



SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788
(631) 234-5588

MATRIMONIAL BOOT CAMP

FACULTY

Hon. Andrew Crecca
Hon. Cheryl Joseph
Robin S. Abramowitz, Esq.
Jody Ann Donato, Esq.
Kevin J. Fitzgerald, Esq.
Robert D. Gallo, Esq.
Jeffrey S. Horn, Esq.
Theresa Mari, Esq.
Lewis A. Silverman, Esq.
Louis L. Sternberg, Esq.
Johanna Stewart, Esq.
Ellen Krakow, Esq.

Program Coordinators: Ellen Krakow, Esq. and Lewis A. Silverman, Esq.

February 10, 2017
SCBA Center - Hauppauge, NY

Matrimonial Boot Camp
Suffolk Academy of Law
February 10, 2017

9:00 – 9:05	Welcome		
9:05 – 10:25	Divorce 101 The Initial Client Interview	Lewis A. Silverman, Esq.	1.5
10:25 – 10:35	<i>Break</i>		
10:35 – 11:00	Commencing the Action The Preliminary Conference	Johanna M. Stewart, Esq.	.5
11:00 – 11:50	Domestic Violence Issues	Hon. Andrew Crecca Kim Susser, Esq.	1.0
11:50 – 12:10	The Pro Bono Case	Ellen Krakow, Esq. Hon. Stephen Behar	
12:10 – 12:35	<i>Lunch</i>		
12:35 – 1:00	The Judicial Perspective Representing Your Client Ethically	Hon. Cheryl Joseph	.5
1:00 – 2:50	Negotiation Simulation	Robin Abramowitz, Esq. Jodi Donato, Esq. Kevin Fitzgerald, Esq. Theresa Mari, Esq. Lewis Silverman, Esq. Jeffrey Horn, Esq., Moderator	2.0
2:50 – 3:00	<i>Break</i>		
3:00 – 3:30	Drafting the Agreement: Special Tips	Louis Sternberg, Esq.	.5
			6.0

Negotiation Simulation

Fact-Pattern and Financial Summary

Negotiation fact pattern

Roles:

Moderator:	Jeff Horn
Wife (Marianne):	Jodi Donato
Wife's Attorney:	Kevin Fitzgerald
Husband (Tony):	Lew Silverman
Husband's Attorney:	Robin Abramowitz
Attorney for Child:	Theresa Mari

Marianne (1970) and Tony (1968) were married in 1992 and for their twenty-fifth wedding anniversary they are getting a divorce.

They met when Tony was 22 and Marianne 20. Tony was working as a plumber's assistant and Marianne was a server in a local restaurant. Tony had played football in high school but did not win a scholarship and went to work instead of college. He was loud and brash and completely different from the other guys Marianne dated. She had taken a few courses at Suffolk Community but her grades were not good and she eventually abandoned the idea of a college education and went to work.

After dating for two years Marianne became pregnant, much to the shame of her parents. An abortion was out of the question for this deeply religious family. When Marianne's parents promised to contribute to a down payment on a house, Tony relented and the couple was married, very quickly and quietly. Marianne always regretted that she did not have a large wedding like her older sister.

The couple has five children: Anthony Jr. (1993), Kathleen (1994), Danny (1995), Rosemarie (1995) (twins) and Christine (2009).

The marriage was unhealthy from the beginning. Four children in three years created a strain. Almost immediately Tony's personality changed from loud and fun to nasty and demanding. He would constantly insult Marianne and criticize her parenting skills while contributing little on his own to help her. After Rosemarie's birth, sex between them ceased almost entirely because neither wanted any more children and Marianne wouldn't take birth control pills. Christine was clearly unplanned.

Tony worked in the plumbing industry, finally becoming a master plumber and starting his own business, which he operates out of the detached family garage. His income tax returns show he earns about \$50,000 per year. He boasts about unreported cash, and the family's expenses are greater than the couple's combined income, yet their debts are small. Tony also likes to gamble and drink, neither being habits which endear him to Marianne.

Marianne has worked little. So many children so quickly kept her at home for many years. When Rosemarie started school Marianne got a job as a cashier in a supermarket; she reduced her hours but has continued to work since Christine's birth. Her income for

the past three years has averaged about \$10,000 per year. Marianne also has health problems; a couple of years ago she was diagnosed with an overactive thyroid and must take medication for the rest of her life. This has caused an emotional and financial strain on the family.

In 1994, the parties purchased a house with the \$25,000 originally promised from Marianne's parents as a gift for the down payment. The house is presently worth \$350,000 and has only \$75,000 left on the mortgage.

The last straw came last year. The couple has not shared a bed in years, Tony sleeping on the sofa in the den. His comings and goings have, frankly, been of little interest to Marianne until he was served with paternity papers. A DNA test confirmed his paternity and he was ordered to pay child support. Marianne told Tony to get out; he lost his temper and beat her up, breaking her arm. She got an Order of Protection against him but declined to cooperate with a criminal prosecution. Disagreements with her older children compelled Marianne to move out of the marital residence.

Marianne and Christine are living in a small accessory apartment created in the basement of the home of Marianne's parents. Marianne was working full-time at the supermarket but recently lost her job when the company went bankrupt and is currently receiving \$250 per week in Unemployment Insurance Benefits while she looks for work. She is having a tough time financially. Marianne's parents are in the process of selling their house and preparing to move to Florida, and Marianne will soon have to find another place to live.

Tony is back in the marital residence. Also staying there are Tony Jr. and the son's girlfriend and their two children, and the other three children (except Christine.) Tony continues to operate his plumbing business out of the marital garage.

Tony has sued Marianne for divorce on grounds of irretrievable breakdown.

Marianne is seeking maintenance. She has no skills, has permanent health issues, and had been supported by Tony since they were married. Tony objects, saying that Marianne is capable of working full-time and does not need long-term maintenance.

When it comes to property division, Marianne is seeking to have the family residence declared a marital asset and wants half the value. Tony claims that Marianne has not contributed financially to the mortgage and expenses over the years and should not get a full half share.

Tony wants full shared custody of Christine. Christine sees him several times a week and stays at the marital residence every other weekend. Tony takes her out to dinner a lot and coaches her soccer team and attends her dance recitals. Christine has even developed a relationship with Tony's non-marital child and loves being the "big sister" after so many years as the youngest.

In deciding child support, Marianne wants to impute income to Tony based on his admissions to her and the household expenses, which exceed their combined income. She also wants Tony to admit that he spends at least \$1,000 per month in gambling. Tony, on the other hand, believes that if they have 50/50 custody, he should not have to pay child support.

Summary of Marianne's Finances

Income

Gross income, 2015.....	\$11,655
Gross income, 2016.....	\$8694

Present income: \$250/week, Unemployment Insurance Benefits

Expenses (weekly)

Food.....	\$100
Shelter.....	-0-
Phone.....	\$53
Clothing (Christine).....	\$25
Insurance (auto)	\$25
Car: gas and repairs.....	\$50
Medical.....	\$50
School supplies (Christine)	\$15
Total.....	\$303/week

Marianne's food is generally supplied by her parents, and Christine's clothing expenses are seasonal.

Marianne has one credit card; she owes about \$500 and was current until she moved out of the marital residence. The expenses are included in the above list.

Summary of Tony's Finances

Income

Gross income, 2015.....\$50,000

Gross income, 2016.....\$50,000

Tony's Gross business income is over \$70,000 per year; the difference is primarily equipment expenses and necessary business costs.

Expenses (monthly)

Mortgage/Taxes.....\$1700

Electric.....\$142

Telephone (land line).....\$55

Cell (includes two children).....\$103

Cable.....\$225

Water.....\$30

Food (household).....\$1200

Lunches, etc.....\$100

Clothing.....\$50

Insurance, home.....\$100

Insurance auto (includes personal and two children).....\$250

Medical.....\$1000

Household repairs and upkeep.....\$150

Automobile leases for Kathleen and Rosemarie\$450

Payments for Tony's Corvette.....\$865

Lease for Tony's Dodge Ram.....\$555

Auto Insurance.....\$750

Recreation\$200

Health Club.....\$50

Dog food and vet bills.....\$50

Misc. expenses.....\$500

Total:.....\$8525/month

Tony has about five credit cards with monthly payments of close to \$5000. The expenses for which he uses the cards re listed above. He is usually rarely more than a month behind on any card.

Speaker Biographies

ROBIN S. ABRAMOWITZ
225 Old Country Road
Melville, New York 11747
(631)761-0870

Educational Background:

B.A. - December 21, 1979, Magna Cum Laude, State University of New York, College at Geneseo

J.D. - August 31, 1989, Hofstra University School of Law, *with distinction*.

Member, Hofstra Law Review 1988 - 1989

Recipient - Hofstra University School of Law - Citation of Excellence for Procedural Courses

Recipient - Hofstra University School of Law - Citation of Excellence for Debtor/Creditor

Legal Background:

June 20, 1990 Admitted to New York State Bar, Appellate Division, Second Department

September 20, 1990 Admitted to United States District Court for the Eastern and Southern Districts of New York

September 23, 1998 Admitted to the United States Court of Appeals for the Second Circuit

January 24, 2005 - Admitted to the United States Supreme Court

September 29, 2009 Admitted to the Florida Bar

January 28, 2010 Admitted to the United States District Court for the Southern District of Florida

May 5, 2010 Admitted to the United States District Court for the Middle District of Florida

Employment Background:

1980 - 1983 - Paralegal, Herrick Feinstein, New York, New York

1983 - 1988 - Paralegal, Ruskin, Schlissel, Moscou, Evans & Faltischek, P.C., Mineola, New York

1988 - 1990 - Law Clerk, Lazer & Aptheker, Melville, New York

1990 - 1996 - Associate, Lazer, Aptheker, Feldman, Rosella & Yedid, LLP, Melville, New York

1997 - 2002 - Partner, Lazer, Aptheker, Feldman, Rosella & Yedid, P.C., Melville, New York

2002- Present- Partner, Lazer, Aptheker, Rosella & Yedid, P.C., Melville, New York

2004- Present- Arbitrator on the Long Island General Commercial Panel for the American Arbitration Association

Areas of Practice:

Bankruptcy, Commercial Litigation, Construction Litigation, Matrimonial Law

Professional Associations:

Women's Bar Association of the State of New York (WBASNY)

Suffolk County Women's Bar Association (SCWBA)

Suffolk County Bar Association (SCBA)

New York State Bar Association (former member)

Professional Activities:

SCWBA activities:

Director 2001-2002, 2016-2017

State Delegate 2001-2002, 2003-2004, 2004-2005, 2009-2010, 2010-2011 (alternate), 2015-2016 (alternate), 2016-2017

Corresponding Secretary 2002-2003 (Editor of Newsletter)

Recording Secretary 2003-2004

Treasurer 2004-2005

Vice-President Membership 2005-2006

President 2006-2007

Immediate Past President 2007-2008

Presenter at CLE program 11/14/02–How to Save Your Client's House from Foreclosure.

Co-Presenter on Practice Management from Solo, Mid-Sized and Large Firms –Touro Law Center- November 17, 2015

WBASNY activities:

Co-Chair Awards Committee 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017

Co-Chair Permanent Convention Committee 2015-2016, 2016-2017

Co-Chair of CLE Committee for Convention 2016

Co-Chair of CLE Committee for Convention 2012

Co-Chair By-Laws Committee 2010-2011

Co-Chair of CLE Committee for Convention 2011

Co-Chair of CLE Committee for Convention 2010

Vice President 2008-2009

Corresponding Secretary 2007-2008

Co-Chair of Convention 2008 Committee

Judicial Screening Committee Delegate for Suffolk Chapter for screening of candidates for the Court of Appeals (2006-2007)

Co-Chair of CLE Committee for Convention 2007

Awards Committee Delegate for Suffolk Chapter (2005-2006, 2004-2005, 2001-2002)

Legislative Committee Delegate for Suffolk Chapter (2003-2004)

Nominations Committee Delegate for Suffolk Chapter (2002-2003, 2009-2010)

Co-Editor for the Newsletter *The Women's Bar News* (2005-2006, 2004-2005)

Co-Chair of Bankruptcy/Commercial/Banking Law Committee (1996-1998, 2001-2004)

Co-Chair of Convention 2001 Committee

Co-Presenter of Program at 1996 Convention concerning the interaction of bankruptcy law with matrimonial law

Co-Presenter at 2004 Convention CLE Seminar - State Court Issues and Bankruptcy Court- What Every State and Bankruptcy Practitioner Should Know, along with Honorable Melanie L. Cyganowski, Honorable Cecelia G. Morris and Susan Mills Richmond, Esq.

SCBA activities:

Member of the Board of Managers of the Suffolk County Bar Pro Bono Foundation 1996-2002

Chairperson of Bankruptcy/Insolvency Law Committee 1998-1999

Judicial Screening Committee 2004-2005

Co-Presenter at CLE - Attention to the Ethics of Transactional Law, with John R. Calcagni, Esq. on October 23, 2004.

Officer of the Suffolk Academy of Law 2009-2010

Officer of the Suffolk Academy of Law 2010-2013

Director of Suffolk County Bar Association 2015-2018

Co-Presenter at CLE - Attention to the Ethics of Transactional Law, with John R. Calcagni, Esq. on April 13, 2010.

Co-Chair of the ADR Committee 2011-2012

Member of the Professional Ethics & Civility Committee 2014-2015, 2015-2016, 2016-2017

Co-Presenter at CLE- A Practitioner's Guide to the Interplay of Matrimonial & Bankruptcy Law along with Honorable Alan S. Trust, Hon. John C. Bivona, Marc A. Pergament, Esq. and Richard L. Stern, Esq. on May 2, 2012

Pro Bono Services:

Volunteer attorney for Pro Bono Project's Bankruptcy Screening Panel since 1993. Represent bankruptcy clients and matrimonial clients referred by Nassau/Suffolk Law Services Pro Bono Project.

Awards:

- 1995 Suffolk County Bar Pro Bono Foundation, Award of Recognition for Pro Bono Services to the Bankruptcy Clinic
- 1995 Suffolk County Women's Bar Association Pro Bono, Award of Recognition for Commitment to Representing Indigent Clients in Suffolk County
- 2000 Suffolk County Bar Pro Bono Foundation Award For Contribution of Time and Services to the Pro Bono Project
- 2003 Suffolk County Women's Bar Association President's Award for extraordinary service and dedication to the Association.
- 2004 New York State Bar Association President's Award for Pro Bono Services
- 2005 Certificate of Recognition from United States Bankruptcy Court for the Eastern District of New York for Pro Bono services rendered in 2004
- 2008 Suffolk County Bar Pro Bono Foundation Award of Special Recognition for contribution of time, effort and exemplary service to the Pro Bono Project
- 2008 Certificate of Recognition from United States Bankruptcy Court for the Eastern District of New York for Pro Bono services rendered to litigants in the court.
- 2011 Suffolk County Bar Association Award of Recognition for work on the Suffolk Academy

of Law for the “Views from the Bench” CLE

Other:

May 20, 2003- Co-Presenter at CLE program Commercial and Residential Lease Enforcement and Evictions in New York. Course offered by Sterling Education Services, LLC at Huntington Hilton, Melville, NY.

Profiled as Alumni of the Month for June 2006 by Hofstra University School of Law

Board Member of Development Board of St. John’s Episcopal Hospital, Far Rockaway, NY 2011 to present.

Long Island’s Top 50 Most Influential Women in Business Award-2014

Appointed to serve on the Board of Governors for the Attorney Fee Dispute Program –term 2016-2019

HON. ANDREW A. CRECCA

Andrew A. Crecca is the Supervising Judge of the Matrimonial Parts in the Tenth Judicial District, Suffolk County, New York. In addition to his duties as Supervising Judge, he is the presiding Justice of Suffolk County's Integrated Domestic Violence Court, and has served in that position since January of 2007. He was first elected to the bench in 2004 as a County Court Judge and presided over felony criminal cases in a dedicated trial part. In January of 2007 he was appointed an Acting Justice of the Supreme Court. In 2010 he was elected Justice of the New York State Supreme Court for the 10th Judicial District.

Prior to his time on the bench Justice Crecca served as a County Legislator, and maintained a private law practice concentrating in matrimonial and family law. He also served as an Assistant District Attorney in the New York County District Attorney's office from 1989 to 1994. He received his undergraduate degree from Marist College in 1986, and his law degree from St. John's University School of Law in 1989.

Justice Crecca has lectured throughout the United States and internationally on domestic violence issues, problem solving courts, matrimonial and family law, as well as on court operations. He serves as a faculty member to the *National Judicial Institute on Domestic Violence*, the *New York State Judicial Institute*, the *National Council of Juvenile and Family Court Judges*, the *Suffolk Academy of Law*, and as an Adjunct Professor at *Touro Law School*. He has also held the position of Adjunct Assistant Professor of Political Science at *Hofstra University*.

As an active member of the *Suffolk County Bar Association*, Justice Crecca serves as Co-Chair of its Law Student Committee and has previously served on its Board of Directors and as chair of the Bench Bar Committee. He also is a member of the *New York State Bar Association* and serves on the *Executive Committee* of the *Family Law Section*. In 2011 Justice Crecca was appointed and continues to serve as a member of the Chief Administrative Judge's *Matrimonial Practice Advisory & Rules Committee* for New York State. He also serves on the Advisory Board of *The Center for Children, Families and the Law* at *Hofstra University School of Law*.

Justice Crecca is also a member of the *New York State Bar Association*, *Alexander Hamilton American Inn of Court*, the *National Council of Juvenile & Family Court Judges*, the *New York State Association of Supreme Court Justices* and the *Suffolk County Matrimonial Bar Association*.

Justice Crecca lives on Long Island with his wife Donna and their two sons.

JODI ANN DONATO, ESQ.

631-654-9008

jodi@donatolawei.com

LEGAL EXPERIENCE

Sole Practitioner

1996 - Present

Matrimonial and family law, misdemeanor defense, probate and administration, residential real estate transactions, estate planning, debt collection defense. Supervise staff. All phases of accounting including budgeting, payroll, financial statements and income tax preparation.

Small Claims Arbitrator, Suffolk County District Court

1995 - Present

Volunteer Attorney, Suffolk County Pro Bono Project Pro Bono Attorney of the Month twice

1994 - Present

18b Attorney, Assigned Counsel Defender Plan of Suffolk County

1993 - 2007

Associate Attorney/Per Diem Attorney, Law Offices of Jack D. Glazer

1993 - 1997

Matrimonial and family law, real estate transactions, estates, debt collection and civil litigation.

Associate Attorney, Law Offices of Phillip William Rogers

1995 - 1996

Matrimonial and family law, estate planning, probate and administration, residential real estate transactions, and District Court practice. Supervised secretarial staff.

Legal Assistant, Sarisohn, Sarisohn, Carner, Steindler, LeBow, Braun & Castrovinci

1992 - 1993

Prepared matrimonial pleadings, submission documents, net worth statements and discovery documents.

Intern, Lewis Silverman - Suffolk County Family Court

1992 - 1992

Research legal issues for the hearing examiners and draft legal memorandums

BAR ADMISSION

New York State Bar - 1993

Eastern District of New York - 1993

US Supreme Court - 1996

EDUCATION

Touro Law School, Juris Doctor, 1992

Hofstra University, Bachelor of Business Administration, Finance, 1985

PROFESSIONAL AND COMMUNITY MEMBERSHIPS

Suffolk County Bar Association

Matrimonial and Family Law Committee
Solo and Small Firm Committee

Family Court Committee
Mock Trial Judge

Suffolk County Matrimonial Bar Association

New York State Bar Association

Family Law Section

General Practice Section

Touro Law Center Alumni Association

Alumni Council
Moot Court Judge

Mentor Program

Touro Law Center Women's Alumni

Suffolk County Women's Business Enterprise Coalition

Park Row Homeowner's Association – Board Member

East Islip Chamber of Commerce

East Islip School District District-Wide Committees – I served as a member of various committees within the school district including the school improvement teams (7 years), Budget Advisory Committee (3 years) and various interview committees.

Girl Scouts of Suffolk County Service Unit 40 – I served as Service Unit Coordinator (3 years), level organizer (4 years) and troop leader (14 years).

PTA - I served as President, Treasurer, Vice President, Corresponding Secretary, Recording Secretary, Council Liaison and chairperson of various committees at the elementary, middle and high school levels for a total of 22 years.

Boy Scouts Pack 205 and Troop 205 – I am a Merit Badge Counselor for Law, Personal Management and Scholarship. I served as Pack Committee Chair (2 years), committee member (6 years) and den leader (6 years).

St. Mary's RC Church – I served as a Catechist (14 years) and was a member of the Family Life Ministry (3 years).

True North Community Church – I serve as a small group volunteer in the Uptown Program.

Kevin J. Fitzgerald, P.C.

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186 West Main Street
Smithtown, New York 11787

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Fax: (631) 862-6160

E-Mail: kfitzgeraldlawfirm@yahoo.com

Principal Attorney

Law Office of KEVIN J. FITZGERALD, P.C. -
April 1990 – Present

Work History:

Areas of Practice are family,
matrimonial, criminal and civil
litigation, real estate

- Experienced in handling complex
matrimonial and commercial
litigation with a focus on contested
matrimonial matters

Assistant District Attorney

Suffolk County District Attorney
1987 – 1990

- District Court Bureau, Rackets
Bureau, Narcotics Bureau,
prosecuted misdemeanor and felony
level cases in all three (3) Bureaus;
extensive trial experience

EDUCATION

Juris Doctor

Touro College

Jacob D. Fuchsberg Law Center

1984 – 1987

Bachelors of Arts

St. Joseph's College

1975 - 1979

**JEFFREY S. HORN, ESQ.
HORN & HORN, ESQS.
780 New York Avenue
Huntington, New York 11743
(631) 271-5200**

ADMITTED:

- Admitted to New York State Bar in February 1981

**COMMITTEES/
ASSOCIATIONS:**

- Member of Suffolk County Bar Association
- Member of Nassau County Bar Association
- Member of Suffolk County Matrimonial Bar Association
- Member of Matrimonial and Family Law Committee of the Suffolk County Bar Association
- 2007 to 2012 - Suffolk County Bar Association Committee for Volunteerism in the Courts
- 2005 to present - Serves on the Suffolk County Judiciary Screening Committee; Currently Chairman
- 2003-2005 President of Suffolk County Matrimonial Bar Association
- Former member of Board of Directors of the Suffolk County Matrimonial Bar Association for 20+ years
- 1999-2001 Co-Chair of the Matrimonial and Family Law Committee of the Suffolk County Bar Association
- 1999 - Served on the Committee on Courts
- Served on Judge Marion T. McNulty's *ad hoc* Committee regarding the matrimonial part of the Suffolk County Supreme Court
- Thompson Reuters - Super Lawyer - Family Law
- Officer Suffolk County Academy of Law

APPOINTMENTS

- Appointed as a Referee to hear and report on various matrimonial issues
- Appointed as a Referee to oversee discovery in Matrimonial actions.
- Suffolk County Calm Project

LECTURES:

- 20+ lectures on behalf of the Suffolk County Academy of Law regarding various matrimonial issues
- Guest Lecturer at Touro College Jacob D. Fuchsberg Law Center (Family Law Class)

- Lecturer for the Suffolk County Bar Association Matrimonial and Family Law Committee
- Three (3) times honored by the Suffolk County Bar Association as the Pro Bono attorney of the month
- Serves as a Matrimonial Law mentor for the Suffolk County Bar Association
- Lecturer for the Huntington Lawyers Club 2011 (new matrimonial legislation)

CHERYL JOSEPH

LEGAL EXPERIENCE

NEW YORK STATE UNIFIED COURT SYSTEM

Judge, Court of Claims

May 2015 -Present

Appointed by Governor Andrew Cuomo. Currently designated as an Acting Supreme Court Justice in the Supreme Court of Suffolk County and presiding over matrimonial actions and post judgment applications effective January 2016. Previously sat in the Family Court of Suffolk County and presided over all family court legal matters including, custody, visitation, neglect and abuse, juvenile delinquency, adoption, support and paternity cases.

Support Magistrate

May 2006 - May 2015

Presided over formal hearings to determine child support, paternity, spousal support and the willful violation of support orders. Ruled on motions and the admissibility of evidence, examine witnesses and instruct litigants as to their legal rights. Researched and analyzed complex legal issues. Prepared detailed written decisions. Issued binding legal orders. Served in Suffolk County Family Court (September 2008 – May 2015) and previously served in Bronx County Family Court (May 2006 – September 2008).

Supervising Court Attorney, Queens County Family Court

December 2004 – May 2006

Responsibilities included oversight of the day to day administration of the courthouse and the supervision of ten court attorneys under the direction of the Honorable Guy P. DePhillips, Supervising Judge. Assisted in the development and implementation of policy and procedures in the courthouse. Advise all court personnel on legal matters. Conducted comprehensive legal research and drafted memoranda and decisions of family law issues. Resolved complaints and personnel conflicts. Acted as a liaison between the court and various legal and social services agencies affiliated with Family Court.

Court Attorney, Queens County Family Court

March 2003 – November 2004

Conducted comprehensive legal research. Drafted written decisions and legal memoranda on a wide variety of family law issues including juvenile delinquency and child support matters. Conferenced a variety of cases including child abuse/neglect and custody/visitation matters. Acted as liaison between the Court and the New York City Department of Probation, the Office of the Corporation Counsel and the New York State Office of Children and Family Services for matters such as violation of probation cases, PINS petitions, juvenile delinquency matters, extension of placements and permanency planning hearings before the Honorable Fran L. Lubow.

CENTER FOR COURT INNOVATION, New York, NY

September 2002 – March 2003

Statewide Domestic Violence Court Coordinator

Assisted in the coordination of the planning and implementation of ten new domestic violence and integrated domestic violence courts throughout New York State. Additional responsibilities included grant management, conducting training for court personnel and providing technical assistance to courts throughout the state.

THE CHILDREN'S LAW CENTER, Brooklyn, NY

November 2001 – September 2002

Law Guardian

Represented the interests of children in custody and visitation in Kings County Family Court. Interview

children, parties and collateral contacts and gather information including educational, medical and mental health records relevant to the pending litigation. Worked closely with representatives of social services agencies. Provided the Court with detailed reports about interviews and discovery, and made recommendations to the Court concerning the best interests of the minor child. Conducted legal research and handled all aspects of litigation. Supervised law interns.

JUDGE HATCHETT, Columbia Tri-Star Television, New York, NY

Legal Researcher

May 2001 – November 2001

Screened all potential cases for legal issues and conducted legal research on multi-state family law and small claims matters. On family cases, located therapeutic resources and programs throughout the country for teens and adolescents and made appropriate referrals. Maintained aftercare and intervention database for all family matters. Acted as a liaison between the show and various courts nationwide. Maintained releases and contracts for the show. Assisted in the editing of the show for legal content.

NEW YORK COUNTY DISTRICT ATTORNEYS OFFICE, New York, NY

Assistant District Attorney

September 1996 – January 2001

Investigated and prosecuted a wide range of felony and misdemeanor cases. Responsibilities included interviewing civilian and police witnesses, grand jury presentations, motion practice, pre-trial hearings, plea negotiations and trials. Member of the Domestic Violence Unit, Sex Crime Unit, and Family Violence and Child Abuse Bureau. Appointed to the Summer Hiring Board. As part of an office-wide community outreach program, lectured students and community members about criminal justice issues.

ACADEMIC EXPERIENCE

TOURO COLLEGE JACOB D. FUCHSBERG LAW CENTER

Adjunct Professor

Summer 2009 – Present

Teach the Family Law Module and Pre-Trial Litigation. These are upper level courses designed to integrate substantive law with procedures for client representation. Students are given hypothetical scenarios and are provided with practical instruction and training in the areas of client interviewing, the drafting of various pleadings, pendente lite applications, oral argument and settlement negotiations.

CITY UNIVERSITY OF NEW YORK, QUEENS COLLEGE

Instructor, Paralegal Studies Program

Spring 2009 – Summer 2010

Taught students the basic procedural and substantive aspects of civil litigation, legal writing and family law.

PACE UNIVERSITY SCHOOL OF LAW

Adjunct Professor

Fall 2008

Taught the Pre-Trial Civil Litigation course for upper level students. This was a simulation class wherein students were given a hypothetical civil case and taught the mechanics of drafting pleadings, conducting discovery, drafting and arguing pre-trial motions.

BROOKLYN LAW SCHOOL

Associate Director of Career Placement

January 2001 – May 2001

Provided comprehensive career services to law students and alumni including resumes review and interview preparation. Counseled law school students and alumni on job search strategies for summer

and permanent employment. Assisted with on-campus recruiting and the review job postings prior to placement on website.

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

Juris Doctor, May 1996

Myron L. Green Award for Oral Advocacy

Review of Law and Social Change, Staff Editor

NEW YORK UNIVERSITY COLLEGE OF ARTS AND SCIENCE, New York, NY

Bachelor of Arts in Political Science and Philosophy, *magna cum laude*, May 1993

Phi Beta Kappa, Dean's List

PROFESSIONAL ACTIVITIES

Presenter, NYS Judicial Institute, 2017

Lecturer, Suffolk Academy of Law, 2010 - Present

NYS Matrimonial Rules and Advisory Committee, Member 2016 - present

NYS Task Force on the Future of Probation in Family Court, Co-Counsel, 2008

NYS Family Court Advisory and Rules Committee, Past Member

Volunteer Arbitrator, Small Claims Part, Civil Court, New York City, June 2003- June 2005

Peer Reviewer, U.S. Department of Justice, Office on Violence Against Women, Legal Assistance for Victims Grants Program, January 2003

Presenter/Facilitator, P.E.A.C.E (Parent Education and Custody Effectiveness) Program, New York City Family Court, January 2002 – March 2003

Presenter/Facilitator, A.C.T. (Assisting Children through Transition) Program, Queens County, March 2005 – May 2006

Facilitator, New York County District Attorney's Office Conference, "Joining Forces: A Leadership Colloquium on Domestic Violence and Child Abuse", January 2003

Presenter, Network of Bar Leaders, "Integrated Domestic Violence Courts in New York State", November 2002

AWARDS

2010 - 2011 Adjunct Professor of the Year (SBA Award), Touro College Jacob Fuchsberg Law Center

2013 Adjunct Professor of the Year (Faculty Award), Touro College Jacob Fuchsberg Law Center

ELLEN KRAKOW

Ellen Krakow is a staff attorney at Nassau Suffolk Law Services. She began her legal career in 1989, practicing commercial litigation and appellate law in California. After 10 years, she shifted her focus to public interest law. In 2005, Ellen joined Nassau Suffolk Law Services and for several years represented individuals with disabilities in matters concerning public benefits, access to medical and support services, special education, disability discrimination, housing and child support.

In 2013, Ellen became the Suffolk Pro Bono Project Coordinator. As Project Coordinator, she oversees the screening and delivery of legal guidance to the Project's clients, refers all financially eligible clients to appropriate private counsel, monitors the progress of referred clients' cases, and recruits new attorneys for pro bono service.

Ellen is a member of the Suffolk County Welfare to Work Commission and a Board Manager of the Suffolk County Bar Pro Bono Foundation.

She received a BA degree from the University of Texas in 1986 and her J.D. degree from George Washington University in 1989. She is admitted to practice in New York, Washington, D.C. and California.

Theresa A. Mari

Theresa A. Mari, Esq. is the managing and founding member of Theresa A. Mari, P.C., a multifaceted law firm with offices in Hauppauge, New York. The firm concentrates in the areas of matrimonial law, family law and real estate transactions. Ms. Mari shares office space with one of Long Island's premier criminal and plaintiff's personal injury firms and therefore is able to support her clients' needs in those additional areas, as well.

After serving as General Counsel to Covidea, an online personal and business banking company, Ms. Mari entered the private sector concentrating in the fields of matrimonial law, family law, corporate work and real estate transactions.

A member of the Suffolk County Bar Association, Ms. Mari has served on the Family Law Committee, Women and Law Committee, Judicial Screening Committees, Lawyers' Assistance Foundation and has served as Associate Dean of the Suffolk County Bar Association's Academy of Law. Ms. Mari has also served as President of the Suffolk County Women's Bar Association, President of the Huntington Lawyer's Club and is currently the Vice President of the Suffolk County Matrimonial Bar Association.

Additionally, Ms. Mari is frequently appointed by the Justices of both the Supreme Court and Family Court as an attorney representing children. In her nearly 23 years of representing children, Ms. Mari has handled a variety of cases involving the abuse and neglect of children, children with drug problems and in divorce cases where custody is highly contested. Ms. Mari has handled several high-profile cases for children of celebrities. Ms. Mari continues to be an active participant in representing children and working with children's advocacy groups. As an advocate in the Family Court, Ms. Mari has handled many cases fighting for the parents' rights to custody and defending parents in neglect proceedings.

Ms. Mari received her Juris Doctor from Hofstra University School of Law in 1988 after obtaining a Bachelor's Degree from Binghamton University in 1985. She was admitted to the Connecticut State Bar in 1988 and the New York State Bar in 1989. Ms. Mari was admitted to practice law in the United States District Court for the Eastern District of New York, the United States Supreme Court, the United States Court of Federal Claims, the United States Court of Appeal for the Federal Circuit and the United States Court of Military Appeals.

Ms. Mari has received several awards, commendations and recognition for her work in volunteer organizations, with the numerous Bar Associations and for her work as an Attorney for the Children.



Lewis A. Silverman was Director of the Family Law Clinic and Associate Professor of Clinical Law at Touro College, Jacob D. Fuchsberg Law Center in Central Islip, New York from 1995 until his retirement in 2016. He received his B.A. in 1973 from New York University and his J.D. in 1976 from Boston University. He served from 1976-1985 as an Assistant Suffolk County Attorney assigned to the Family Court Bureau, including Unit Head of the Child Abuse/Neglect Unit and Deputy Bureau Chief of the Family Court Bureau. From 1985 until joining the Law Center in 1995 he was a Hearing Examiner in Suffolk County Family Court where he presided at hearings to determine child support and spousal support obligations. He served as President of the New York State Hearing Examiners Association from 1988 to 1995 and had numerous decisions published by the *New York Law Journal*. He has also served as chair of the New York State Bar Association's Committee on Social Services, as an officer of the Suffolk Academy of Law, and the first chair of the Suffolk County Bar Association's Family Court Committee, and presently serves on the New York State Bar Association's Special Committee on LGBT People and the Law. In addition to his duties as Director of the Family Law Clinic, Professor Silverman also taught courses in Family Law, Rights of Children, Sexual Orientation and Law, and Civil Procedure, and served as a faculty advisor to the Moot Court Board. He has served as an Adjunct Professor of Law at Hofstra University School of Law in Hempstead, New York and St. John's University School of Law in Jamaica, New York. Professor Silverman has published several articles and presented at numerous conferences and programs on topics on family law and civil rights for sexual minorities. He has served as a resource for the press and been quoted frequently in print and television news. He has also been recognized five times by the Suffolk County Bar Pro Bono Foundation for his pro bono activities. Professor Silverman was also Village Justice for the Incorporated Village of Lake Grove in Suffolk County, New York, from 1998 to 2006.

