

BREAKING UP IS HARD TO DO:

Everything you need to know about
Bankruptcy and Family Law

Presented by:
Ian M. Falcone
Shayna Steinfeld
Ladonya Horton
January 28, 2019



Department of Human Services
Division of Child Support Services



We're not in Kansas anymore

- Divorce is very different from bankruptcy
- Different Issues
 - Equity
- Different Forms
 - DRFA
 - Child Support Worksheet
 - Settlement Agreement
 - Orders



Domestic Relations Financial Affidavit

In the Superior Court of _____ County, Georgia

_____, Plaintiff)
 vs. _____)
 _____, Defendant)

Civil Action No. _____

DOMESTIC RELATIONS FINANCIAL AFFIDAVIT

1. AFFIANT'S NAME: _____ Age _____
 Spouse's Name: _____ Age _____
 Date of Marriage: _____ Date of Separation: _____

Names and birth dates of children for whom support is to be provided:

Name	Date of Birth
_____	_____
_____	_____

Names and birth dates of affiant's other children:

Name	Date of Birth
_____	_____
_____	_____

2. SUMMARY OF AFFIANT'S INCOME AND NEEDS

(a) Gross monthly income (from item 3A) \$ _____
 (b) Net monthly income (from item 3B) \$ _____
 (c) Average monthly expenses (item 5A) \$ _____
 Monthly payments to creditors \$ _____
 Total monthly expenses and payments to creditors (item 5C) \$ _____

3. A. AFFIANT'S GROSS MONTHLY INCOME (complete this section or attach Child Support Schedule A)
 (All income must be entered based on monthly average regardless of date of receipt.)

Salary or Wages \$ _____
 ATTACH COPIES OF 2 MOST RECENT WAGE STATEMENTS

Commissions, Fees, Tips \$ _____

Income from self-employment, partnership, close corporations, and independent contracts (gross receipts minus ordinary and necessary expenses required to produce income)
 ATTACH SHEET ITEMIZING YOUR CALCULATIONS \$ _____

Rental Income (gross receipts minus ordinary and necessary expenses required to produce income)
 ATTACH SHEET ITEMIZING YOUR CALCULATIONS \$ _____

Bonuses \$ _____

Overtime Payments \$ _____

Severance Pay \$ _____

Recurring Income from Pensions or Retirement Plans \$ _____

Interest and Dividends \$ _____

Trust Income \$ _____

Income from Annuities \$ _____

Capital Gains \$ _____

Social Security Disability or Retirement Benefits \$ _____

Workers' Compensation Benefits \$ _____

Unemployment Benefits \$ _____

Judgments from Personal Injury or Other Civil Cases \$ _____

Gifts (cash or other gifts that can be converted to cash) \$ _____

Prizes/Lottery Winnings \$ _____

Alimony and maintenance from persons not in this case \$ _____

Assets which are used for support of family \$ _____

Fringe Benefits (if significantly reduce living expenses) \$ _____

Any other income (do NOT include means-tested Public assistance, such as TANF or food stamps) \$ _____

GROSS MONTHLY INCOME \$ _____

B. Affiant's Net Monthly Income from employment (deducting only state and federal taxes and FICA) \$ _____

Affiant's pay period (i.e., weekly, monthly, etc.) _____

Number of exemptions claimed _____

4. ASSETS
 (If you claim or agree that all or part of an asset is non-marital, indicate under the appropriate spouse's column and state the amount and the inheritance, source of funds, etc.)

Description	Value	Separate Asset of the Husband	Spouse's Asset
Cash	\$ _____	_____	_____
Stocks, bonds	\$ _____	_____	_____
CD's/Money Market Accounts	\$ _____	_____	_____
Bank Accounts (list each account):	\$ _____	_____	_____
Retirement Pensions, 401K, IRA, or Profit Sharing	\$ _____	_____	_____
Money owed you:	\$ _____	_____	_____

Tax Refund owed you: \$ _____

Real Estate:
 home: \$ _____
 debt owed: \$ _____
 other: \$ _____
 debt owed: \$ _____

Automobiles/Vehicles:
 Vehicle 1: \$ _____
 debt owed: \$ _____
 Vehicle 2: \$ _____
 debt owed: \$ _____

Life Insurance (net cash value): \$ _____

Furniture/furnishings: \$ _____

Jewelry: \$ _____

Collectibles: \$ _____

Other Assets: \$ _____
 \$ _____
 \$ _____
 \$ _____

Total Assets: \$ _____

5. A. AVERAGE MONTHLY EXPENSES

HOUSEHOLD

Mortgage or rent payments \$ _____
 Property taxes \$ _____
 Homeowner/Renter Insurance \$ _____
 Electricity \$ _____
 Water \$ _____
 Garbage and Sewer \$ _____
 Telephone: residential line: \$ _____
 cellular telephone: \$ _____
 Gas \$ _____
 Repairs and maintenance \$ _____
 Lawn Care \$ _____

