individuals.

The proposed amendment to this form and instructions are specifically to delete the notarization requirement of the parties and to add new affirmation statements in accordance with §92.525(2), Florida Statutes, that read: "Under penalties of perjury, which can include fines and/or imprisonment, I declare that I have read this document and that the facts stated in it are true.". The form and instructions are also amended to comply with Rule 12.100(c) regarding the caption and to clarify obtaining a court date and filing the family law cover sheet.

WHEREFORE, the undersigned respectfully requests that the Court amend the Florida Family Law Rules of Procedure as outlined in this Out-of-Cycle Report of the Family Law Rules Committee.

Respectfully submitted on June 29, 2017.

/s/ Honorable Laurel Moore Lee
Honorable Laurel Moore Lee, Chair
Family Law Rules Committee
Thirteenth Judicial Circuit
800 E. Twiggs St.
Tampa, FL 33602
813/272-6137
eastcirdivr@fljud13.org
Florida Bar No. 177581

/s/ John F. Harkness, Jr.
John F. Harkness, Jr., Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
850/561-5758
jharkness@flabar.org
Florida Bar No. 123390

CERTIFICATE OF COMPLIANCE

I certify that these rules and forms have been read against Thomson Reuters' Online Westlaw as the Thomson Reuters' *Florida Rules of Court, Vol. I — State* (2017 edition) does not contain Form 12.901(a).

I certify that this document meets the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Mikalla Andies Davis
Mikalla Andies Davis, Staff Liaison
Family Law Rules Committee
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
850/561-5663
mdavis@flabar.org
Florida Bar No. 100529

INSTRUCTIONS FOR FLORIDA FAMILY LAW RULES OF PROCEDURE FORM 12.901(a), PETITION FOR SIMPLIFIED DISSOLUTION OF MARRIAGE ~~(01/15)~~ ~~(--/--)~~

When should this form be used?

This form should be used when a husband and wife are filing for a simplified **dissolution of marriage**. You and/or your **spouse** must have lived in Florida for at least 6 months before filing for a dissolution in Florida. You may file a simplified dissolution of marriage in Florida if **all** of the following are true:

- You and your spouse agree that the marriage cannot be saved.
- You and your spouse have no minor or dependent child(ren) together, the wife does not have any minor or dependent children born during the marriage, and the wife is not now pregnant.
- You and your spouse have worked out how the two of you will divide the things that you both own (your **assets**) and who will pay what part of the money you both owe (your **liabilities**), and you are both satisfied with this division.
- You are not seeking support (**alimony**) from your spouse, and vice versa.
- You are willing to give up your right to **trial** and **appeal**.
- You and your spouse are both willing to go into the clerk's office to sign the petition (not necessarily together).
- You and your spouse are both willing to go to the **final hearing** (at the same time).

If you do not meet the criteria above, you must file a regular **petition** for dissolution of marriage.

This petition should be typed or printed in black ink. Each of you must sign the petition~~ in the presence of a deputy clerk (in the clerk's office), although you do not have to go into the clerk's office at the same time. You will need to provide picture identification (valid driver's license or official identification card) for the clerk to witness your signatures~~.

What should I do next?

1. After completing this form, you should **file** ~~the original~~ it with the **clerk of the circuit court** in the county where you live and keep a copy for your records.

   You may document your agreement by signing a **Marital Settlement Agreement,** Florida Family Law Rules of Procedure Form 12.902(f)(3) and filing it with the **clerk of the circuit court** or you may agree that all of your assets (what you own) and liabilities (what you owe) have been disposed of by oral agreement.

2. You must prove to the court that the husband **and/or** wife has (have) lived in Florida for more than 6 months before filing the petition for dissolution of marriage. Residence can be proved by:

- a valid Florida driver's license, Florida identification card, or voter registration card issued to one of you at least 6 months prior to filing for dissolution of marriage; or
- the testimony of another person who knows that either you or your spouse has resided in Florida for more than 6 months and is available to testify in court; or
- an **affidavit**. To prove residence by affidavit, use an **Affidavit of Corroborating Witness**, Florida Supreme Court Approved Family Law Form 12.902(i). This form must be signed by a person who knows that either you or your spouse has lived in Florida for more than 6 months before the date that you filed the petition for dissolution of marriage. This affidavit may be signed in the presence of the clerk of the court or in the presence of a **notary public**, who must affix his or her seal at the proper place on the affidavit.