LAW OFFICE OF LOUIS L. STERNBERG

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Louis L. Sternberg, Esq.

Education:

- Touro College Jacob D. Fuchsberg Law Center, J.D.
- University at Buffalo, B.A.

Admissions:

- New York State Bar
- United States Supreme Court Bar

Experience

- 2010 to 2011: Touro Law Center Family Law Clinic, *Staff Attorney*
 - Served as the attorney of record and supervised law students in child support proceedings in the Suffolk County Family Court.
- 2011 to Date: Law Office of Louis L. Sternberg, *Solo Practitioner*
 - Solo practice of law with emphasis on matrimonial actions (contested and uncontested) and all aspects of family law.
 - Member of Suffolk County Family Court 18b Assigned Counsel Panel.
- 2016 to Date: Suffolk County EAC ERASE, *Course Instructor*
 - Provide parents with information, tools and resources regarding the the Family Court system with emphasis on child support.

Awards and Honors

- 2014, 2015 and 2016 Super Lawyers Rising Star
- March 2015 - Suffolk Pro Bono Project - Pro Bono Attorney of the Month
- 2014 Touro Law Center Long Island Public Interest and Pro Bono Attorney of the Year Recipient

JOHANNA M. STEWART

Johanna M. Stewart, Esq. obtained a Bachelors Degree in Politics, Economics and Society from SUNY Old Westbury in May, 1985. She attended Touro Law School and obtained her Juris Doctor in June of 1999. She was admitted to the New York State Bar in 2000. From 2000 through February, 2002 Ms. Stewart was a solo practitioner handling cases in Education Law (IDEA) and Matrimonial Law. In February 2002, Ms. Stewart became an Assistant Town Attorney in the Town of Huntington and served as same until January 2013. In January 2013, she became Principal Law Clerk to Supreme Court Justice John J. Jeo. At present, Justice Leo presides over Matrimonial and Domestic Relations matters as well as the Tax Certiorari, Eminent Domain calendar and Foreclosure cases.

Kim Susser, Esq.
Visiting Assistant Clinical Professor,
Director Family Law Clinic

Kim Susser graduated George Washington University National Law Center in 1989. Professor Susser was the Director of the Matrimonial and Family Law Unit at the New York Legal Assistance Group (NYLAG) where she started in 1997. While at Touro, she continues to conduct family law work for NYLAG in Suffolk County. She also served as an Adjunct Professor at St. John's University School of Law and New York Law School. She's taught the Domestic Violence Litigation Clinic, Trial Advocacy, Family Court and Externship classes.

Prior to working at NYLAG, Professor Susser was the staff attorney at Victim Services (now known as Safe Horizon) where she represented victims of domestic violence in Family Court. From 1990 until 1995, she was a trial attorney in the Juvenile Rights Division of the Legal Aid Society where she represented children in child protective and delinquency proceedings.

Professor Susser currently sits on the Statewide NYSBA/ NYWBA Domestic Violence Initiative. She was a member of the Association of the Bar of the City of New York and was Secretary of the Domestic Violence Task Force. Professor Susser is also an active member of the Lawyer's Committee Against Domestic Violence and was the 2006 recipient of their annual In the Trenches award. In 2009, she received the Kathryn A. McDonald Award for Excellence in Service to the Family Court. In June 2015, Professor Susser was acknowledged for her over 20 years of legal services by the NYC Bar Association.

PUBLICATIONS

Amy Barasch and Kim Susser, "Court of Appeals Recognizes New Frontiers in Parenting", NYLJ, 9/19/2016.

Kim Susser, "Litigating Custody and Visitation in Domestic Violence Cases" in Goodman and Leidholdt, ed., *Lawyer's Manual on Domestic Violence: Representing the Victim*, 6th Ed., NYS Appellate Division, First Dept. (2015).

Kim Susser, "*Nicholson Revisited: New York Lawyers Seek Protections for Battered Mothers and Children*" 23 ABA Child Law Practice 113, No. 7 (Sept. 2004).

Kim Susser, "Weighing the Domestic Violence Factor in Custody Cases: Tipping the Scales in Favor of Protecting Victims & Children," 27 Fordham Urban LJ 875 (2000).

Tami Steckler and Kim Susser, "Practice Pointers for Attorneys in Family Offense Proceedings" in Cohen & Neely, ed., *Lawyer's Manual on Domestic Violence: Representing the Victim*, 2d Ed., NYS Appellate Division, First Dept. 1998.

Elkins & Fosbinder, *The New York Law of Domestic Violence*, West 1998; updated Supplements 2000 - 2002.

Materials
from
Lewis A. Silverman

New York Divorce Law 101

Lewis A. Silverman, ESQ.
February 10, 2017

Divorce Clients

Families in distress.
Victims of domestic violence.
Involved in new relationships.
Frequently lack records and paperwork.
Willing to pay to disparage other spouse.



The Initial Interview

- Assessing client's goals and level of cooperation.
- Questions should be open-ended.
- Three stages: introduction; fact-gathering; advice and counsel.
- Always ask: "What is the worst thing s/he can say about you?"
- Discuss retainer and future course of action.

The Retainer & Fees

- Must be in writing.
- Fees may not be excessive.
- Must bill at least every 60 days.
- May not be contingent on a result.
- May not include a nonrefundable retainer fee, although a reasonable minimum fee clause is permissible.

Ethical Concerns

- Retainer must meet all requirements.
- Permissible to represent both parties to a separation agreement, but why would you invite a grievance?
- No sexual relations with a client unless they exist before the legal representation commences, but why would you represent a relative, friend or lover?
- Lawyer may not violate duty of confidentiality to former clients.


Issues to Resolve

1. Jurisdiction over divorce – residence of parties and venue
2. Grounds for divorce
3. Papers to file – contested or uncontested
4. Civil or religious ceremony – need for DRL §253 affidavit
5. Minor children (under 21)
 - a. Custody and visitation (ends at age 18)
 - b. Child support
6. Spousal maintenance
7. Equitable distribution of property
8. Previous orders from other courts?




Jurisdiction and Venue DRL §230

- Jurisdiction – Residence of parties:
- No wait – Both parties live in NY and cause of action occurred in NY
- One year residence required:
 - Either party lives in NY for one year and
 - Cause of action arose in NY; or
 - Parties married in NY; or
 - Parties resided in NY as husband and wife.
- Two year residence required of either party:
 - If no shorter period qualifies
- Venue:
 - County where either party lives
 - Any other county designated by plaintiff, on consent, CPLR §509.



Grounds for Divorce DRL §170

1. Cruel and inhuman treatment
2. Abandonment
 - a. Desertion
 - b. Lockout
 - c. Constructive (sexual) abandonment
3. Confinement in prison for three or more years
4. Adultery
5. Living apart for more than one year pursuant to judgment of separation
6. Living apart for more than one year pursuant to separation agreement (conversion divorce)
7. No-fault




No-Fault Divorce DRL § 170(7)


The relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath. No judgment of divorce shall be granted under this subdivision unless and until the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce.

Papers to File

1. Fees
2. Contested or Uncontested
3. Forms packet
 - a. Uncontested packet can be obtained online.
 - b. Special software
 - c. Civil or religious ceremony – DRL §253 affidavit
4. Net Worth Affidavit
5. Forms checklists provided by Clerk's office



Minor Children – Custody and Visitation



Does custody order or agreement already exist?

IF YES:

1. Does either party wish a modification?
2. Does the order of custody have a self-contained expiration date (Order of Protection; Neglect/Abuse Order of Disposition)?
3. If there is a written agreement, does it name all of the children under 18?

IF NOT:


1. Court will deal with issue at Preliminary Conference.
2. Court will consider the appointment of Attorney for the Child and forensics.
3. Principal goal is *status quo* pending litigation.

Minor Children – Child Support (until age 21)

Does child support order or agreement already exist?

IF YES:

1. Does the order or agreement name all children under 21?
2. Are any children under 21 emancipated?
3. Does the agreement, if any, comply with CSSA?



IF NOT:

1. Court will deal with both *pendente lite* child support and permanent support.
2. CSSA must be strictly complied with.

Child Support Standards Act

- Child support ends at age 21, unless extended by agreement of parties.
- Mathematical formula for determining child support – income based by noncustodial parent.
- Add-ons: health insurance; uncovered health expenses; child care, all pro rata. Education expenses – not pro rata.
- Any agreement must indicate the presumptive amount and whether the agreement complies or deviates.

Spousal Maintenance

Is there an Order or Agreement?

If YES:

Does the agreement (if any) meet the requirements of DRL §236(B)(3)?

If **NOT**, Court will have to deal with the issue.

1. Statutory formula for both temporary maintenance, DRL §236(B)(5-a) and permanent maintenance, DRL §236(B)(6).
2. Maintenance may be for set period of time, or permanent.
3. Standard is pre-separation standard of living.
4. Realistically, not always granted, especially if the spouse is self-supporting or there just is not enough money.
5. Maintenance factors recently amended, DRL §236(B)(6). Review the factors.



Equitable Distribution of Property

Marital property is property acquired during the marriage by either spouse. Title does not matter.

There are a few EXCEPTIONS:

1. Pre-marital property
2. Inheritance
3. Personal injury settlement

Types of property

1. Real property, including home, vacation and rental property
2. Motor vehicle or boat
3. Bank accounts
4. Jewelry and personal items
5. Debts
6. Pensions, even if not in payout status
7. Interest in intellectual property – occupational licenses, degrees, professional licenses – see recent amendments

If property exists:

Is there an agreement that complies with DRL §236(B)(3)? If NOT, Court will have to deal with the issue.

E.D., continued...

- Equitable does NOT mean equal.
- However, for longer marriages, unless the Court takes a dislike to one of the parties, it may approximate equality.
- Use the basic approach – ICED :
 - Identify property.
 - Classify as marital or separate
 - Evaluate the property
 - Distribute the property.

The Preliminary Conference

- Court will issue an Order in advance directing exchange of Net Worth Affidavits.
- Extensive Conference Stipulation/Order to be prepared by both attorneys.
- If you need temporary relief, file OSC in advance.
- Court will deal with emergency and temporary issues:
 - Custody
 - Child support
 - Spousal maintenance
 - Bank accounts and other assets
 - Discovery schedule
 - Experts

Previous Orders from Other Courts

1. Order of Protection
2. Order of Custody/Visitation
3. Child Support Order
4. Order in child abuse/neglect case
5. Bankruptcy Court Order



Thank you

GENERAL INFORMATION SHEET

(To be completed by client)

Full Name:

Social Security #:

Birthdate:

Address:

Phone: (H):

(W):

(FAX):

(PAGER):

(Cellular Phone):

Occupation:

Job Title:

Employer:

Address:

Dates of Current Employment:

Job Benefits:

Education:

Date of Prior Marriage:

Ante Nuptial Agreement: YES_____ NO_____

Date of Separation:

Restore to Prior Name: YES_____ NO_____

Spouse's Full Name:

Social Security #:

Spouse's Birthdate:

Address:

Phone: (H):

(W):

(FAX):

(PAGER):

(Cellular Phone):

Occupation:

Job Title:

Employer:

Address:

Dates of Current Employment:

Job Benefits:

Education:

Date of Spouse's Prior Marriage:

Restore Prior Name: YES___ NO___

Date of Marriage:

Place of Marriage:

Children of this Marriage:

Residence of Children for the past five years:

Special Health or Handicap Problems of any Children or Family Members:

Client's Children of Prior Marriage:

Child Support Paid: \$

Child Support Received: \$

Amount of Child Support: \$

Spouse's Children of Prior Marriage:

Child Support Paid: \$

Child Support Received: \$

Amount of Child Support: \$

PERSONAL RECORD:

Criminal Record:

Client:

Spouse:

Domestic Violence, TRO:

Client:

Spouse:

Drugs, Alcohol:

Client:

Spouse:

Either party in the Military?

Client:

Spouse:

Any Social Services involvement? Time period/Reason:

Client:

Spouse:

Has either party received Public Assistance/Benefits?

Client:

Spouse:

MEDICAL HISTORY:

Mental Health:

Client:

Spouse:

Disabilities/Impairments:

Client:

Spouse:

RELIGION:

Client:

Spouse:

NOTES:

**COMPLETE THE FOLLOWING ONLY
IF CUSTODY OF THE CHILD(REN) IS AN ISSUE**

Your Home:

- A. Kind of home (apartment, mobile home, duplex, etc.), number of rooms, any problems with utilities, safety, etc?

- B. Will your spouse say your home is not a proper place to raise your children? Why?

- C. Name all people who live in your home and state their relationship to you:

- D. Describe your neighborhood:

- E. How close are the children's schools, play areas and friends:

Spouse's Home:

- A. Kind of home (apartment, mobile home, duplex, etc.), number of rooms, any problems with utilities, safety, etc.?
- B. Is that home not a proper place to raise your children?
Why?
- C. Name all people who live in that home and state their relationship to your spouse:
- D. Describe the neighborhood:
- E. How close are the children's schools, play areas and friends:

Children's Health:

- A. Describe any significant medical problems:

- B. State who usually takes the children to the doctor:

- C. If your children are currently taking any medication. State what and why:

- D. Describe any problems your children have with nerves, sleep, mood swings, school, peer relationships, learning disabilities, etc.:

If the children are school age:

- A. Grades at school:
- B. Attendance at school:
- C. Conduct at school:
- D. Describe any recent significant changes in grades, attendance or conduct at school:
- E. Describe your children's relationships with classmates and teachers:

Drugs and Alcohol:

- A. If your spouse says that you or anyone in your household use drugs, prescription, non-prescription or alcohol. State what and why:
- B. If your spouse or anyone in your spouse's current household uses drugs, prescription, non-prescription or alcohol. Describe what you know:

Crime:

- A. If your spouse says you or anyone in your household has ever been arrested for anything other than routine traffic tickets. State who, when why and what:

- B. If your spouse or anyone in your spouse's household has ever been arrested for anything other than routine traffic tickets. State who, when why and what:

Mental and Emotional:

- A. If your spouse says you or anyone in your household is emotionally unstable. State who and why:

- B. If anyone in your household has seen a psychologist or counselor for emotional or mental problems or receives any medication for emotional or mental problems or suffers from "flashbacks" from drug use, military experiences or other past stressful experiences. State who, when and the names of the counselors:

- C. If anyone in your spouse's household has seen a psychologist or counselor for emotional or mental problems or receives any medication for emotional or mental problems or suffers from "flashbacks" from drug use, military experiences or other past stressful experiences. State who, when and the names of the counselors:

Work and Child Care:

- A. Describe the current child care arrangement for your children:
- B. If your spouse has or wants custody. What is or would be the child care arrangement and would it be adequate?
- C. Hours you work:
- D. Where you work:
- E. Type of work you do:
- F. Spouse's work hours;
- G. Spouse's place of work:
- H. Type of work your spouse does:

Health:

- A. Your medical status and any medical problems:

- B. Your spouse's medical status and any medical problems:

Age:

- A. You:
- B. Your spouse:
- C. Your child(ren):

Education:

- A. You:

- B. Your spouse:

Marriages:

- A. How many times have you been married and divorced?

- B. How many times has your spouse been married and divorced?

- C. List your children, other than the children involved in this proceeding, and state who has custody, how old the children are and how they are doing:
- D. List your spouse's children other than the children involved in this proceeding, and state who has custody, how old the children are and how they are doing:
- E. If the children involved in this proceeding are emotionally close to any step-siblings. Explain:
- F. If the children involved in this proceeding are emotionally close to any relatives of either you or your spouse. Explain:

If the children were asked in private by the Judge who they want to live with. What do you think they would say?

Respective School Districts:

- A. Yours:

Any other cases pending regarding custody of the children:

- A. State and county where pending:
- B. When the case was filed:
- C. Case number:
- D. Any Orders already entered:
- E. Judge's name:

Discipline:

- A. Your beliefs and methods:
- B. Your spouse's beliefs and methods:

Religious activity of the children:

- A. With you:
- B. With your spouse:

Strengths and Weaknesses as parents:

- A. You:
- B. Your spouse:

DOCUMENTS TO BE FILLED OUT AND RETURNED TO ATTORNEY

1. General Information Sheet
2. Property List
3. Debt List
4. Monthly Expenses
5. Visitation Schedule (Please review and make any changes you desire - for each change please state your reason for such change)

DOCUMENTS TO BE PROVIDED TO ATTORNEY

(Please provide copies – we would prefer you keep your originals)

1. Past three years tax returns, including W-2 forms
2. Current pay stubs from January to present
3. Past six months bank statements for all checking and savings accounts (upon receiving it, provide current months bank statement)
4. Verification of debts (i.e. credit card statements, invoices, monthly statements, etc.)
5. Verification of assets (i.e. monthly or quarterly statement of any asset listed above in General Information Sheet)
6. Vehicle titles
7. Boat titles, Motorcycle titles
8. NADA (blue book) value of automobiles (highlight car value – you may obtain this information from a bank, car dealership, etc.)
9. Warranty Deed or Quit Claim Deed to all real estate, including residence and/or any and all land
10. Verification of medical insurance cost for children only
11. Verification of monthly day care cost for children
12. Cost of transportation for visitation
13. Verification of other child support payments made either by you or your spouse for any children of a previous marriage or children prior to marriage
14. Certificates of Deposit

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

Plaintiff,

- against -

Defendant.

**STATEMENT
OF NET WORTH
DATED:**

Index No.

Date Action Commenced:

Complete all items, marking "NONE", "INAPPLICABLE" and "UNKNOWN", if appropriate

STATE OF NEW YORK)
)ss.:
COUNTY OF _____)

_____, the Plaintiff/Defendant herein, being duly sworn, deposes and says that, **subject to the penalties of perjury**, the following is an accurate statement as of _____, __, 20__, of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), **statement of income from all sources** and statement of assets transferred of whatsoever kind and nature and wherever situated and statement of expenses:

I. FAMILY DATA

(a)	Plaintiff's date of birth:	
(b)	Defendant's date of birth:	
(c)	Date married:	
(d)	Names and dates of birth of Child(ren) of the marriage:	
(e)	Minor child(ren) of prior marriage:	
(f)	Custody of child(ren) of prior marriage:	
(g)	Plaintiff's present address:	
	Defendant's present address:	
(h)	Occupation/Employer of Plaintiff:	
	Occupation/Employer of Defendant:	

II. EXPENSES: (List your current expenses on a monthly basis. If there has been any change in these expenses during the recent past please indicate). Items included under “other” should be listed separately with separate dollar amounts.)

(a)		Housing: Monthly	
	1.	Mortgage/Co-op Loan	
	2.	Home Equity Line of Credit/Second Mortgage	
	3.	Real Estate Taxes (if not included in mortgage payment)	
	4.	Homeowners/Renter's Insurance	
	5.	Homeowner's Association/Maintenance charges/Condominium Charges	
	6.	Rent	
	7.	Other	
		TOTAL: HOUSING	
(b)		Utilities: Monthly	
	1.	Fuel Oil/Gas	
	2.	Electric	
	3.	Telephone (land line)	
	4.	Mobile Phone	
	5.	Cable/Satellite TV	
	6.	Internet	
	7.	Alarm	
	8.	Water	
	9.	Other	
		TOTAL: UTILITIES	

(c)		Food: Monthly	
	1.	Groceries	
	2.	Dining Out/Take Out	
	3.	Other	
		TOTAL: FOOD	
(d)		Clothing: Monthly	
	1.	Yourself	
	2.	Child(ren)	
	3.	Dry Cleaning	
	4.	Other	
		TOTAL: CLOTHING	
(e)		Insurance: Monthly	
	1.	Life	
	2.	Fire, theft and liability and personal articles policy	
	3.	Automotive	
	4.	Umbrella Policy	
	5.	Medical Plan	
		5A. Medical Plan for yourself (Including name of carrier and name of insured)	
		5B. Medical Plan for children (Including name of carrier and name of insured)	
	6.	Dental Plan	
	7.	Optical Plan	
	8.	Disability	

	9.	Worker's Compensation	
	10.	Long Term Care Insurance	
	11.	Other	
		TOTAL: INSURANCE	
(f)		Unreimbursed Medical: Monthly	
	1.	Medical	
	2.	Dental	
	3.	Optical	
	4.	Pharmaceutical	
	5.	Surgical, Nursing, Hospital	
	6.	Psychotherapy	
	7.	Other	
		TOTAL: UNREIMBURSED MEDICAL	
(g)		Household Maintenance: Monthly	
	1.	Repairs/Maintenance	
	2.	Gardening/landscaping	
	3.	Sanitation/carting	
	4.	Snow Removal	
	5.	Extermination	
	6.	Other	
		TOTAL: HOUSEHOLD MAINTENANCE	
(h)		Household Help: Monthly	
	1.	Domestic (housekeeper, etc.)	
	2.	Nanny/Au Pair/Child Care	
	3.	Babysitter	
	4.	Other	
		TOTAL: HOUSEHOLD HELP	

(i)		Automobile: Monthly (List data for each car separately)	
		Year: _____ Make: _____ Personal: _____ Business: _____	
	1.	Lease or Loan Payments (indicate lease term)	
	2.	Gas and Oil	
	3.	Repairs	
	4.	Car Wash	
	5.	Parking and tolls	
	6.	Other	
		TOTAL: AUTOMOTIVE	
(j)		Education Costs: Monthly	
	1.	Nursery and Pre-school	
	2.	Primary and Secondary	
	3.	College	
	4.	Post-Graduate	
	5.	Religious Instruction	
	6.	School Transportation	
	7.	School Supplies/Books	
	8.	School Lunches	
	9.	Tutoring	
	10.	School Events	
	11.	Child(ren)'s extra-curricular and educational enrichment activities (Dance, Music, Sports, etc.)	
	12.	Other	
		TOTAL: EDUCATION	
(k)		Recreational: Monthly	
	1.	Vacations	
	2.	Movies, Theatre, Ballet, Etc.	

	3.	Music (Digital or Physical Media)	
	4.	Recreation Clubs and Memberships	
	5.	Activities for yourself	
	6.	Health Club	
	7.	Summer Camp	
	8.	Birthday party costs for your child(ren)	
	9.	Other	
		TOTAL: RECREATIONAL	
(l)		Income Taxes: Monthly	
	1.	Federal	
	2.	State	
	3.	City	
	4.	Social Security and Medicare	
	5.	Number of dependents claimed in prior tax year	
	6.	List any refund received by you for prior tax year	
		TOTAL: INCOME TAXES	
(m)		Miscellaneous: Monthly	
	1.	Beauty parlor/Barber/Spa	
	2.	Toiletries/Non-Prescription Drugs	
	3.	Books, magazines, newspapers	
	4.	Gifts to others	
	5.	Charitable contributions	
	6.	Religious organizations dues	
	7.	Union and organization dues	
	8.	Commutation expenses	
	9.	Veterinarian/pet expenses	

	10.	Child support payments (for Child(ren) of a prior marriage or relationship pursuant to court order or agreement)	
	11.	Alimony and maintenance payments (prior marriage pursuant to court order or agreement)	
	12.	Loan payments	
	13.	Unreimbursed business expenses	
	14.	Safe Deposit Box rental fee	
		TOTAL: MISCELLANEOUS	
(n)		Other: Monthly	
	1.		
	2.		
	3.		
		TOTAL: OTHER	
		TOTAL: MONTHLY EXPENSES	

III.		GROSS INCOME INFORMATION:	
	(a)	<p>Gross (total) income - as should have been or should be reported in the most recent Federal income tax return. (State whether your income has changed during the year preceding date of this affidavit. If so, please explain.)</p> <p>Attach most recent W-2, 1099s, K1s and income tax returns.</p> <p>List any amount deducted from gross income for retirement benefits or tax deferred savings.</p>	
	(b)	To the extent not already included in gross income in (a) above:	
		1. Investment income, including interest and dividend income, reduced by sums expended in connection with such investment	
		2. Worker's compensation (indicate percentage of amount due to lost wages)	
		3. Disability benefits (indicate percentage of amount due to lost wages)	
		4. Unemployment insurance benefits	
		5. Social Security benefits	
		6. Supplemental Security Income	
		7. Public assistance	
		8. Food stamps	
		9. Veterans benefits	
		10. Pensions and retirement benefits	
		11. Fellowships and stipends	
		12. Annuity payments	
	(c)	If any child or other member of your household is employed, set forth name and that person's annual income:	
	(d)	List any maintenance and/or child support you are receiving pursuant to court order or agreement	
	(e)	Other:	

IV. ASSETS *(If any asset is held jointly with spouse or another, so state, and set forth your respective shares. Attach additional sheets, if needed)*

A.	1.	Cash Accounts:	
		Cash	
	1.1	a. Location	
		b. Source of Funds	
		c. Amount as of date of commencement	
		d. Current amount	
		TOTAL: CASH	
	2.	Checking Accounts:	
	2.1	a. Financial Institution	
		b. Account Number	
		c. Title holder	
		d. Date opened	
		e. Source of Funds	
		f. Balance as of date of commencement	
		g. Current balance	
	2.2	a. Financial Institution	
		b. Account Number	
		c. Title holder	
		d. Date opened	
		e. Source of Funds	
		f. Balance as of date of commencement	
		g. Current balance	
		TOTAL: Checking Accounts	

	3.	Savings Account (including individual, joint, totten trust, certificates of deposit, treasury notes)	
	3.1	a. Financial Institution	
		b. Account Number	
		c. Title holder	
		d. Type of account	
		e. Date opened	
		f. Source of Funds	
		g. Balance as of date of commencement	
		h. Current balance	
	3.2	a. Financial Institution	
		b. Account Number	
		c. Title holder	
		d. Type of account	
		e. Date opened	
		f. Source of Funds	
		g. Balance as of date of commencement	
		h. Current balance	
		TOTAL: Savings Accounts	
		TOTAL: Accounts	\$
B.	4.	Real Estate (Including real property, leaseholds, life estates, etc. at market value – do not deduct any mortgage)	
	4.1	a. Description	
		b. Title owner	
		c. Date of acquisition	
		d. Original price	

		e. Source of funds to acquire	
		f. Amount of mortgage or lien unpaid	
		g. Estimate current fair market value	
	4.2	a. Description	
		b. Title owner	
		c. Date of acquisition	
		d. Original price	
		e. Source of funds to acquire	
		f. Amount of mortgage or lien unpaid	
		g. Estimate current fair market value	
		TOTAL: Real Estate	
C.	5.	Retirement Accounts (e.g. IRAs, 401(k)s, 403(b)s, pension, profit sharing plans, deferred compensation plans, etc.)	
	5.1	a. Description	
		b. Location of assets	
		c. Title owner	
		d. Date of acquisition	
		e. Source of funds	
		f. Amount of unpaid liens	
		g. Value as of date of commencement	
		h. Current value	
	5.2	a. Description	
		b. Location of assets	
		c. Title owner	
		d. Date of acquisition	
		e. Source of funds	

		f. Amount of unpaid liens	
		g. Value as of date of commencement	
		h. Current value	
		TOTAL: Retirement Accounts	
D.	6.	Vehicles (Auto, Boat, Truck, Plane, Camper, Motorcycles, etc.)	
	6.1	a. Description	
		b. Title owner	
		c. Date of acquisition	
		d. Original price	
		e. Source of funds to acquire	
		f. Amount of lien unpaid	
		g. Current fair market value	
		h. Value as of date of commencement	
	6.2	a. Description	
		b. Title owner	
		c. Date of acquisition	
		d. Original price	
		e. Source of funds to acquire	
		f. Amount of lien unpaid	
		g. Current fair market value	
		h. Value as of date of commencement	
		TOTAL: Value of Vehicles	\$
E.	7.	Jewelry, art, antiques, household furnishings, precious objects, gold and precious metals (only if valued at more than \$500)	
	7.1	a. Description	
		b. Title owner	

		c. Location	
		d. Original price or value	
		e. Source of funds to acquire	
		f. Amount of lien unpaid	
		g. Value as of date of commencement	
		h. Estimate Current Value	
	7.2	a. Description	
		b. Title Owner	
		c. Location	
		d. Original price or value	
		e. Source of funds to acquire	
		f. Amount of lien unpaid	
		g. Value as of date of commencement	
		h. Estimate Current Value	
		TOTAL Value of Jewelry, Art, Antiques, etc.	\$
		IF YOU HAVE NO OTHER ASSETS OR BUSINESS INTERESTS, GO TO THE LIABILITIES SECTION ON PAGE 17	
F.	8.	Interest in any Business	
	8.1	a. Name and Address of Business	
		b. Type of Business (corporate, partnership, sole proprietorship or other)	
		c. Your percentage of interest	
		d. Date of acquisition	
		e. Original price or value	

		f. Source of funds to acquire	
		g. Net worth of business and date of such valuation	
		h. Other relevant information	
		TOTAL: Value of Business Interests	
G.	9.	Cash Surrender Value of Life Insurance	
	9.1	a. Insurer's name and address	
		b. Name of insured	
		c. Policy number	
		d. Face amount of policy	
		e. Policy owner	
		f. Date of acquisition	
		g. Source of funds	
		h. Cash surrender value as of date of commencement	
		i. Current cash surrender value	
	9.2	a. Insurer's name and address	
		b. Name of insured	
		c. Policy number	
		d. Face amount of policy	
		e. Policy owner	
		f. Date of acquisition	
		g. Source of funds	
		h. Cash surrender value as of date of commencement	
		i. Current cash surrender value	
		Total: Cash Surrender Value of Life Insurance	

H.	10.	Investment Accounts/Securities/Stock Options/Commodities/Broker Margin Accounts	
		10.1 a. Description	
		b. Title holder	
		c. Location	
		d. Date of acquisition	
		e. Source of funds	
		f. Value as of date of commencement	
		g. Current value	
		10.2 a. Description	
		b. Title holder	
		c. Location	
		d. Date of acquisition	
		e. Source of funds	
		f. Value as of date of commencement	
		g. Current Value	
		TOTAL: Investment Accounts/Securities/Stock Options/Commodities/Broker Margin Accounts	
		TOTAL: Value of Securities	\$
I.	11.	Loans to Others and Accounts Receivable	
		11.1 a. Debtor's Name and Address	
		b. Original amount of loan or debt	
		c. Source of funds from which loan made or origin of debt	
		d. Date payment(s) due	
		e. Amount due as of date of commencement	
		f. Current amount due	
		TOTAL: Loans to Others and Accounts Receivable	

J.	12.	Contingent Interests (stock options, interests subject to life estates, prospective inheritances)	
		12.1 a. Description	
		b. Location	
		c. Date of vesting	
		d. Title owner	
		e. Date of acquisition	
		f. Original price or value	
		g. Source of acquisition to acquire	
		h. Method of valuation	
		i. Value as of date of commencement	
		j. Current value	\$
		TOTAL: Contingent Interests	\$
K.	13.	Other Assets (e.g., tax shelter investments, collections, judgments, causes of action, patents, trademarks, copyrights, and any other asset not hereinabove itemized)	
		13.1 a. Description	
		b. Title owner	
		c. Location	
		d. Original Price or value	
		e. Source of funds to acquire	
		f. Amount of lien unpaid	
		g. Value as of date of commencement	
		h. Current value	
		TOTAL: Other Assets	\$
		TOTAL ASSETS:	\$

V.		<u>LIABILITIES</u>	
A.	1.	Accounts Payable	
		1.1 a. Name and address of creditor	
		b. Debtor	
		c. Amount of original debt	
		d. Date of incurring debt	
		e. Purpose	
		f. Monthly or other periodic payment	
		g. Amount of debt as of date of commencement	
		h. Amount of current debt	
		1.2 a. Name and address of creditor	
		b. Debtor	
		c. Amount of original debt	
		d. Date of incurring debt	
		e. Purpose	
		f. Monthly or other periodic payment	
		g. Amount of debt as of date of commencement	
		h. Amount of current debt	
		TOTAL: Accounts Payable	\$
B.		Credit Card Debt	
	2.	2.1 a. Debtor	
		b. Amount of original debt	
		c. Date of incurring debt	
		d. Purpose	
		e. Monthly or other periodic payment	
		f. Amount of debt as of date of commencement	
		g. Amount of current debt	

		2.2 a. Debtor	
		b. Amount of original debt	
		c. Date of incurring debt	
		d. Purpose	
		e. Monthly or other periodic payment	
		f. Amount of debt as of date of commencement	\$
		g. Amount of current debt	\$
		TOTAL: Credit Card Debt	\$
C.	3.	Mortgages Payable on Real Estate	
		3.1 a. Name and address of mortgagee	
		b. Address of property mortgaged	
		c. Mortgagor(s)	
		d. Original debt	
		e. Date of incurring debt	
		f. Monthly or other periodic payment	
		g. Maturity date	
		h. Amount of debt as of date of commencement	
		i. Amount of current debt	
		3.2 a. Name and address of mortgagee	
		b. Address of property mortgaged	
		c. Mortgagor(s)	
		d. Original debt	
		e. Date of incurring debt	
		f. Monthly or other periodic payment	
		g. Maturity date	

		h. Amount of debt as of date of commencement	
		i. Amount of current debt	
		TOTAL: Mortgages Payable	
D.	4.	Home Equity and Other Lines of Credit	
	4.1	a. Name and address of mortgagee	
		b. Address of property mortgaged	
		c. Mortgagor(s)	
		d. Original debt	
		e. Date of incurring debt	
		f. Monthly or other periodic payment	
		g. Maturity date	
		h. Amount of debt at date of commencement	
		i. Amount of current debt	
		TOTAL: Home Equity and Other Lines of Credit	\$
E.	5.	Notes Payable	
	5.1	a. Name and address of noteholder	
		b. Debtor	
		c. Amount of original debt	
		d. Date of incurring debt	
		e. Purpose	
		f. Monthly or other periodic payment	
		g. Amount of debt as of date of commencement	
		h. Amount of current debt	
		TOTAL: Notes Payable	\$
F.	6.	Brokers Margin Accounts	
	6.1	a. Name and address of broker	
		b. Amount of original debt	

		c. Date of incurring debt	
		d. Purpose	
		e. Monthly or other periodic payment	
		f. Amount of debt as of date of commencement	
		g. Amount of current debt	
		TOTAL: Broker's Margin Accounts	
G.	7.	Taxes Payable	
	7.1	a. Description of Tax	
		b. Amount of Tax	
		c. Date Due	
		TOTAL: Taxes Payable	\$
H.	8.	Loans on Life Insurance Policies	
	8.1	a. Name and address of insurer	
		b. Amount of loan	
		c. Date incurred	
		d. Purpose	
		e. Name of Borrower	
		f. Monthly or other periodic payment	
		g. Amount of debt as of date of commencement	
		h. Amount of current debt	
		TOTAL: Loans on Life Insurance	
I.	9.	Installment accounts payable (security agreements, chattel mortgages)	
	9.1	a. Name and address of creditor	
		b. Debtor	
		c. Amount of original debt	
		d. Date of incurring debt	
		e. Purpose	

		f. Monthly or other periodic payment	
		g. Amount of debt as of date of commencement	
		h. Amount of current debt	
		TOTAL: Installment Accounts	\$
J.	10.	Other Liabilities	
	10.1	a. Description	
		b. Name and address of creditor	
		c. Debtor	
		d. Original amount of debt	
		e. Date incurred	
		f. Purpose	
		g. Monthly or other periodic payment	
		h. Amount of debt as of date of commencement	
		i. Amount of current debt	
	10.2	a. Description	
		b. Name and address of creditor	
		c. Debtor	
		d. Original amount of debt	
		e. Date incurred	
		f. Purpose	
		g. Monthly or other periodic payment	
		h. Amount of debt as of date of commencement	
		i. Amount of current debt	
		TOTAL: Other Liabilities	\$
		TOTAL LIABILITIES	\$

VI. ASSETS TRANSFERRED

List all assets transferred in any manner during the preceding three years, or length of the marriage, whichever is shorter. Note: Transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the Statement of Net Worth.

