

SUPREME COURT OF ARKANSAS

In re Supreme Court Committee on Child Support—Affidavit of Financial Means

2016 Ark. 315 (2016) · Decided September 15, 2016

SUMMARY

The Supreme Court of Arkansas adopted a revised seven-page Affidavit of Financial Means for use in family-support matters. The affidavit, incorporating a requirement that litigants and their attorneys initial each page, was made effective October 10, 2016.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	September 15, 2016
DISPOSITION	approved
PROCEDURAL POSTURE	The Supreme Court Committee on Child Support recommended adoption of a revised Affidavit of Financial Means after the Supreme Court published a proposed version for public comment.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion adopting an administrative form and establishing its effective date.

TOPICS

child support family law procedure family law civil procedure

PRACTICE AREAS

family law child support civil procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court should adopt the committee's revised Affidavit of Financial Means after the public-comment process.
2. Whether the revised affidavit should include lines at the bottom of each page for litigants and, when represented, their attorneys to initial.

HOLDINGS

1. The Supreme Court adopted the revised Affidavit of Financial Means recommended by the Supreme Court Committee on Child Support.
2. The adopted affidavit must include lines at the bottom of each page for litigants and, if represented, their attorneys to initial.
3. The new Affidavit of Financial Means became effective October 10, 2016.

KEY QUOTATIONS

“The court accepts the committee’s recommendation and adopts the new affidavit, with that one change, effective October 10, 2016.”

FACTUAL BACKGROUND

The Supreme Court Committee on Child Support revised and updated the existing Affidavit of Financial Means to obtain more pertinent information for family-support proceedings. The proposed affidavit was circulated for public comment, and four letters were received. After considering the comments, the committee recommended one change—adding initial lines to each page—which the court adopted along with the revised affidavit.

PROCEDURAL HISTORY

The committee proposed a revised affidavit, and the Supreme Court published it for written comments by order dated April 14, 2016. After reviewing four comment letters, the committee recommended adoption with one formatting change: adding lines at the bottom of each page for litigants and their attorneys to initial. The Supreme Court accepted the recommendation and adopted the revised affidavit effective October 10, 2016.

DISPOSITION

approved

OPINION

PER CURIAM.

Cite as 2016 Ark. 315 SUPREME COURT OF ARKANSAS Opinion Delivered September 15, 2016 IN RE SUPREME COURT COMMITTEE ON CHILD SUPPORT—AFFIDAVIT OF FINANCIAL MEANS PER CURIAM The Supreme Court Committee on Child Support proposed a new Affidavit of Financial Means to the court, revised and updated to provide more pertinent information to the parties and the courts in matters involving family support than the current affidavit provides.

By per curiam dated April 14, 2016, the court published the proposed affidavit for written comments due to the court by May 20, 2016. The court requested that the committee review the

comments submitted and, taking those into consideration, to make a final recommendation to the court.

The committee's final recommendation is to adopt the proposed affidavit with one change suggested in the comments, to add lines at the bottom of each page for the litigants and, if represented, their attorneys, to initial.

The court accepts the committee's recommendation and adopts the new affidavit, with that one change, effective October 10, 2016. The new Affidavit is attached. RECOMMENDATION TO THE SUPREME COURT OF ARKANSAS FROM THE SUPREME COURT COMMITTEE ON CHILD SUPPORT IN RE: ADMINISTRATIVE ORDER NO. IO--AFFIDAVIT OF FINANCIAL MEANS INTRODUCTION The Supreme Court Committee on Child Support proposed a new Affidavit of Financial Means to the Court, revised and updated to provide more pertinent information to the parties and the courts in matters involving family support than the current affidavit provides.

By per curiam order dated April 14, 2016, the Court published the proposed affidavit for comment, with written comments due to the Clerk of the Court on May 20, 2016. The Clerk received four letters in response. The Court requested that the Committee review the comments and make a final recommendation, taking those comments into consideration. DISCUSSION The Committee met on June 24, 2016, to review the comments.

Of the four letters submitted, three of them supported the proposed affidavit, with one suggestion made for a formatting issue. In the fourth letter, the writer commented positively to one change and made seven suggestions for other changes.