3. You must pay the appropriate **filing fees** to the clerk of the circuit court. If you and your spouse cannot afford to pay the filing fees, you may fill out an **Application for Determination of Civil Indigent Status**, and file it with your petition for dissolution of marriage. You may obtain this form from the clerk and he or she will determine whether you are eligible to have filing fees waived.

4. ~~Either you or the clerk of court~~You will need to complete a **Family Court Cover Sheet**, Florida Family Law Rules of Procedure Form 12.928. The clerk's office can provide this form.

5. ~~You must~~Depending on your jurisdiction, you may either obtain a date and time for a court appearance from the clerk of court, or a date and time will be provided to you by the court. On that date, **you and your spouse must appear together before a judge**. ~~You should~~ Depending on your jurisdiction, you will either complete a **Final Judgment of Simplified Dissolution of Marriage**, Florida Family Law Rules of Procedure Form 12.990(a), and bring it with you to the hearing, or the judge will prepare it at the hearing. At that time, if all of the papers are in order, the judge may grant a final judgment dissolving your marriage under simplified dissolution of marriage procedures by signing the final judgment ~~which you have provided~~.

6. If you fail to complete this procedure, the court may dismiss the case to clear its records.

Where can I look for more information?

Before proceeding, you should read "General Information for Self-Represented Litigants" found at the beginning of these forms. The words that are in **"bold underline"** in these instructions are defined there. For further information, see chapter 61, Florida Statutes, and Rule 12.105, Florida Family Law Rules of Procedure.

Special notes…

Remember, a person who is NOT an attorney is called a nonlawyer. If a nonlawyer helps you fill out these forms, that person must give you a copy of a **Disclosure from Nonlawyer**, Florida Family Law Rules of Procedure Form 12.900(a), before he or she helps you. A nonlawyer helping you fill out these forms also **must** put his or her name, address, and telephone number on the bottom of the last page of every form he or she helps you complete.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No.: _____
Division: _____

In re the Marriage of:

_____,
Husband,
and
_____,
Wife.

PETITION FOR SIMPLIFIED DISSOLUTION OF MARRIAGE

We, *{full legal name}*_____, Husband, and *{full legal name}* _____, Wife, being sworn, certify that the following information is true:
[fill in **all** blanks]

1. We are both asking the Court for a dissolution of our marriage.
2. Husband lives in *{name}* _____ County, *{state}* _____, and has lived there since *{date}* _____. Wife lives in *{name}* _____ County, *{state}* _____, and has lived there since *{date}* _____.
3. We were married to each other on *{date}*_____ in the city of *{city}* _____ in state of *{state}* _____, or country of *{country}* _____.
4. Our marriage is irretrievably broken.
5. We do not have any minor or dependent children together, the wife does not have any minor or dependent children born during the marriage, and the wife is not pregnant.
6. We have divided our assets (what we own) and our liabilities (what we owe) by agreement. We are satisfied with this agreement.

   *{Check **one** only}*

   ( ) Our marital settlement agreement, Florida Family Law Rules of Procedure Form 12.902(f)(3), is attached. This agreement was signed freely and voluntarily by each of us and we intend to be bound by it.

( ) Our marital settlement agreement is not in writing. We prefer to keep our financial agreements private.

7. *{Check **one** only}* ( ) yes ( ) no Wife wants to be known by her former name, which was *{full legal name}*_____.
8. We each certify that we have not been threatened or pressured into signing this petition. We each understand that the result of signing this petition may be a final judgment ending our marriage and allowing no further relief.
9. We each understand that **we both must come to the hearing** to testify about the things we are asking for in this petition.
10. We understand that we each may have legal rights as a result of our marriage and that by signing this petition we may be giving up those rights.
11. We ask the Court to end our marriage and approve our marital settlement agreement.

~~**I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this petition and that the punishment for knowingly making a false statement includes fines and/or imprisonment.**~~

Under penalties of perjury, which can include fines and/or imprisonment, I declare that I have read this document and that the facts stated in it are true.

Dated: _____

_____
Signature of HUSBAND
Printed Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Fax Number: _____
E-mail Address(es):_____

~~STATE OF FLORIDA~~
~~COUNTY OF _____~~

~~Sworn to or affirmed and signed before me on _____by _____.~~

_____

_____
~~NOTARY PUBLIC or DEPUTY CLERK~~

~~[*Print, type, or stamp commissioned name of notary or deputy clerk.*]~~

~~____ Personally known~~
~~____ Produced identification~~
~~____ Type of identification produced~~

~~**I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this petition and that the punishment for knowingly making a false statement includes fines and/or imprisonment.**~~

Under penalties of perjury, which can include fines and/or imprisonment, I declare that I have read this document and that the facts stated in it are true.