Child Support Worksheet

CHILD SUPPORT WORKSHEET

IN THE COURT OF COUNTY STATE OF GEORGIA

Parent: CHD Action Case No. _____
 IV-D Case No. _____

Defendant: Initial Action
 Modification
 Date of Initial Child Support Order: _____

Children for Whom Support is Being Determined in This Case

Name	Birth Date	Name	Birth Date
<input type="checkbox"/>		<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	

Total Number of Children: _____

Noncustodial Parent: Mother Father

Submitted by: _____ Nonparent Custodian: Mother Father

Monthly Gross Income (from Schedule A, Line 22): \$ _____

Monthly Adjusted Income: \$ _____

2. Father's parent pays self-employment tax or pays child support under a pre-existing order or is entitled to a credit for other qualified children living in the home, complete Schedule B and enter amount from Schedule B, Line 9 or Line 10 here: \$ _____

3. *Of course, enter amount from Line 1 here: \$ _____

4. *If you are the parent, you may enter amount from Line 2 above (divide each parent's income by the combined income to find %).

5. Basic Child Support Obligation (from Table): \$ _____

6. *Pre- or co-payment of Basic Child Support Obligation (Autopay Line 4) by parent(s) on Line 5: \$ _____

7. *Adjustment for Work Related Child Care and Health Insurance Expenses (from Schedule D and enter amount from Schedule D, Line 8 here): \$ _____

8. *If you are the parent, you may enter amount here: \$ _____

9. *Add Lines 5, 6, 7, and 8 and enter results here: \$ _____

10. *Adjustment for Additional Expenses Paid. Insert amounts PRD by each parent for child care & children's insurance from Schedule G, Line 3, Columns (a) and (b): \$ _____

11. *If you are the parent, you may enter amount here: \$ _____

12. *If Line 9 is zero, carry over amount from Line 7. *Of course, subtract Line 8 from Line 7.

The amount on Line 9 is the Presumptive Child Support Amount.

CHILD SUPPORT SCHEDULE A GROSS INCOME

TAIF (Temporary Assistance for Needy Families)	(a) Mother	(b) Father	(c)
1. If a parent includes TAIF, please check the box and enter any amounts for Gross Income below that apply.	<input type="checkbox"/>	<input type="checkbox"/>	
Gross Income (Report all amounts in monthly amount)			
1. Salary and Wages (Do not include TAIF or imputed income items. Enter Imputed Income on Line 22 below)	\$	\$	\$
2. Commissions, Fees, Tips	\$	\$	\$
3. Income from Self-Employment	\$	\$	\$
4. Business	\$	\$	\$
5. Dividend Payments	\$	\$	\$
6. Severance Pay	\$	\$	\$
7. Recurring Income from Pensions or Retirement Plans	\$	\$	\$
8. Interest Income	\$	\$	\$
9. Income from Dividends	\$	\$	\$
10. Trust Income	\$	\$	\$
11. Income from Annuities	\$	\$	\$
12. Capital Gains	\$	\$	\$
13. Social Security Disability or Retirement Benefits (Do not include SSD or payments for children)	\$	\$	\$
14. Worker's Compensation Benefits	\$	\$	\$
15. Unemployment Benefits	\$	\$	\$
16. Judgments from Personal Injury or Other Civil Cases	\$	\$	\$
17. Gifts (cash or other gifts that can be converted to cash)	\$	\$	\$
18. Pensions/Lifetime Windings	\$	\$	\$
19. Alimony & Maintenance from persons not in this case	\$	\$	\$
20. Assets which are used for support of family	\$	\$	\$
21. Fringe Benefits (if significantly reduce living expenses). Any Other Income including Imputed Income (Do not include means tested public assistance, such as TAIF or Food Stamps.)	\$	\$	\$
22. _____	\$	\$	\$
TOTAL GROSS MONTHLY INCOME	\$	\$	\$
23. Enter this amount on Line 1 of the Child Support Worksheet.	\$	\$	\$

Name of Parties: vs.