The Committee discussed each and every suggestion. Some were for changes the Committee had discussed specifically in the drafting stage. Some were for changes to things the Committee had done by design or had opted not to do.

The Committee adopted one of the suggestions: putting lines at the bottom of each page for the litigant and the attorney, if he or she is represented, to initial. The affidavit was amended accordingly. I{E RECOMMENDATION After considering the Comments submitted to the Court, the Committee respectfully recommends that the Court approve and adopt the attached Affidavit of Financial Means, as amended. Thank you.

Respectfully submitted, Mackie Piel Circuit Judge Chair of Child Support Committee D 2 IN THE CIRCUIT COURT OF COUNTY, ARKANSAS (Domestic Relations Division) Division Plaintiff V Case No. DR Defendant AFFIDAVIT OF FINANCIAL MEANS Name:, being duly sworn, says under penalty of perjury, that he/she has prepared or approved this financial statement, and that the following information and attachments (including income verification as required by page 7) are complete, true, and correct.

Date Signature Subscribed and sworn to before me on this day of 20 Notary Public My commission expires MY INCOME 1 How often are you paid? _ weekly _ bi-weekly (every two weeks-26 times a year) _ monthly _ bi-monthly (twice a month-24 times a year) _ other -Explain (attach an exhibit if necessary) 2.* Net Pay: (Take-home after allowable deductions) \$ *Complete worksheet on next page to determine Net Pay for calculating child support Page 1 of 7 Initials NET PAY WORKSHEET (If more than one employer, fill out and attach multiple copies of this worksheet) EMPLOYER Address: Telephone #: 3.

Gross Wages per pay period \$ ALLOWABLE DEDUCTIONS UNDER STATE LAW A. Federal Income Taxes Withheld \$ B. State Income Taxes Withheld \$ C. F.I.C.A. (Social Security) or Railroad Retirement \$ D. Medicare: \$ E. Health Insurance (only the portion paid for children in this case \$ as required by page 7) F. Court-ordered child support for other children not \$ involved in this current case.

(For example, children from a previous relationship or marriage): G TOTAL Allowable Deductions \$ 3.H Subtract TOTAL Allowable Deductions from Gross Wages = NET PAY \$ THE FINAL NUMBER IN THIS BOX BELONGS ON PAGE 1 UNDER "NET PAY" If you pay support for children not involved in this case in a form other than payroll deduction, then you should attach the child support order and proof of payment as an exhibit to this affidavit Any other deductions from your paycheck do not figure into your net pay under Arkansas law regarding child support.

Some examples of payroll deductions that you may not subtract from your income for calculating child support include: pension plans, union dues, 401(k) payments, loan repayments, charitable contributions, life insurance, and health insurance payments that cover you or your spouse.

However, the court may consider these expenses, particularly if they are significant, so you should reflect them in the proper place in the pages to follow' Page 2 of 7 Initials OTHER INCOME Other income Amount: Source Frequency 4 Bonuses or incentive pay not 4.1 reflected on page 2: 4.2 Other court-ordered income such as alimony/child support paid to you: 4.3 Payments from a settlement or annuity: 4.4 Regular gifts from relatives or friends: 4.5 Investment income such as rent payments to you: 4.6 Stock dividends or bond payments: 4.7 Regular payments to you or on your behalf from a Trust: 4.8 Other: 4.9 TOTAL OTHER INCOME: \$ OTHER AVAILABLE FUNDS 5 ASSET AMOUNT SOURCE Cash on hand, and in bank 5.1 accounts: 5.2 Trust fund assets held on your behalf: 5.3 Stocks, bonds, mutual funds 5.4 Other (i.e.

401-K, retirement, etc) 5.5 TOTAL: \$ Page 3 of 7 Initials MY CURRENT MONTHLY EXPENSES * 6 Expense: Amount: Expense: Amount: a Health Insurance Rent/house payment \$ n \$ b Gas, water, trash, & \$ o Non-covered medical \$ electricity (including medicine) c. Telephone \$ p Life insurance \$ d Internet \$ q Car payment \$ e Media Services, i.e \$ r Car Insurance \$, Cable/Satellite, etc. f Child care \$ s Car fuel and \$ maintenance g Food \$ t Lawn care \$ h Union

dues \$ u Charitable giving \$ Pension plan \$ V Household Expenses \$ 401(k) payments \$ W Dry cleaning \$ J k. Garnishments \$ X Other \$ Cigarettes \$ v Other: \$ m Alcohol \$ z. \$ TOTAL * Place a check mark by all expenses which you are not currently paying.