Description of Property	To Whom Transferred and Relationship to Transferee	Date of Transfer	Value

VII. LEGAL & EXPERT FEES

Please state the amount you have paid to all lawyers and experts retained in connection with your marital dissolution, including name of professional, amounts and dates paid, and source of funds. Attach retainer agreement for your present attorney.

VIII. OTHER DATA CONCERNING THE FINANCIAL CIRCUMSTANCES OF THE PARTIES THAT SHOULD BE BROUGHT TO THE ATTENTION OF THE COURT ARE:

The foregoing statements and a rider consisting of _____ page(s) annexed hereto and made a part hereof, have been carefully read by the undersigned who states that they are true and correct and states same, under oath, subject to the penalties of perjury.

Sworn to before me this
day of _____, 20__

Notary Public

This is the _____ Statement of Net Worth
I have filed in this proceeding.

Attorney Certification:

REQUIRED ATTACHMENTS:

Retainer Agreement

Most recent W-2, 1099s, K1s and Income Tax Returns

Retainer Agreement for Legal Services
(Matrimonial)

This document, when countersigned by you, will confirm that you have retained me as your attorney to represent you in connection with the ongoing marital disputes between you and your husband/wife. This document will also set forth the complete terms of our agreement regarding the services I am to render to you, the fees you shall be obligated to pay me therefore, our other respective obligations to each other, and the nature of our professional relationship.

As your attorney, I shall endeavor to resolve all appropriate legal issues arising out of the breakdown of your marital relationship, including custody, visitation, spousal support, child support, possession of the marital home, equitable distribution of marital property, declaration of separate property, and responsibility for personal debts and litigation expenses. I shall endeavor to resolve these issues primarily by means of a written agreement between you and your spouse and, if that is not feasible, by determination of a court of competent jurisdiction. My services as your attorney shall include, but not be limited to, the negotiation, preparation and execution of settlement agreements and the prosecution or defense of litigation seeking a legal dissolution of your marriage and a determination of the appropriate legal issues.

Since you have been referred to me through the auspices of the Pro Bono Project, you will not be required to pay any legal fees to me, provided that you continue, throughout the time I represent you, to remain eligible to receive such pro bono services, in accordance with the income eligibility guidelines established by the Pro Bono Project. In the event there is a future change in your financial circumstances, as a result of which you are no longer eligible to receive pro bono legal services, I shall so inform you, and my continued representation of you thereafter will require the payment of legal fees in accordance with the terms of a new Retainer Agreement for Legal Services to be signed by us at that time. Although you are not obligated to pay for my legal services rendered to you, provided you remain eligible to receive pro bono legal services, I may become entitled to receive an award of legal fees to be paid by your husband/wife.

Even though you are not obligated to pay for my legal services rendered to you, provided that you remain eligible to receive pro bono legal services, you will be required to pay for, or to reimburse me for, any and all out-of-pocket expenses and disbursements which I may pay or incur on your behalf, such as court filing fees, process server's fees, court reporter's fees, photocopies and long-distance telephone calls. No substantial expense or disbursement will be incurred or charged to you without your prior knowledge and approval.

You will be billed periodically for the out-of-pocket expenses and disbursements incurred by my firm in connection with your matter. Upon receipt of my bill, you are expected to review the bill and promptly bring to my attention any objections you may have to the bill. Payment in full is due within 30 days of your receipt of each bill. I will be happy to discuss with you any question or objection you may raise to my bill. You will not be charged for the time expended in discussing any aspect of bills rendered to you.

You have, and will continue to have, the absolute right to cancel this retainer agreement and discharge me as your attorney at any time during the course of my representation. Should

you exercise this right, or should I withdraw for any reason as your attorney, you will be charged only for the expenses and disbursements incurred up until that time.

I shall keep you informed at all times concerning the status of your case and agree to explain the laws pertinent to your situation, the available courses of action, and the attendant benefits and risks of each. I shall notify you promptly of any developments in your case, including court appearances, conferences and determinations, and I will be available for office meetings and telephone discussions with you at mutually convenient times. Copies of all papers will be supplied to you as they are prepared or received by my office, and you will be billed a reasonable photocopy charge of \$.10 per page for these materials.

You are advised that in the event I determine there has been an irretrievable breakdown in the attorney-client relationship or that you have materially breached the terms of this retainer agreement, I may decide to make application to the Court in which your action is pending to be relieved as your attorney. In such event, you will be provided with notice of the application and an opportunity to be heard.

While I seek to avoid any fee dispute with my clients, in the event such a dispute does arise, you are advised that you have the right, at your election, to seek arbitration to resolve the fee dispute. In such event, I shall advise you in writing by certified mail that you have 30 days from receipt of such notice in which to elect to resolve the dispute by arbitration, and I shall enclose a copy of the arbitration rules and a form for requesting arbitration. The decision resulting from an arbitration is binding upon both you and me.

I have advised you that in order for me to properly protect your interests, it may be necessary to retain outside experts, such as appraisers, actuaries, private investigators and accountants. You will be responsible to pay the costs incurred for any such outside expert's services, which in some cases may have to be paid in advance, depending upon the requirements of the particular expert retained. No expert or appraiser shall be retained without your prior approval. If necessary and appropriate, an application may be made to the court to have your spouse pay all or part of the aforementioned fees for experts.

I have informed you that pursuant to Court rules, I am required, as your attorney, to certify all papers submitted to Court on your behalf which contain statements of fact, and specifically to certify that I have no knowledge that the substance of the submission is false. Accordingly, you agree to provide me at all times with complete, accurate and truthful information regarding all matters that may be the subject of Court papers and to certify in writing to me, prior to the time the papers are actually submitted to the Court, the accuracy of all papers which I prepare on your behalf for submission to the Court, all of which you shall review and, where appropriate, sign.

It is understood that I have made no promises or representations to you, express or implied, concerning the ultimate outcome of any negotiations or litigation, whether presently pending or hereafter to be initiated between you and your spouse. You further acknowledge that I have not guaranteed, and that I cannot guarantee, the success of any action taken by my firm on your behalf during any negotiations or litigation with respect to any issues to be resolved, including, without limitation, issues of custody, visitation, spousal support, child support, equitable distribution of marital property, declaration of separate property, responsibility for debts and counsel fees. You are aware of the unpredictable nature of matrimonial

negotiations and litigation and acknowledge that I have made no guarantees concerning the ultimate disposition of any phase of the matter for which you have retained me as your attorney.

It is further agreed that I will share information with Nassau Suffolk Law Services regarding the facts and status of your case. By signing this retainer you agree to this exchange of information with Nassau Suffolk Law Services.

If this agreement regarding our professional relationship meets with your approval, kindly sign your name where indicated on the accompanying copy of this document. I have advised you that, pursuant to Court rules, a copy of this retainer agreement is required to be filed with the Court in which any action for marital dissolution is pending. By signing this document copy, you acknowledge that you have read this retainer agreement in its entirety, had full opportunity to consider its terms, received a full and satisfactory explanation of same, understood it and fully agreed to its terms. You also acknowledge that you have received and read the Statement of Client's Rights and Responsibilities, a copy of which is attached to this retainer agreement.

I HAVE READ AND UNDERSTAND THE ABOVE RETAINER AGREEMENT, AND I HEREBY ACCEPT ALL OF ITS TERMS, AGREE TO BE BOUND HEREBY, AND ACKNOWLEDGE RECEIPT OF A COMPLETE COPY HEREOF:

Client=s name (print)

Client=s signature

Volunteer Attorney=s name (print)

Volunteer Attorney=s signature

Ethical Issues

Ethics

NYS Rules of Professional Conduct

1.5 (d)(5) Fees in matrimonial matters

V.W. v. J.B., rev'd Weinstein v. Barnett – Issue is whether a performance fee agreement was contingent on a result. (Remanded for additional fact-finding.

1.7(a)(1); (b)(4) Dual representation

Levine v. Levine – NY Court of Appeals allows attorney to represent both parties to separation agreement. Blatantly incorrect.

1.8(b) – Information about the client

1.8(j) Sexual relations

Iowa Supreme Court Attorney Disciplinary Board v. Morrison – Court itemizes the reasons for prohibiting attorney-client sexual relationship.

Attorney Grievance Commission of Maryland v. Culver – Attorney disbarred for sexual relationship with client, and then obstructing her efforts to sue him.

1.9 Duties to Former Clients

Woods v. Superior Court – Attorney for family corporation cannot represent husband in divorce action.

Rule 1.5. Fees and Division of Fees, NY ST RPC Rule 1.5

McKinney's Consolidated Laws of New York Annotated
Judiciary Law (Refs & Annos)
Appendix
Rules of Professional Conduct [Eff. April 1, 2009. as Amended to January 1, 2014.] (Refs & Annos)
Client-Lawyer Relationship

Rules of Prof. Con., Rule 1.5 McK.Consol.Laws, Book 29 App.

Rule 1.5. Fees and Division of Fees

Currentness

(a) A lawyer shall not make an agreement for, charge, or collect an excessive or illegal fee or expense. A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive. The factors to be considered in determining whether a fee is excessive may include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent or made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) A lawyer shall communicate to a client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible. This information shall be communicated to the client before or within a reasonable time after commencement of the representation and shall be in writing where required by statute or court rule. This provision shall not apply when the lawyer will charge a regularly represented client on the same basis or rate and perform services that are of

Rule 1.5. Fees and Division of Fees, NY ST RPC Rule 1.5

the same general kind as previously rendered to and paid for by the client. Any changes in the scope of the representation or the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. Promptly after a lawyer has been employed in a contingent fee matter, the lawyer shall provide the client with a writing stating the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or, if not prohibited by statute or court rule, after the contingent fee is calculated. The writing must clearly notify the client of any expenses for which the client will be liable regardless of whether the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a writing stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge or collect:

(1) a contingent fee for representing a defendant in a criminal matter;

(2) a fee prohibited by law or rule of court;

(3) a fee based on fraudulent billing;

(4) a nonrefundable retainer fee; provided that a lawyer may enter into a retainer agreement with a client containing a reasonable minimum fee clause if it defines in plain language and sets forth the circumstances under which such fee may be incurred and how it will be calculated; or

(5) any fee in a domestic relations matter if:

(i) the payment or amount of the fee is contingent upon the securing of a divorce or of obtaining child custody or visitation or is in any way determined by reference to the amount of maintenance, support, equitable distribution, or property settlement;

(ii) a written retainer agreement has not been signed by the lawyer and client setting forth in plain language the nature of the relationship and the details of the fee arrangement; or

(iii) the written retainer agreement includes a security interest, confession of judgment or other lien without prior notice being provided to the client in a signed retainer agreement and approval from a tribunal after notice to the adversary. A lawyer shall not foreclose on a mortgage placed on the marital residence while the spouse who consents to the mortgage remains the titleholder and the residence remains the spouse's primary residence.

Rule 1.5. Fees and Division of Fees, NY ST RPC Rule 1.5

(e) In domestic relations matters, a lawyer shall provide a prospective client with a statement of client's rights and responsibilities at the initial conference and prior to the signing of a written retainer agreement.

(f) Where applicable, a lawyer shall resolve fee disputes by arbitration at the election of the client pursuant to a fee arbitration program established by the Chief Administrator of the Courts and approved by the Administrative Board of the Courts.

(g) A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless:

(1) the division is in proportion to the services performed by each lawyer or, by a writing given to the client, each lawyer assumes joint responsibility for the representation;

(2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client's agreement is confirmed in writing; and

(3) the total fee is not excessive.

(h) Rule 1.5(g) does not prohibit payment to a lawyer formerly associated in a law firm pursuant to a separation or retirement agreement.

Notes of Decisions (304)

Rules of Prof. Con., Rule 1.5 McK. Consol. Laws, Book 29 App., NY ST RPC Rule 1.5
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Rule 1.7. Conflict of Interest: Current Clients, NY ST RPC Rule 1.7

McKinney's Consolidated Laws of New York Annotated
Judiciary Law (Refs & Annos)
Appendix
Rules of Professional Conduct [Eff. April 1, 2009, as Amended to January 1, 2014.] (Refs & Annos)
Client-Lawyer Relationship

Rules of Prof. Con., Rule 1.7 McK.Consol.Laws, Book 29 App.

Rule 1.7. Conflict of Interest: Current Clients

Currentness

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

(1) the representation will involve the lawyer in representing differing interests; or

(2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Notes of Decisions (615)

Rules of Prof. Con., Rule 1.7 McK. Consol. Laws, Book 29 App., NY ST RPC Rule 1.7
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Rule 1.8. Current Clients: Specific Conflict of Interest Rules, NY ST RPC Rule 1.8

McKinney's Consolidated Laws of New York Annotated
Judiciary Law (Refs & Annos)
Appendix
Rules of Professional Conduct [Eff. April 1, 2009, as Amended to January 1, 2014.] (Refs & Annos)
Client-Lawyer Relationship

Rules of Prof. Con., Rule 1.8 McK.Consol.Laws, Book 29 App.

Rule 1.8. Current Clients: Specific Conflict of Interest Rules

Currentness

(a) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless:

(1) the transaction is fair and reasonable to the client and the terms of the transaction are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not:

(1) solicit any gift from a client, including a testamentary gift, for the benefit of the lawyer or a person related to the lawyer; or

(2) prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any gift, unless the lawyer or other recipient of the gift is related to the client and a reasonable lawyer would conclude that the transaction is fair and reasonable.

For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to conclusion of all aspects of the matter giving rise to the representation or proposed representation of the client or prospective client, a lawyer shall not negotiate or enter into any arrangement or understanding with:

Rule 1.8. Current Clients: Specific Conflict of Interest Rules, NY ST RPC Rule 1.8

(1) a client or a prospective client by which the lawyer acquires an interest in literary or media rights with respect to the subject matter of the representation or proposed representation; or

(2) any person by which the lawyer transfers or assigns any interest in literary or media rights with respect to the subject matter of the representation of a client or prospective client.

(c) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent or pro bono client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer, in an action in which an attorney's fee is payable in whole or in part as a percentage of the recovery in the action, may pay on the lawyer's own account court costs and expenses of litigation. In such case, the fee paid to the lawyer from the proceeds of the action may include an amount equal to such costs and expenses incurred.

(f) A lawyer shall not accept compensation for representing a client, or anything of value related to the lawyer's representation of the client, from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independent professional judgment or with the client-lawyer relationship; and

(3) the client's confidential information is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, absent court approval, unless each client gives informed consent in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice; or

Rule 1.8. Current Clients: Specific Conflict of Interest Rules, NY ST RPC Rule 1.8

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil matter subject to Rule 1.5(d) or other law or court rule.

(j)(1) A lawyer shall not:

(i) as a condition of entering into or continuing any professional representation by the lawyer or the lawyer's firm, require or demand sexual relations with any person;

(ii) employ coercion, intimidation or undue influence in entering into sexual relations incident to any professional representation by the lawyer or the lawyer's firm; or

(iii) in domestic relations matters, enter into sexual relations with a client during the course of the lawyer's representation of the client.

(2) Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship.

(k) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this Rule solely because of the occurrence of such sexual relations.

Notes of Decisions (172)

Rules of Prof. Con., Rule 1.8 McK. Consol. Laws, Book 29 App., NY ST RPC Rule 1.8
Current with amendments through January 1, 2014.

Rule 1.9. Duties to Former Clients, NY ST RPC Rule 1.9

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Client-Lawyer Relationship

Rules of Prof. Con., Rule 1.9 McK.Consol.Laws, Book 29 App.

Rule 1.9. Duties to Former Clients

Currentness

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) Unless the former client gives informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 or paragraph (c) of this Rule that is material to the matter.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or

(2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client.

Notes of Decisions (220)

Rules of Prof. Con., Rule 1.9 McK. Consol. Laws, Book 29 App., NY ST RPC Rule 1.9
Current with amendments through January 1, 2014.

Levine v Levine, 56 N.Y.2d 42 (1982)
436 N.E.2d 476, 451 N.Y.S.2d 26

56 N.Y.2d 42, 436 N.E.2d 476, 451 N.Y.S.2d 26

Myrna P. Levine, Respondent,
v.
Terry J. Levine, Appellant.

Court of Appeals of New York
Argued March 30, 1982;
decided May 18, 1982

CITE TITLE AS: Levine v Levine

SUMMARY

Appeal from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered July 20, 1981, which (1) reversed, on the law and the facts, a judgment of the Supreme Court at Special Term (Anthony J. Cerrato, J.), entered in Westchester County, dismissing the complaint on the merits following a nonjury trial, and (2) granting plaintiff judgment setting aside a separation agreement.

Plaintiff wife brought this action to have the separation agreement between the parties and the two subsequent modifications thereto set aside as inequitable and unconscionable. The separation agreement was prepared by an attorney who is related to defendant husband by marriage and who had previously represented the husband in connection with his business. He had known both parties for a number of years. The attorney told plaintiff that he was representing both parties only because they had already settled the basic terms of the agreement and that the plaintiff was free to seek the advice of another attorney. After defendant obtained a conversion divorce based on the agreement, plaintiff commenced this action, alleging that she was not represented by counsel of her own choosing but instead and without her consent was represented by the defendant's attorney in the execution of the agreement and subsequent modifications. She further alleged that defendant exerted undue influence on her with respect to the agreement and that it was the product of coercion and overreaching. The Supreme Court dismissed the complaint, finding no evidence of coercion, undue influence or overreaching practiced by the defendant. It also concluded that the agreement was fair, and, specifically, that the attorney had managed to preserve neutrality throughout his joint representation of the couple. The Appellate Division reversed, and granted plaintiff judgment setting aside the separation agreement.

The Court of Appeals reversed and reinstated the Supreme Court judgment, holding, in an opinion by Judge Jasen, that the weight of the credible evidence supports the trial court's findings that the agreement was fair and was not the product of coercion or overreaching by defendant, and that the fact that the parties were represented by the same attorney does not, in and of itself, establish overreaching requiring rescission of the agreement.

Levine v Levine, 83 AD2d 606, reversed.

HEADNOTES

Husband and Wife and Other Domestic Relationships
Separation Agreement
Joint Representation

Levine v Levine, 56 N.Y.2d 42 (1982)
436 N.E.2d 476, 451 N.Y.S.2d 26

([1]) The fact that a separation agreement was prepared by one attorney representing both the husband and the wife is not sufficient, in and of itself, to establish overreaching requiring rescission of the agreement. Accordingly, in an action by plaintiff wife seeking to have the parties' separation agreement set aside as inequitable and unconscionable based on allegations that she was not represented by counsel of her own choosing, but instead and without her consent, was represented by defendant's attorney, that defendant exerted undue influence on the plaintiff with respect to the agreement and that it was the product of coercion and overreaching, the trial court's judgment dismissing the complaint is reinstated, where the attorney told plaintiff that he was involved in the matter only because the basic terms of the agreement had already been settled by the parties and that she was free to seek the advice of another attorney and the weight of the credible evidence supports the trial court's findings that the separation agreement was fair and was not the product of overreaching by defendant, and, further, the Appellate Division made no factual determination that the terms of the agreement were unfair to plaintiff.

POINTS OF COUNSEL

William C. Herman and Lester A. Levin for appellant.

I. The fact of a single attorney acting as a scrivener attorney for both parties to a separation agreement is not sufficient in and of itself to establish overreaching requiring the setting aside of such agreement. (Perry v Perry, 64 AD2d 625; Stern v Stern, 63 AD2d 700; Christian v Christian, 42 NY2d 63; Perlmutter v Perlmutter, 65 AD2d 601; Freimour v Freimour, 78 AD2d 896.) II. The court below was in error in setting aside the agreements herein without examining the terms and provisions thereof. Upon such examination it will be found that same are fair and equitable in all respects. (Christian v Christian, 42 NY2d 63; Stern v Stern, 63 AD2d 700; Perlmutter v Perlmutter, 65 AD2d 601; Goodison v Goodison, 66 AD2d 923, 48 NY2d 786; Perry v Perry, 64 AD2d 625.) III. Appellant failed to prove her case that there was coercion or undue influence, overreaching *44 or that the agreement was unfair by a fair preponderance of the credible evidence. (Simon v Krimko, 139 App Div 187; Lopp v Lopp, 191 App Div 500; Southard v Curley, 134 NY 148; Matter of Nowakowski, 2 NY2d 618; Boyd v Boyd, 252 NY 422; Perry v Perry, 64 AD2d 625.) IV. Respondent has failed to establish any coercion or undue influence. Respondent in any event would be estopped from the assertion of same as a result of the ratification of the agreement and modifications thereof. (Port Chester Elec. Constr. Corp. v Hastings Terraces, 284 App Div 966; Grubel v Union Mut. Life Ins. Co., 54 AD2d 686; 1163 Realty Corp. v United Institutional Servicing Corp., 55 AD2d 908; Fowler v Fowler, 197 App Div 572.) V. The sequestration or exclusion of witnesses is purely discretionary with the trial court. (Publishers' Book Bindery v Ziegelheim, 184 Misc 559.)

Frank Silverstein and Marshall S. Goldman for respondent.

I. The court below properly reversed the trial court on the facts, and the Court of Appeals, on this record, may not make new findings. (Crooks v People's Nat. Bank of Malone, 177 NY 68; Frank v Von Bayer, 236 NY 473.) II. The separation agreement was not freely and voluntarily entered into by plaintiff. (Christian v Christian, 42 NY2d 63; Marotta v Lattingtown Harbor Dev. Co., 20 Misc 2d 338; Port Chester Elec. Constr. Corp. v Hastings Terraces, 284 App Div 966; Perlmutter v Perlmutter, 65 AD2d 601; Krause v Krause, 282 NY 355; Tamas v Tamas, 47 AD2d 686.) III. The husband's attorney represented both sides in the preparation and execution of the agreement and therefore did not properly represent plaintiff-appellant. (Perry v Perry, 64 AD2d 625; Corcoran v Corcoran, 73 AD2d 1037; Rosenheck v Rosenheck, 69 AD2d 878; Goodison v Goodison, 66 AD2d 923, 48 NY2d 786; Christian v Christian, 42 NY2d 63; Stern v Stern, 63 AD2d 700.) IV. The Judge improperly refused to exclude Mr. Barnhard from the courtroom. (Philpot v Fifth Ave. Coach Co., 142 App Div 811.) V. The court failed to take into consideration the financial circumstances and standard of living of the parties at the time of the signing of the agreement. VI. Since defendant did not take the witness stand in his own behalf, *45 the court should have inferred the truth of plaintiff's statements. (Matter of Cohen, 7 NY2d 488.)

OPINION OF THE COURT

Levine v Levine, 56 N.Y.2d 42 (1982)
436 N.E.2d 476, 451 N.Y.S.2d 26

Jasen, J.

We are asked on this appeal to determine whether the fact that a separation agreement was prepared by one attorney representing both the husband and wife is sufficient, in and of itself, to establish overreaching requiring a rescission of the agreement.

The parties were married on October 18, 1958 and have two children. Due to a variety of differences, the couple separated in 1971. On February 17, 1976, they entered into a separation agreement. At the time, the husband was operating an auto supply parts business and, according to the record, was earning \$20,000 per year. The wife was employed as a bookkeeper for her husband's business and earned approximately \$170 per week.

The separation agreement provided, among other things, that the wife was to retain custody of the children. The wife was also awarded the right to occupy the marital residence and ownership of all the furniture therein was transferred to her. The husband agreed to pay \$125 per week in support for the wife and the two children. In addition, the husband agreed to pay for the children's private education, health insurance, clothing and medical bills. The husband also assumed all carrying charges on the marital residence, including taxes and mortgage interest payments, and agreed to provide the wife with the free use of a Cadillac automobile. For her part, the wife agreed to transfer her half interest in a boat owned by the couple. Although the boat had a market value of between \$40,000 and \$50,000, it was encumbered by a substantial mortgage.

The separation agreement was prepared by an attorney, related to the husband by marriage, who had previously represented the husband in connection with his business and who had known both parties for a number of years. The husband initially contacted the attorney and informed him that he had discussed the possibility of a separation agreement with his wife and that the couple had agreed on the *46 essential terms. The attorney then arranged to meet with the wife at his office.

At this meeting, the attorney told the wife that he was involved in the matter only because the basic terms of the agreement had already been settled by the parties and that the wife was free to seek the advice of another attorney. Based on conversations with both parties, the attorney prepared a draft agreement. Further negotiations and consultations followed, after which a final agreement was drawn up, thoroughly reviewed by plaintiff, and then signed by her.

On June 14, 1976, the parties executed an amendment to the separation agreement in order to arrange for the sale of the marital residence and the purchase of a second house. A second amendatory agreement, dated November 19, 1976, provided for the transfer of the Cadillac referred to in the original agreement to plaintiff. The husband, based on the 1976 separation agreement, obtained a conversion divorce (see Domestic Relations Law, § 170, subd [6]) on August 23, 1977.

The wife then commenced this action seeking to have the separation agreement and the two subsequent modifications thereof set aside as "inequitable" and "unconscionable". In her complaint, the wife alleged that she "was not represented by counsel of her own choosing, but instead and without her consent was represented by the defendant's attorney" in the execution of the separation agreement and subsequent modifications. The wife further alleged that the husband "coerced and exerted undue influence and overreaching on the plaintiff" such that "plaintiff's use of defendant's attorney was not a choice freely made by plaintiff."

After a nonjury trial, the wife's complaint was dismissed for failure to make out a prima facie case. The court found no evidence of coercion, undue influence or overreaching practiced by the husband. The court also concluded that the agreement was fair, and a specific finding was made that the attorney had "managed to preserve neutrality" throughout his joint representation of the couple. *47

Levine v Levine, 56 N.Y.2d 42 (1982)

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On appeal, a unanimous Appellate Division reversed, on the law and the facts, and granted the wife judgment setting aside the separation agreement. After noting that the wife was represented by her husband's counsel, the court below stated: "Upon this record, we conclude that the circumstances evince a sufficient degree of overreaching on the part of the husband to require that this separation agreement be set aside." (83 AD2d 606.) There should be a reversal.

At the outset, it should be noted that, in the posture in which this case comes before us, the standard of review is rather limited. Where, as here, the Appellate Division reverses "on the law and the facts" and makes new findings, we must examine the record to determine whether the weight of the credible evidence supports the trial court's findings or the new findings made by the Appellate Division. (NY Const. art VI, §3, subd a; CPLR 5501, subd [b].) In our view, the weight of the evidence supports the finding made by the trial court that the separation agreement was not the product of overreaching by the husband. Moreover -- and this would be fatal to the wife's claim, as a matter of law -- there was no factual determination at the Appellate Division that the terms of the agreement were unfair to the wife. To establish her entitlement to the relief which she seeks, the wife would have to demonstrate both overreaching and unfairness.

For the most part, a separation agreement which is regular on its face will be recognized and enforced by the courts in much the same manner as an ordinary contract. However, because of the fiduciary relationship between husband and wife, separation agreements generally are closely scrutinized by the courts, and such agreements are more readily set aside in equity under circumstances that would be insufficient to nullify an ordinary contract. (Christian v Christian, 42 NY2d 63, 72; see, also, McGahee v Kennedy, 48 NY2d 832, 834.) Although courts may examine the terms of the agreement as well as the surrounding circumstances to ascertain whether there has been overreaching, the general rule is that "[i]f the execution of the agreement * * * be fair, no further inquiry will be made." (Christian v Christian, supra, at p 73.) *48

Nor does the fact that the same attorney represented both parties in the preparation of the agreement require an automatic nullification of the agreement. While the absence of independent representation is a significant factor to be taken into consideration when determining whether a separation agreement was freely and fairly entered into, the fact that each party retained the same attorney does not, in and of itself, provide a basis for rescission. (Perry v Perry, 64 AD2d 625; see, e.g., D'Arc v D'Arc, 164 NJ Super 226; McCarty v McCarty, 300 SW2d 394 [Mo]; Whitney v Seattle-First Nat. Bank, 90 Wn 2d 105; Marshall v Marshall, 273 SE2d 360 [W Va]; see, generally, Independent Advice as Essential to Validity of Transaction Between Persons Occupying a Confidential or Fiduciary Relationship, Ann., 123 ALR 1505.) Of course, a claim of overreaching will be subject to a "far more searching scrutiny" and, as a result, is less likely to prevail where the party had the benefit of independent representation during the negotiation and execution of the agreement. (2 Lindey, Separation Agreements and Ante- Nuptial Contracts [rev ed], § 37, subd 9, p 37-22 [and cases cited therein].) On the other hand, where one attorney has represented both parties to the agreement, a question of overreaching on the part of the party who is the prime beneficiary of the attorney's assistance may arise. Nevertheless, as long as the attorney fairly advises the parties of both the salient issues and the consequences of joint representation, and the separation agreement arrived at was fair, rescission will not be granted. (Perry v Perry, supra.) While the potential conflict of interests inherent in such joint representation suggests that the husband and wife should retain separate counsel, the parties have an absolute right to be represented by the same attorney provided "there has been full disclosure between the parties, not only of all relevant facts but also of their contextual significance, and there has been an absence of inequitable conduct or other infirmity which might vitiate the execution of the agreement". (Christian v Christian, 42 NY2d 63, 72, supra.)

Applying these principles to the case before us, we cannot conclude that it was error for the trial court, as a matter of law, to have found that the separation agreement *49 in this case is fair, both on its face and when considered in light of the parties' circumstances at the time of execution. The husband undertook a variety of financial obligations, all of which were designed to maintain the wife and the two children in the style to which they were accustomed to living. Although the wife has contended throughout this action that the husband earns a far greater income than the record reflects, she has not come forward with an

Levine v Levine, 56 N.Y.2d 42 (1982)

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evidentiary showing to support this claim. We agree with the trial court that the wife's bare allegations to the effect that the husband has been "living high on the hog" provide no basis for overturning the parties' agreement.

Contrary to the determination below, the fact that the same attorney represented both parties in the preparation of the separation agreement does not, without more, establish overreaching on the part of the husband. The record discloses that the attorney had been an acquaintance of the husband and wife for a number of years. He agreed to draft the separation agreement only because the parties, prior to consulting him, already had reached an accord on the essential terms. Even then, the attorney told the wife that she could consult with another attorney, but the wife declined to do so. In addition, the wife expressly acknowledged in the separation agreement itself that the attorney had previously represented her husband, that she had "complete faith and trust in him" as her attorney, and that through his representation she was "entering into a better agreement than if she had consulted with independent counsel who tried to bargain for a better agreement". Most importantly, the trial court specifically found that the attorney remained neutral throughout his involvement with the parties, and this particular finding was not disturbed by the Appellate Division. Under these circumstances, any inference of overreaching on the part of the husband arising from the joint representation properly was rejected by the trial court.

Finally, we cannot say, as a matter of law, that the trial court abused its discretion by failing to grant plaintiff's request to exclude the attorney who drafted the agreement from the courtroom during the taking of testimony from other witnesses. (See Richardson, Evidence [10th ed], *50 § 460.) In any event, even assuming error, there has been no showing of any prejudice occasioned by this failure to exclude such as would require a new trial.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the judgment of Supreme Court, Westchester County, reinstated.

Chief Judge Cooke and Judges Gabrielli, Jones, Wachtler, Fuchsberg and Meyer concur.
Order reversed, etc. *51

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Iowa Supreme Court Attorney Disciplinary Bd. v. Morrison, 727 N.W.2d 115 (2007)

727 N.W.2d 115
Supreme Court of Iowa.

IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD, Complainant,

v.

William T. MORRISON, Respondent.

No. 06-1390. | Jan. 26, 2007.

Synopsis

Background: In an attorney disciplinary proceeding, the parties jointly recommended 60-day license suspension, and the Grievance Commission recommended six-month license suspension.

[Holding:] The Supreme Court, Streit, J., held that indefinite license suspension, with no possibility of reinstatement for at least three months, was warranted as disciplinary sanction for attorney's misconduct in engaging in sexual relationship with client he was representing in marriage dissolution proceeding, in light of attorney having been previously admonished for making sexual advance toward another client.

License suspended.

Attorneys and Law Firms

*117 Charles L. Harrington and Teresa A. Vens, Des Moines, for complainant.

William T. Morrison, Mason City, respondent, pro se.

Opinion

STREIT, Justice.

A lawyer had a sexual relationship with a client he was representing in a dissolution proceeding. Because such conduct may be harmful to the client's interest and reflects poorly on the legal profession, we suspend the attorney's license for three months.

I. Facts and Prior Proceedings

William Morrison was admitted to the Iowa bar in 1989. He presently has a law office in Mason City. In June 2005, Morrison reported to the Iowa Supreme Court Attorney Disciplinary Board ("Board") he "engaged in a sexual relationship with a female client while representing her in a dissolution proceeding." Morrison represented this client from October 2004 through February 2005. They had sex on several occasions from November 2004 through March 2005. Morrison did not have a personal relationship with this client prior to November 2004.

