**THE FLORIDA SUPREME COURT**

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CASE NO. SC06-93

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DENISE C. SHARON,
Petitioner,

vs.

C. WILLIAM SHARON,
Respondent.

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On Appeal from the Second District Court of Appeal
State of Florida

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# PETITIONER'S BRIEF ON JURISDICTION

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## STATEMENT OF THE CASE AND FACTS

In August of 2002, the trial court entered a final judgment dissolving the marriage between Ms. Sharon and Mr. Sharon. (Appendix, p. 2). The final judgment of dissolution included a provision reserving jurisdiction to award attorneys' fees, costs and expenses to either party. (Id.). The final judgment also included a provision stating:

> At the final hearing, the parties stipulated that entitlement and amount of any contribution to attorneys' fees, costs and litigation expenses would be determined at a subsequent hearing.

(Id. at p. 3).

By notice dated September 18, 2002, Ms. Sharon's counsel noticed for hearing the trial court's reservation of jurisdiction on the issue of attorney's fees and costs at trial. (Id. at p. 2, fn. 4). In May of 2003, the trial court awarded attorneys' fees and costs to Ms. Sharon. (Id. at p. 2). Mr. Sharon appealed that award and the Second District Court of Appeal reversed.

## THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL

The Second District held that the trial court erred in awarding fees and costs to Ms. Sharon because she failed to file a motion for attorneys' fees and costs pursuant to Florida Rule of Civil Procedure 1.525. (Appendix, pp. 1-2). The Second District held that the trial court erred because Rule 1.525 requires a separate written motion for attorneys' fees to be filed within thirty (30) days of

the entry of the judgment and Ms. Sharon never filed a motion for attorneys' fees, relying instead on her notice of hearing on the issue and on the provision reserving jurisdiction and the stipulation of the parties contained within the final judgment of dissolution. (Id. at p. 3). The Court noted that during the pendency of the appeal, the Florida Supreme Court adopted Family Law Rule of Procedure 12.525 that expressly precludes the application of Rule 1.525 in proceedings governed by the Family Law Rules. (Id.). The Second District further noted, however, that it previously had determined that the new rule would not apply retroactively. (Id.).

The Second District opinion at issue expressly recognizes conflict with decisions of other districts. The Court notes that its determination that Rule 1.525 required a separate written motion for attorneys' fees to be filed within thirty (30) days of the entry of judgment conflicts with Fisher v. John Carter & Associates, Inc., 864 So. 2d 493 (Fla. 4th DCA 2004). In rejecting the notion that Family Law Rule of Procedure 12.525 should apply retroactively, the court notes conflict with Smith v. Smith, 902 So. 2d 859, 863 (Fla. 1st DCA 2005) in which the Court concluded that Rule 12.525, as a procedural change in the law, applied to pending appeals.

Ms. Sharon timely moved for rehearing, rehearing en banc and certification, but that motion was denied. Ms. Sharon timely filed a notice seeking to invoke the discretionary jurisdiction of this Court.

## SUMMARY OF ARGUMENT

The Second District opinion below conflicts with decisions from other districts regarding whether Family Law Rule 12.525 should be retroactively applied and whether a stipulation and reservation of jurisdiction in a final judgment are sufficient to satisfy Rule 1.525. These issues embody fundamental remedial and procedural rights of the parties that should be uniform throughout the state. A litigant's ability to obtain fees should not depend on the district in which a matter is pending. Moreover, the uniform retroactive application of Rule 12.525 would serve the purposes for which that rule was created, recognizing the inherent differences between family law and general civil litigation matters.

## ARGUMENT

### I. The decision below conflicts with an opinion from the First District Court of Appeal regarding whether Family Law Rule of Procedure 12.525 should be retroactively applied.

The Second District opinion below is in direct conflict with Smith v. Smith, 902 So. 2d 859, 863 (Fla. 1st DCA 2005) in which the First District held that Rule 12.525 applies retroactively because it is a remedial rule, "designed to give effect to the special nature of family law, as distinct from general civil litigation." Id. at

864. As the First District noted, finding Rule 12.525 to have only prospective effect cannot be reconciled with the long standing and well "settled principle of law that procedural or remedial changes in the law are applicable to pending cases, including cases pending on appeal from a lower court." Id. at 863.