Page 4 of 7 Tni t ia1 s Ini t i-al- s MINOR CHILDREN 7 Number of children: a Number of minor children I have with opposing party # b Number of other minor children I have # c. Names of minor children involved in this case: AGE I 2 3 4 CREDITORS & DEBTS 8 Debts in the names of BOTH PARTIES are: Creditor: Total amount owed Monthly payment: a \$ \$ b \$ \$ c. \$ \$ d \$ \$ e \$ \$ f \$ \$ g \$ \$ Totals: \$ \$ Page 5 of 7 Ini t ia1 s Ini t ia1 s L Debts only in my name: Creditor: Total amount owed: Monthly payment a \$ \$ b \$ \$ c \$ \$ d \$ \$ e \$ \$ Totals \$ \$ '10.

Debts only in the name of the other party: Creditor: Total amount owed Monthly payment: a \$ \$ b \$ \$ c \$ \$ d \$ \$ e \$ \$ Totals \$ \$ 11. SUMMARY OF ABOVE DEBT TABLES Summary of Debts: Total Owed: Total Monthly Payments: a Joint Debts: \$ \$ b My Debts: \$ \$ c Other Party's Debts: \$ \$ Page 6 of 7 Ini t ial- s Ini t ial- s ACKNOWLEDGEMENT OF RESPONSIBILITIES AND CONSEQUENCES I, understand that I must comply with the following, I acknowledge and agree to each provision by initialing each paragraph below. _Both parties must complete and exchange this seven-page affidavit by providing to opposing counsel or pro se litigants within five days before hearing. _Both parties must supply the original notarized affidavit to the court. If I am employed, I must attach copies of my last three paystubs to this affidavit. If I am self-employed, I must attach copies of my last two federal and state tax returns, including all schedules, to this affidavit.

Before each court hearing where financial matters are at issue, I will review this document and provide updated information to the other party and to the court. I understand that the cost of dependent health insurance coverage is the difference Ue,veen self-only and self with dependents or family coverage or the cost of adding the child(ren) to existing coverage.

I understand that failing to comply with these provisions, or deliberately attempting to mislead the court or the opposing party, may result in my being held in contempt of cou11, being fined, being ordered to pay attorney's fees, and/or being sentenced up to 6 months in fail, and that serious violations can result in prosecution for felony perjury- punishable by 3 to '10 years in prison.

Date Signature I certify that I have reviewed this affidavit with my client and advised him or her of the importance of providing true, correct, complete answers and the required exhibits. Date Attorney Form Revised t2016 Page 7 of 7 Judge Robert Herzfelcl.Søfine County Circuit Court Phone: 501-303- 1584 4úi (Division Fax: 303-l5tl5 j ud gcherzf'eld @ gmail.cotn 22""t Ju[icíaf cDistrict of,4rfrgnsas \$,, p rì r i, i, iùT9',ilJlif I l. i jil:ì fJ,'i'f j,çn, 0,, CF Zúlþ ÁpR l9 p t, Ol Stacey Pectol Clerk of the Supreme Court ii;AC[' F [CTOL, CLERK FB tu ffiĐ ATTN: Adrninistrative Order Nulnber l0 AP R 1 I 2016 625 Marshçill Street, LittleRock, AR7220I S TACEY }TE.CTOL

CLE fiK RE: Draft Affidavit of Financial Means Dear Ms. Pectol, I am writing to express support of the new draft Affidavit of Financial Means (AFM) that is up for comment until May 20th.

It was clearly drafted with practicality, clarity, and ease of use in mind. As a Circuit Judge who hears primarily domestic cases, I can attest that the new draft addresses all of the concerns I have had over the years. I'll list some highlights below: 1. Moving the notarized signature to the front page serves multiple purposes.