The Board filed a complaint against Morrison alleging he violated the Iowa Code of Professional Responsibility for Lawyers¹ by engaging in a sexual relationship with a client. In lieu of an evidentiary hearing before the Grievance Commission, the Board and Morrison agreed to submit the matter upon stipulation. The parties stipulated to the facts above. Morrison acknowledged

Iowa Supreme Court Attorney Disciplinary Bd. v. Morrison, 727 N.W.2d 115 (2007)

his conduct was unethical. The Board noted Morrison cooperated with its investigation. The parties also included with the stipulation a private admonition Morrison received from the Board in March 2004. Morrison was admonished for "solicitation of a dissolution client for a social relationship by reason of that dissolution client's 'attractiveness.' " The parties jointly recommend Morrison's conduct warrants suspension of his Iowa law license for sixty days. The Grievance Commission recommends Morrison's license to practice law be suspended for six months and that he enter and complete a counseling program to address his "boundary issues." Morrison reports he has already completed such a counseling program with a psychologist in addition to marriage counseling.

*118 II. Scope of Review

[1] [2] [3] We review the findings of the Grievance Commission de novo. Iowa Ct. R. 35.10(1). We give weight to the Commission's findings but we are not bound by those findings. *Iowa Supreme Ct. Attorney Disciplinary Bd. v. McGrath*, 713 N.W.2d 682, 695 (Iowa 2006). The Board has the burden to prove disciplinary violations by a convincing preponderance of the evidence. *Iowa Supreme Ct. Attorney Disciplinary Bd. v. D'Angelo*, 710 N.W.2d 226, 230 (Iowa 2006). "This burden is 'less than proof beyond a reasonable doubt, but more than the preponderance standard required in the usual civil case.' " *Id.* (quoting *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Lett*, 674 N.W.2d 139, 142 (Iowa 2004)).

III. Merits

[4] [5] Morrison admits he had a sexual relationship with a client. This is a patent violation of Iowa Code of Professional Responsibility for Lawyers DR 5-101(B) (lawyer shall not engage in sexual relations with a client) and DR 1-102(A)(1) and (6) (lawyer shall not violate a disciplinary rule or engage in any other conduct that adversely reflects on the fitness to practice law). "Professional responsibility involves many gray areas, but sexual relationships between attorney and client is not one of these. Such conduct is clearly improper." *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Furlong*, 625 N.W.2d 711, 714 (Iowa 2001). Before determining the appropriate sanction, we review the sound reasons for prohibiting attorney-client sexual relationships.

First, "[t]he unequal balance of power in the attorney-client relationship, rooted in the attorney's special skill and knowledge on the one hand and the client's potential vulnerability on the other, may enable the lawyer to dominate and take unfair advantage." Iowa Code of Prof'l Responsibility EC 5-25. This is why the client's consent is irrelevant. We have previously stated "the professional relationship renders it impossible for the vulnerable layperson to be considered 'consenting.' " *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Hill*, 540 N.W.2d 43, 44 (Iowa 1995) (*Hill II*); accord *Furlong*, 625 N.W.2d at 714.

Second, a sexual relationship between attorney and client may be harmful to the client's interest. This is true in any legal representation but "presents an even greater danger to the client seeking advice in times of personal crises such as divorce, death of a loved one, or when facing criminal charges." Iowa Code of Prof'l Responsibility EC 5-25.

[6] Third, an attorney-client sexual relationship may prevent the attorney from competently representing the client. An attorney must be able to objectively evaluate the client's case. The American Bar Association stated "[t]he roles of lover and lawyer are potentially conflicting ones as the emotional involvement that is fostered by a sexual relationship has the potential to undercut the objective detachment that is often demanded for adequate representation." ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 92-364 (1992).

Finally, an attorney initiating a sexual relationship with a client or attempting to do so may undercut the client's trust and faith in the lawyer. "Clients may rightfully expect that confidences vouchsafed to the lawyer will be solely used to advance the client's interest, and will not be used to advance the lawyer's interest, sexual or otherwise." Iowa Code of Prof'l Responsibility EC 5-25.

Iowa Supreme Court Attorney Disciplinary Bd. v. Morrison, 727 N.W.2d 115 (2007)

[7] [8] [9] We now turn to the appropriate sanction. We consider

*119 the nature and extent of the respondent's ethical infractions, his fitness to continue practicing law, our obligation to protect the public from further harm by the respondent, the need to deter other attorneys from engaging in similar misconduct, our desire to maintain the reputation of the bar as a whole, and any aggravating or mitigating circumstances.

Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Kallsen, 670 N.W.2d 161, 164 (Iowa 2003). We give the discipline recommended by the Grievance Commission its due respect although "the matter of sanction is solely within the authority of this court." " *McGrath*, 713 N.W.2d at 703 (quoting *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Sloan*, 692 N.W.2d 831, 833 (Iowa 2005)). Ultimately, we determine the appropriate discipline based on the unique facts of each case. *Iowa Supreme Ct. Attorney Disciplinary Bd. v. Zenor*, 707 N.W.2d 176, 178 (Iowa 2005).

This court does not tolerate attorney-client sexual relationships. See *McGrath*, 713 N.W.2d at 703-04 (three-year suspension for attempting to obtain and extorting sexual favors in exchange for legal services); *Furlong*, 625 N.W.2d at 714 (eighteen-month suspension for engaging in a sexual relationship with one client and encouraging her to withdraw her complaint with the Board and sexually harassing another client); *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Steffes*, 588 N.W.2d 121, 125 (Iowa 1999) (two-year suspension for attorney who took photographs of partially-clothed client under pretext of documenting her back injury); *Hill II*, 540 N.W.2d at 45 (twelve-month suspension for making unwelcome sexual advances toward client); *Comm. on Prof'l Ethics & Conduct v. Hill*, 436 N.W.2d 57, 58-59 (Iowa 1989) (*Hill I*) (three-month suspension for accepting vulnerable client's offer to have sex in exchange for money); *Comm. on Prof'l Ethics & Conduct v. Durham*, 279 N.W.2d 280, 285-86 (Iowa 1979) (reprimand for attorney kissing and embracing inmate client). In the present case, the Grievance Commission recommends Morrison's license to practice law be suspended for six months and that he be required to complete a counseling program to address his "boundary issues." The Board on the other hand recommends a sixty-day suspension because "this case does not involve aggravating factors such as forced sexual advances or commercial exploitation."

Our review is hindered by a limited record. Based on the parties' stipulation, Morrison's conduct does not appear to be particularly egregious in comparison to our previous cases involving attorney-client sexual relationships. But even a purely consensual sexual relationship between attorney and client is clearly prohibited by DR 5-101(B) for the reasons we have already stated.

[10] Like this case, *Hill I* involved an attorney representing a client in a dissolution action. There, we said

A lawyer undertaking a divorce action must recognize reconciliation is possible and may be in the best interest of his client. An attorney must be aware that the actions of the client and attorney may affect negotiations in the dissolution case, including determination of custody and visitation of minor children. Sexual intercourse between the lawyer and a client seeking a dissolution of marriage carries a great potential of prejudice both to the client and to the minor children of the marriage.

Hill I, 436 N.W.2d at 59. Morrison's client and her husband had at least one minor child. We do not know from the record if the relationship between Morrison and his client prejudiced her in the dissolution action. Nevertheless, at least *120 the potential for harm existed and exists in any attorney-client representation. See *Steffes*, 588 N.W.2d at 123 (sexual harassment by attorney made client uncomfortable going to attorney's office so client did not seek attorney's advice regarding pending criminal charges).

Moreover, Morrison has previously been admonished for making a sexual advance toward another client. He became sexually involved with the client in this particular case just eight months after the admonishment. Clearly, Morrison has not learned his lesson. See *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Lemanski*, 606 N.W.2d 11, 14 (Iowa 2000) ("The prior

Iowa Supreme Court Attorney Disciplinary Bd. v. Morrison, 727 N.W.2d 115 (2007)

disciplinary history of an attorney is a factor we consider in imposing sanctions.”). A suspension of Morrison's license to practice law is necessary and appropriate. We hereby suspend Morrison's license to practice law in Iowa for a minimum of three months.

IV. Conclusion

Morrison is suspended indefinitely from the practice of law with no possibility of reinstatement for at least three months. This suspension shall apply to all facets of the practice of law as provided in Iowa Court Rule 35.12(3) and requires notification of clients as outlined in Iowa Court Rule 35.21. Upon any application for reinstatement, Morrison must establish that he has not practiced law during the suspension period and he has in all ways complied with the requirements of Iowa Court Rule 35.13. Costs are taxed to Morrison pursuant to Iowa Court Rule 35.25(1).

LICENSE SUSPENDED.

Footnotes

- 1 This court adopted the Iowa Rules of Professional Conduct effective July 1, 2005. Because Morrison's alleged misconduct occurred before July 1, 2005, the Iowa Code of Professional Responsibility for Lawyers governs. In substance, the rules regarding attorney-client sexual relationships remain unchanged. *See* Iowa R. of Prof'l Conduct 32:1.8(j).

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V. W., Plaintiff,

v.

J. B., Defendant.

Supreme Court, New York County,
July 6, 1995

CITE TITLE AS: V.W. v J.B.

HEADNOTES

Attorney and Client

Compensation

Validity of Performance Fee Agreement in Matrimonial Action

[[1]] A Performance Fee Agreement (PFA) between plaintiff client and defendant attorney, executed during a matrimonial action after plaintiff had executed the documents necessary for an uncontested divorce but before plaintiff's spouse had executed the separation agreement and the spouse's counsel had concluded that the other documents were in acceptable form as was required, which provided that plaintiff, "in light of the results achieved by [defendant]", agreed to pay a performance fee of \$2,000,000 in three installments, violates the Code of Professional Responsibility's rule against contingent fees in domestic relations cases. That the first payment of the fee was to be paid from a specified equitable distribution payment did not transform the otherwise fixed fee into a contingent fee. However, where parties enter into a fee agreement prior to the completion of the matter and the legal fee turns on the "result obtained", such fee is based on a prohibited contingency of the amount of the award. Here, the matter was not final until the separation agreement was signed by plaintiff's spouse and, therefore, at the time of its execution, the PFA was contingent on the husband's execution of the separation agreement and his counsel's approval of certain documents. Thus, the PFA when executed by plaintiff was invalid pursuant to DR 2-106 (C) (2).

TOTAL CLIENT SERVICE LIBRARY REFERENCES

Am Jur 2d, Attorneys at Law, §§ 196, 257.

Carmody-Wait 2d, Officers of Court § 3:358.

Judiciary Law, Appendix, Code of Professional Responsibility, DR 2-106(C)(2).

NY Jur 2d, Attorneys at Law, § 138.

ANNOTATION REFERENCES

Amount of attorneys' fees in matters involving domestic relations. 59 ALR3d 152.

Excessiveness or adequacy of attorneys' fees in domestic relations cases. 17 ALR5th 366.

V.W. v J.B., 165 Misc.2d 767 (1995)

629 N.Y.S.2d 971

APPEARANCES OF COUNSEL

Flemming, Zulack & Williamson, L. L. P., New York City (*Richard A. Williamson* of counsel), for plaintiff. *Kronish, *768 Lieb, Weiner & Hellman, L. L. P.*, New York City (*Celia Goldwag Barenholtz* of counsel), for defendant.

OPINION OF THE COURT

Lewis R. Friedman, J.

Plaintiff seeks summary judgment on the fifth cause of action, for rescission. The application raises serious questions under the Code of Professional Responsibility, not previously addressed in the New York cases, concerning retainer agreements and “bonuses” in matrimonial cases.

In July 1992 plaintiff retained defendant to represent her in a matrimonial matter. The written retainer called for plaintiff to pay a fee determined solely by multiplying the number of hours expended on the case times the hourly rate charged for the service.¹ Negotiations proceeded for over two years until a settlement was reached. Plaintiff’s husband ultimately agreed to pay her more than 20 times his original offer. Plaintiff has stated in her pleadings that defendant’s legal work was “fabulous.” On August 18, 1994 plaintiff, in New York, executed the separation agreement. The document was shipped by Federal Express to plaintiff’s husband who was in California; he executed it on August 19. The parties were divorced by judgment entered August 30, 1994.

Defendant and her former firm were paid about \$300,000 based on their time charges. On August 18, allegedly after plaintiff had executed the separation agreement, plaintiff and defendant executed the Performance Fee Agreement (PFA) which is at issue here. In the PFA, plaintiff “in light of the results achieved by [defendant] ... has graciously and generously agreed to pay a performance fee of \$2,000,000” in three installments.² Defendant agreed to waive her outstanding bill for \$41,000 in fees and expenses. The first installment of the performance fee, \$1,000,000, was due “upon transfer to [plaintiff] of the equitable distribution payment” in the separation agreement. That part of the fee was paid on August 29, 1994. Plaintiff retained new counsel in early January 1995, *769 refused to pay the second installment, due January 15, and demanded repayment of the \$1,000,000 already paid. This action for rescission and restitution followed. Defendant counterclaimed for the balance of her fee.

In the fifth cause of action plaintiff contends that the PFA violated the Code of Professional Responsibility. There is no doubt that a retainer agreement with counsel is invalid if it violates the Code of Professional Responsibility (*cf.*, *Cohen v Lord, Day & Lord*, 75 NY2d 95, 99-101 [1989]; *Matter of Cooperman*, 83 NY2d 465, 472 [1994]). Specifically plaintiff alleges a violation of DR 2-106 (C) (2) (22 NYCRR 1200.11 [c] [2]) which at the relevant time provided that an attorney “shall not enter into an arrangement for, charge or collect: (2) any fee in a domestic relations matter (i) the payment or amount of which is contingent upon the securing of a divorce or upon the amount of maintenance, support, equitable distribution or property settlement.”

The rule against contingent fees in domestic relations cases in this State is deep seated and well established. Long prior to the adoption of the Code of Professional Responsibility and the Equitable Distribution Law (Domestic Relations Law § 236 [B]) the courts consistently held that an agreement between a spouse and counsel to pay “a percentage or any part of her alimony is void as against public policy” (*Levine v Levine*, 206 Misc 884, 885 [Sup Ct, Queens County 1954]; *Matter of Dangler*, 192 App Div 237 [1st Dept 1920]; *Matter of Bruckett*, 114 App Div 257 [3d Dept 1906], *affd* 189 NY 502 [1907]; *Van Vleck v Van Vleck*, 21 App Div 272 [4th Dept 1897]). The same rule applied to lump-sum payments to resolve future alimony claims (*Dougherty v Burger*, 133 Misc 807, 808 [Sup Ct, NY County 1929]).³

When New York adopted the Code of Professional Responsibility it modified the Model Code of Professional Responsibility promulgated by the American Bar Association to adopt the clear prohibition on contingent fees in domestic relations cases

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contained in DR 2-106 (C) (2). The original American Bar Association Ethical Consideration (EC 2-20) as adopted in 1970 by the New York State Bar Association did not contain a flat prohibition on contingent fees in matrimonial cases but noted *770 that "because of the human relationships involved and the unique character of the proceedings contingent fee arrangements in domestic relation cases are rarely justified."

The policy reasons for the restrictions in matrimonial cases on the use of fees which are contingent on the outcome has been that this kind of fee might induce lawyers to discourage reconciliation and encourage bitter and wounding court battles (*see*, Restatement, Contracts § 586 [1932]; Wolfram, Modern Legal Ethics § 9.4.4, at 538-541 [1986]; Speiser, Attorney's Fees § 2.6, at 83, 89 [1973]; Comment, Professional Responsibility-Contingent Fees in Domestic Relations Actions: Equal Freedom to Contract for the Domestic Relations Bar, 62 NC L Rev 381, 387 [1984]; *cf.*, Restatement [Second] of Contracts § 190, comment c; Restatement [Third] of Law Governing Lawyers § 47, comment d [Tent Draft No. 4 1991]). Another often expressed policy reason to preclude contingent fees in matrimonial actions is that they are not necessary. Since the court may award attorney's fees to a nonmonied spouse (Domestic Relations Law § 237; *see, e.g., Newman v Freitas*, 129 Cal 283, 292, 61 P 907, 910 [1900]; *McDearmon v Gordon & Gremillion*, 247 Ark 318, 445 SW2d 488 [1969]) any party should be able to retain counsel.

The question whether the PFA violates the Code of Professional Responsibility requires analysis of whether the payment or amount was "contingent" on the result. Plaintiff correctly notes that DR 2-106 (C) (2) does not use the term "contingent fee", which is used in DR 2-106 (C) (1) banning those fees in criminal cases. Clearly the fee here could not be called a "contingent fee" in its traditional sense. The Code of Professional Responsibility does not define "contingent." One common definition of a "contingent fee" between attorney and client is "an agreement, express or implied, for legal services ... under which compensation, contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement, is to be in an amount which either is fixed or is to be determined under a formula." (*New England Tel. & Tel. Co. v Board of Assessors*, 392 Mass 865, 870-871, 468 NE2d 263, 266-267 [1984].) That is consistent with the definition in Black's Law Dictionary 553 (5th ed 1979). The usual meaning of a "contingent fee" is that the attorney will be paid only if the case is won (*e.g., Pocius v Halvorsen*, 30 Ill 2d 73, 78, 195 NE2d 137, 139 [1963]; *City of Burlington v Dague*, 505 US 557 [1992]). There is no doubt that by its terms the PFA was a fixed, binding agreement that did not turn on *771 the outcome of the case or on the amount received by plaintiff. The attorney had no risk that the fee would not be paid if the case was lost.

Plaintiff suggests that because the first payment of the fee was to be paid from a specified equitable distribution payment it was "contingent" for payment on the completion of the case. In *Shanks v Kilgore* (589 SW2d 318, 321 [Mo App 1979]) the court found that since the \$60,000 fee was to be paid partially from each equitable distribution installment it was based on a prohibited contingency, the receipt of payment. This court rejects that analysis; once the fee has been firmly fixed the uncertainty of actual payment does not make it invalid. It has long been an accepted practice in this jurisdiction, even where the entire fee is fixed at an hourly rate, for counsel to agree to await payment until the ultimate resolution of the case. Neither the fee nor the obligation to pay it turns on the outcome. Only the timing of the payment is uncertain. Bar Ethics Committees appear to support that view. (*Cf., Philadelphia Bar Assn., Professional Guidance Commn.*, No. 90-15, 1990 WL 303931.) The court cannot conclude that such a provision makes a fixed fee into a "contingent fee."

A more troubling question is presented because the language of DR 6-102 (C) (2) uses the term "contingent ... upon the ... amount of ... equitable distribution." "Contingent" means "[p]ossible, but not assured; doubtful or uncertain; conditional upon the occurrence of some future event which is itself uncertain, or questionable." (Black's Law Dictionary 290 [5th ed 1979].) The PFA based the fee on "the results achieved." The Code of Professional Responsibility, following well-established New York law (*e.g., Matter of Freeman*, 34 NY2d 1, 9 [1974]), provides that one of the "[f]actors to be considered as guides in determining the reasonableness of a fee ... [is] the amount involved and the results obtained." (DR 2-106 [B] [4]; 22 NYCRR 1200.11 [b] [4].) Thus the question before this court becomes whether the use of the "results obtained" to set the final fee necessarily makes the fee "contingent" on the ultimate amount. The answer to that question has divided the courts which have considered it.

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In *Head v Head* (66 Md App 655, 668, 505 A2d 868, 874-875 [1986]) the court found no violation of DR 2-106 (C) (2). In that case there had been a judicial determination by the lower court of a legal fee which included a "bonus" based on the result.⁴ The fee was held not to be contingent because "the fee was not directly related by percentage or formula to the amount recovered or protected." The court supported its conclusion by noting that the fee did not serve the usual purpose of a contingent fee since the parties could afford counsel and no res was created since the party involved was the monied spouse. In *In re Malec* (205 Ill App 3d 273, 288, 562 NE2d 1010, 1020-1021 [1990], *appeal denied sub nom. Malec v Zurla*, 136 Ill 2d 545, 567 NE2d 333 [1991]), the court simply agreed with *Head's* conclusion and observed that a fee to be determined based on performance would not be contingent. However, in *Malec* the fee arrangement was actually invalidated as "contingent" because a \$1 million bonus was tied to counsel's achievement of a specific result. The court in *Eckell v Wilson* (409 Pa Super 132, 597 A2d 696 [1991], *appeal denied* 530 Pa 643, 607 A2d 253 [1992]), after reviewing the cases, concluded that a fee based on a minimum hourly rate with the final fee to be based on the reasonable value of the services, including whether a favorable result was reached, is not a fee grounded on a prohibited contingency. The court reasoned that since the attorney would be paid regardless of the outcome, the risk of nonpayment in case of an unfavorable result, characteristic of a contingent fee, was missing. The court found that the agreement was the equivalent of a quantum meruit fee based on the factors permitted by the Rules of Practice.⁵ *773

On the other hand a number of courts have found "result" based fees to be prohibited contingencies. In *Salerno v Salerno* (241 NJ Super 536, 575 A2d 532 [1990], *supra*), the retainer provided for hourly billing and a final fee "premium" based, *inter alia*, on "the result accomplished". The court held that a charge based on a percentage of the equitable distribution to the client clearly has all the aspects of a contingent fee. Although a fee contingent on the amount of equitable distribution was held valid under the New Jersey Rules, which are based on the Model Rules, the fee was invalidated for violation of rule 1.5 (c) which requires that the agreement be in writing and set the exact percentage of recovery which the attorney sought as a fee.⁶

In *State ex rel. Oklahoma Bar Assn. v Fagin* (848 P2d 11 [Okla 1992], *supra*), the court imposed professional discipline on an attorney for charging a fee in a divorce case based on the result. The court concluded that any fee which gives an attorney an interest in seeing that there is no reconciliation is contingent on the result. The court reasoned that, since rule 1.5 (d) (1) (*see, n 5, supra*) prohibits "any type of fee which has some aspect of a contingency involved," any enhancement of a fee based on a favorable result is contingent (848 P2d, at 14, *supra*). The court specifically rejected *Eckell v Wilson* (*supra*), since in its view it is irrelevant to analysis under the Rules whether a fee is fixed by a formula or percentage; a fee is prohibited if it is contingent "in any way" on the result.

This court concludes that where the parties enter into a fee agreement prior to the completion of the matter where a legal fee turns on the "result obtained," that of necessity is a fee based on a prohibited contingency of the amount of the award. EC 2-20, the theoretical basis for DR 2-106 (C) (2), clearly establishes that the conflict between prohibited contingencies and the list of factors in setting a fee must be resolved in favor of prohibiting the arrangement. In New York fault is *774 still generally a condition precedent to a divorce (Domestic Relations Law § 170) and there is a strong public policy supporting reconciliation. The Code of Professional Responsibility bars an attorney from having a self-interest in the proceeding. Further, the Code of Professional Responsibility protects the client from possible overreaching by the attorney. The court also notes that the language of DR 2-106 (C) (2) is even stronger than that in DR 2-106 (C) (1) which bars contingent fees in criminal cases. An attorney in a matrimonial case may not "charge or collect" "any fee" "contingent upon ... the amount of ... equitable distribution." The court finds that this analysis compels the conclusion that had the fee agreement provided for a final fee based on all of the DR 2-106 (B) factors, it would have been invalid. A similar result would be required by the new "Matrimonial Rules" (22 NYCRR 1400.3) if the retainer were entered into after November 30, 1993. In those cases DR 2-106 (C) (2) still applies. Further under the new rule all of the fee factors must be spelled out in detail. The inclusion of "the results obtained" as a factor would therefore still result in a fee invalid under DR 2-106 (C) (2).

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Defendant argues that this case differs from those where “bonuses” or “tips” have been invalidated because the PFA was not referred to in the retainer but was only agreed to after the case was “completed” and there was a “final resolution of the matrimonial matter.” Defendant notes that plaintiff had also executed the documents necessary for an uncontested divorce prior to signing the PFA. Plaintiff, however, relies on the undisputed fact that on August 18, when the settlement agreement, other documents and the PFA were signed by her, her husband had not yet executed the settlement agreement, nor had husband's counsel concluded that the other documents were “in acceptable form” as was required. Therefore, she argues, there was no certainty that the agreement would be signed by her husband in the form submitted, or that all of the issues were actually resolved.

This court's experience is that, despite the sense of counsel that a deal has been struck and that a separation agreement is final, there are often last minute disagreements and proposed changes by the client. This matter was obviously not final, at least until signed by plaintiff's then husband. That uncertainty meant that, at the time of its execution, the PFA was contingent; it was contingent on the husband's execution of the separation agreement and his counsel's approval of *775 certain documents. If the husband had raised any issues, defendant's self-interest in the result would have created the conflicted loyalty to the client that DR 2-106 (C) (2) was designed to prevent. Defendant counters by claiming that the PFA is for a fixed “unconditional” fee, final and binding on plaintiff. Yet that position is belied by the use of the phrase “results achieved” in the PFA. If the husband did not sign or had demanded substantive changes there would have been no “results.” Defendant's papers continuously justify the fee by the size of the equitable distribution settlement. Of course, a \$2,000,000 “bonus” for an unexecuted separation agreement, with no results, would be patently excessive (*see*, DR 2-106 [A]; 22 NYCRR 1200.11 [a]) warranting invalidation of the PFA for that reason alone. Thus, this court concludes that the PFA when executed by plaintiff was invalid pursuant to DR 2-106 (C) (2). Of course, this decision does not express any view on the propriety of a truly voluntary agreement for a “bonus” to counsel entered into after completion of the entire proceeding.

Plaintiff concedes that in light of the invalidity of the PFA defendant would be entitled to the \$41,000 of her time charges which she waived. This court agrees.

Plaintiff's motion for summary judgment on the fifth cause of action is granted. The counterclaim is dismissed. *776

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Footnotes

- 1 The retainer was originally between plaintiff and defendant's former law firm. It was continued by oral agreement when defendant left that firm in January 1993 and continued to represent plaintiff in her own practice.
- 2 At the time the PFA was signed the parties here also executed an attorney's confidentiality agreement, which paralleled the confidentiality portion of the separation agreement, to which counsel was not a party. Plaintiff's argument that the confidentiality agreement violates DR 4-101 (C) (22 NYCRR 1200.19) is not germane to the cause of action involved here.
- 3 These rules are consistent with the older cases throughout the country (*e.g.*, *Oppenud v Bussey*, 172 Okla 625, 46 P2d 319, 324 [1935]; *Barelli v Levin*, 144 Ind App 576, 247 NE2d 847 [1969]; *Sobieski v Maresco*, 143 So 2d 62 [Fla App 1962]; *McConnell v Mc Connell*, 98 Ark 193, 136 SW 931 [1911]).
- 4 Since the fee involved the attorney's own client it did not turn on cases which have discussed whether “the result obtained” may be used by the court in a fee shifting setting (*see, e.g.*, *Valparaiso Bank & Trust Co. v Sims*, 343 So 2d 967, 971-972 [Fla Dist Ct App 1977], *cert denied* 353 So 2d 678 [Fla 1977]; *Flynn v Flynn*, 338 NW2d 295, 296 [SD 1983]; *State ex rel. Oklahoma Bar Assn. v Fagin*, 848 P2d 11, 15 [Okla 1992], and cases cited therein). Clearly in New York the “result obtained” is one of the factors that the court must take into account when making a fee award to be paid by the other side under Domestic Relations Law § 237 (*Price v Price*, 115 AD2d 530).
- 5 At the relevant time Pennsylvania attorneys were governed by the Code of Professional Responsibility, which was similar to the New York version. Thereafter Pennsylvania adopted the Model Rules of Professional Conduct, as have many other States. Model Rules

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of Professional Conduct rule 1.5 (a) uses the same list of permitted factors in determining the reasonableness of a fee as does Code of Professional Responsibility DR 2-106 (A). Fees contingent "upon the amount of alimony or support or property settlement *in lieu thereof*" are prohibited. (Model Rules of Professional Conduct rule 1.5 [d] [1] [emphasis added]). At least one State has held that Model Rules of Professional Conduct rule 1.5 (d) (1) does not bar contingent fees as to equitable distribution since that is not in lieu of support (*Salerno v Salerno*, 241 NJ Super 536, 539, 575 A2d 532, 534 [1990]; *cf.*, *In re Cooper*, 81 NC App 27, 39-40, 344 SE2d 27, 35 [1986]; *but see*, Wolfram, *Modern Legal Ethics* § 9.4.4, at 540).

- 6 That rule is similar to 22 NYCRR 1400.3, which applies to retainers in matrimonial actions entered into after November 30, 1993; retainers now must be in writing and set forth "in plain language the terms of compensation." The purpose of the new rule is to prohibit result based fees. (*See*, Report, Committee to Examine Lawyer Conduct in Matrimonial Actions, at 13 [1993].)

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Weinstein v Barnett, 219 A.D.2d 77 (1996)
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219 A.D.2d 77, 640 N.Y.S.2d 103

Vickie Weinstein, Respondent,
v.
Jacalyn F. Barnett, Appellant.

Supreme Court, Appellate Division, First Department, New York
April 4, 1996

CITE TITLE AS: Weinstein v Barnett

SUMMARY

Appeal from a judgment of the Supreme Court (Lewis Friedman, J.), entered August 3, 1995 in New York County, which granted plaintiff's motion for summary judgment on her cause of action seeking rescission of an agreement.

HEADNOTES

Attorney and Client
Compensation
Performance Fee Agreement--Rescission

([1]) Supreme Court erred in granting plaintiff's motion for summary judgment on her cause of action seeking rescission of a Performance Fee Agreement (PFA) pursuant to which plaintiff client agreed to pay defendant, her former attorney, a \$2,000,000 bonus in connection with the successful conclusion of a matrimonial action. DR 2-106 (C) (2) (22 NYCRR 1200.11 [c] [2]) prohibits any fee in a domestic relations matter the payment or amount of which is contingent upon the securing of a divorce or upon the amount of maintenance, support, equitable distribution or property settlement, and Supreme Court held that because the PFA came into being some 24 hours before plaintiff's ex-husband signed the parties' separation agreement, the Disciplinary Rule was violated as a matter of law. The issue is whether the husband's signature was a mere formality or whether any genuine impediment remained to achieve formality; plaintiff's case is advanced entirely on the affidavit of her present lawyer, who lacks knowledge of what actually transpired, without any affidavit from her. Also lacking is any evidence from the husband, or from any of the lawyers representing him at the critical time. The question of contractual intent is essentially factual in nature, particularly where a writing is incomplete and recourse must be had to surrounding circumstances. While the record contains a letter- stipulation between counsel delineating the mechanical steps to be taken with respect to the payment of moneys from husband to wife following delivery of appropriately initialed revised pages to be inserted in the separation agreement, without extrinsic evidence this stipulation is insufficient by itself to resolve the fundamental factual issue.

TOTAL CLIENT SERVICE LIBRARY REFERENCES

Am Jur 2d, Attorneys at Law, §§ 247, 249, 257, 268, 284.

Carmody-Wait 2d, Officers of Court §§ 3:345-3:348, 3:350, 3:352, 3:358.

Judiciary Law, Appendix, Code of Professional Responsibility, DR 2-106 (C) (2).

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NY Jur 2d, Attorneys at Law, §§ 130-133, 137-139. *78

ANNOTATION REFERENCES

Excessiveness or adequacy of attorney's fees in domestic relations cases. 17 ALR5th 366.

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Bruce H. Wiener of counsel, New York City (*Raymond B. Harding* and *Pamela A. Phillips* on the brief; *Fischbein Badillo Wagner Itzler*, attorneys), for appellant.

OPINION OF THE COURT

Wallach, J.

This appeal requires us to assess the legality of an agreement by plaintiff, an erstwhile client, to pay to defendant, her former attorney, a two million dollar bonus in connection with the successful conclusion of a matrimonial action.

In July 1992, plaintiff retained defendant, then a member of a law firm since dissolved, to represent her in a matrimonial dispute. At that time, plaintiff informed counsel that her husband, a successful Hollywood film producer, had offered her a lump-sum settlement by way of equitable distribution of \$750,000. Over the ensuing two-year period, defendant's diligent efforts resulted in an August 1994 settlement proposal from the husband in excess of fifteen million dollars. In the pleadings before us, plaintiff concedes defendant's description of her services as "fabulous".

In the doubtlessly euphoric atmosphere attendant upon plaintiff's execution of the separation agreement and other settlement documents in New York City on August 18, 1994, plaintiff and defendant simultaneously executed and exchanged a one-page agreement (referred to by plaintiff as a "Performance Fee Document", by defendant as a "Bonus Agreement", and by the IAS Court as a "Performance Fee Agreement" or "PFA") which provided, in pertinent part, as follows:

"It is agreed by and between Vickie Delores Weinstein ('Weinstein') and Jacalyn F. Barnett ('Barnett') that:

"1. In light of the results achieved by Barnett for Weinstein in resolving her matrimonial dispute (especially in light of Robert Weinstein's initial offer of \$750,000 for equitable distribution and maintenance), Weinstein has graciously and generously agreed to pay a performance fee of \$2,000,000 (the 'Performance *79 Fee') in addition to the fees and expenses incurred herein. However, Barnett waives the outstanding fees and expenses incurred to date in the approximate sum of \$41,000.

"2. The Performance Fee will be payable as follows:

"a. \$1,000,000 upon transfer to you of the equitable distribution payment in paragraph 23.1 (a) of Weinstein's separation agreement, dated August 18, 1994;

"b. \$500,000 on or before January 15, 1995; and

"c. \$500,000 on or before July 15, 1995."

Weinstein v Barnett, 219 A.D.2d 77 (1996)

640 N.Y.S.2d 103

Plaintiff partially performed this agreement to the extent of timely payment to defendant on August 29, 1994 of the one million dollar installment pursuant to paragraph 2 (a). However, subsequent thereto, and for undisclosed reasons, plaintiff's former attitude of "grac[e] and genero[sity]" (§ 1) toward defendant evaporated, and instead of paying the second installment of \$500,000 due on January 15, 1995, plaintiff brought this action to recover the previous one million dollar payment. In her answer, defendant counterclaimed for the million dollar balance due under the terms of the agreement.

In April 1995, plaintiff moved for summary judgment upon her fifth cause of action for rescission on the ground that the agreement violated Code of Professional Responsibility DR 2-106 (C) (2) (22 NYCRR 1200.11 [c] [2]), which prohibits

"Any fee in a domestic relations matter to which Part 1400 of the joint rules of the Appellate Divisions [Procedure for Attorneys in Domestic Relations Matters] is applicable,

"(A) The payment or amount of which is contingent upon the securing of a divorce or upon the amount of maintenance, support, equitable distribution, or property settlement".