Ms. Sharon respectfully submits that this Court should accept jurisdiction to resolve this conflict because there likely are hundreds or possibly thousands of cases throughout Florida that would have been pending either post-judgment or on appeal when Rule 12.525 was adopted and in which this well could be a dispositive issue. The First and Second District's analyses are diametrically opposed and cannot be reconciled absent a ruling of this Court.

## II. The decision below conflicts with decisions of other district courts of appeal regarding whether the reservation of jurisdiction in a final judgment automatically extends the time to file a motion or excuses such filing.

The Second District opinion below is in direct conflict with Saia Motor Freight Line, Inc. v. Reid, 888 So. 2d 102 (Fla. 3d DCA 2004) and Fisher v. John Carter & Associates, Inc., 864 So. 2d 493 (Fla. 4th DCA 2004), in which the Third and Fourth District Courts held that a reservation of jurisdiction to award fees automatically extends the time for filing a fee motion under Rule 1.525. Indeed, the Second District Court of Appeal certified conflict with those decisions in two separate Second District cases. See Nicoletti v. Nicoletti, 902 So. 2d 215 (Fla. 2d DCA 2005); Molloy v. Flood, 884 So. 2d 256 (Fla. 2d DCA 2004).

As the Second District opinion reflects, there was no dispute below that the parties expressly stipulated and agreed to have entitlement and amount of contribution to attorneys' fees determined at a subsequent hearing and that Ms. Sharon subsequently noticed that hearing. It is further undisputed that the final judgment expressly reserved jurisdiction to award attorneys' fees, costs and litigation expenses to either party. The Third and Fourth District Courts of Appeal have found similar circumstances sufficient to satisfy or extend the requirements of Rule 1.525. In the instant case, however, the Second District opinion found such circumstances insufficient to support a fee award.

Ms. Sharon respectfully submits that this Court should accept jurisdiction to resolve this conflict between the districts. First, there may be many family law cases involving similar circumstances arising prior to the adoption of Rule 12.525. If Rule 12.525 is not applied retroactively, this conflict may be outcome determinative to those cases.

Second, Rule 1.525 continues to apply to non-family law cases. The districts should be uniform in their interpretation and application of this rule so that a litigant's rights do not depend on in which district the case is filed.

Finally, this issue calls for resolution in favor of the Third and Fourth Districts' interpretation as a matter of fundamental fairness and justice. Under that interpretation, parties are bound by their stipulations and trial courts are

allowed to manage their trials without fear that these agreements will be defeated by a technical argument raised long after the agreements first were made.

## CONCLUSION

The decision below expressly and directly conflicts with decisions from other district courts of appeal regarding the retroactive application of Family Law Rule 12.525 and regarding circumstances sufficient to satisfy or extend the requirements of Rule 1.525. This Court has discretionary jurisdiction to review this matter pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) and Article V, § 3 of the Florida Constitution.

Ms. Sharon submits that this Court should exercise its discretionary jurisdiction in this case to resolve the difference of opinion among districts regarding whether Rule 12.525 should apply retroactively as a remedial rule applicable to pending cases because this is an issue that is likely to be repeated among the many cases pending on appeal when Rule 12.525 was adopted. It is fundamentally unfair to a litigant to have his or her right to retroactive application of a remedial rule turn on the district in which the case is pending. Ms. Sharon respectfully submits that Rule 12.525 should be given retroactive application for all cases pending at the time of its adoption.

Ms. Sharon also submits that this Court should exercise its discretionary jurisdiction in this case to resolve the conflicts among the district courts of appeal

regarding whether a reservation of jurisdiction and a stipulation among the parties is sufficient to preserve the right to seek fees without strict compliance with Rule 1.525. Ms. Sharon respectfully submits that this Court should determine that parties who have stipulated to a subsequent determination of the issue and who secure a final judgment with an express reservation of jurisdiction should not be permitted to escape responsibility for attorneys' fees based on the timing requirements of Rule 1.525.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PETITIONER'S BRIEF ON JURISDICTION** and a copy of the **APPENDIX TO PETITIONER'S BRIEF ON JURISDICTION** have been furnished by U.S. Mail to:

Virginia R. Vetter, Esq.
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and

Richard G. Pippinger, Esq.
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on January 26, 2006.

_____
Attorney

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

_____
Attorney