Submitted by: _____ Today's Date: _____

Case #: _____

CHILD SUPPORT SCHEDULE D ADDITIONAL EXPENSES

	(a) Mother	(b) Father	(c) Nonparent Custodian	(d) Combined
1. Child Care Expenses Necessary for Parent's Employment, Education or Medical Training (Enter monthly amount including transportation and dependent care expenses for other care for the month report in using parent's net of dependent care expenses from the IRS Form 2449, and the amount of the dependent care credit from Form 2441.)	\$	\$	\$	\$
2. Health Insurance Premiums Paid for the Children (Enter monthly amount paid for each child's health, dental, vision, or dependent care insurance (including health care dependent on the parent's health insurance premium) for the month of payment. Include the total amount of premium for the month of payment. Do not include the amount of premium for the month of payment if the parent is not the primary or secondary obligor for the month of payment.)	\$	\$	\$	\$
3. Travel Working Additional Expenses (Line 1 + Line 2)	\$	\$	\$	\$
4. The Raw Works of Personal Expenses (From Child Support Worksheet, Line 2)	\$	\$	\$	\$
5. The Raw Works of Additional Expenses (From Child Support Worksheet, Line 2)	\$	\$	\$	\$
6. The Raw Works of Additional Expenses (From Child Support Worksheet, Line 2)	\$	\$	\$	\$

Child Care Paid by Mother

1. Total monthly amount paid for child care during entire year	\$	\$	\$	\$
2. Total monthly amount paid for child care during summer break	\$	\$	\$	\$
3. Total monthly amount paid for child care during other school breaks	\$	\$	\$	\$
4. Total monthly amount of other child care (e.g. pre-school age child or child with disability)	\$	\$	\$	\$
5. Total Monthly Income	\$	\$	\$	\$
6. Monthly Average (Child Care Line 6 by 12)	\$	\$	\$	\$

Child Care Paid by Father

1. Total monthly amount paid for child care during entire year	\$	\$	\$	\$
2. Total monthly amount paid for child care during summer break	\$	\$	\$	\$
3. Total monthly amount paid for child care during other school breaks	\$	\$	\$	\$
4. Total monthly amount of other child care (e.g. pre-school age child or child with disability)	\$	\$	\$	\$
5. Total Monthly Income	\$	\$	\$	\$
6. Monthly Average (Child Care Line 12 by 12)	\$	\$	\$	\$

Child Care Paid by Nonparent Custodian

1. Total monthly amount paid for child care during entire year	\$	\$	\$	\$
2. Total monthly amount paid for child care during summer break	\$	\$	\$	\$
3. Total monthly amount paid for child care during other school breaks	\$	\$	\$	\$
4. Total monthly amount of other child care (e.g. pre-school age child or child with disability)	\$	\$	\$	\$
5. Total Monthly Income	\$	\$	\$	\$
6. Monthly Average (Child Care Line 18 by 12)	\$	\$	\$	\$

CHILD SUPPORT SCHEDULE E Deductions (Deduction Exclusions)

	(a) Mother	(b) Father	(c) Nonparent Custodian	(d) Combined
1. Age Deduction (Enter reduced amount from Form 1041, Column (d) for each child.)	\$	\$	\$	\$
2. Student Deduction (Enter reduced amount from Form 1041, Column (d) for each child.)	\$	\$	\$	\$
3. Other Deductions (Enter reduced amount from Form 1041, Column (d) for each child.)	\$	\$	\$	\$
4. Total Deductions	\$	\$	\$	\$
5. Total Monthly Income	\$	\$	\$	\$
6. Monthly Average (Total Deductions Line 4 by 12)	\$	\$	\$	\$

Family Law Basics

- Child Support
 - Blended Income
 - Formulaic
- Alimony
 - Equity and Needs
- Property Division
 - Equitable Division



The Automatic Stay

- When does it apply?
 - Automatic
 - Semi-Automatic
- What does it stop?
 - Commencement or continuation . . .
- Exceptions



Exceptions

- Collection of DSOs
- Establishment or Modification of an Order for domestic support obligations
- Assets that are not property of the estate

**THERE IS NO
EXCEPTION TO THE
RULE THAT EVERY
RULE HAS AN
EXCEPTION.**



James Thurber
American Author
1894 - 1961

QUOTEHD.COM



Department of Human Services
Division of Child Support Services

DCSS is a state agency that can establish and enforce court ordered child support. If alimony has been ordered for the *support and maintenance* of a former spouse, the agency will also enforce those provisions so long as the non-custodial parent has an obligation to support the minor child.