The motion court granted the relief sought, rescinding the agreement, granting judgment against defendant for the return of the one million dollars paid, less a \$41,000 credit for unpaid hourly fees hitherto waived by defendant in the agreement, and dismissed "the counterclaim".¹ The court reasoned that because this attorney-client agreement came into being some 24 hours before the husband signed the separation agreement (which contained provisions and mechanisms for an uncontested divorce), the Disciplinary Rule was violated as a matter of law. The court dealt as follows with defendant's contention that the separation agreement was complete and the husband's *80 execution of the papers was merely a "ministerial act": "This court's experience is that, despite the sense of counsel that a deal has been struck and that a separation agreement is final, there are often last minute disagreements and proposed changes by the client. This matter was obviously not final, at least until signed by plaintiff's then husband. That uncertainty meant that, at the time of its execution, the PFA was contingent; it was contingent on the husband's execution of the separation agreement and his counsel's approval of certain documents. If the husband had raised any issues, defendant's self-interest in the result would have created the conflicted loyalty to the client that DR 2-106 (C) (2) was designed to prevent." Expressing no opinion as to the propriety of a truly voluntary bonus agreement after completion of the entire proceeding, the court concluded that the agreement when executed was contingent, and therefore invalid under DR 2-106 (C) (2).

This late-afternoon view of the shadowy uncertainties that beset the human condition has, to be sure, a respectable ancestry. Even before the Common Era, the author of Ecclesiastes wrote (IX:11): "I returned, and saw under the sun that the race is not to the swift, nor the battle to the strong, neither yet bread to the wise, nor yet riches to men of understanding, nor yet favour to men of skill; but time and chance happeneth to them all." A modern poet² has distilled the thought in seven words: "Things fall apart; the centre cannot hold."

Yet neither personal philosophy nor experience, however deep, can dislodge the well-settled rule applicable to summary judgment that "[i]ssue- finding, rather than issue-determination, is the key to the procedure" (*Esteve v Abad*, 271 App Div 725, 727). The issue here is whether, on the one hand, the husband's signature was a mere formality or, to the contrary, any genuine impediment remained to achieve finality. In the context of summary judgment, plaintiff's case is advanced entirely on the affidavit of her present lawyer, who lacks any knowledge of what actually transpired, without any affidavit from her. Also lacking is any evidence from the husband, or from any of the lawyers who represented him at the critical interval of time. Whether, to put it in the vernacular, this was "a done deal" on August 18th, or the arrangement remained "contingent", is, in our view, a question of fact--perhaps subtle and nuanced, but a factual issue nonetheless. "The question of contractual intent *81 [is] essentially factual in nature" (*Four Seasons Hotels v Vinnik*, 127 AD2d 310, 318), particularly where a writing is incomplete and recourse must be had to surrounding circumstances. That principle is most applicable here where the relevant

Weinstein v Barnett, 219 A.D.2d 77 (1996)

640 N.Y.S.2d 103

intent to be determined is not that pertaining to the parties to the PFA, but rather the intent of the spousal parties to a separation agreement which is not part of the record before us, no doubt due to its provisions for confidentiality.³

The record does contain a letter-stipulation between counsel, dated August 18, 1994, delineating the mechanical steps to be taken with respect to the payment of monies from husband to wife following delivery of revised pages to be inserted in the separation agreement, appropriately initialed. Without extrinsic evidence, this stipulation is insufficient by itself to resolve the fundamental factual issue.

Accordingly, the judgment, Supreme Court, New York County (Lewis R. Friedman, J.), entered August 3, 1995, which summarily granted plaintiff \$959,000, plus interest and costs, on her fifth cause of action for rescission, and dismissed defendant's counterclaim, should be reversed, on the law, without costs, the judgment vacated, the motion denied, the counterclaim reinstated, and the matter remanded for further proceedings before another Judge. Plaintiff's motion to supplement the record on appeal is denied.

Rosenberger, J. P., Rubin, Nardelli and Mazzarelli, JJ., concur.

Judgment, Supreme Court, New York County, entered August 3, 1995, reversed, on the law, without costs, the judgment vacated, plaintiff's motion for summary judgment on the cause of action seeking rescission denied, the counterclaim reinstated, and the matter remanded for further proceedings before another Judge. Plaintiff's motion to supplement the record on appeal is denied. *82

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Footnotes

- 1 Presumably, this was the counterclaim that sought to estop plaintiff from rescinding the agreement. Another counterclaim sought recovery of the balance due under the agreement.
- 2 William Butler Yeats, "The Second Coming".
- 3 By motion submitted four weeks after this appeal was argued, plaintiff has sought leave to supplement the record with a copy of her 50-page divorce settlement agreement, which was obviously not before the motion court. We reject this voluminous submission as untimely (*see*, 22 NYCRR 600.11 [f] [4]).

End of Document

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Materials
from
Johanna Stewart

SUPREME COURT:STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

Index No: _____
Purchased: _____
Plaintiff designates SUFFOLK COUNTY
as the place of trial

Plaintiff,

- against -

SUMMONS WITH NOTICE

Defendant.

The basis of the venue is Plaintiff's residence
Plaintiff resides at _____

-----X

County of Suffolk

ACTION FOR A DIVORCE

To the above-named Defendant:

YOU ARE HEREBY SUMMONED to serve a notice of appearance, on the Plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the day of service or within thirty (30) days after the service is completed if this summons is not personally delivered to you within the State of New York; and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: _____, New York

NOTICE: The nature of this action is to dissolve the marriage between the parties on the grounds of DRL §170(7) irretrievable breakdown in relationship and DRL §170(2) abandonment.

Yours., etc.,

Attorney for Plaintiff
Office and P.O. Address

2014 JUL -3 PM 2:41
SUFFOLK COUNTY CLERK

FILED

The relief sought is:

- a. A judgment of absolute divorce in favor of the Plaintiff dissolving the marriage between the parties in this action;**
- b. custody of the infant issue of the marriage;**
- c. an award of child support;**
- d. an award of child care expenses;**
- e. that defendant be directed to pay for college educational expenses of the infant issue;**
- f. exclusive use and occupancy of the marital residence;**
- g. that defendant be directed to maintain medical insurance for the benefit of the infant issue;**
- h. that defendant be directed to pay all uncovered and unreimbursed medical, dental and health related expenses incurred on behalf of the infant issue;**
- i. granting plaintiff child support enforcement services;**
- j. that defendant maintain a policy of life insurance on his life with plaintiff as beneficiary;**
- k. that the Court grant to plaintiff an award of her separate property;**
- l. that the Court grant to plaintiff a distributive award;**
- m. that there be an equitable distribution of all the marital property;**
- n. that the marital debts of the parties be apportioned between them;**
- o. that plaintiff receive an equitable distribution of any and all retirement plans, stock plans and deferred compensation plans of any kind of the defendant;**
- p. that plaintiff be awarded counsel and expert's fees and costs;**
- q. an order pursuant to FAC §412, §413 and Common Law, directing defendant to support plaintiff until her death in the event the parties are not divorced;**
- r. and for such other and further relief as to the Court may seem just, proper and equitable.**

NOTICE OF ENTRY OF AUTOMATIC ORDERS (D.R.L. 236) Rev. 1/13
FAILURE TO COMPLY WITH THESE ORDERS MAY BE DEEMED
A CONTEMPT OF COURT

PURSUANT TO the Uniform Rules of the Trial Courts, and DOMESTIC RELATIONS LAW § 236, Part B, Section 2, both you and your spouse (the parties) are bound by the following **AUTOMATIC ORDERS**, which have been entered against you and your spouse in your divorce action pursuant to 22 NYCRR §202.16(a), and which shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties:

(1) **ORDERED:** Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) **ORDERED:** Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court ; except that any party who is already in pay status may continue to receive such payments thereunder.

(3) **ORDERED:** Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbering any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) **ORDERED:** Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) **ORDERED:** Neither party shall change the beneficiaries of any existing life insurance policies and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

IMPORTANT NOTE: After service of the Summons with Notice or Summons and Complaint for divorce, if you or your spouse wishes to modify or dissolve the automatic orders, you must ask the court for approval to do so, or enter into a written modification agreement with your spouse duly signed and acknowledged before a notary public.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

Plaintiff,

Index No.: _____

- against -

AFFIDAVIT OF SERVICE

Defendant.

-----X

STATE OF NEW YORK)
COUNTY OF SUFFOLK)

, being duly sworn deposes and says: Deponent is not a party to this action and is over the age of eighteen years and resides in the County of Nassau and State of New York.

On the 12TH day of June, 2014, at 9:05 am, I served the within Summons with Notice on _____, New York, by delivering a true copy to said recipient personally; deponent knew the person so served to be the person described as said person therein and deponent identified the defendant by a detailed description that was provided to him and the defendant identified Joseph Ortiz.

Description:

Sex: _____; Color: _____, Height: _____, Weight: _____, Hair Color: _____,
Eye Color: _____, approximate age: _____, Glasses: _____, Tattoos: _____,
Other: _____

Person spoken to was asked were the recipient in the Military Service of the State of New York or the United States or dependent on someone in the Military Service and received a negative reply. Upon information and belief based upon the conversation and observation as aforesaid deponent avers that the recipient is not in the Military Service of the State of New York or the United States or dependent on someone in the Military Service at that terms is defined in statutes of the State of New York or the Federal Soldiers and Sailors Relief Act.

Sworn to me this 20th day
of June, 2014.

Notary Public

Notary Public, State of New York
Qualified in Suffolk County
Commission Expires October 23, 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

Index No.:

Plaintiff,

VERIFIED COMPLAINT

- against -

Defendant.

-----X

Plaintiff, I, _____, by her attorney, _____, as

and for her Verified Complaint respectfully alleges as follows:

FIRST: The parties hereto over the age of eighteen (18) years.

SECOND: The plaintiff resided in New York State for a continuous period in excess of one (1) year immediately preceding the commencement of this action.

THIRD: The Plaintiff and Defendant were married on the _____ day of _____, _____, in the Town of _____, County of Suffolk and State of New York.

FOURTH: There is one child of the marriage, to wit: _____ - date of birth: _____ and no other children are expected.

FIFTH: There is no other action for divorce, separation or annulment between the parties that is pending in any other jurisdiction, domestic or foreign, and no other judgment or decree of divorce, separation or annulment has been granted in connection with this marriage in the State of New York or in any other jurisdiction, domestic or foreign.

SIXTH: The relationship between plaintiff-wife and defendant-husband has broken down irretrievably for a period of more than six (6) months prior to the commencement of this action.

SEVENTH: The economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of counsel fees and experts' fees and expenses have been or will be resolved by the parties, or determined by the Court and incorporated in the Judgment of Divorce.

EIGHTH: By reason of the foregoing, plaintiff is entitled to a judgment of divorce based on the irretrievable breakdown of the marriage for a period of more than six (6) months prior to the commencement of this action.

NINTH: Plaintiff has taken prior to entry of final judgment, all steps solely within plaintiff's power to remove any barrier to defendant's remarriage following the divorce.

WHEREFORE, plaintiff demands judgment against the defendant for an absolute divorce as follows:

- a. A judgment of absolute divorce in favor of the Plaintiff dissolving the marriage between the parties in this action;
- b. custody of the infant issue of the marriage;
- c. an award of child support;
- d. an award of child care expenses;
- e. that defendant be directed to pay for college educational expenses of the infant issue;
- f. exclusive use and occupancy of the marital residence;
- g. that defendant be directed to maintain medical insurance for the benefit of the infant issue;
- h. that defendant be directed to pay all uncovered and unreimbursed medical, dental and health related expenses incurred on behalf of the infant issue;
- i. granting plaintiff child support enforcement services;

- j. that defendant maintain a policy of life insurance on his life with plaintiff as beneficiary;
- k. that the Court grant to plaintiff an award of her separate property;
- l. that the Court grant to plaintiff a distributive award;
- m. that there be an equitable distribution of all the marital property;
- n. that the marital debts of the parties be apportioned between them;
- o. that plaintiff receive an equitable distribution of any and all retirement plans, stock plans and deferred compensation plans of any kind of the defendant;
- p. that plaintiff be awarded counsel and expert's fees and costs;
- q. an order pursuant to FAC §412, §413 and Common Law, directing defendant to support plaintiff until her death in the event the parties are not divorced;
- r. and for such other and further relief as to the Court may seem just, proper and equitable.

Dated: 1 New York

Yours etc.,

Attorney for Plaintiff

New York

(i)

TO: _____
Attorney for Defendant

New York

(i)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

)ss.:

COUNTY OF SUFFOLK)

Re:

Index No.:

1. being duly sworn says:

1. I am not a party to the within action;
2. I am over 18 years of age;
3. I am a resident of ^{Nassau} Suffolk County.

4. On 26th day of October, 2016, I served the within Verified Complaint by depositing a true copy thereof enclosed in a postage paid properly addressed wrapper, under the exclusive care and custody of the United States Postal Service within the State of New York, addressed to the following attorney at the address designated by said attorney for that purpose.

To: _____ Esq.

Sworn to before me this
26th day of October, 2016.

Notary Public

Notary Public, State of New York

Qualified in Suffolk County
Commission Expires October 23, 2017

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss.:

, ESQ., being duly sworn, deposes and says:

That I am the Attorney for the Plaintiff, I _____, in the within action for divorce. I have read the Annexed VERIFIED COMPLAINT and know the contents thereof. The contents are true to my knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

Sworn to me this 26th day of
October, 2016.

Notary Public

Notary Public, State of New York
Qualified in Suffolk County
Commission Expires October 23, 2018

UCS - 125 (1/00)
STATE OF NEW YORK UNIFIED COURT SYSTEM
CONTESTED MATRIMONIAL CASE - PRELIMINARY CONFERENCE FORM

1. County: _____

HON. JOHN L LEO

2. Judge: _____

3. Case Title: _____

4. Index #: _____

5. Date Summons Served: _____

6. Date of Preliminary Conference: _____

7. Retainer Filed:

a. by plaintiff
____ Yes ____ No

b. by defendant
____ Yes ____ No

8. Net Worth Statement Filed:

a. by plaintiff
____ Yes ____ No

b. by defendant
____ Yes ____ No

9. Parties Present:

a. by plaintiff
____ Yes ____ No

b. by defendant
____ Yes ____ No

10. Attorney Fees:

by plaintiff

a. requested:
____ Yes ____ No

c. granted:
____ Yes ____ No

by defendant

b. requested:
____ Yes ____ No

d. granted:
____ Yes ____ No

DATE SUMMONS FILED: _____
DATE ISSUE JOINED _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

Plaintiff,

Index No. _____

-against-

Defendant.

-----X

PRELIMINARY CONFERENCE STIPULATION & ORDER
PRESIDING JUSTICE: _____ Part No: _____

The parties and counsel have appeared before this Court on _____
at a preliminary conference held pursuant to 22 NYCRR §202.16.

Attorney for Plaintiff:

Attorney for Defendant:

Attorney for the Child(ren):

Phone:

Fax:

Email:

(1) NET WORTH: A sworn statement of net worth as of the date of commencement
of the action: ☐ has been filed with the Court by plaintiff _____ defendant _____

☐ will be filed with the Court by ☐ plaintiff ☐ defendant no later

than _____

(2) RETAINER: A signed copy of each party's attorney's retainer agreement and
client's bill of rights statement:

☐ has been filed with the Court by plaintiff _____ defendant _____

☐ will be filed with the Court by ☐ plaintiff ☐ defendant no later

than _____

(3) COMPLAINT: The plaintiff served a complaint on _____ OR

The plaintiff will serve a complaint on or before _____.*

*this date shall be the date used to determine the timeliness of a Notice of Discontinuance (CPLR 3217(a))

(4) DATE OF MARRIAGE: _____

(5) DATE OF BIRTH: Plaintiff _____ Defendant _____

(6) OCCUPATION AND EMPLOYER:

Plaintiff _____

☐ check if W-2 employee

Defendant _____

☐ check if W-2 employee

(7) ADDRESS OF MARITAL RESIDENCE: _____

(8) CHILDREN: List name(s) and date(s) of birth:

(9) ORDERS OF PROTECTION: ☐ There has been an Order of Protection issued involving the parties in this case. The Order was issued on _____ by the _____ Court. The Order was issued against the:
☐ plaintiff ☐ defendant, for the protection of the ☐ plaintiff ☐ defendant
☐ the parties children Attach copy of the Order(s).

(10) OTHER ORDERS: The following other orders involving the parties have been issued (attach copies):

Nature of Order _____

Issuing Court _____ Date Issued _____

Nature of Order _____

Issuing Court _____ Date Issued _____

(11) TRANSLATOR: ☐ plaintiff ☐ defendant is requesting a translator in the _____ language.

(11) OTHER AGREEMENTS: ☐ premarital ☐ marital ☐ separation agreement asserted (attach copy of agreement)

Any challenge(s) shall be asserted no later than 60 days from the date of this Order

(12) GROUND: The issue of fault is:

☐ resolved: the parties agree that _____ will proceed on an uncontested basis on the grounds of _____

☐ unresolved: a jury trial ☐ is or ☐ is not requested.

(13) CUSTODY: ☐ there are no children of the marriage

the issue of custody is: ☐ unresolved or ☐ resolved (if resolved, explain: _____)

the issue of parenting time is: ☐ unresolved or ☐ resolved (if resolved, explain): _____

issues related to decision making are: ☐ unresolved or ☐ resolved (if resolved, explain): _____

For resolved issues of custody, parenting time and decision making: the parties are to submit a stipulated parenting plan within thirty days of the date of this Order.

For unresolved issues of custody, parenting time and decision making: Each party shall serve and submit a proposed parenting plan within thirty days of the date of this Order.

(14) ATTORNEY FOR THE CHILD(REN):

☐ the parties are NOT requesting the appointment of an Attorney for the Child(ren) at this time, but reserve the right to make such request at a later time OR

☐ the parties ARE requesting that an Attorney for the Child(ren) be appointed by the Court (such appointment shall be made by separate Order) and the cost shall be paid as follows: _____% by plaintiff and _____% by defendant, subject to reallocation by the Court.

(16) FORENSIC EVALUATOR:

☐ the parties ARE NOT requesting the appointment of a forensic evaluator at this time, but reserve the right to make such request at a later date, OR

☐ the parties ARE requesting that forensic evaluator be appointed by the Court and ☐ the parties agree that the cost for the forensic evaluator be paid _____% by the plaintiff and _____% by the defendant OR

☐ the parties do not agree on allocation of the cost of a forensic evaluator and request that the Court determine the allocation thereof.

(17) FINANCIAL:

Maintenance is: ☐ unresolved OR ☐ resolved

Child Support is: ☐ unresolved OR ☐ resolved

Equitable Distribution is: ☐ unresolved OR ☐ resolved

As to each of the above issues which have been resolved, attach to this Stipulation any Orders, agreements or stipulations regarding the same.

(18) OTHER

List all other causes of action and ancillary relief sought which are unresolved:

ANY ISSUES NOT SPECIFICALLY LISTED IN THIS STIPULATION AS UNRESOLVED MAY NOT BE RAISED IN THIS ACTION UNLESS GOOD CAUSE IS SHOWN

(19) PENDENTE LITE RELIEF: The parties stipulate and agree that:

(20) DISCOVERY:

PRESERVATION OF EVIDENCE:

Financial Records: Each party shall maintain all financial records in his or her possession through the date of the execution of a final stipulation of settlement, separation agreement, or entry of a judgment of divorce, whichever occurs first.

Electronic Evidence: For the relevant periods relating to the issues in this litigation, each party shall maintain and preserve all electronic files, other data generated by and/or

stored on the party's computer system(s) and storage media (i.e. hard disks, floppy disks, backup tapes, cloud), or other electronic data. Such items include, but are not limited to, email and other electronic communications, word processing documents, spreadsheets, data bases, calendars, telephone logs, contact manager information, internet usage files, offline storage or information stored on removable media, information contained on laptops or other portable devices and network access information.

Other Evidence to be preserved: _____

(21) DOCUMENT PRODUCTION:

No later than 45 days after the date of this Order, the parties shall exchange the records listed below. Absent any specified time period, records are to be produced for the **three years** prior to the date of commencement through the present. If a party does not have complete records for the time period, that party shall take all reasonable steps to obtain such records within the stated time period.

Time Period

- ☐ _____ Federal, state and local tax returns including all schedules, K-1's, 1099's, 21W-2's and similar data.
- ☐ _____ Credit card statements for all credit cards used by a party.
- ☐ _____ Joint checking account statements, checks and registers.
- ☐ _____ Individual checking account statements, checks and registers.
- ☐ _____ Brokerage account statements.
- ☐ _____ Savings account records.
- ☐ _____ Other (specify) _____
- ☐ _____ Other (specify) _____

Any written authorization to obtain any such records listed above directly from the source shall be executed by the party within five business days of presentation of such written authorization, or in the event that such authorization is presented at the preliminary conference, then it shall be executed at the preliminary conference.

No later than **sixty days** from the date of this Order, the parties shall notify the Court of all items listed above that have not been provided. **Failure to comply with the scheduled discovery may result in sanctions, including the award of legal fees.**

Notices of discovery and inspection shall be served by the parties no later than _____.

(22) OTHER DISCOVERY

Interrogatories, **which shall be limited to 20 questions including subparts absent leave of Court**, shall be served no later than _____ (date)
Party depositions shall be completed no later than _____ (date)
Third party depositions shall be completed no later than _____ (date)

Other _____

No later than ten (10) days from the date of this Order, each party shall execute and supply authorization(s) for release of information from any and all pension, deferred compensation, retirement plans or programs or for other employment benefits and/or payments that a party is receiving or has a right to receive in the future, or is currently vesting, or is entitled to either by contract, collective bargaining agreement, as an employee or union member from any welfare and/or employee benefit fund, trust, or any other post-employment benefit paying entity.

Compliance with discovery demands shall be on a timely basis pursuant to the CPLR. **Failure to comply may result in sanctions, including the award of legal fees.**

(23) EXPERTS: Check if experts are required to value any of the following, and indicate the date of valuation:

	Plaintiff	Defendant	Date of Valuation
Deferred compensation	_____	_____	_____
Retirement assets	_____	_____	_____
Business interest	_____	_____	_____
Professional practice	_____	_____	_____
License/Degree/Certification	_____	_____	_____
Jewelry	_____	_____	_____
Separate property	_____	_____	_____
Residential real estate	_____	_____	_____
Commercial real estate	_____	_____	_____
Stock options, stock plans or other benefit plan	_____	_____	_____
Intellectual property	_____	_____	_____
Sports memorabilia	_____	_____	_____
Antiques	_____	_____	_____
Collectibles	_____	_____	_____
Other (Identify)	_____	_____	_____

(24) Neutral Experts: the parties agree to the appointment of the following experts by the Court and the parties **further agree that they will be bound by the results thereof:**

Pension Appraisal(s): ☐ not applicable

Pension appraisal(s) for ☐ the plaintiff and/or ☐ the defendant shall be performed by _____ and the costs shall be paid as follows: _____% by plaintiff and _____% by defendant, subject to reallocation by the Court.

Each party shall execute any requisite authorizations for pension appraisals and deliver them to the expert no later than ten (10) business days from the date of this Order; copies of said authorizations shall be sent at the same time to all opposing counsel and to the Court.

Real Property Appraisal(s): ☐ not applicable Appraisal(s) shall be conducted for the following real property: _____

_____ and shall be performed by _____ and the costs shall be paid as follows: _____ % by plaintiff and _____ % by defendant, subject to reallocation by the Court.

Business Appraisal(s): ☐ not applicable.

Appraisal(s) for the plaintiff's business(es) known as _____ shall be performed by _____ and the costs shall be paid as follows: _____ % by plaintiff and _____ % by defendant, subject to reallocation by the Court.

Appraisal(s) for the defendant's business(es) known as _____ shall be performed by _____ and the costs shall be paid as follows: _____ % by plaintiff and _____ % by defendant subject to reallocation by the Court.

License Valuation(s):

Plaintiff's ☐ license ☐ degree ☐ certification ☐ not applicable shall be performed by _____ and the cost shall be paid as follows: _____ % by plaintiff and _____ % by defendant subject to reallocation by the Court.

Defendant's ☐ license ☐ degree ☐ certification ☐ not applicable shall be performed by _____ and the cost shall be paid as follows: _____ % by plaintiff and _____ % by defendant subject to reallocation by the Court.

Other Appraisal: _____
☐ not applicable

Expert reports are to be exchanged in accordance with 22 NYCRR 202.16(g) and local rules.

(25) HEALTH INSURANCE COVERAGE NOTICE AND ACKNOWLEDGMENT:

I fully understand that upon the entry of a judgment of divorce, I may no longer be allowed to receive health coverage under my former spouse's health insurance plan. I may be entitled to purchase health insurance on my own through a COBRA option, if available; otherwise, I may be required to secure my own health insurance coverage.

(26) COMPLIANCE CONFERENCE:

The parties and their attorneys shall appear at a compliance conference to be held on _____ at _____ ☐ a.m. ☐ p.m.

(27) NOTE OF ISSUE:

A Note of Issue shall be filed on or before _____. Failure to file a Note of Issue as directed herein may result in dismissal pursuant to CPLR §3216.

(28) AUTOMATIC ORDERS (Domestic Relations Law §236(B)(2)(a) &(b).

Both parties are bound by the following automatic Orders which shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further Order of the Court or upon written agreement between the parties:

Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the express written consent of the other party, property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats, individually or jointly held by the parties, except in the usual course of business for customary and usual household expenses or for reasonable attorneys fees in connection with this matter.

Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the express written consent of the other party, or upon further Order of the Court, except any party who is already in pay status may continue to receive such payments thereunder.

Neither party shall incur unreasonable debts hereafter, including but not limited to further borrowing against any credit line secured by the family residence, further encumberancing of any assets, or unreasonable use of credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

Neither party shall change the beneficiaries of any existing life insurance policies and each party shall maintain the existing life insurance, automobile insurance, homeowners' and/or renters' insurance policies in full force and effect.

In addition, neither party shall disparage nor denigrate the other or discuss any aspect of the issues in contention before the Court with the child(ren) of the parties.

(29) ALTERNATE DISPUTE RESOLUTION/MEDIATION

The parties are aware of the existence of alternate dispute resolution methods offered by Suffolk County to help resolve matrimonial actions. Specifically, the parties have been advised of the Suffolk County Civil Alternatives to Litigating in Matrimonial Project (CALM). In sum, the parties are aware that the Court may refer the parties to the Project or the parties, on their own, may request a referral, at any time, to a mediator from the Project's Roster of Mediators and the initial mediation session of forty-five (45) minutes is free. If the parties wish to extend the mediation process beyond the initial mediation session, then the Mediator shall be entitled to compensation in accordance with Section VII of the Rules of the CALM Project.

The parties agree that if they participate in said program, they will comply with CALM Rules. The parties further understand and agree that the mediation process is confidential and the Mediator designated or otherwise chosen to handle this matter shall be immune from suit by any of the parties or other participants in this case due to or based upon the Mediator's activities.

Although the parties are aware that the Court may order them to participate in initial mediation, they ☐ have ☐ have not elected to voluntarily participate and attend such a session at this time. The parties understand that if the Justice presiding over this matter does not direct they attend a mediation session at this time, they are not precluded from participating in the CALM project at a later time.

(30) NEW YORK'S TEMPORARY AND PERMANENT MAINTENANCE STATUTE

The parties acknowledge that they have received a copy of notice of guideline maintenance annexed to this Stipulation and Order which outlines New York's statute regarding the calculation and/or award of temporary and/or permanent maintenance.

Plaintiff

Defendant

Attorney for Plaintiff

Attorney for Defendant

Dated: _____
Central Islip, N.Y.

SO ORDERED:

HON.
Justice of the Supreme Court

Yours etc.

Attorney for Plaintiff

New York

(i)

TO:

Attorney for Defendant

New York .

(i)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF SUFFOLK)

Re: Index No.:

1. being duly sworn says:

1. I am not a party to the within action;
2. I am over 18 years of age;
3. I am a resident of ^{Nassau} Suffolk County.

4. On _____, 2016, I served the within Verified Complaint by depositing a true copy thereof enclosed in a postage paid properly addressed wrapper, under the exclusive care and custody of the United States Postal Service within the State of New York, addressed to the following attorney at the address designated by said attorney for that purpose.

To: _____ Esq.

Sworn to before me this
26th day of October, 2016.

Notary Public

Notary Public, State of New York
Qualified in Suffolk County
Commission Expires October 23, 1991

STATE OF NEW YORK)

) SS.:

COUNTY OF SUFFOLK)

, ESQ., being duly sworn, deposes and says:

That I am the Attorney for the Plaintiff, I _____, in the within action for divorce. I have read the Annexed VERIFIED COMPLAINT and know the contents thereof. The contents are true to my knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

Sworn to me this 26th day of
October, 2016.

Notary Public

Notary Public, State of New York
Qualified in Suffolk County
Commission Expires October 23, 2018

UCS - 125 (1/00)
STATE OF NEW YORK UNIFIED COURT SYSTEM
CONTESTED MATRIMONIAL CASE - PRELIMINARY CONFERENCE FORM

1. County: _____

HON. JOHN J. LEO

2. Judge: _____

3. Case Title: _____

4. Index #: _____

5. Date Summons Served: _____

6. Date of Preliminary Conference: _____

7. Retainer Filed:

a. by plaintiff

____ Yes ____ No

b. by defendant

____ Yes ____ No

8. Net Worth Statement Filed:

a. by plaintiff

____ Yes ____ No

b. by defendant

____ Yes ____ No

9. Parties Present:

a. by plaintiff

____ Yes ____ No

b. by defendant

____ Yes ____ No

10. Attorney Fees:

by plaintiff

a. requested:

____ Yes ____ No

by defendant

b. requested:

____ Yes ____ No

c. granted:

____ Yes ____ No

d. granted:

____ Yes ____ No

DATE SUMMONS FILED: _____
DATE ISSUE JOINED _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X

Plaintiff,

Index No. _____

-against-

Defendant.

-----X

PRELIMINARY CONFERENCE STIPULATION & ORDER
PRESIDING JUSTICE: _____ Part No: _____

The parties and counsel have appeared before this Court on _____
at a preliminary conference held pursuant to 22 NYCRR §202.16.

Attorney for Plaintiff:

Attorney for Defendant:

Attorney for the Child(ren):

Phone:

Fax:

Email:

(1) NET WORTH: A sworn statement of net worth as of the date of commencement
of the action: ☐ has been filed with the Court by plaintiff _____ defendant _____

☐ will be filed with the Court by ☐ plaintiff ☐ defendant no later

than _____

(2) RETAINER: A signed copy of each party's attorney's retainer agreement and
client's bill of rights statement:

☐ has been filed with the Court by plaintiff _____ defendant _____

☐ will be filed with the Court by ☐ plaintiff ☐ defendant no later

than _____

(3) COMPLAINT: The plaintiff served a complaint on _____ OR

The plaintiff will serve a complaint on or before _____.*

*this date shall be the date used to determine the timeliness of a Notice of Discontinuance (CPLR 3217(a))

(4) DATE OF MARRIAGE: _____

(5) DATE OF BIRTH: Plaintiff _____ Defendant _____

(6) OCCUPATION AND EMPLOYER:

Plaintiff _____

☐ check if W-2 employee

Defendant _____

☐ check if W-2 employee

(7) ADDRESS OF MARITAL RESIDENCE: _____

(8) CHILDREN: List name(s) and date(s) of birth:

(9) ORDERS OF PROTECTION: ☐ There has been an Order of Protection issued involving the parties in this case. The Order was issued on _____ by the _____ Court. The Order was issued against the: ☐ plaintiff ☐ defendant, for the protection of the ☐ plaintiff ☐ defendant ☐ the parties children Attach copy of the Order(s).

(10) OTHER ORDERS: The following other orders involving the parties have been issued (attach copies):

Nature of Order _____

Issuing Court _____ Date Issued _____

Nature of Order _____

Issuing Court _____ Date Issued _____

(11) TRANSLATOR: ☐ plaintiff ☐ defendant is requesting a translator in the _____ language.

(11) OTHER AGREEMENTS: ☐ premarital ☐ marital ☐ separation agreement asserted (attach copy of agreement)

Any challenge(s) shall be asserted no later than 60 days from the date of this Order

(12) GROUND: The issue of fault is:

☐ resolved: the parties agree that _____ will proceed on an uncontested basis on the grounds of _____

☐ unresolved: a jury trial ☐ is or ☐ is not requested.

(13) CUSTODY: ☐ there are no children of the marriage
the issue of custody is: ☐ unresolved or ☐ resolved (if resolved, explain: _____

the issue of parenting time is: ☐ unresolved or ☐ resolved (if resolved, explain):

issues related to decision making are: ☐ unresolved or ☐ resolved (if resolved, explain): _____

For resolved issues of custody, parenting time and decision making: the parties are to submit a stipulated parenting plan within thirty days of the date of this Order.

For unresolved issues of custody, parenting time and decision making: Each party shall serve and submit a proposed parenting plan within thirty days of the date of this Order.

(14) ATTORNEY FOR THE CHILD(REN):

☐ the parties are NOT requesting the appointment of an Attorney for the Child(ren) at this time, but reserve the right to make such request at a later time OR

☐ the parties ARE requesting that an Attorney for the Child(ren) be appointed by the Court (such appointment shall be made by separate Order) and the cost shall be paid as follows: _____% by plaintiff and _____% by defendant, subject to reallocation by the Court.

(16) FORENSIC EVALUATOR:

☐ the parties ARE NOT requesting the appointment of a forensic evaluator at this time, but reserve the right to make such request at a later date, OR

☐ the parties ARE requesting that forensic evaluator be appointed by the Court and ☐ the parties agree that the cost for the forensic evaluator be paid _____% by the plaintiff and _____% by the defendant OR

☐ the parties do not agree on allocation of the cost of a forensic evaluator and request that the Court determine the allocation thereof.

(17) FINANCIAL:

Maintenance is: ☐ unresolved OR ☐ resolved

Child Support is: ☐ unresolved OR ☐ resolved

Equitable Distribution is: ☐ unresolved OR ☐ resolved

As to each of the above issues which have been resolved, attach to this Stipulation any Orders, agreements or stipulations regarding the same.

(18) OTHER

List all other causes of action and ancillary relief sought which are unresolved:

ANY ISSUES NOT SPECIFICALLY LISTED IN THIS STIPULATION AS UNRESOLVED MAY NOT BE RAISED IN THIS ACTION UNLESS GOOD CAUSE IS SHOWN

(19) PENDENTE LITE RELIEF: The parties stipulate and agree that:

(20) DISCOVERY:

PRESERVATION OF EVIDENCE:

Financial Records: Each party shall maintain all financial records in his or her possession through the date of the execution of a final stipulation of settlement, separation agreement, or entry of a judgment of divorce, whichever occurs first.