First, approximately half of the AFMs submitted to me are not notarized. Putting it on the front makes it more likely to be completed. Second, clarifying on the front page that this document is sworn under oath gives even more incentive to take it seriously and provide correct information. 2.

The old form was very confusing as to proper deductions and coming up with the true net income. The new draft makes it much simpler to calculate, offers clear instructions, and puts the accurate net income unambiguously front and center. 3. The modernization of the "monthly expenses" page has been sorely needed (i.e., the old form refers to "fire insurance"), and will provide a much more accurate picture of actual expenses.

The addition of cigarettes and alcohol as separate categories is significant as well. 4. The Acknowledgement section on page 7 will be valuable in ensuring that the parties provide appropriate supporting documentation and take the necessary time to fill out the paperwork honestly and completely. 5. Requiring attorneys to certify they have gone over the form with their clients and advised them of the importance of the form will dramatically improve data quality as well as the preparedness of attorneys. For trial, I can't tell you how many times I have watched the blood drain from attorneys' faces because they were so surprised by their client's answers or, conversely, at how inaccurately their clients had filled out the form.

6. By way of slightly improving the form, it appears that at some point in drafting, there was a margin issue which, presumably, could easily be corrected where the table of debts bleeds over onto page 7. I suggest that this be corrected for ease of use as well as professional appearance. Thank you for working on this very practical approach, and I look forward to seeing the new forms in court. Sincerely,
Honorable Judge J. R. G. (Circuit Judge) No. 14 in Court, R. 72015 Tnp L ANCASTER Lruø FINVT, PLLC 4r j Nourr+ Mrrnxnr Sr ATTOI{N tys Ar tyfiPl'r., iif CtIVå-0 Ttr-: (5or)176.2224 ['.O Box rz95 (5or)778'6r86 Beu ron, AÎ 7zor.9 Jerr.ircrM. rancasrer.'iioiî'!t,r,oilç;lrntæ Clirrtt;n W. Lancaster LoriD.r.roward /Jllr ÄpR 2l p l: I I SIAC[PICiOL, CLERK April 20, 2016 Ms. Stacey Pectol, Clerk of the Supreme Court of Arkansas.ç\tn; Aclmin, Orcler No. 10 625 Marshall St. FM fl Little Rock, AR 72201 2 1 201ñ APR oL RY l'-ill.S"l (:l.ASS tNl,1/1. \$'iA 1:.;Ç:(' Pec'f CLE RK I{u IN RI' ADI\{IN.

ORDER NO. 10 AFFIDAVIT OF FINANCIAL MEANS PER CUMMULATIVE OPINION APRIL 14, 2016 Dear Ms. Pectol I am writing today to express my great support of the changes to the

Affidavit of Financial Means ("Affidavit") as recently revised and submitted for comments as per the above-styled opinion. I am a female, single, attorney, having been in practice a little over two years, with a small firm in Benton.

Approximately 75% of the work I do is in domestic relations, adoption, and guardianship cases. I am a frequent user of the AFM and very familiar with its use in both settlement negotiations and court proceedings. I support the changes to the AFM for many reasons. Firstly, moving the signature and notary area to the front makes it easy to see if the person has actually completed that portion. Many times, people fill out the AFM and then fail to sign the document, which causes issues if not caught before court. Next, the revisions to the "Verify Income" section, removing the second "allowable deductions" and "other deductions" sections clears up that substantially. Finally, many times in practice people struggle to double up on the deductions, in part I believe, because those two sections are listed twice in the document. This is so incredibly confusing for clients, so this revision helps greatly!

Additionally, putting the "Net Pay Worksheet" on the second page is a wonderful change. In the old version, it was several pages back in the document, which always led to confusion. This newly-placed and clearly delineated worksheet is clear to understand, defines the court-ordered child support section well, and has an explanation section at the bottom of the page that makes it very clear what is and is not included in pay, and pay-related deductions, etc. The Lancaster Times Herald-Examiner Law Firm published the new AFM on the website to Page 3, the "Let the lucerne" section gives good examples of what might be included.

