

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC08-2358

IN RE: AMENDMENTS TO
FLORIDA FAMILY LAW RULES
OF PROCEDURE—FORMS 12.995(a),
12.995(b), and 12.995(c).

**DIANE M. MATOUSEK, CLERK OF THE CIRCUIT COURT IN AND FOR
VOLUSIA COUNTY, FLORIDA’S, COMMENTS TO AMENDMENTS TO
FLORIDA FAMILY LAW RULES OF PROCEDURE, FORM 12.995(a)
INCOME DEDUCTION ORDER**

COMES NOW, Diane M. Matousek, Clerk of the Circuit Court, in and for Volusia County, Florida (hereinafter “the Clerk”), by and through undersigned counsel, and submits these comments to the proposed amendments to Florida Family Law Rules of Procedure Form 12.995(a) Income Deduction Order:

The Clerk appreciates this opportunity to comment on the proposed amendments to the Florida Family Law Rules of Procedure Form regarding Income Deduction Orders.

As currently written, the proposed form suggests that the statutory per-payment depository fee will not be assessed on payments made under the income deduction order until the amount of any support arrears owed in the case is fully paid. This is a mistake in the arrangement of the form, or an incorrect interpretation of the statutes.

According to Florida Statutes, § 61.181(2)(a), the depository fee shall be assessed and collected on each support payment received, for the depository's administration, management and maintenance of such case. In fact, subsection (3)(a) of Section 61.181, states that, “[n]onpayment of the required fee shall be considered a delinquency[.]” The section goes on to provide that if the total amount of fees and costs due but unpaid accumulates in excess of \$50.00, the statutory judgment by operation of law process is triggered pursuant to Florida Statutes, § 61.14(6)(a).

The Clerk is concerned that the Committee is misinterpreting Florida Statutes, § 61.14(6)(a)1., which states that once accumulated unpaid fees have become a judgment by operation of law, no deduction for the delinquent fees shall be made from support payments received until any support arrearages have been paid. However, this prohibition pertains to the deduction of delinquent fees from a support payment and in no way implies that the fee shouldn't be assessed at all until any arrearages in a case are paid in full.

Unfortunately, as currently written, the Committee's Form 12.995(a) Income Deduction Order, will likely cause those completing the form and employers subject to the Order to believe that no statutory fee should accompany the support payments. This is in direct conflict with the statutes, and would cause the State Disbursement Unit and the local Clerk of Court child support depositories great financial harm.

Accordingly, the Clerk respectfully requests that the Form Income Deduction Order be amended as follows or similarly to achieve the same effect (changes indicated by underlining):

INCOME DEDUCTION ORDER (Non-Title IV-D Case)

Same.

2. You shall deduct:

\$_____ per _____ for child support
\$_____ per _____ for permanent alimony
\$_____ per _____ for rehabilitative alimony
\$_____ per _____ for arrears totaling \$_____
\$_____ per payment (4% / maximum \$5.25) for
State of Florida Disbursement Unit Fee

The deduction for arrears shall be no less than 20% of the current support obligation. In addition to support payments, the Payor shall deduct from the Obligor's income the depository fee as provided by Florida Statute § 61.181 (4% per payment or \$5.25 maximum per payment).

After the full amount of any arrears is paid, you shall deduct for attorneys' fees and costs owed until the full amount is paid.

\$_____ per _____ for attorneys' fees and costs totaling \$_____

\$_____ Total amount of income to be deducted each pay period

Same.

The Clerk hopes that these comments prove to be helpful to the Committee as it finalizes the form Income Deduction Order to be set forth in the Family Law Rules. The Clerk would be glad to answer any further questions regarding this matter.

Respectfully Submitted,

/s/ Laura E. Roth
LAURA E. ROTH
Attorney for Diane M. Matousek,
Clerk of the Circuit Court
Volusia County Courthouse
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DeLand, FL 32724
(386) 736-5904
Fla. Bar No.: 798401

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to the below listed parties on this 24th day of February, 2009:

Robyn L. Vines
200 E. Broward Blvd., 15th Floor
Fort Lauderdale, FL 33301-1963

/s/ Laura E. Roth
LAURA E. ROTH
Attorney for Diane M. Matousek,
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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in Diane M. Matousek, Clerk of the Circuit Court in an for Volusia County's, Comments to Amendments to Florida Family Law Rules of Procedure—Form 12.995(a) Income Deduction Order, was prepared in MS Word using 14-point Times New Roman font.

/s/ Laura E. Roth
LAURA E. ROTH
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REQUEST FOR ORAL ARGUMENT

COMES NOW, the Honorable Diane M. Matousek, Clerk of the Circuit Court in and for Volusia County, Florida, through undersigned counsel, respectfully requesting to participate in any oral argument that may be scheduled in the above referenced case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by U.S. mail to: Robyn L. Vines, 200 E. Broward Blvd., 15th Floor, Fort Lauderdale, FL 33301-1963, on this 24th day of February, 2009.

/s/ Laura E. Roth
LAURA E. ROTH
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