Dated: _____

_____
Signature of WIFE
Printed Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Fax Number: _____
E-mail Address(es):_____

~~STATE OF FLORIDA~~
~~COUNTY OF~~

~~Sworn to or affirmed and signed before me on _____by _____.~~

_____

~~NOTARY PUBLIC or DEPUTY CLERK~~

~~[*Print, type, or stamp commissioned name of notary or deputy clerk.*]~~

~~____ Personally known~~
~~____ Produced identification~~
~~____ Type of identification produced~~

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM, HE/SHE MUST FILL IN THE BLANKS BELOW: [fill in **all** blanks]

This form was prepared for: [choose ~~only~~**one or both**] ( ) Husband ( ) Wife

This form was completed with the assistance of:

{name of individual} _____

{name of business} _____

{address} _____

{city} _____, *{state}*_____, *{telephone number}*_____.

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

JORGE LABARGA
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
PEGGY A. QUINCE
CHARLES T. CANADY
RICKY POLSTON
C. ALAN LAWSON
JUSTICES

JOHN A. TOMASINO
CLERK OF COURT

SILVESTER DAWSON
MARSHAL

January 4, 2017

Mr. William J. Schifino, Jr., President
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

The Honorable Laurel Moore Lee, Chair
Family Law Rules Committee
Hillsborough County Courthouse
301 N. Michigan Avenue
Plant City, Florida 33563-3429

Dear Mr. Schifino and Judge Lee:

I have been instructed by the Florida Supreme Court to request that the Family Law Rules Committee consider an issue relating to notarization of certain family law forms.

As you may know, the Judicial Management Council (JMC) has been working to implement a Do It Yourself Florida (DIY) initiative with the objective of assisting self-represented litigants with the filing of certain pleadings. DIY interactive interviews are currently being programmed using A2J[1] software with a hope of future

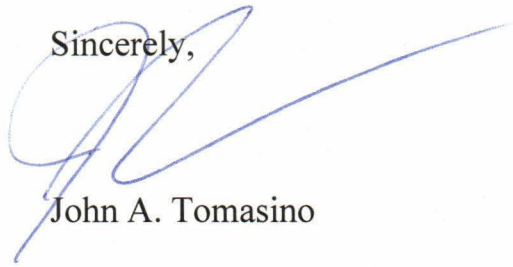
[1] Access to Justice Author (A2J Author) is a cloud based software tool that delivers greater access to justice for self-represented litigants by enabling non-technical authors from the courts, clerk's offices, legal services organizations, and law schools to rapidly build and implement user friendly web-based interfaces for document assembly. See www.a2jauthor.org.

use and the ability to integrate and file through the statewide e-filing portal operated by the Florida Court Clerks and Comptrollers (FCCC).

During its review of interviews pertaining to simplified dissolution of marriage (Family Law Form 12.901(a)) and dissolution of marriage without minor or dependent children or property (Family Law Form 12.901(b)(3)), the JMC identified an issue with the online completion of the interview process and resultant forms where notarization is required by rule or statute. Currently, in order to comply with the notarization requirement, a self-represented litigant must print the pertinent form to be notarized, exit the DIY interview, seek the services of a notary public, and upload the notarized document into the e-filing portal.

Because the notary process requires a user to exit the DIY interview session, it presents an impediment to self-represented litigants, which must be weighed against any benefit or protection afforded by the notarization requirement. Therefore, the Court requests that the Family Law Rules Committee review the notarization requirements contained in the Family Law Rules of Procedure along with relevant statutes to determine whether notarization of filings continues to be a necessity. The committee's findings and proposals for amendments to rule or statute, if any, should be filed with the Clerk of Court on or before June 30, 2017 in accordance with Florida Rule of Judicial Administration 2.140(f).

Sincerely,



John A. Tomasino

JAT:aqj

cc: The Honorable Barbara J. Pariente, Liaison, Family Law Rules Committee
Mr. Jack Harkness, Jr., Executive Director, The Florida Bar
Ms. Krys Godwin, Bar Staff Liaison, Family Law Rules Committee
Ms. Deborah J. Meyer, Director of Central Staff