The old form did not have these, which caused people to sometimes forget about them or even intentionally leave them out and plead ignorance. Income is different from other funds available to a person, so making those sections separate is a great step to even more clarity. Additionally, making the "My Current Monthly Expenses" table on Page 4 larger makes it so much easier to complete.

The current form crams the same table onto half a page, which makes the numbers so small that it's difficult to complete the table where it is legible. I was pleased, well, to see that the informational table about the parties was removed (formerly as on p. 4 of 7 in the old version). Sometimes these parties have been divorced for years, separated for years, or they are parties who would never have known the information about the other party at all. Making this section out just saves me time, and truly, this section was almost never used in my practice. Also, changing the debt sections on Page 7 to "my net worth" and "liabilities of the other party" instead of "Plaintiff" and "Defendant" clears these sections up quite nicely. A lot of times, even with the parties named listed on the case, the party completing the form still does not know who the

Plaintiff and Defendant are. Finally, the last page is, in my opinion, the best change made to the document.

Clients rarely understand that the Affidavit is necessary to set child support and spousal support. They sometimes feel like the court is just being nosy, the other party's attorney is asking intrusive questions by sending an AFM with interrogatories, and that this personal information cannot possibly be needed for the court to just set support.

Having this information on the back easily explains the reasons the AFM is needed and lets the party know that the other party has to complete one as well. This explanation section also clearly tells the client that three pay stubs or two weeks returns, as applicable, are to be submitted with the form as well. As a family law and probate practitioner, I wholeheartedly support the changes made in this new version of the AFM. Thank you for your time and for allowing the comment period. If you should have any other questions in this regard, please do not hesitate to give me a call.

Submitted, Lori D. Howald Associate Attorney Seln T. (Keith Keirrh, Ndill, ero Victoria Hirsis
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Stacy Pectol FM F,"-mff} Clerk, Supreme Court of AR Attn: Admirt.

Order No, L0 APR 25 2016 Justice Blc.lg. 625 MarshallSt, STACEY PECTOL Little Rock,
AR72207 CLERK Dear Ms. Pectol I have had an opportunity to review the proposed revised
Affidavit of Financial Means, and I whole heartedly support the revisions. This clears up many of
the previous AFM's less than clear instructions to the clients that are filling these out. In particular,
the acknowledgment of understanding what they are providing with the listed
potential consequences will make this a more meaningful document and will cause the attorneys
providing this information to be more thorough. Sincerely, Maly M, White Schnicler' Keith, 4i
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ffi rjltrw Ð MA)r 03 ZOIO Stacel, Pectol, Clerk, Supreme Court of Arkansas -;..., 'ç:r ìl,...,
L.lrrsticc Building 625 Marshall Street Little Rock, AR12207 RE: Administrative Order 10 Dear
Clerk Pectol Having reviewed the Proposed Affidavit to replace the current Affidavit of Financial
Means, I have the following comments: 1.

Shouldn't the net pay include the "other income" from page two before the total amount of net
income is transferred to page one? 2. On the list of Creditors and Debts, could you include a space

for the last four digits of the account number? 3. Also on the list of Creditors and Debts. could you provide some suggestions such as Mortgage, Student Loans, Medical Bills, Credit Cards, Bank Loans, Collections Accounts?

I think that my clients remember their debts more easily if I ask for them by type. 4. At some place, you may need to inquire whether the debt was incurred during the marriage, Just having whose name the debt is in does not help determine whether or not a debt is a marital debt. at The bottom of every page (mostly) for the lawyer's 5. I would recommend a line for initials because we have this document for every client and they all look alike - especially when they just have numbers written in). 6.

I would recommend PLAIN Docket, in the Response, in the Court's section 51 I N, Mople, Secrecy AR 72143 ' 50 I -2/9-02'22 for 50 I -2 7 I -022 iJ' email: c c l c f u l l e , - r (i D h o l m l o i l . c o m L H T T E R T O P E C T O L / p a g e t w o 7 . I like the design of the Income worksheet, and I like the Responsibilities and Consequences section, g. I would recommend moving the Notary box to the end of the document because it's just confusing at the beginning, Thank you for allowing an opportunity to comment on the form.

Carla Fuller ARBAR 90086