Electronic Evidence: For the relevant periods relating to the issues in this litigation, each party shall maintain and preserve all electronic files, other data generated by and/or

stored on the party's computer system(s) and storage media (i.e. hard disks, floppy disks, backup tapes, cloud), or other electronic data. Such items include, but are not limited to, email and other electronic communications, word processing documents, spreadsheets, data bases, calendars, telephone logs, contact manager information, internet usage files, offline storage or information stored on removable media, information contained on laptops or other portable devices and network access information.

Other Evidence to be preserved: _____

(21) DOCUMENT PRODUCTION:

No later than 45 days after the date of this Order, the parties shall exchange the records listed below. Absent any specified time period, records are to be produced for the three years prior to the date of commencement through the present. If a party does not have complete records for the time period, that party shall take all reasonable steps to obtain such records within the stated time period.

- | Time Period | |
|--------------------------------|--|
| <input type="checkbox"/> _____ | Federal, state and local tax returns including all schedules, K-1's, 1099's, 21W-2's and similar data. |
| <input type="checkbox"/> _____ | Credit card statements for all credit cards used by a party. |
| <input type="checkbox"/> _____ | Joint checking account statements, checks and registers. |
| <input type="checkbox"/> _____ | Individual checking account statements, checks and registers. |
| <input type="checkbox"/> _____ | Brokerage account statements. |
| <input type="checkbox"/> _____ | Savings account records. |
| <input type="checkbox"/> _____ | Other (specify) _____ |
| <input type="checkbox"/> _____ | Other (specify) _____ |

Any written authorization to obtain any such records listed above directly from the source shall be executed by the party within five business days of presentation of such written authorization, or in the event that such authorization is presented at the preliminary conference, then it shall be executed at the preliminary conference.

No later than sixty days from the date of this Order, the parties shall notify the Court of all items listed above that have not been provided. **Failure to comply with the scheduled discovery may result in sanctions, including the award of legal fees.**

Notices of discovery and inspection shall be served by the parties no later than _____.

(22) OTHER DISCOVERY

Interrogatories, **which shall be limited to 20 questions including subparts absent leave of Court**, shall be served no later than _____ (date)
Party depositions shall be completed no later than _____ (date)
Third party depositions shall be completed no later than _____ (date)

Other _____

No later than ten (10) days from the date of this Order, each party shall execute and supply authorization(s) for release of information from any and all pension, deferred compensation, retirement plans or programs or for other employment benefits and/or payments that a party is receiving or has a right to receive in the future, or is currently vesting, or is entitled to either by contract, collective bargaining agreement, as an employee or union member from any welfare and/or employee benefit fund, trust, or any other post-employment benefit paying entity.

Compliance with discovery demands shall be on a timely basis pursuant to the CPLR. **Failure to comply may result in sanctions, including the award of legal fees.**

(23) EXPERTS: Check if experts are required to value any of the following, and indicate the date of valuation:

	Plaintiff	Defendant	Date of Valuation
Deferred compensation	_____	_____	_____
Retirement assets	_____	_____	_____
Business interest	_____	_____	_____
Professional practice	_____	_____	_____
License/Degree/Certification	_____	_____	_____
Jewelry	_____	_____	_____
Separate property	_____	_____	_____
Residential real estate	_____	_____	_____
Commercial real estate	_____	_____	_____
Stock options, stock plans or other benefit plan	_____	_____	_____
Intellectual property	_____	_____	_____
Sports memorabilia	_____	_____	_____
Antiques	_____	_____	_____
Collectibles	_____	_____	_____
Other (Identify)	_____	_____	_____

(24) Neutral Experts: the parties agree to the appointment of the following experts by the Court and the parties **further agree that they will be bound by the results thereof:**

Pension Appraisal(s): ☐ not applicable

Pension appraisal(s) for ☐ the plaintiff and/or ☐ the defendant shall be performed by _____ and the costs shall be paid as follows: _____% by plaintiff and _____% by defendant, subject to reallocation by the Court.

Each party shall execute any requisite authorizations for pension appraisals and deliver them to the expert no later than ten (10) business days from the date of this Order; copies of said authorizations shall be sent at the same time to all opposing counsel and to the Court.

Real Property Appraisal(s): ☐ not applicable Appraisal(s) shall be conducted for the following real property: _____

_____ and shall be performed by _____ and the costs shall be paid as follows: _____ % by plaintiff and _____ % by defendant, subject to reallocation by the Court.

Business Appraisal(s): ☐ not applicable.

Appraisal(s) for the plaintiff's business(es) known as _____ shall be performed by _____ and the costs shall be paid as follows: _____ % by plaintiff and _____ % by defendant, subject to reallocation by the Court.

Appraisal(s) for the defendant's business(es) known as _____ shall be performed by _____ and the costs shall be paid as follows: _____ % by plaintiff and _____ % by defendant subject to reallocation by the Court.

License Valuation(s):

Plaintiff's ☐ license ☐ degree ☐ certification ☐ not applicable shall be performed by _____ and the cost shall be paid as follows: _____ % by plaintiff and _____ % by defendant subject to reallocation by the Court.

Defendant's ☐ license ☐ degree ☐ certification ☐ not applicable shall be performed by _____ and the cost shall be paid as follows: _____ % by plaintiff and _____ % by defendant subject to reallocation by the Court.

Other Appraisal: _____
☐ not applicable

Expert reports are to be exchanged in accordance with 22 NYCRR 202.16(g) and local rules.

(25) HEALTH INSURANCE COVERAGE NOTICE AND ACKNOWLEDGMENT:

I fully understand that upon the entry of a judgment of divorce, I may no longer be allowed to receive health coverage under my former spouse's health insurance plan. I may be entitled to purchase health insurance on my own through a COBRA option, if available; otherwise, I may be required to secure my own health insurance coverage.

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Neither party shall change the beneficiaries of any existing life insurance policies and each party shall maintain the existing life insurance, automobile insurance, homeowners' and/or renters' insurance policies in full force and effect.

In addition, neither party shall disparage nor denigrate the other or discuss any aspect of the issues in contention before the Court with the child(ren) of the parties.

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The parties are aware of the existence of alternate dispute resolution methods offered by Suffolk County to help resolve matrimonial actions. Specifically, the parties have been advised of the Suffolk County Civil Alternatives to Litigating in Matrimonial Project (CALM). In sum, the parties are aware that the Court may refer the parties to the Project or the parties, on their own, may request a referral, at any time, to a mediator from the Project's Roster of Mediators and the initial mediation session of forty-five (45) minutes is free. If the parties wish to extend the mediation process beyond the initial mediation session, then the Mediator shall be entitled to compensation in accordance with Section VII of the Rules of the CALM Project.

The parties agree that if they participate in said program, they will comply with CALM Rules. The parties further understand and agree that the mediation process is confidential and the Mediator designated or otherwise chosen to handle this matter shall be immune from suit by any of the parties or other participants in this case due to or based upon the Mediator's activities.

Although the parties are aware that the Court may order them to participate in initial mediation, they ☐ have ☐ have not elected to voluntarily participate and attend such a session at this time. The parties understand that if the Justice presiding over this matter does not direct they attend a mediation session at this time, they are not precluded from participating in the CALM project at a later time.

(30) NEW YORK'S TEMPORARY AND PERMANENT MAINTENANCE STATUTE

The parties acknowledge that they have received a copy of notice of guideline maintenance annexed to this Stipulation and Order which outlines New York's statute regarding the calculation and/or award of temporary and/or permanent maintenance.

Plaintiff

Defendant

Attorney for Plaintiff

Attorney for Defendant

Dated: _____
Central Islip, N.Y.

SO ORDERED:

HON.
Justice of the Supreme Court

Domestic Violence
Materials
from
Hon. Andrew Crecca
and
Kim Susser



DOMESTIC ABUSE INTERVENTION PROJECT

202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

Orders of Protection in Matrimonial Cases

Both DRL §240 and §252 have provisions concerning issuance of Orders of Protection in matrimonial cases.

DRL §240 concerns, generally and specifically, the issue of custody and child support in matrimonial actions and under DRL §240(3) the issuance of orders or protection that may be necessary as a condition of any order made concerning custody & child support [see below applicable provisions].

DRL §252 similarly provides for the issuance of Orders of Protection or TOP in any supreme court actions for divorce, separation, annulment or in an action to declare the nullity of a void marriage. Such initial applications or modifications can be entertained in both the supreme and family courts. [see statutes attached].

Under both sections, the available information indicates that application for OP or TOP must be in writing in the form of an Order to Show Cause or Notice of Motion (see DRL § 252(4)(8)). *Ex parte* relief is available with an Order to Show Cause. The Court rule (22 NYCRR 202.7[f]) which governs notice on applications for temporary relief, specifically provides that the rule does not apply to Orders to Show Cause or motions requesting an Order of Protection under DRL § 240—unless otherwise ordered by the Court. DRL §252 does not provide standards for determining whether an OP should be granted; therefore the substantive law to be applied is from Article 8 FCA.

Statutes Concerning Orders of Protection in Matrimonial Actions

DRL §240

1. (a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into

the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

(a-1)(1) **Permanent and initial temporary orders of custody or visitation.** Prior to the issuance of any permanent or initial temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in subparagraph three of this paragraph.

(2) **Successive temporary orders of custody or visitation.** Prior to the issuance of any successive temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in subparagraph three of this paragraph, unless such a review has been conducted within ninety days prior to the issuance of such order.

(3) **Decisions and reports for review.** The court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of the family court act, and all warrants issued under the family court act; and

(ii) reports of the statewide computerized registry of orders of protection established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

(4) **Notifying counsel and issuing orders.** Upon consideration of decisions pursuant to article ten of the family court act, and registry reports and notifying counsel involved in the proceeding, or in the event of a self-represented party, notifying such party of the results thereof, including any court appointed attorney for children, the court may issue a temporary, successive temporary or final order of custody or visitation.

(5) **Temporary emergency order.** Notwithstanding any other provision of the law, upon emergency situations, including computer malfunctions, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to subparagraph three of this paragraph.

(6) **After issuing a temporary emergency order.** After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to subparagraph three of this paragraph within twenty-four hours of the issuance of such temporary emergency order. Should such twenty-four hour period fall on a day when court is not in session, then the required reviews shall take place the next day the court is in session. Upon reviewing decisions and reports the court shall notify associated counsel, self-represented parties and attorneys for children pursuant to subparagraph four of this paragraph and may issue temporary or permanent custody or visitation orders.

§ 252. Effect of pendency of action for divorce, separation or annulment on petition for order of protection

1. In an action for divorce, separation or annulment or in an action to declare the nullity of a void marriage in the Supreme Court, the Supreme Court or the family court shall entertain an application for an order of protection or temporary order of protection by either party. Such an order may require any party:

(a) to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court;

- (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of the criminal procedure law, or any criminal offense against such child or against the other parent or against any person to whom custody of the child is awarded or from harassing, intimidating or threatening such persons;
- (d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court act;
- (e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;
- (f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced; or
- (g) to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the person protected by the order or a minor child residing in such person's household. "Companion animal," as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.
- (h) to observe such other conditions as are necessary to further the purposes of protection.

DRL § 252 (4) No order of protection may direct any party to observe conditions of behavior unless: (i) the party requesting the order of protection has served and filed an action, proceeding, counterclaim or written motion and, (ii) the court has made a finding on the record that such party is entitled to issuance of the order of protection which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order is issued has given knowing, intelligent and voluntary consent to its issuance. The provisions of this subdivision shall not preclude the court from issuing a temporary order of protection upon the court's own motion or where a motion for such relief is made to the court, for good cause shown.

DRL § 252 (8) Any party moving for a temporary order of protection pursuant to this subdivision during hours when the court is open shall be entitled to file such motion or pleading containing such prayer for emergency relief on the same day that such person first appears at such court, and a hearing on the motion or portion of the pleading requesting such emergency relief shall be held on the same day or the next day that the court is in session following the filing of such motion or pleading.

§ 812. Procedures for family offense proceedings

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree or an attempted assault, criminal obstruction of breathing or blood circulation or strangulation between spouses or former spouses, or between parent and child or

between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

- (a) persons related by consanguinity or affinity;
- (b) persons legally married to one another;
- (c) persons formerly married to one another regardless of whether they still reside in the same household;
- (d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time; and
- (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate persons, including, but not limited to district attorneys, criminal and family court clerks, corporation counsels, county attorneys, victims assistance unit staff, probation officers, warrant officers, sheriffs, police officers or any other law enforcement officials, to inform any petitioner or complainant bringing a proceeding under this article, before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

- (a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;
- (b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end the family disruption and obtain protection. Referrals for counseling, or counseling services, are available through probation for this purpose;
- (c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;
- (d) That a proceeding or action subject to the provisions of this section is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest, or request

for arrest, if any;

(e) Repealed.

(f) That an arrest may precede the commencement of a family court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding; provided, however, that the arrest of an alleged offender shall be made under the circumstances described in subdivision four of section 140.10 of the criminal procedure law;

(g) That notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section.

3. Official responsibility. No official or other person designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

4. Official forms. The chief administrator of the courts shall prescribe an appropriate form to implement subdivision two of this section.

5. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of the criminal procedure law, the family court act and the domestic relations law. Such notice shall be available in English and Spanish and, if necessary, shall be delivered orally and shall include but not be limited to the following statement:

“If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangement to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for

the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection.

The forms you need to obtain an order of protection are available from the family court and the local criminal court (the addresses and telephone numbers shall be listed). The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters can be accessed by calling the following 800 numbers (the statewide English and Spanish language 800 numbers shall be listed and space shall be provided for local domestic violence hotline telephone numbers).

Filing a criminal complaint or a family court petition containing allegations that are knowingly false is a crime.”

The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with the provisions of this section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law. Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the family court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

§ 828. Temporary order of protection; temporary order for child support

1. (a) Upon the filing of a petition or counter-claim under this article, the court for good cause shown may issue a temporary order of protection, which may contain any of the provisions authorized on the making of an order of protection under section eight hundred forty-two, provided that the court shall make a determination, and the court shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons.

(b) Upon the filing of a petition under this article, or as soon thereafter as the petitioner appears before the court, the court shall advise the petitioner of the right to proceed in both the family and criminal courts, pursuant to the provisions of section one hundred fifteen of this act.

2. A temporary order of protection is not a finding of wrongdoing.

3. The court may issue or extend a temporary order of protection *ex parte* or on notice simultaneously with the issuance of a warrant, directing that the respondent be arrested and brought before the court, pursuant to section eight hundred twenty-seven of this article.

4. Notwithstanding the provisions of section eight hundred seventeen of this article the court may,

together with a temporary order of protection issued pursuant to this section, issue an order for temporary child support, in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. An order making such award shall be deemed to have been issued pursuant to article four of this act. Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

§ 842. Order of protection

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must articulate a basis for its decision on the record. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

(a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section eight

hundred twelve of this act, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;

(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(g) to require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and

(h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order.

(i) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.

2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.

(j) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing

continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or the department of corrections and community supervision where the individual is under probation or parole supervision.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

In addition to the foregoing provisions, the court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

§842-a. Suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms pursuant to section 400.00 of the penal law and ineligibility for such a license; order to surrender firearms.

1. Mandatory and permissive suspension of firearms license and ineligibility for such a license upon the issuance of a temporary order of protection. Whenever a temporary order of protection is issued pursuant to section eight hundred twenty-eight of this article:

(a) the court shall suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (B) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (C) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the respondent has a prior conviction for stalking in the first degree as defined

in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

2. Mandatory and permissive revocation or suspension of firearms license and ineligibility for such a license upon the issuance of an order of protection. Whenever an order of protection is issued pursuant to section eight hundred forty-one of this part:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; and

(b) the court may, where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

3. Mandatory and permissive revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection. Whenever a respondent has been found, pursuant to section eight hundred forty-six-a of this part to have willfully failed to obey an order of protection issued by this court or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to section eight hundred forty-six-a of this part:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the willful failure to obey such order involves (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of

section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

4. Suspension. Any suspension order issued pursuant to this section shall remain in effect for the duration of the temporary order of protection or order of protection, unless modified or vacated by the court.

5. Surrender. (a) Where an order to surrender one or more firearms has been issued, the temporary order of protection or order of protection shall specify the place where such firearms shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such firearms to be surrendered and shall direct the authority receiving such surrendered firearms to immediately notify the court of such surrender.

(b) The prompt surrender of one or more firearms pursuant to a court order issued pursuant¹ this section shall be considered a voluntary surrender for purposes of subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law. The disposition of any such firearms shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law.

(c) The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all pistols, revolvers, rifles, shotguns or other firearms owned or possessed by a respondent pursuant to this act.

6. Notice. (a) Where an order of revocation, suspension or ineligibility has been issued pursuant to this section, any temporary order of protection or order of protection issued shall state that such firearm license has been suspended or revoked or that the respondent is ineligible for such license, as the case may be.

(b) The court revoking or suspending the license, ordering the respondent ineligible for such license, or ordering the surrender of any firearm shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality of such action.

(c) The court revoking or suspending the license or ordering the defendant ineligible for such license shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

(d) Where an order of revocation, suspension, ineligibility, or surrender is modified or vacated, the court shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality concerning such action and shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

7. Hearing. The respondent shall have the right to a hearing before the court regarding any revocation, suspension, ineligibility or surrender order issued pursuant to this section, provided that nothing in this subdivision shall preclude the court from issuing any such order prior to a hearing. Where the court has issued such an order prior to a hearing, it shall commence such hearing within fourteen days of the date such order was issued.

8. Nothing in this section shall delay or otherwise interfere with the issuance of a temporary order of protection.

New York Bill Jacket, 1996 Assembly Bill 2446
1996

Governor of New York

219th Legislature, 1996 Regular Session

Illegible text characters in the source data are indicated by three
asterisks (***).

APPROVAL #23 CHAPTER 85

LAWS OF 1996 _____ MEMORANDUM NO. _____

SENATE BILL _____ ASSEMBLY BILL 2446C

2446--C

1995-1996 Regular Sessions

IN ASSEMBLY

January 31, 1995

Introduced by M. of A. WEINSTEIN, **GREEN**, MATUSOW, KOON, GOTTFRIED, PHEFFER, KATZ, AUBRY
-- Multi-Sponsored by -- M. of A. ARROYO, BARBARO, BRAGMAN, BRENNAN, BRODSKY, CANESTRARI,
CHRISTENSEN, CLARK, COLMAN, CONNELLY, DAVIS, DESTITO, DINAPOLI, DINOWITZ, DUGAN,
ENGLEBRIGHT, EVE, FELDMAN, GALEF, GANTT, GLICK, GRANNIS, GREENE, GROMACK, GUNTHER,
HARENBERG, HILL, HOCHBERG, HOYT, JACOBS, JOHN, KAUFMAN, LAFAYETTE, LENTOL, LUSTER,
MAGEE, MAYERSOHN, McLAUGHLIN, MURTAUGH, NOLAN, ORTIZ, PILLITTERE, POLONETSKY, PRETLOW,
RAMIREZ, SCHIMMINGER, SEMINERIO, SIDIKMAN, SWEENEY, TOKASZ, TONKO -- read once and
referred to the Committee on Judiciary -- recommitted to the Committee on Rules in
accordance with Assembly Rule 3, sec. 2 -- Rules Committee discharged and committed to
the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as
amended and recommitted to said committee -- again reported from said committee with
amendments, ordered reprinted as amended and recommitted to said committee -- reported
and referred to the Committee on Rule -- committee discharged, bill amended, ordered
reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law and the family court act, in relation to
child custody

In Sen. 7403B ***

DATE RECEIVED BY GOVERNOR:

5/9

ACTION MUST BE TAKEN BY:

5/21

DATE GOVERNOR'S ACTION TAKEN:

MAY 21 1996

SENATE VOTE _____ Y _____ N HOME RULE MESSAGE _____ Y _____ N

DATE _____ BILL IS DISAPPROVED

ASSEMBLY VOTE 148 Y 0 N DATE _____

DATE 5/6

COUNSEL TO THE GOVERNOR

STATE OF NEW YORK

2446--C

1995-1996 Regular Sessions

IN ASSEMBLY

January 31, 1995

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

Introduced by M. of A. WEINSTEIN, **GREEN**, MATUSOW, KOON, GOTTFRIED, PHEFFER, KATZ, AUBRY -- Multi-Sponsored by -- M. of A. ARROYO, BARBARO, BRAGMAN, BRENNAN, BRODSKY, CANESTRARI, CHRISTENSEN, CLARK, COLMAN, CONNELLY, DAVIS, DESTITO, DINAPOLI, DINOWITZ, DUGAN, ENGLEBRIGHT, EVE, FELDMAN, GALEF, GANTT, GLICK, GRANNIS, GREENE, GROMACK, GUNTHER, HARENBERG, HILL, HOCHBERG, HOYT, JACOBS, JOHN, KAUFMAN, LAFAYETTE, LENTOL, LUSTER, MAGEE, MAYERSOHN, McLAUGHLIN, MURTAUGH, NOLAN, ORTIZ, PILLITTERE, POLONETSKY, PRETLOW, RAMIREZ, SCHIMMINGER, SEMINERIO, SIDIKMAN, SWEENEY, TOKASZ, TONKO -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Rules in accordance with Assembly Rule 3, sec. 2 -- Rules Committee discharged and committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law and the family court act, in relation to child custody

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The legislature finds and declares that there has been a growing recognition across the country that domestic violence should be a weighty consideration in custody and visitation cases. At least thirty-eight states and the District of Columbia have laws making domestic violence a relevant factor in custody decisions by the courts. A unanimous joint resolution of Congress, adopted in 1990, urged states to adopt statutes establishing a presumption "that it is detrimental to the child to be placed in the custody of the abusive spouse": (H.Res. 172). In 1994, the Model Code on Domestic and Family Violence of the National Council of Juvenile and Family Court Judges provided for a presumption against custody with the violent parent where the court determines that domestic violence has occurred (sec. 401). The Model Code also calls upon the court to consider as primary the safety and well-being of the child and the abused parent in setting visitation and provides that parental absence and relocation of the abused parent cannot be weighed against that parent (sec. 402). In addition, a comprehensive 1994 report by the American Bar Association, "The Impact of Domestic Violence on Children", recommended that state legislatures amend their custody codes to better protect battered parents and their children, including a presumption that custody not be awarded to a parent with a history of domestic violence and the direction of supervised visitation in appropriate cases.

Rather than imposing a presumption, the legislature hereby establishes domestic violence as a factor for the court to consider in child custody and visitation proceedings, regardless of whether the child has witnessed or has been a direct victim of the violence.

The legislature recognizes the wealth of research demonstrating the effects of domestic violence upon children, even when the children have not been physically abused themselves or witnessed the violence. Studies indicate that children raised in a violent home experience shock, fear, and guilt and suffer anxiety, depression, somatic symptoms, low self-esteem, and developmental and socialization difficulties. Additionally, children raised by a violent parent face increased risk of abuse. A high correlation has been found between spouse abuse and child abuse. A study of children in shelters for victims of domestic violence shows higher rates of child abuse in homes where a spouse has been battered.

A home environment of constant fear where physical or psychological violence is the means of control and the norm for the resolution of disputes must be contrary to the best interests of a child. It is well documented that family violence is cyclical and self-perpetuating. Children who live in a climate of domestic violence learn to use physical violence as an outlet for anger and are more likely to use violence to solve problems while children and later as adults.

Domestic violence does not terminate upon separation or divorce. Studies demonstrate that domestic violence frequently escalates and intensifies upon the separation of the parties. Therefore, at the time the court must make judgments regarding the custody and

visitation of children, great consideration should be given to the corrosive impact of domestic violence and the increased danger to the family upon dissolution and into the foreseeable future.

§ 2. Subdivision 1 of section 240 of the domestic relations law, as amended by chapter 389 of the laws of 1995, is amended to read as follows:

1. In any action or proceeding brought (1) to annul a marriage **or** to declare the nullity of a void marriage, **or** (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, **the** court shall require verification of the status of any child of the marriage **with** respect to such child's custody and support, **including** any prior orders, and shall enter orders for custody and support **as**, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support **out** of the property of either or both parents. The court shall make its award for child support **pursuant** to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support **obligation** for persons not in receipt of aid to dependent children must contain either a request for child support **enforcement** services which would authorize the collection of the support **obligation** by the immediate issuance of an income execution for support **enforcement** as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support **enforcement** services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules without other child support **enforcement** services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support **enforcement** services to the support **collection** unit of the appropriate social services district any time it directs payments to be made to such support **collection** unit. Additionally, the copy of any such

request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; **the** name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support **is** sought or from the party ordered to pay child support **to** the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support **has** applied for or is receiving such services, the court shall not direct such payments to be made to the support **collection** unit, as established in section one hundred eleven-h of the social services law. Such direction shall require that if either parent has health insurance available through an employer or organization that may be extended to cover the child, that such parent exercise the option of additional coverage in favor of such child and execute and deliver any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child. Where employer or organization subsidized health insurance coverage is available, the court shall order the legally responsible relative immediately to enroll the eligible dependents named in the order who are otherwise eligible for such coverage without regard to any seasonal enrollment restrictions. Such order shall further direct the legally responsible relative to maintain such coverage as long as it remains available to such relative. Upon a finding that a responsible relative wilfully failed to obtain such health insurance in violation of a court order, such relative will be presumptively liable for all medical expenses incurred on the behalf of such dependents from the first date such dependent was eligible to be enrolled in medical insurance coverage after the issuance of the order of support **directing** the acquisition of such coverage. In making an order for employer or organization provided health insurance pursuant to this section the court shall consider the availability of such insurance to all parties to the order and direct that either or both parties obtain such insurance and allocate the costs therefor consistent with obtaining comprehensive medical insurance for the child at reasonable cost to the parties. Such direction shall be effective as of the date of the application therefor, and any retroactive amount of child support **due** shall be support **arrears/past due** support **and** shall, except as provided for herein, be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary support **which** has been paid. In addition, such retroactive child support **shall** be enforceable in any manner provided by law including, but not limited to, an execution for support **enforcement** pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support **is** a public assistance recipient, or the order of support **is** being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support **and** notify the parties that such amount shall be enforced by the support **collection** unit pursuant to an execution for support **enforcement** as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the courts shall not direct the schedule of repayment of retroactive support. Where such direction is for child support **and** paternity has been established by a voluntary acknowledgement of paternity as defined in section forty-one hundred thirty-five-b of the public health law, the court shall inquire of the parties whether the acknowledgement has been duly filed, and unless satisfied that it has been so filed shall require the clerk of the court to file such acknowledgement with the appropriate registrar within five business days. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the court for any reason whatsoever,

other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to the custodial parent under this section with any amount payable to such parent under section two hundred thirty-six of this chapter. Upon the application of either parent, or of any other person or party having the care, custody and control of such child pursuant to such judgment or order, after such notice to the other party, parties or persons having such care, custody and control and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage **rendered** on or after September first, nineteen hundred forty, or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of this article, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such child support **nunc pro tunc** as of the date of application based on newly discovered evidence. Any retroactive amount of child support **due** shall be support **arrears/past due support and** shall be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support **which** has been paid. In addition, such retroactive child support **shall** be enforceable in any manner provided by law including, but not limited to, an execution for support **enforcement** pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules.

§ 3. Subdivision (a) of section 447 of the family court act is amended to read as follows:

(a) In the absence of an order of custody or of visitation entered by the supreme court, the court may make an order of custody or of visitation, in accordance with subdivision one of section two hundred forty of the domestic relations law, requiring one parent to permit the other to visit the children at stated periods without an order of protection, even where the parents are divorced and the support order is for a child only.

§ 4. Subdivision (c) of section 467 of the family court act, as amended by chapter 40 of the laws of 1981, is amended to read as follows:

(c) In any determination of an application pursuant to this section, the family court shall have jurisdiction to determine such applications, in accordance with subdivision one of section two hundred forty of the domestic relations law, with the same powers possessed by the supreme court, and the family court's disposition of any such application is an order of the family court appealable only under article eleven of this act.

§ 5. Subdivision (a) of section 549 of the family court act, as added by chapter 952 of the laws of 1971, is amended to read as follows:

(a) If an order of filiation is made or if a paternity agreement or compromise is approved by the court, in the absence of an order of custody or of visitation entered by the supreme court the family court may make an order of custody or of visitation, in accordance with subdivision one of section two hundred forty of the domestic relations law, requiring one parent to permit the other to visit the child or children at stated periods.

§ 6. Section 651 of the family court act, as amended by chapter 250 of the laws of 1983, subdivision (b) as amended and subdivisions (c) and (d) as added by chapter 457 of the laws of 1988, is amended to read as follows:

§ 651. Jurisdiction over habeas corpus proceedings and petitions for custody and visitation of minors. (a) When referred from the supreme court or county court to the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors.

(b) When initiated in the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors, including applications by a grandparent or grandparents for visitation rights pursuant to section seventy-two or two hundred forty of the domestic relations law.

(c) When initiated in the family court pursuant to a petition under part eight of article ten of this act or section three hundred fifty-eight-a of the social services law, the family court has jurisdiction to enforce or modify orders or judgments of the supreme court relating to the visitation of minors in foster care, notwithstanding any limitation contained in subdivision (b) of section four hundred sixty-seven of this act.

(d) With respect to applications by a grandparent or grandparents for visitation rights, made pursuant to section seventy-two or two hundred forty of the domestic relations law, with a child remanded or placed in the care of a person, official, agency or institution pursuant to the provisions of article ten of this act, the applicant, in such manner as the court shall prescribe, shall serve a copy of the application upon the social services official having care and custody of such child, and the child's law guardian, who shall be afforded an opportunity to be heard thereon.

§ 7. Subdivision (c) of section 652 of the family court act, as added by chapter 40 of the laws of 1981, is amended to read as follows:

(c) In any determination of an application pursuant to this section, the family court shall have jurisdiction to determine such applications, in accordance with subdivision one of section two hundred forty of the domestic relations law, with the same powers possessed by the supreme court, and the family court's disposition of any such application is an order of the family court appealable only under article eleven of this act.

§ 8. This act shall take effect immediately and shall apply to all actions or proceedings concerning custody of or a right to visitation with a child whether such action or proceeding was commenced pursuant to section 240 of the domestic relations law or any other provision of law.

NEW YORK STATE ASSEMBLY

TWO HUNDRED NINETEENTH SESSION

REPRINT

DATE: 05/06/96

DATE: 05/06/1996

TIME: 07:38:13 PM

BILL: A2446-C R.R. NO: 447 SPONSOR: WEINSTEIN (MS)

Requires court to consider evidence of domestic violence in child custody and visitation proceedings

Y	Abbate PJ	Y	Galef SR	Y	Oaks RC
EOR	Acampora PL	Y	Gantt DF	Y	O'Neil CA
Y	Alfano TW	Y	Genovesi AJ	Y	Ortiz FW
Y	Anderson RR	Y	Glick DJ	Y	Ortloff C
Y	Arroyo CE	Y	Gottfried RN	Y	O'Shea CJ
Y	Aubry JL	Y	Grannis A	Y	Parment WL
Y	Bacalles JG	Y	Green RL	Y	Perry NN
Y	Balboni MA	Y	Greene A	Y	Pheffer AI
Y	Barbaro FJ	Y	Griffith E	Y	Pillittere JT
Y	Barraga TF	Y	Gromack AJ	Y	Polonetsky J
Y	Bea SD	Y	Guerin JJ	Y	Pordum FJ
Y	Becker GR	Y	Gunther JE	Y	Prentiss RG
Y	Bonacic JJ	Y	Harenberg PE	Y	Prescott DW
Y	Boyland WF	Y	Healey PB	Y	Pretlow JG
Y	Boyle PM	Y	Herbst M	Y	Ramirez R
Y	Bragman MJ	Y	Hikind D	Y	Ravitz J
Y	Brennan JF	Y	Hill EH	Y	Reynolds TM
Y	Brodsky RL	Y	Hochberg AG	Y	Rivera PM
Y	Brown HC	Y	Hoyt WB	Y	Robach JE
Y	Butler DJ	Y	Jacobs RS	Y	Sanders S
Y	Butler MW	Y	John SV	Y	Scarborough W
Y	Calhoun N	Y	Johnson J	Y	Schimminger RL
Y	Canestrari RJ	Y	Katz M	Y	Seaman DE
Y	Casale PM	Y	Kaufman SB	Y	Seminerio AS
Y	Christensen JK	Y	Keane RJ	Y	Sidikman DS
Y	Clark BM	Y	Kirwan TJ	Y	Spano MJ
Y	Colman S	Y	Klein J	Y	Stephens WH
Y	Connelly EA	Y	Koon D	Y	Straniere RA
Y	Conte JD	Y	Lafayette IC	Y	Stringer SM
Y	Cook VE	Y	Lentol JR	Y	Sullivan EC
Y	Crouch CW	Y	Little EO	Y	Sullivan F
Y	Crowley J	Y	Lopez VJ	Y	Sweeney RK
Y	D'Andrea RA	Y	Luster MA	Y	Tedisco J
Y	Davis G	Y	Magee B	Y	Thiele FW
Y	Destito RM	Y	Mahoney BJ	Y	Tocci RC
Y	Diaz F	Y	Manning PR	Y	Tokasz P
Y	DiNapoli TP	Y	Matusow NC	Y	Tonko PD

Y	Dinga JJ	Y	Mayersohn N	Y	Towns DC
Y	Dinowitz J	Y	Mazzarelli DJ	Y	Townsend DR
Y	Doran CJ	Y	McEneny JJ	Y	Vann A
Y	Dugan EC	Y	McGee PK	Y	Vitaliano EN
Y	Englebright S	Y	McLaughlin BM	Y	Warner RJ
Y	Espada PG	Y	Meeks GW	Y	Weinstein HE
Y	Eve AO	Y	Miller JM	Y	Weisenberg H
Y	Farrell HD	Y	Morelle JD	Y	Weprin M
Y	Faso JJ	Y	Murtaugh JB	Y	Wertz RC
Y	Feldman D	Y	Nesbitt CH	Y	Winner GH
Y	Ferrara D	Y	Nolan CT	Y	Wirth SL
Y	Fessenden DJ	Y	Norman C	Y	Wright KL
EOR	Flanagan JJ	Y	Nortz HR	Y	Mr. Speaker
		YEAS: 148		NAYS: 0	

CONTROL: 15055944

CERTIFICATION: /S/ FRANCINE M. MISASI

CLERK OF THE ASSEMBLY

LEGEND: Y=YES, NAY=NO, NV=ABSTAIN, ABS=ABSENT, ELB=EXCUSED FOR LEGISLATIVE BUSINESS,
EOR=EXCUSED FOR OTHER REASONS.

NEW YORK STATE ASSEMBLY

MEMORANDUM IN SUPPORT OF LEGISLATION

Submitted in accordance with Assembly Rule III, 1(e)

Bill Number: Assembly 2446 Senate

Sponsors: Members of Assembly: Weinstein

Senators:

Introduced at the request of:

Title of Bill:

An act to amend the domestic relations law and the family court act in relation to child custody.