O.C.G.A. § 19-11-1 through § 19-11-39



ADDITIONAL EXCEPTIONS TO THE AUTOMATIC STAY:

- COMPLAINTS FOR PATERNITY AND CHILD SUPPORT
- SUBMITTING INCOME DEDUCTION ORDERS
- SUSPENSION OF STATE LICENSES
- REPORTING DELINQUENCY TO CREDIT BUREAUS
- INTERCEPTING STATE AND FEDERAL TAX REFUNDS
- ENFORCING OBLIGATION TO PROVIDE MEDICAL INSURANCE

11 USC 362 (b)



EXCEPTIONS TO THE EXCEPTIONS

Although certain actions may not violate the automatic stay, they can violate a confirmed plan. If the debtor's confirmed plan does not specifically state that DCSS can take the allowed actions in 11 USC § 362(b), the agency can be prohibited from taking the action after the plan is confirmed.

In re Rodriguez 367 Fed Appx 25, 27 (2010)



Eleventh Circuit Chimes in

The Eleventh Circuit allowed DOR to collect the DSO but did not allow plan interference In *Florida Dept. of Revenue v. Davis (In re Davis)*, 481 Fed. Appx. 492 (11th Cir. 2012)

In *Florida Dept. of Revenue v. Diaz (In re Diaz)*, 647 F.3d 1073 (11th Cir. 2011) the 11th Circuit noted that only the Superior Court can modify a DSO and held that confirmed that the plan could not discharge a DSO, allowing post-confirmation collection.

“Discharge injunction prohibits collection only with respect to dischargeable debts and does not apply to nondischargeable debts.” *United States v. White*, 466 F3d 1241, 1246 (11th Cir. 2006)

DEBTORS

If the child support obligation is over 36 months old, the agency will file a review and modification.

If bankruptcy is filed in good faith, agency will cooperate so that debtor can continue to support the children

Confirm debtor is in compliance with the DSO

CREDITORS

Receive notices

Locate employers and submit Income Deduction Orders

Review the bankruptcy plan and negotiate with debtor's attorney for treatment of child support/alimony claims in the child's best interest

File proofs of claim, motions for relief, motions to dismiss and objections to confirmation when necessary

Confirm debtor is NOT in compliance with the DSO

Dischargeability

- Domestic Support Obligations
 - NEVER dischargeable
- Property Division/Other
 - Discharged in a completed Chapter 13 case only



Labels? We don't need no stinkin' labels!

- Labels are not determinative
- Intent
- Factors
 - Length of payments
 - Tax treatment
 - Need for support
 - Disparate Incomes



Examples

- DSOs
 - Attorney Fees to Opposing Counsel
 - Guardian Ad Litem Fees
 - Education Expenses
- Intent
- Factors
 - Length of payments
 - Tax treatment
 - Need for support
 - Disparate Incomes



DETAILS CAN HELP OR HURT YOU

EXAMPLE 1

Intended as Alimony

Husband shall pay Wife the sum of \$25,000 in monthly installments of \$1000

Alimony

Due to the income disparity of the parties and their relative financial positions, the following is awarded as alimony: Husband shall pay Wife \$25,000 in monthly installments of \$1000

EXAMPLE 2

“Wife shall agree to pay \$60,000 in installments to Husband as enumerated in Exhibit C, which is attached and by reference made a part of the agreement. It is the intent of the parties that this shall be regarded as periodic payments for debt initially incurred by Wife and transferred to accounts held by Husband. These loan repayments shall not be dischargeable in bankruptcy and shall not be terminated by the death or remarriage of the Plaintiff”

The “Preference Problem”

- Equitable division can equal a preference
- Preference ≠ Fraud
- Surface determination
- “Reasonably Equivalent Value”
- Cases that are tried rarely get reviewed.



Joint Representation: An Ethics Dilemma?

- Does the Chapter matter?
- Midstream changes
- Means Test concerns

Rule 1.7: Conflicts of Interest

- A lawyer shall NOT represent . . .
- “Significant Risk”
- “Materially and Adversely Affect”
- Informed Consent – IN WRITING
 - Consultation
 - Written explanation of risks
 - Opportunity to consult with independent counsel

Details

- DRFA
- Child Support Worksheet
- Past Pleadings
- Ex-spouse



Contact Information

Ian M. Falcone
THE FALCONE LAW FIRM, P.C.
363 Lawrence Street
Marietta, GA 30060
(770) 426-9359
imf@falcofirm.com
www.falcofirm.com

Shayna Steinfeld
Steinfeld & Steinfeld, P.C.
31 Lenox Pointe, NE
Atlanta, GA 30324
(404) 495-0740
shayna@steinfeldlaw.com
www.steinfeldlaw.com

Ladonya Horton
Law Office of Ladonya M. Horton
P.O. Box 370063
Decatur, GA 30037
(678) 480-9656
lmhortonesq@hotmail.com