Purpose:

To ensure that domestic violence by one parent against another be considered by courts in determining the best interests of children with regard to custody.

Summary of Provisions:

The bill amends sections 70 and 240 of the domestic relations law and sections 447(a), 467(c), 549(a), 651, and 652(c) of the family court act to provide that in granting custody and visitation the court consider domestic violence by one parent against the other parent when deciding the best interest of the child whether or not the child has witnessed the violence or the violent parent has directly abused the child.

Justification:

Under current law, the court determines which parent shall have custody based upon the best interests of the child. Recent findings by the New York Task Force on Women in the Courts indicate that in making custody decisions, some judges fail to understand and take into account the consequences to children of violence against their mothers, despite a variety of studies that conclude it is not in the best interests of a child to live with a violent parent. A Task Force survey of attorneys practicing throughout the state demonstrates that judges too often disregard a father's violence against a mother and award joint or sole custody to abusive fathers. (Report of the New York Task Force on Women in the Courts, OCA, March 31, 1986, pp.175-176). In *Blake vs. Blake* 106 A.D. 2d 916, 483 NYS 2d 879 (4th Dept. 1984) (reversing trial court, unreported decision), the trial court judge awarded custody to the father despite uncontroverted evidence that he had physically abused the mother for several years.

Judges erroneously assume that the beating of a child's parent is not a detriment to the child or that the problem will end upon separation or divorce. (Keenan, *Domestic Violence and Custody Litigation: The Need for Statutory Reform*, 13 Hofstra Law Review 407, 410, (1985)).

Abuse of a parent is detrimental to children regardless of whether the children are physically abused themselves or whether they actually witness the violence to the parent (Keenan at 417; Fields, "Spouse Abuse As a Factor in Custody and Visitation Decisions," *Child Abuse and Neglect* (Appellate Division 1986)). The batterer's violence injures children both directly and indirectly. Some experts have described spouse abuse as a form of non-physical child abuse. (L. Walker, *The Battered Women Syndrome*, Springer, (1984)).

A child does not have to directly witness the attacks on a parent to suffer emotional trauma. Studies have indicated that children raised in a violent home have reactions of shock, fear and guilt. (D. Martin, *Battered Wives*, chs. 6 & 7 (1976)). Such children also have impaired self-esteem and developmental and socialization difficulties. (Westra & Martin, "Children of Battered Women, 10 *Maternal-Child Nursing J* 41, 49 (1981)).

Children who have witnessed their fathers beating their mothers have suffered from delayed development and sleep disturbances and feelings of fear, helplessness, depression, guilt and anxiety. (Wohl & Kaufman, *Silent Screams & Hidden Cries*, Brunner/Mazel, New York 1985). Studies indicate that these children suffer somatic symptoms as well, with a higher incidence of colds, sore throats, hospitalizations and bedwetting than children from non-violent homes. Hilberman & Munson, *Sixty Battered Women*, 2 *Victimology* 460, 463 (1978); Pagelow, "Children in Violent Families: Direct and Indirect Victims," in Hills and Barnes, eds, *Young Children and Their Families* 47, 54 (Lexington Books, Mass., 1982).

In addition, placing a child in the custody of a battering parent is not in the child's best interest because evidence suggests that children not only suffer emotional harm from domestic violence, but there is also an increased risk that they will suffer physical harm from the batterer. The recent death of 6-year old Lisa Steinberg is a tragic example. A high correlation has been found between spouse abuse and child abuse. (Rosenbaum and O'Leary, *Children: The Unintended Victim of Marital Violence* 51 *Amer. J. Orthopsychiatry*, 692). A study of children in shelters for battered women found higher rates of child abuse in families where there is wife abuse than in other families. (Layzer et.al. *Center for Women Policy Studies*, 1986). A Colorado study found that 53% of battering husbands abused their children. (Walker, 1984).

There is evidence that as children of men who assault their wives grow older, they are at greater risk of being assaulted by the batterer. One study found that among children of battered women, 17.6% are abused in the under 3 year old age group; 37.5% were abused in the 3-5 year old group and 41.5% of children 6-11 were abused. (Hershey, "Domestic Violence: Children Reared in Explosive Homes.") (Unpublished ms. 1982, p.9, reported in Fields, p.5).

Finally, it is not in the best interests of children or society for children to be raised by a battering parent because of the cyclical nature of family violence. Children who are raised in violent homes learn to use physical violence as an outlet for anger and are more likely to use violence to resolve conflicts. (Pagelow, pp. 64-66). In fact, the batterer is likely to have come from a violent home." (Hilberman at 1337). Men who saw their parents physically attack each other were 3 times more likely to hit their own spouses than those with non-violent parents. The sons of the most violent parents have a rate of wife-beating 10 times greater than the sons of non-violent parents. (Straus, Gelles & Steinmetz, *Behind Closed Doors*, 1980).

The Need for Supervised Visitation: Contrary to the attitudes of some judges, the negative effects on a child of spouse abuse do not disappear when the parents separate or divorce. (Keenan, p. 421). In fact, abuse may increase when the woman attempts to assert her autonomy and physical assaults may escalate (D. Martin, p. 76-79). It may be appropriate to prohibit the violent parent from visitation with the child or make provision for supervised visitation under circumstances that protect the child and abused parent from harm (Fields, p.12).

As a batterer's violence towards an estranged or ex-wife escalates, both the woman and children are at risk during unsupervised visitation periods, during transfers of the children for visitation and through shared custody arrangements. If the courts fail to recognize the continued risk of harm to the woman or children from the batterer, they ill not make provisions for supervision during visitation or for the protection of the woman exposed to contact with the batterer while transferring the children. (Keenan, p.422).

A number of appellate decisions have recognized that spouse abuse is a basis for suspension of visitation or for requiring supervised visitation (Katz vs. Katz 97 A.D. 2d. 398, 467 NYS 2d. 223 (3d Dept. 1983) (supervised visitation); Goldring vs. Goldring, 73 A.D. 2d. 955, 424 NYS 2d 273 (2d Dept. 1980) (visitation suspended); Molier vs. Molier, 53 A.D. 2d 996, 386 NYS 2d. 226 (3d Dept. 1976) (visitation suspended); Serrano vs. Serrano, N.Y.L.J., 1/21/86, p.17, col.6 (Sup. Ct. Kings Co.) (visitation denied).

At least ten states require that courts consider spousal abuse in temporary and/or permanent custody decisions (Alaska, Arizona, California, Colorado, Florida, Illinois, Kentucky, Iowa, Texas, Washington, and the District of Columbia). The New York Task Force on Women in the Courts has called upon the legislature to enact legislation that "provides that abuse of one's spouse is evidence of parental unfitness for custody and a basis for termination of visitation or a requirement for supervised visitation (p. 180).

Legislative History:

1988, Similar to A.8699-B - Passed Assembly

1989-90, Similar to A.6095 - Held in Children and Families

1991-92, A.4379 - Passed Assembly

1993-94, A.3454 - Passed Assembly

Effective: Immediately.

SB:1/20/94

CHAPTER 85

APPROVAL #23

STATE OF NEW YORK

EXECUTIVE CHAMBER

ALBANY 12224

MAY 21 1996

MEMORANDUM filed with Assembly Bill Number 2446-C, entitled:

"AN ACT to amend the domestic relations law and the family court act, in relation to child custody"

APPROVED

The bill amends the domestic relations law and family court act to require a court to consider the effects of domestic violence upon the best interests of a child before rendering a custody or visitation determination. Where there is proof, by a preponderance of the evidence, that a party to a custody or visitation proceeding has committed acts of domestic violence, the court must take that into consideration when making a final determination.

The victims of domestic violence are not limited to those who are actually battered by spouses, for the evidence is overwhelming that those who batter their spouses inflict

tremendous harm on their children. In the first place, a high percentage of those who physically abuse their spouses also abuse their children. Just as important, domestic violence causes great psychological and developmental damage to children even when they are not themselves physically abused. A particularly alarming consequence of domestic violence is that sons of batterers are far more likely to abuse their spouses than sons raised in households free of violence.

This pernicious cycle must stop; all who suffer from batterers must be protected by the law. By requiring courts to weigh the effects of domestic violence upon a child who is the subject of a visitation or custody proceeding before making a final determination the bill takes a major and long-overdue step forward. More, however, remains to be done.

Earlier this session I proposed the domestic violence and public safety act of 1996 to strengthen the laws protecting those terrorized by violence in their homes and ensuring that those who perpetrate such despicable acts are held accountable. Recently, the Senate passed this important bill. In approving this bill, I call upon the Assembly to pass my program bill promptly to better protect all victims of domestic violence.

The bill is approved.

B-203 BUDGET REPORT ON BILLS Session Year: 1996

SENATE NO RECOMMENDATION ASSEMBLY
No. 2446--C

Law: Domestic Relations Law

Title: In relation to child custody

The proposal noted above has been referred to the Division of the Budget for comment. After careful review, we find that it has no appreciable effect on State finances or programs, and/or that this office does not have the technical expertise necessary to evaluate the proposal.

We therefore make no recommendation.

C-85

STATE OF NEW YORK

OFFICE OF THE ATTORNEY GENERAL

DENNIS C. VACCO

Attorney General

MEMO IN SUPPORT

A.2446-B S.7403-A

May 15, 1996

AN ACT to amend the domestic relations law and the family court act, in relation to child custody.

Summary of the Legislation: This bill would amend the Domestic Relations Law and the Family Court Act to provide that allegations of domestic violence raised by parties to a child custody or visitation case will be heard so that the court can determine the effect of such violence upon the best interests of the child prior to making a custody or visitation order, whether or not the child was physically injured or personally witnessed the abuse.

Current Law: Currently, the law does not provide, where an allegation of domestic violence is raised in a sworn petition or complaint, and those allegations are proven by a preponderance of the evidence, that the court determine the impact of such domestic violence upon the best interests of the child, who is the subject of the proceeding.

Fiscal Implications for State & Local Governments: None.

Position of the Attorney General: Given the growing recognition that domestic violence affects both the adult victim and any children present in the household, the Attorney General strongly supports this legislation. Numerous studies indicate that children who witness domestic violence or are exposed to such relationships, often suffer severe emotional trauma and are more likely to themselves be abused.

As Chairman of the Governor's Commission on Child Abuse and Neglect, the Attorney General is in the process of evaluating the current child protective system. One glaring omission in the protection of these most vulnerable citizens is the lack of consideration given to domestic violence in making custody determinations. Clearly, in making any determination of the best interest of the child, subject to the proceedings, the Court should consider allegations of domestic violence within the family or the household.

Memorandum

NEW YORK STATE POLICE

May 10, 1996

To: Michael C. Finnegan

Counsel to the Governor

From: Glenn Valle

Counsel to the Division of State Police

Subject: TEN DAY BILL - S2446-C

AN ACT to amend the domestic relations law and family court act, in relation to child custody.

POSITION:

The Division of State Police takes no position to this legislation.

GV:ba

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

BRIAN J. WING

Acting Commissioner

May 17, 1996

Honorable Michael C. Finnegan

Counsel to the Governor

Executive Chamber

State Capitol, Room 210

Albany, New York 12224

Re: Ten Day Bill Senate 2446-C

Dear Mr. Finnegan:

Your office has requested this Department's comments on the above-referenced bill which is before the Governor for action. The Department recommends approval of the bill for the reasons set forth below.

The bill would amend section 240(1) the Domestic Relations Law (DRL) to add domestic violence as a factor for the court to consider in child custody and visitation proceedings, regardless of whether the child has witnessed or has been a direct victim of domestic violence. The bill recognizes the potentially devastating effect of domestic violence upon children, even in those situations in which the child has neither been physically abused nor witnessed acts of domestic violence.

The bill also would amend sections 447, 467, 549, 651 and 652 of the Family Court Act (FCA) to cross-reference section 240(1) of the DRL, which lists the factors to be considered when the Family Court is making a determination regarding custody or visitation. The bill would therefore make explicit the applicability of section 240(1) of the DRL to custody and visitation determinations made within the context of support, paternity, and custody proceedings.

The bill would require allegations of domestic violence to be made in a sworn statement, and proven by a fair preponderance of the evidence in order to be considered as a factor in awarding custody or visitation. It is unclear whether the bill requires the allegations of domestic violence to be proven within the context of the proceeding to award custody and/or visitation, or whether a determination made in another proceeding (i.e., a proceeding pursuant to Article 10 of the Family Court Act, or an administrative hearing brought to expunge or seal an indicated report of child abuse or maltreatment), that domestic violence was proven by a fair preponderance of the evidence, would suffice. The term "domestic violence" is not defined in the bill or elsewhere in statute. It is respectfully suggested that these concerns be addressed by the Office of Court Administration by promulgating appropriate court rules.

The bill would apply to private custody and/or visitation determinations only, and thus would not directly affect the programs or administration of this Department. The Department supports the bill, however, because it would enhance the court's ability to make appropriate custody and/or visitation determinations, while protecting children from the effects of domestic violence.

Thank you for the opportunity to comment on this bill.

Very truly yours,

John E. Robitzek

Deputy General Counsel

JER/TGK

cc: Robert Balachandran, Esq.

Barbara Howard

STATE OF NEW YORK

EXECUTIVE DEPARTMENT

CRIME VICTIMS BOARD

845 CENTRAL AVENUE, ROOM 107

ALBANY, NEW YORK 12206-1588

(518) 457-8727

CHAIRMAN

GENNARO A. FISCHETTI

BOARD MEMBERS

LORRAINE FELEGY

CHRISTINA HERNANDEZ

CHARLES F. MAROTTA

JOAN A. CUSACK

May 14, 1996

Honorable Michael C. Finnegan

Counsel to the Governor

Executive Chamber

New York State Capitol

Albany, New York 12224

Re: A.2446-C - AN ACT to amend the domestic relations law and the family court act, in relation to child custody

Dear Mr. Finnegan:

The Board is in receipt of your request for comment on the above referenced legislation, which provides for consideration of the effect of domestic violence upon the best interests of the child in custody determinations, where there are proven allegations of domestic violence.

The Crime Victims Board supports this measure which will help to ensure that children will be insulated from the effects of domestic violence.

Thank you for the opportunity to comment on this legislation.

Very truly yours,

Marcia Plato

Senior Attorney

NEW YORK STATE EXECUTIVE DEPARTMENT

DIVISION FOR YOUTH

CAPITAL VIEW OFFICE PARK

52 WASHINGTON STREET

RENSSELAER, NY 12144

JOHN A. JOHNSON

DIRECTOR

EDWARD J. BARTLEY

EXECUTIVE DEPUTY DIRECTOR

May 14, 1996

Hon. Michael C. Finnegan

Counsel to the Governor

Executive Chamber

State Capitol

Albany, New York 12224

Re: A. 2446-C

Support

Dear Mr. Finnegan:

This is in response to your request for comment on the above-referenced legislation which would amend the Domestic Relations Law to require consideration of domestic violence in custody determinations. Where it is proven by a preponderance of the evidence that a party to an action concerning custody of a child has committed an act of domestic violence, this fact must be weighed by the court in determining the best interests of the child. The bill also makes conforming amendments to Family Court Act provisions relating to visitation and custody.

As referenced in the legislative intention portion of the bill, domestic violence in the home increases the likelihood that the children will be also abused. In addition, it has been shown that such children often emulate acts of parental violence. Although

the Division for Youth would prefer that the bill create a presumption that custody not be awarded to a parent with a history of domestic violence, this bill appropriately focuses the attention of the court on the issue of domestic violence. Accordingly, this agency supports this legislation.

Thank you for the opportunity to comment on this legislation.

Sincerely,

Deirdre M. Dineen

Deputy Director and General Counsel

State of New York

Council on Children and Families

5 Empire State Plaza

Suite 2810

Albany, New York 12223

(518) 473-3652 Fax: (518) 473-2570

George E. Pataki

Governor

Alana M. Sweeny

Executive Director

May 14, 1996

TO: Michael C Finnegan

Counsel to the Governor

FROM: Alana M. Sweeny

Executive Director

SUBJECT: Assembly 2446-C; before the Governor for Approval

RECOMMENDATION: Approval

Requires courts to consider domestic violence in making any determination of custody

or visitation of a child, where one party alleges and proves by a preponderance of the evidence that the other party has committed an act constituting domestic violence against the party making the allegation or a member of that party's family or household. The amendments apply to any custody or visitation determination pursuant to the Domestic Relations Law and Articles 4, 5 and 6 of the Family Court Act, relating to support, paternity and termination of parental rights proceedings, respectively.

The Council on Children and Families recommends approval of the bill. The Council agrees that domestic violence should be a factor considered by courts in determining the best interests of a child when custody and visitation are an issue, and that it is appropriate to reflect that factor in the statute. The statute makes it clear that domestic violence should be considered regardless of whether the child is the target of the violence, since it is likely that violence occurring in the child's household will adversely impact the child and his or her perception of one or both parties.

Although the statute may result in more false allegations of domestic violence, it provides sufficient safeguards to the accused parent. The allegation must be sworn to and then proven by a preponderance of the evidence. Even if that occurs, and even if the party admits that violence occurred, he or she may be able to show that the violence has had no significant impact on the child or will not have any significant future impact on the child, and that granting visitation or placing the child with him or her is not detrimental to the child's best interests.

The Council assumes that introduction of evidence of a prior civil or criminal judicial proceeding which determined the question of whether domestic violence has occurred would be sufficient to meet the "preponderance of the evidence" standard, since the prior determination would have used a "preponderance of the evidence" or a higher standard. The Council urges courts to adopt that interpretation in order to avoid the possibility that the domestic violence issue will be relitigated every time a change in custody or visitation is sought, and in order to avoid the possibility of multiple conflicting determinations based on the same underlying factual circumstances.

FAMILY IMPACT STATEMENT: It is unlikely the bill will have any significant impact on intact families. To the extent domestic violence becomes an issue in custody or visitation cases, the level of antagonism is likely to increase; however, courts should have no interest in ignoring domestic violence for the sake of avoiding antagonism. Knowing that domestic violence could become an issue in a custody or visitation proceeding could provide one additional incentive for the parties to settle their differences without resorting to violence, to the benefit of all involved.

STATE OF NEW YORK

UNIFIED COURT SYSTEM

EMPIRE STATE PLAZA

4 ESP, SUITE 2001

ALBANY, NEW YORK 12223-1450

(518) 474-7469

JONATHAN LIPPMAN

Chief Administrative Judge

MICHAEL COLODNER

Counsel

May 15, 1996

Hon. Michael Finnegan

Counsel to the Governor

Executive Chamber

State Capitol

Albany, New York 12224

Re: Assembly Bill 2446-C

Dear Mr. Finnegan:

Thank you for requesting the comments of this Office on the above-referenced measure. This measure requires Supreme and Family Courts, in adjudicating child custody and visitation issues, to consider proven domestic violence "together with such other facts and circumstances" as are relevant to a determination of children's best interests.

That family violence should be a weighty consideration in custody and visitation cases has been gaining increasing recognition in the courts of New York State and nationally. Significantly, the proposed measure is consistent with appellate case law in New York in which domestic violence has been an important factor. See, e.g., *Anonymous G. v. Anonymous G.*, 132 A.D.2d 459, 462 (1st Dept., 1987) (required supervised visitation); *Keating v. Keating*, 147 A.D.2d 675, 682 (2d Dept., 1989) (denied visitation); *Molier v. Molier*, 53 A.D.2d 996, 997 (3rd Dept., 1976), *aff'd. as mod.*, 46 N.Y.2d 718 (1976) (denied visitation); *Sheridan v. Sheridan*, 611 N.Y.S.2d 688 (3rd Dept., 1994) (justified relocation).

The New York State Unified Court System had proposed an alternative approach as part of its legislative agenda -- that is, consideration of domestic violence as one of a constellation of factors relevant to a determination of a child's best interests -- rather than singling out domestic violence as the sole enumerated factor. While we would have preferred to see enactment of our more comprehensive measure, we recognize that the common thread in both measures - viz., ensuring that courts consider domestic violence in determining custodial and visitation arrangements - represents an important advance in addressing the serious problem of domestic abuse.

For these reasons, the Unified Court System supports this measure and urges its approval.

Sincerely,

Michael Colodner

C - 85

TOMPKINS COUNTY TASK FORCE for BATTERED WOMEN

P.O. Box 164, Ithaca, New York 14851

(607) 277-5000 (Crisis)

(607) 277-3203 (Office)

May 14, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, NY 12224

Dear Governor Pataki,

I am writing to implore you to sign into law A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein and Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

In 1990, the U.S. House of Representatives and Senate unanimously passed Resolution 172 which holds that evidence of spouse abuse should create a presumption that it is detrimental to the child to be placed in the custody of an abusive parent. Studies show that abuse of one parent by the other is harmful to children whether the child is physically abused or not, and whether the child actually witnessed the abuse or not. The violence of a batterer harms the child both directly and indirectly.

* Children raised in a violent home may suffer shock, fear, guilt, and delayed development.

* These children also learn to use physical violence themselves to resolve conflicts.

* Sons of violent parents have a rate of spousal abuse 10 times greater than those of non-violent parents.

* Data also indicates that over 50% of battering spouses will abuse their children as well.

There are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to breaking that cycle. Furthermore, children desperately need the protection and justice the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Sonia Bouvier

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

42 WEST 44TH STREET

NEW YORK, N.Y. 10036-6690

FAX # (212) 398-6634

FERN SCHAIR

EXECUTIVE SECRETARY AND CHIEF ADMINISTRATIVE OFFICER

(212) 382-6620

ALAN ROTHSTEIN

COUNSEL TO THE EXECUTIVE SECRETARY

(212) 382-6623

JONATHAN BURMAN

DIRECTOR OF LEGISLATIVE AFFAIRS

(212) 382-6655

FAX: (212) 354-7438

May 7, 1996

Re: S.7403-B/A.2446-C

AN ACT to amend the domestic relations law and family court act, in relation to child custody Passed Both Houses

Hon. Michael C. Finnegan

Executive Chamber

State Capitol

Albany, New York 12224

Dear Mr. Finnegan:

Attached please find a Report, prepared by the Matrimonial Law Committee of the Association of the Bar of the City of New York, regarding the issue of child custody in cases involving domestic violence.

While the Association is pleased that the Legislature, in passing S.7403-B/ A.2446-C, has taken an important step in recognizing the tragic effects of domestic violence on children, we do not believe that the bill goes far enough. The legislation establishes domestic violence as a factor for the court to consider in child custody and visitation proceedings. While mandating such consideration is, indeed, preferable to the current situation, the Association favors legislation that would create a presumption against an award of custody to a perpetrator of domestic violence.

I hope that this Report proves useful as you consider this most important issue.

Sincerely,

Jonathan Burman

NOW-NYS SUPPORTS

P.O. Box 170 • Buffalo, New York 14213 • Phone (716) 882-5741 • Fax (716) 882- 5872

CHILD CUSTODY AND FAMILY VIOLENCE

April 30, 1996

A.2446-B-Weinstein S.7403-A-Saland

The National Organization For Women-New York State (NOW-NYS) strongly supports this legislation which would ensure that domestic violence by one parent against the other be considered by the Court in determining the best interest of the child when making a determination with regard to custody.

Under current New York Law, a Court awarding custody of a child need not consider evidence

of domestic violence by one parent against the other in determining the best interest of the child, the sole standard of such an award. Judges often mistakenly assume that the battering on one parent by the other is not detrimental to the child and is therefore irrelevant, even though data indicates that over 50% of battering spouses will abuse their children as well.

Studies show that domestic violence is harmful to children whether the child is physically abused or not. Children raised in violent homes may suffer shock, fear, guilt and delayed development. Children also learn to resolve conflict violently. Sons of batterers have a rate of partner abuse 10 times greater than those of non-violent parents.

Currently 31 states provide that evidence of spouse abuse be, at the very least, considered by a Court in making an award of child custody or visitation. New York lags behind, making no reference to domestic violence in custody statutes. Federal funding appropriated under the Family Violence and Services Act will most likely be given to those States with the most effective resources. The House, the Senate, 31 other states and our own Appellate Courts have recognized the need to consider domestic violence when determining custody and the best interest of the child. Any effort towards breaking the cycle of violence saves lives and financial resources.

This legislation goes a long way toward addressing the serious issue of domestic violence in custody and visitation cases. The National Organization For Women-New York State urges the Legislature to act in the best interest of our children and pass this legislation without hesitation. Our future depends on it. NOW-NYS strongly supports this child custody and family violence legislation.

Sharon I. Fawley

President

Marcia Pappas

Legislative VP

Charlotte Watson

Domestic Violence

Task Force

Lois J. Shapiro-Canter, Esq

Lobbyist

TOMPKINS COUNTY TASK FORCE for BATTERED WOMEN

P.O. Box 164, Ithaca, New York 14851

(607) 277-5000 (Crisis)

(607) 277-3203 (Office)

May 14, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, NY 12224

Dear Governor Pataki,

I am writing to implore you to sign into law A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein **and** Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

In 1990, the U.S. House of Representatives and Senate unanimously passed Resolution 172 which holds that evidence of spouse abuse should create a presumption that it is detrimental to the child to be placed in the custody of an abusive parent. Studies show that abuse of one parent by the other is harmful to children whether the child is physically abused or not, and whether the child actually witnessed the abuse or not. The violence of a batterer harms the child both directly and indirectly.

* Children raised in a violent home may suffer shock, fear, guilt, and delayed development.

* These children also learn to use physical violence themselves to resolve conflicts.

* Sons of violent parents have a rate of spousal abuse 10 times greater than those of non-violent parents.

* Data also indicates that over 50% of battering spouses will abuse their children as well.

There are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to breaking that cycle. Furthermore, children desperately need the protection and justice the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Louise Miller

SPANISH ACTION LEAGUE OF ONONDAGA COUNTY, INC.

LIGA DE ACCIÓN HISPANA DEL CONDADO DE ONONDAGA, INC.

EXECUTIVE DIRECTOR: *Sam Velázquez*

April 30, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

As a survivor of Domestic Violence, I am writing to implore you to sign into law **A.2446-b/S.7403.a.** sponsored by Member of Assembly Welnstein and Senator Saland, which ensures that domestic violence by one parent against the other, other family or household member, be consider by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sold standard of such award. New York is among a minority of states that make no reference to domestic violence in their custody statutes.

In 1990, the US House of Representative and Senate unanimously passed Resolution 172 which holds that evidence of spouse abuse should create a presumption that is detrimental to the child to be placed in the custody of an abusive parent. Studies show that abuse of one parent by the other is harmful to children whether the child is physically abused or not and whether the child actually witnessed the abuse or not. The violence of a batterer harms the child both directly and indirectly!

- Children raised in a violent house may suffer shock, fear, guilt and delayed development.
- These children also learn to use physical violence themselves to resolve conflicts.
- Sons of violent parents have a rate of spousal abuse 10 times greater than those of non-violent parents.
- Data also indicates that over 50% of battering spouses will abuse their children as well.

As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate there are so many compelling reasons for continuing this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to braking the cycle. Furthermore, children desperately need the protection and justice the State can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Millie Butler

Joan Zorza, Editor

Domestic Violence Report

Home: 25 Sutton Place South, #8D

New York, NY 10022-2462

(212) 888-6647 phone & fax

e-mail: jzorza@panix.com

April 25, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, NY 12248

Re: Support A.2446-b/S.7403-a

Dear Governor Pataki:

As Co-president of the New York State Coalition Against Domestic Violence and a board member of the New York City Coalition Against Domestic Violence, I urge you to support and sign into law custody bill A.2446-b/S.7403-a sponsored respectively by Assemblymember Weinstein and Senator Saland, which requires judges to consider in custody or visitation determinations any allegation proven by a preponderance of the evidence that was made in a sworn petition or complaint [or in any sworn pleading, language which I understand will be added]. I know that you understand the need for this bill from having talked to you and from your previous sponsorship when you were in the Senate of these provisions in a custody bill in domestic violence situations.

Currently, New York is one of fewer than ten states to not have any statutory provision

making domestic violence a factor in custody determinations. Unfortunately, some supreme and family court judges in New York have refused to permit allegations of domestic violence into evidence in the mistaken view that the legislature has not allowed them to do so. In addition, many judges have only admitted such evidence if proffered by an expert witness testifying as to how the domestic violence affected the child involved. Many battered women, unable to afford an expert, were unable to raise their concerns about the violence, thereby jeopardizing their own safety and penalizing the very children who most need the court's protection. Enactment of A.2446-b/ S.7403-a will correct these problems and better enable women and children to be protected.

The American Psychological Association has just released **Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence**. It notes on page 12 that women seldom make false reports of either child abuse or battering, even in custody disputes. Furthermore, the APA joins the growing body of judicial, legal and medical groups (including the American Medical Association, the American Bar Association, the National Council of Juvenile and Family Court Judges) that acknowledges the enormous harm to children who grow up in homes witnessing domestic violence or its after affects.

Because of the enormous harm to battered women and their children from domestic violence, even when the children do not directly view it, I strongly urge you to sign this important bill. Enacting this legislation will probably help more children in violent homes than has almost any other legislation ever enacted in New York.

Please feel free to contact me if I can be of any further assistance.

Very truly yours,

Joan Zorza, Esq.

Alternatives for Battered Women, Inc.

April 26, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

As a (director of a domestic violence program, board member, battered woman, concerned citizen, etc.), I am writing to implore you to sign into law A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein **and** Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such

evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

In 1990, the U.S. House of Representatives and Senate unanimously passed Resolution 172 which holds that evidence of spouse abuse should create a presumption that it is detrimental to the child to be placed in the custody of an abusive parent. Studies show that abuse of one parent by the other is harmful to children whether the child is physically abused or not, and whether the child actually witnessed the abuse or not. The violence of a batterer harms the child both directly and indirectly:

- Children raised in a violent home may suffer shock, fear, guilt and delayed development.
- These children also learn to use physical violence themselves to resolve conflicts.
- Sons of violent parents have a rate of spousal abuse 10 times greater than those of non-violent parents.
- Data also indicates that over 50% of battering spouses will abuse their children as well.

As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate, there are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to breaking that cycle. Furthermore, children desperately need the protection and justice the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

THE NEW YORK STATE

COALITION AGAINST DOMESTIC VIOLENCE INC.

The Women's Building

79 Central Avenue

Albany, New York 12206

518-432-4864

April 30, 1996

Michael Finnegan

Counsel to the Governor

Executive Chamber

Albany, New York 12224

Dear Mr. Finnegan:

As the executive director of the New York State Coalition Against Domestic Violence, I am writing to implore you to consider favorably A.2446-b/ S.7403-a, sponsored by Member of Assembly Weinstein and Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

In 1990, the U.S. House of Representatives and Senate unanimously passed Resolution 172 which holds that evidence of spouse abuse should create a presumption that it is detrimental to the child to be placed in the custody of an abusive parent. Studies show that abuse of one parent by the other is harmful to children whether the child is physically abused or not, and whether the child actually witnessed the abuse or not. The violence of a batterer harms the child both directly and indirectly:

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- Sons of violent parents have a rate of spousal abuse 10 times greater than those of non-violent parents.
- Data also indicates that over 50% of battering spouses will abuse their children as well.

As you know from the Governor's previous sponsorship of a similar version of this bill during his tenure in the Senate, there are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to breaking that cycle. Furthermore, children desperately need the protection and justice the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge that this bill be signed into law.

Sincerely,

Sherry Frohman, CSW

Executive Director

YWCA

Tonawandas

49 TREMONT STREET • NORTH TONAWANDA, NEW YORK 14120 • TELEPHONE: 716-692-5580

May 7, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

As a director of a domestic violence program and a formerly battered woman, I am writing to implore you to sign into law A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein **and** Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

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- * Data also indicates that over 50% of battering spouses will abuse their children as well.

As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate, there are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources, and protecting children from violent parents is key to breaking that cycle. Furthermore, children desperately need the protection and justice the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Very truly,

Gloria Bele, Director

Domestic Violence Program

C-85

SPANISH ACTION LEAGUE OF ONONDAGA COUNTY, INC.

LIGA DE ACCIÓN HISPANA DEL CONDADO DE ONONDAGA, INC.

EXECUTIVE DIRECTOR: *Sam Velázquez*

April 30, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

As a Coordinator of a Domestic Violence Prevention Program, I am writing to implore you to sign into law **A.2446-b/S.7403.a.** sponsored by Member of Assembly Weinstein and Senator Saland, which ensures that domestic violence by one parent against the other, other family or household member, be consider by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sold standard of such award. New York is among a minority of states that make no reference to domestic violence in their custody statutes.

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• Data also indicates that over 50% of battering spouses will abuse their children as well.

As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate there are so many compelling reasons for continuing this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to breaking the cycle. Furthermore, children desperately need the protection and justice the State can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Martha C. Rodriguez

Domestic Violence Prevention Coordinator

SPANISH ACTION LEAGUE OF ONONDAGA COUNTY, INC.

LIGA DE ACCIÓN HISPANA DEL CONDADO DE ONONDAGA, INC.

EXECUTIVE DIRECTOR: Sam Velázquez

April 30, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

As a Advocate of a Domestic Violence Prevention Program, I am writing to implore you to sign into law **A.2446-b/S.7403.a.** sponsored by Member of Assembly Weinstein and Senator Saland, which ensures that domestic violence by one parent against the other, other family or household member, be consider by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sold standard of such award. New York is among a minority of states that make no reference to domestic violence in their custody statutes.

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As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate there are so many compelling reasons for continuing this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to braking the cycle. Furthermore, children desperately need the protection and justice the State can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Annette Rodriguez Galeas

Domestic Violence Prevention Advocate

YWCA

Child Development Center

TEAM - Teenage Education and Motherhood Program

Parent and Community Services

Alternatives to Violence

April 29, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, NY 12224

Dear Governor Pataki:

As a volunteer in a domestic violence program, I am writing to implore you to sign into law, A.2446-b/s.7403-a sponsored by Member of Assembly Weinstein **and** Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

In 1990, the U.S. House of Representatives and Senate unanimously passed Resolution 172 which holds that evidence of spouse abuse should create a presumption that it is detrimental to the child to be placed in the custody of an abusive person. Studies show that abuse of one parent by the other is harmful to children whether the child is physically abused or not, and whether the child actually witnessed the abuse or not. The violence of a batterer harms the child both directly and indirectly:

*Children raised in a violent home may suffer shock, fear, guilt and delayed development.

*These children also learn to use physical violence themselves to resolve conflicts.

*Sons of violent parents have a rate of spousal abuse 10 times greater than those of non-violent parents.

*Data also indicates that over 50% of battering spouses will abuse their children as well.

As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate, there are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violence parents is the key to breaking that cycle. Furthermore, children desperately need the protection and justice the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Beth Parke

Volunteer

Alternatives to Violence Program

WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

Legislative Consultant

Barbara Shack

7 West 81st Street

New York, NY 10024

(212) 873-6086

Legislative Counsel

Patricia Martinelli

21 Budd Lane

East Greenbush, NY 12061

(518) 479-4413

1996 LEGISLATIVE MEMORANDUM #10

S. 7403A - Saland, DeFrancisco, et al.

A. 2446B - Weinstein, **Green**, Matuso, Koon, Katz, Gottfried, Pheffer, Aubry, et al.

SUBJECT: AN ACT to amend the domestic relations law and family court act, in relation to child custody.

STATUS: Senate Judiciary Committee/Assembly Judiciary Committee

WBASNY POSITION: SUPPORT

This bill would amend § 240 of the Domestic Relations Law and various provisions of the Family Court Act to provide that in a proceeding to determine child custody and/or visitation, where an allegation of domestic violence has been plead and proven by a preponderance of the evidence, the court must determine the impact of such domestic violence upon the best interest of the child. WBASNY strongly supports this bill.

The criterion for determining custody and visitation is the best interest of the child. Although judges presently have the authority to consider domestic violence as a factor in determining the best interest of the child, the New York State Task Force on Women in the Courts recently found that many judges do not take into account the consequences to children of violence against a parent by another parent. Indeed, the Task Force found that judges have been granting custody to abusive parents.

There are many studies demonstrating that it is detrimental and therefore, not in a child's best interests, to have extended visitation or live with a violent parent. Often, the violence against the other parent does not end upon separation or divorce. If it does, however, the child's physical safety may be in jeopardy, because the batterer may direct his or her violent attention to the child. Moreover, children who are reared in violent homes are more likely to use violence to resolve conflicts. This is not in any child's best interests.

The Legislature should adopt this legislation without hesitation.

WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

245 Fifth Avenue, Suite 2103, New York, New York 10016

(212) 889-7813 Telephone

(212) 481-3071 Facsimile

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107 Fembank Avenue

Delmar NY 12054

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May 17, 1996

Honorable Michael Finnegan

Counsel to the Governor

Executive Chamber

The State Capitol

Albany, New York 12224

Dear Mr. Finnegan:

I am writing to express the strong support of the women's Bar Association of the State of New York for legislation currently before the governor (S.7403- A/A.2446-B), which would require the court to consider domestic violence in awarding custody or visitation of children. I have attached a memorandum in support issued earlier this year by the Women's Bar Association, and based upon the reasons stated in that memorandum, I urge the Governor to sign this bill.

Very truly yours,

CAROLINE LEVY, ESQ.

President

CL/md

attachment

THE PARK SLOPE SAFE HOMES PROJECT

P.O. BOX 429

VAN BRUNT STATION

BROOKLYN, N.Y. 11215

HOTLINE • 499-2151

A community program for Park Slope battered women & their families

Un programa para mujeres golpeadas y sus familias que viven en la comunidad de
Park Slope

April 30, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

As the director of a domestic violence program, I am writing to implore you to sign into law A.2446b/S.7403-a, sponsored by Assemblywoman Weinstein and Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

In 1990, the U.S. House of Representatives and Senate unanimously passed Resolution 172 which holds that evidence of spouse abuse should create a presumption that it is detrimental to the child to be placed in the custody of an abusive parent. Studies show that abuse of one parent by the other is harmful to children whether the child is physically abused or not, and whether the child actually witnessed the abuse or not. The violence of a batterer harms the child both directly and indirectly:

- Children raised in a violent home may suffer shock, fear, guilt and delayed development.
- These children also learn to use physical violence themselves to resolve conflicts.
- Sons of violent parents have a rate of spousal abuse 10 times greater than those of non-violent parents.
- Data also indicates that over 50% of battering spouses will abuse their children as well.

As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate, there are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to breaking that cycle. Furthermore, children desperately need the protection and justice the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Cynthia A. Dansby

Director

ST. LAWRENCE VALLEY RENEWAL HOUSE FOR VICTIMS OF FAMILY VIOLENCE, INC.

39 MAIN STREET, CANTON, NEW YORK 13617

(315) 379-9845

April 29, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

As a director of a domestic violence program in New York State (Renewal House, St. Lawrence County). I am writing to implore you to sign into law A. 2446- b/S.7403-a, sponsored by Member of Assembly Weinstein and Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

In 1990, the U.S. House of Representatives and Senate unanimously passed Resolution 172 which holds that evidence of spouse abuse should create a presumption that it is detrimental to the child to be placed in the custody of an abusive parent. Studies show that abuse of one parent by the other is harmful to children whether the child is physically abused or not, and whether the child actually witnessed the abuse or not. The violence of a batterer harms the child both directly and indirectly:

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Sincerely,

Kimberly Robinson

Director

YWCA

Child Development Center

TEAM - Teenage Education and Motherhood Program

Parent and Community Services

Alternatives to Violence

April 29, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, NY 12224

Dear Governor Pataki:

As a director of a domestic violence program, I am writing to implore you to sign into law, A.2446-b/s.7403-a sponsored by Member of Assembly Weinstein **and** Senator Saland,

which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

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Sincerely,

Brenda Symans-Olson

Program Director

Alternative to Violence Program

A University Hospital of Columbia University

College of Physicians & Surgeons

May 2, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

As Director of a Domestic Violence Program, I am writing to implore you to sign into law A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein **and** Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

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As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate, there are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to breaking that cycle. Furthermore, children desperately need the protection and justice that the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Susan Xenarios, CSW

Director

Crime Victims Treatment Center

411 West 114th St. #6D

New York, N.Y. 10025

YWCA

Child Development Center

TEAM - Teenage Education and Motherhood Program

Parent and Community Services

Alternatives to Violence

April 29, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, NY 12224

Dear Governor Pataki:

As a Resident Case Manager for a Transitional Housing program, I am writing to implore you to sign into law, A.2446-b/s.7403-a sponsored by Member of Assembly Weinstein and Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

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Sincerely,

Kathleen Girdlestone

Resident Case Manager

TOMPKINS COUNTY TASK FORCE for BATTERED WOMEN

P.O. Box 164, Ithaca, New York 14851

(607) 277-5000 (Crisis)

(607) 277-3203 (Office)

Dear Governor Pataki,

As a counselor/ advocate in a domestic violence program, I am writing to implore you to sign into law A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein and Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

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Sincerely,

Aqeela S. Shakur

Counselor/Advocate

TOMPKINS COUNTY TASK FORCE for BATTERED WOMEN

P.O. Box 164, Ithaca, New York 14851

(607) 277-5000 (Crisis)

(607) 277-3203 (Office)

May 13, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, NY 12224

Dear Governor Pataki,

As an assistant director in a domestic violence program, I am writing to implore you to sign into law A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein **and** Senator Saland, which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

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Sincerely,

Annette Fuhr

Assistant Director

TOMPKINS COUNTY TASK FORCE for BATTERED WOMEN

P.O. Box 164, Ithaca, New York 14851

(607) 277-5000 (Crisis)

(607) 277-3203 (Office)

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, N.Y. 12224

Dear Governor Pataki,

As a director of a domestic violence program, I am writing to implore you to sign into law A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein **and** Senator Saland,

which ensures that domestic violence by one parent against the other, or other family or household member, be considered by the court when making a determination with regard to custody or visitation. Under current New York law, a court awarding custody or visitation rights need not consider such evidence in determining the best interest of the child, the sole standard of such an award. New York is among a minority of states that makes no reference to domestic violence in their custody statutes.

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As you know from your previous sponsorship of a similar version of this bill during your tenure in the Senate, there are so many compelling reasons for enacting this legislation. Breaking the cycle of violence saves lives and financial resources. And protecting children from violent parents is key to breaking that cycle. Furthermore, children desperately need the protection and justice the state can provide through this legislation. It is our duty to consider their needs first in matters of child custody. We urge you to sign this bill into law.

Sincerely,

Joanne S. Farbman

Executive Director

Nassau County

Coalition Against Domestic Violence, Inc.

Coalition Legal Services

Helen Carroll Scholfield, Esq.

Director of Legal Services

Administrative Offices: 250 Fulton Avenue, Mezzanine West n Hempstead, New York 11550

(516) 572-0700 FAX (516) 572-0715

Client Services Office

Nassau County

Medical Center

Box 285-G

East Meadow

New York 11554

(516) 572-6596

FAX (516) 572-5026

HOTLINES:

Domestic Violence

(516) 542-0404

Rape/Sexual Assault

(516) 222-2293

May 14, 1996

Gov. George Pataki

Executive Chambers

Albany, NY 12224

Dear Governor Pataki:

I am writing to urge you to sign into law S.7403-A/A.2246-B, which passed unanimously in both the Senate and Assembly last week. This legislation requires that judges hear and consider evidence of domestic violence when making awards of child custody or visitation.

Numerous studies have shown that violence by one parent towards the other has an extremely

negative and dangerous effect on their children.

As a New York State senator you sponsored legislation encompassing these same provisions. Victims of domestic violence throughout the state are counting on your support now. It is time that our courts not be permitted to ignore or discount the violence of a parent when deciding on the future lives of children. Too often, abuse of a parent is not even deemed to be relevant in these cases. This legislation will enable this information to be brought before the court and mandate its consideration before custody awards and visitation are made.

By signing this bill you will help the children of our state reduce exposure to violence in their homes.

Very truly yours,

Helen Carroll Scholfield

HCS/kj

Coalition of Battered Women's Advocates

339 Lafayette Street

New York, New York 10012

Telephone 212/673-7754

Fax 212/673-7754

May 13, 1996

The Honorable George Pataki

Governor of New York

Executive Chamber

Albany, New York 12224

Dear Governor Pataki:

On behalf of the Coalition of Battered Women's Advocates, I write to urge you to sign into law the essential legislation A.2446-b/S.7403-a, sponsored by Member of Assembly Weinstein and Senator Saland, which would ensure that domestic violence within a family seeking divorce or separation be considered when a judge makes decisions about custody or visitation. At the present time, judges are not required to take this critical factor into consideration -- and as a result, the children of New York State are in jeopardy.

In most states across the country, legislation has passed requiring that judges give

Careful consideration to the grave effects of domestic violence in making custody and visitation awards. What we see first hand in the domestic violence programs throughout New York City lend further credence to the many studies which indicate that the effects of domestic violence on children can be devastating. The psychological damage children sustain through witnessing domestic violence is so severe that many of them develop posttraumatic stress disorder. In addition to the emotional scars, children who witness domestic violence are 50% more likely to be physically abused by the batterer. It is essential that the judges consider these crucial factors as they make decisions about the futures of children living with this violence.

We are counting on you to help stop the cycle of violence through your support of this crucial legislation. As you are probably aware from your previous sponsorship of a similar version of this bill while you were a Senator, this legislation will be an excellent step toward ensuring that children are protected. Please protect New York's children by signing this bill.

Sincerely,

Mary Trinity

Executive Director

C-85

STATE OF NEW YORK

DIVISION OF CRIMINAL JUSTICE SERVICES

EXECUTIVE PARK TOWER

STUYVESANT PLAZA

ALBANY, NEW YORK 12203

PAUL SHECHTMAN

DIRECTOR OF CRIMINAL JUSTICE AND COMMISSIONER

DIVISION OF CRIMINAL JUSTICE SERVICES

MAUREEN E CASEY

COUNSEL

May 15, 1996

Honorable Michael C. Finnegan

Counsel to the Governor

Executive Chamber

State Capitol - Room 225

Albany, NY 12224

Re: Assembly Bill Number 2446-C

No Recommendation

Dear Mr. Finnegan:

This is in response to your request for comment on the above-referenced legislation which amends Domestic Relations Law §240(1), and adds references to such amended provision to various sections of the Family Court Act, to require courts to consider the effects of proven allegations of domestic violence against a family or household member as a factor when determining the best interests of the child in proceedings involving custody or visitation proceedings.

It does not appear that this legislation would have any significant adverse impact on the operations of this agency. Accordingly, the Division of Criminal Justice Services makes no **recommendation** on A. 2446-C.

Thank you for the opportunity to comment on this legislation.

Sincerely,

Maureen E. Casey

Counsel

cc: Michael Ambrecht

Debra E. White

NY Bill Jacket, 1996 A.B. 2446, Ch. 85
END OF DOCUMENT

Lawyer's Manual on Domestic Violence

Representing the Victim, 6th Edition

Edited by

Mary Rothwell Davis, Dorchen A. Leidholdt and Charlotte A. Watson



Supreme Court of the State of New York, Appellate Division, First Department
The New York State Judicial Committee on Women in the Courts

Three of the chapters are highly recommended by the speakers:

Ch. 3, Interviewing and Assisting Domestic Violence Survivors

by *B.J. Cling and Dorchon A. Leidholdt*, p. 32.

Ch. 10, Representing Victims of Domestic Violence in Supreme Court Matrimonial Actions

by *Hon. Emily Ruben*, p. 108.

Ch. 15, Litigating Custody and Visitation in Domestic Violence Cases

by *Kim Susser*, p. 163.

The link to the publication is:

<http://www.nycourts.gov/ip/womeninthecourts/pdfs/DV-Lawyers-Manual-Book.pdf>

Materials
from
Louis Sternberg

Drafting Settlement Agreements

1. A “marital agreement” must be “in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded.” DRL §236(B)(3).
2. What can a marital agreement do? Pursuant to DRL §236(B)(3), such an agreement may include:
 - a. A contract to make a testamentary provision of any kind, or a waiver of any right to elect against the provisions of a will;
 - b. Provision for the ownership, division or distribution of separate and marital property;
 - c. Provision for the amount and duration of maintenance or other terms and conditions of the marriage relationship, subject to the provisions of section 5-311 of the general obligations law, and provided that such terms were fair and reasonable at the time of the making of the agreement and are not unconscionable at the time of entry of final judgment;
 - d. provision for the custody, care, education and maintenance of any child of the parties, subject to the provisions of section two hundred forty of this chapter.
3. Procedural requirements / prohibitions of written agreements
 - a. Acknowledgment. DRL §236(B)(3)
 - i. An agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the matter to entitle a deed to be recorded.
 - ii. What is a proper acknowledgment? See RPL §309-a (acknowledgments within this state) and RPL §309-b (acknowledgments without this state).
 - iii. A written agreement without the proper acknowledgment is unenforceable. *Matisoff v. Dobi*, 90 NY2d 127 (1997).
 - iv. Stipulations in open court recorded on the record do not require same acknowledgment
 1. An agreement between the parties or their attorneys relating to any matter in an action, *other than one made between counsel in open court*, is not binding upon a party unless it is in writing subscribed by him

or his attorney or reduced to the form of an order and entered.” CPLR § 2104

2. Placing an oral stipulation of settlement on the record, as opposed to executing a written agreement, is a very risky and should be avoided when possible.

b. General Obligations Law § 5-3.11: Certain Agreements Between Husband and Wife Void

- i. “Except as provided in section two hundred thirty-six of the domestic relations law, a husband and wife cannot contract to alter or dissolve the marriage or to relieve either of his or her liability to support the other in such a manner that he or she will become incapable of self-support and therefore is likely to become a public charge.” General Obligations Law §5-3.11
- ii. Support provisions of an agreement cannot make either party “likely to become a public charge,” meaning that such party will become dependent on financial support from the government for subsistence.

c. Notice regarding health care coverage. DRL §255

- i. “If the parties have entered into a stipulation of settlement/agreement on or after the effective date of this section resolving all of the issues between the parties, such settlement/agreement entered into between the parties shall contain a provision relating to the health care coverage of each party; and that such provision shall either: (a) provide for the future coverage of each party, or (b) state that each party is aware that he or she will no longer be covered by the other party's health insurance plan and that each party shall be responsible for his or her own health insurance coverage, and may be entitled to purchase health insurance on his or her own through a COBRA option, if available. The requirements of this subdivision shall not be waived by either party or counsel and, in the event it is not complied with, the court shall require compliance and may grant a thirty day continuance to afford the parties an opportunity to procure their own health insurance coverage.” DRL §255
- ii. Requirement is simple. Include language of subsection b in stipulation.

- d. **Child Support. Requirements of DRL §240(1-b).**
 - i. **Presumptive amount of support.** “[t]he parties [must] have been advised of the provisions of this subdivision, and that the basic child support obligation provided for therein would presumptively result in the correct amount of child support to be awarded.” DRL §240(1-b)(h)
 - 1. The non-custodial parent shall be liable for the presumptive amount of support “[u]nless the court that the non-custodial parents’ pro-rata share of the basic child support obligation is unjust or inappropriate” based on the factors in subsection (f).
 - 2. Best practice is to list all of the subsection (f) factors in your agreement so both parties are aware of such considerations.
 - ii. **CSSA Chart.** Any unrepresented party must be provided with a copy of the Child Support Standards Chart promulgated by the commissioner of the office of temporary and disability assistance pursuant to subdivision two of section one hundred eleven-i of the social services law.
 - iii. **Calculations of Presumptive Amount of Support and Applicable Percentages.**
 - 1. The parties must be advised that the Child Support Standards Act provides for a percentage of combined parental gross income (minus FICA tax actually paid and, if applicable, New York City and Yonkers taxes) payable as child support from the non-custodial parent to the custodial parent based on each party’s pro-rata share of the combined income.
 - 2. The percentages are based upon the number of children of the parties. 17% for 1 child; 25% for 2 children; 29% for 3 children; 31% for 4 children; and no less than 35% for 5 or more children.
 - 3. The stipulation must state the income of the party (actual or imputed) as well as the exclusions from income for the purposes of the child support calculation (such as spousal maintenance).

4. The presumptive amount of child support based on CSSA must be explicitly stated in the agreement.
 5. But “[w]here the combined parental income exceeds the dollar amount set forth in subparagraph two of this paragraph [the ‘cap’], the court shall determine the amount of child support for the amount of the combined parental income in excess of such dollar amount through consideration of the factors set forth in paragraph (f) of this subdivision and/or the child support percentage.” DRL §240(1-b)(1)(c)(3). When the combined income exceeds the cap (which is currently \$143,000) and recalculated bi-annually), it is advisable to include the formula amount for the combined income in excess of the cap even though support on such income in excess of the cap is discretionary (the court may use the subsection (f) factors or apply the formula).
- iv. **Deviation from the Presumptive Amount of Support.** DRL §240(1-b)(h)
1. The parties must be advised that “in the event that such agreement or stipulation deviates from the basic child support obligation, the agreement or stipulation must specify the amount that such basic child support obligation would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount.” DRL §240(1-b)(h)
 2. If the agreement seeks to deviate from the presumptive amount of support, the agreement must state the reason or reasons for the deviation.
- v. **Child Support Add-ons.**
1. **Child care.** When a custodial parent is working or pursuing education / training that will lead to employment and, as a result, incurs child care expenses, “the court shall determine reasonable child care expenses and such child care expenses, where incurred, shall be prorated in the same proportion as each parent's income is to the combined parental

income.” DRL §240(1-b)(c)(4). As is the case with the basic support obligation, the parties are free to deviate and agree upon a different distribution of such costs.

2. Health Care Expenses. Each party is liable for his / her pro-rata share of the “reasonable health care expenses not reimbursed or paid by insurance.” DRL §240(1-b)(c)(5). Again, the parties are free to deviate and agree upon a different distribution of such costs.

- a. Health care costs are frequently litigated. When representing the parent who will be obtaining these services for the child, explicitly state what the other party will be liable for. For example, “medical, dental, orthodontic (whether medically necessary or not), prescription medication, prescription optical (including contact lenses and eyeglass frames up to \$_____ each year), psychological and psychiatric expenses, hospitalization costs as well as prescribed equipment.”

3. College and Educational Expenses.

- a. “Where the court determines, having regard for the circumstances of the case and of the respective parties and in the best interests of the child, and as justice requires, that the present or future provision of post-secondary, private, special, or enriched education for the child is appropriate, the court may award educational expenses. The non-custodial parent shall pay educational expenses, as awarded, in a manner determined by the court, including direct payment to the educational provider.” DRL §240(1-b)(c)(7)
- b. Common issues include private high school, religious education, whether college will be addressed currently or when the costs are actually incurred and a “SUNY cap.”

- c. Suggested language: “College education and post-secondary schooling expenses shall include tuition & fees, registration fees, room / board (including comparably priced off-campus housing), meal plan costs, textbooks, laboratory materials / fees, required activity fees, supplies / equipment required in pursuance of a particular course and reasonable travel expenses to and from school for the child beginning and at the end of each semester. Additionally, college education and post-secondary schooling expenses shall include college application fees, SAT / ACT exam fees, SAT / ACT preparatory course / tutoring fees, AP course fees and AP exam fees.”

4. Extracurricular Expenses

- a. Extracurricular expenses are frequently included in stipulations but, be advised that if such expenses are not included in the stipulation, the court will not require payment towards such costs in a subsequent enforcement proceeding.
- b. Suggested language: “The parties stipulate that reasonable extracurricular activities shall include but not be limited to: art, acting, singing, dancing and music lessons (outside of a parochial school program); museum membership; athletic and sport instruction; scouting programs; self-defense instruction; foreign language instruction.”

General Tips and Suggested Provisions

1. Draft your agreement to settle the case and in anticipation of future litigation. Issues that were contentious prior to commencement and during the litigation will likely remain contentious afterwards. Give these issues great attention when drafting an agreement.
2. Explicitly state all relevant statutory factors in the determination of child support, maintenance and equitable distribution (either in recitals or in the applicable articles of the agreement) so both parties have actual notice of such factors.
3. If unsure about the assets of the other party, include language that explicitly states that the parties do not own any property not otherwise included in the agreement.
4. If you represent the Plaintiff, include language that the Defendant acknowledges receipt of the previously-served pleadings, Automatic Orders, Notice Concerning Continuation of Health Care Coverage, Child Support Standards Chart and Notice of Guideline Maintenance. Doing so may prevent a subsequent challenge to the agreement wherein Defendant claims not to have received these documents.
5. If you are preparing the agreement, remember that ambiguities are construed against the drafter. It is also advisable to include a provision that neither attorney shall be considered the “drafter” or a provision that no adverse inference shall be drawn for or against either party by reason of the fact that the primary draftsman was the attorney for one of the parties.
6. If your retainer allows for it, you may be entitled to counsel fees even in a pro bono matter. Do not hesitate to include a provision regarding payment of counsel fees in your stipulation.
7. Merger / Survival provisions.
8. Do not leave client liable for a mortgage if the client is not occupying home. Either require the sale of home or require the other party to refinance without your client being named as an obligor.
9. Don't merely make one party liable for joint debts. Make sure to include indemnification provisions and, whenever possible, a provision for the schedule of payments towards debts. Always enable your client to demand proof of payment towards such debts.
10. Life Insurance to protect support obligations.
11. Claiming the children on taxes.

Appendix I

Supreme Court Matrimonial Checklists

SUPREME COURT-SUFFOLK COUNTY
TRIAL TERM-MATRIMONIAL DIVISION
400 CARLETON AVENUE
P.O. BOX 9070
CENTRAL ISLIP, NEW YORK 11722-9070
(631) 853-7598

CONTESTED (SETTLED) AND
UNCONTESTED REQUIREMENTS
FOR SUBMISSION OR INQUEST

NAME _____ INDEX NO: _____

IMPORTANT: PAPERS WILL NOT BE ACCEPTED BY THE MATRIMONIAL CLERK UNLESS ALL FEES ARE PAID.
IN PERSON: SUPREME COURT CLERK'S OFFICE, 400 CARLETON AVENUE, CENTRAL ISLIP, N.Y.
IN PERSON OR BY MAIL: SUFFOLK COUNTY CLERK'S OFFICE, 310 CENTER DR., RIVERHEAD, N.Y. 11901.
IF FEES ARE PAID BY MAIL, SEND CHECK OR MONEY ORDER WITH SELF-ADDRESSED STAMPED
ENVELOPE TO THE ATTENTION OF: CIVIL COURT ACTIONS. CHECKS ARE TO BE MADE PAYABLE TO
THE SUFFOLK COUNTY CLERK.

- _____ 1. Index Number must be affixed on all papers submitted. (Fee: \$210.00).
- _____ 2. Request for Judicial Intervention (R.J.I.) (filing fee \$95.00) together with affidavit of service {22NYCRR 202.6}.
(Fee: \$95.00). Submit form in duplicate
- _____ 3. Note of Issue (filing fee \$30.00) together with affidavit of service {22NYCRR 202.21, CPLR 3402}.
- _____ 4. SUMMONS with statutory notation and **proof of filing of the original summons** with the Suffolk County Clerk.
- _____ 5. AFFIDAVIT OF SERVICE OF SUMMONS, containing, amongst other things, a description as to defendants' identity {DRL 232} and military status of defaulting party {22NYCRR 202.21} with proof of filing with the County Clerk. If the defendant admits to service, defendant's affidavit must state the date that the Summons was served upon the defendant. If service was made pursuant to an Order of Publication, submit copy of order with affidavit of service, affidavit of publication and proof of filing both with the Suffolk County Clerk.
- _____ 6. ORIGINAL VERIFIED COMPLAINT, or a photocopy, with proof of filing original verified complaint with the Suffolk County Clerk. Submit proof of service of Verified Complaint and Notice of Appearance and/or Verified Answer if defendant has appeared
- _____ 7. Original Affirmation of Regularity., Affidavit of Regularity for self represented litigants.
- _____ 8. PLAINTIFF'S AFFIDAVIT, {22NYCRR 202.21(i)}. Establish residency {DRL 230} and the evidentiary facts to warrant the relief sought.
- _____ 9. If custody is to be determined in the absence of a Family Court Order, stipulation or agreement, comply with Section 76-h of the DRL
- _____ 10. Where there is a request to continue a Family Court Order, you must submit a copy of same.
- _____ 11. Sworn statement pursuant to Section 253 of the DRL, with proof of service. This is in addition to the statement appearing in the complaint. (If the grounds are based on a separation agreement, and the defendant has answered, then a sworn statement pursuant to Section 253 is needed from each party).
- _____ 12. Original Certificate of Dissolution of Marriage (Form D.O.H. 2168).

13. (a) If cause of action is based on a Separation Agreement, submit one of the following:

---Copy of the executed Agreement with proof of filing of the original with the County Clerk.

OR

---Copy of Memorandum of the Agreement with proof of filing of the original memorandum with the County Clerk, and submit the original Separation Agreement.

NOTE: Receipt for filing fee is not considered proof of filing.

(b) If cause is based on other grounds, submit original stipulation of settlement, if any. Filing fee: \$35.00

{c} Stipulation of Settlement/Separation Agreement must comply with DRL 255 (Health insurance for parties after Dissolution of Marriage).

14. In order to comply with the CHILD SUPPORT STANDARDS ACT, effective 9/15/89, we need:

(a) Itemization Sheet for Computation of Income must be completed and verified {DRL Sec. 240}.

Note: Income of each party may be stated in the Stipulation of Settlement/Separation Agreement.

(b) Any agreement or stipulation executed on or after 9/15/89 must contain a provision that the parties have been advised of the CHILD SUPPORT STANDARDS ACT.

{c} Effective April 2, 1992, agreements or stipulations must contain a statement that the BASIC SUPPORT OBLIGATION provided by CSSA would presumptively result in the correct amount of child support to be awarded, the amount agreed to, and if there is a difference, the reasons(s) for the difference.

(d) Affidavit/Affirmation that the unrepresented party has been served with a copy of the Child Support Standards Chart promulgated by the Commissioner of Social Services.

15. When there are unemancipated children who are not in receipt of public assistance, an affirmation or affidavit from the custodial parent must be submitted containing one of the following {DRL Sec. 236 B(7)(b), effective 6/15/94}:

(a) A request for child support services through the Support Collection Unit which would authorize collection of the support obligation by the immediate issuance of an income execution for support enforcement; OR

(b) A statement that he or she has applied for such services through the Support Collection Unit; OR

{c} A statement that he or she is in receipt of such services through the Support Collection Unit; OR

(d) A statement that he or she is aware of, but declines, such services through the Support Collection Unit at this time. Where the custodial parent declines Support Collection Unit services, a statement in addition to same must be made that he or she understands that an income deduction order may be issued pursuant to CPLR Sec. 5242© without other child support enforcement services and that payment of an administrative fee may be required.

NOTE: If (a) is selected, the following information must be included or attached thereto: Name, Address, DOB, SS# of both parties; Date & Place of marriage; name & DOB of child(ren); Name & Address of employer of income payor.

If (a) or (b) is selected, language as set forth in DRL Sec. (240(c)(5)(b) must be included on the face of the judgment.

16. Proposed FINDINGS OF FACT and CONCLUSIONS OF LAW, and a separate Proposed JUDGMENT {22NYCRR 202.50, Appendix B}. Both must be on separate "BLUE BACK."

17. Proof of service of Proposed Judgment upon opposing party by regular mail or personal service {22NYCRR 202.48}. If the party is represented by an attorney, serve the attorney.

18 Qualified Medical Child Support Order (DRL 240{1} Effective 1-1-98) Submit proof of service and an affidavit describing the available health insurance. If there is no health insurance available through an employer submit an affidavit to that effect.

- _____ 19. Notice of Settlement: Settle Judgment, Qualified Medical Child Support Order, and any other Orders by picking a date at least ten (10) days from the date that the opposing party will be served by mail with the proposed Judgment or any other proposed Orders; or at least five (5) days from the date that the opposing party will be served by personal service. Submit proof of service of Notice of Settlement.
- _____ 20. Form UCS 111, completed and signed.
- _____ 21. Certification pursuant to Section 130-1.1-a of the Rules of the Chief Administrator of the Courts.
- _____ 21(a), Registry check information sheet for custody/visitation requests.
- _____ 21(b), DRL 255 compliance in the parties agreement or addendum. (If the parties have no written agreement then proof of service of the DRL 255 notice)
- _____ 21(c) Any action filed after January 25th, 2016 when represented by counsel must indicate in both parties affidavit's (or in a written agreement if any) that the parties have been served with a copy of the, "Notice of Guideline Maintenance".
- _____ 21(d) Any cases with "mediator" intervention, require an authorization notice signed by both parties in order for the court to communicate with the mediator. (Mediator's name not to appear on any other forms.)

IN THE ABSENCE OF A STIPULATION, FAMILY COURT ORDER OR SEPARATION AGREEMENT, AND THERE ARE UNEMANCIPATED CHILDREN OF THE MARRIAGE, AND/OR A REQUEST FOR MAINTENANCE, COUNSEL FEES AND/OR EQUITABLE DISTRIBUTION, THEN COMPLY WITH THE FOLLOWING (22, 23, AND 24). THE CASE WILL THEN BE PLACED ON THE INQUEST CALENDAR. (ITEMS 12 THROUGH 20 NEED NOT BE SUBMITTED AT THIS TIME). NUMBERS 21, 21a, 22, 23, and 24 ARE TO BE SUBMITTED WITH ALL OTHER NECESSARY PAPERS.

- _____ 22. Statement of Net Worth with retainer agreement {DRL 236; 22NYCRR 202.16}
- _____ 23. Signed Statement of Proposed Disposition where Net Worth Statement is required.
- _____ 24. Affirmation of professional services rendered when applying for counsel fees.

NOTE: YOU WILL BE NOTIFIED BY MAIL OF THE DATE TO APPEAR FOR INQUEST AND THE ASSIGNED JUSTICE. SERVE NOTICE OF THE APPEARANCE DATE AND ASSIGNED JUSTICE UPON THE DEFAULTING PARTY'S ATTORNEY OR UPON THE DEFAULTING PARTY IF NOT REPRESENTED BY AN ATTORNEY. SUBMIT PROOF OF SERVICE TO THE ASSIGNED JUSTICE PRIOR TO OR ON THE DATE OF INQUEST.

CLERK _____ DATE _____

TELEPHONE NUMBER _____

RETURN THIS CHECKLIST WITH CORRECTIONS TO THE CLERK WHOSE NAME APPEARS ABOVE

**SUPREME COURT-SUFFOLK COUNTY
TRIAL TERM-MATRIMONIAL DIVISION
400 Carleton Avenue
Central Islip, New York 11722**

S.R.

REQUIREMENTS FOR SUBMISSION OF:

Domestic Relations Order/Qualified Domestic Relations Order, Amended Judgment of Divorce, Amended Domestic Relations Order/Qualified Domestic Relations Order, ANY other Amended Orders relevant to Dissolution of Marriage

Re: _____ Index Number _____

When submitting a proposed Order to the Court, please comply with the following:

_____ Copy of signed Judgment of Divorce/Separation/Annulment

_____ Proof of Service of proposed Domestic Relations Order/Amended Judgment of Divorce or Amended Domestic Relations Order*

_____ Notice of Settlement with Proof of Service* Get this form on the Court Website. Go to Uncontested Divorce with Children, print the form and instructions.

_____ Relevant pages of Stipulation/Agreement that describe plan, percentages, dates or any other factual descriptions in the proposed Domestic Relations Order. **Include the cover page and signature page with acknowledgment of signature.** If trial decision, submit copy

_____ Certification pursuant to section 130-1.1-a of the Rules of the Chief Administrator of the Court. Get this form on the Court Website. Go to Uncontested Divorce with Children, print the form and instructions.

If submitting an amended order, in addition to the above also submit:

_____ Copy of the signed order you wish to have amended

_____ Affirmation/Affidavit explaining defect in original signed Order and proof supporting the proposed correction

_____ Other _____

Note: Approval from the Plan is recommended prior to submission of the proposed Domestic Relations Order/Qualified Domestic Relations Order/Amended DRO/QDRO.

Send documents to the attention of the Clerk named below, together with this sheet.

***Serve the opposing party (former spouse), as well as the last known attorney of record**

Clerk: _____

Date: _____

COURT WEBSITE: www.nycourts.gov

10/18/11-gl

Supreme Court
Trial Term-Matrimonial Division
400 Carleton Avenue
P.O. Box 9070
Central Islip, NY 11722-9070
631-853-5462/63

CONTESTED REQUIREMENTS

Important: PAPERS WILL NOT BE ACCEPTED FOR FILING BY THE MATRIMONIAL CLERK'S OFFICE UNLESS ALL FEES HAVE BEEN PAID. FEES ARE PAYABLE BY MAIL OR IN PERSON- THE SUFFOLK COUNTY CLERKS OFFICE AT 310 CENTRE DRIVE, RIVERHEAD, NY 11901

IN PERSON ONLY- SUPREME COURT CLERK'S OFFICE AT 400 CARLETON AVENUE, CENTRAL ISLIP, NY. PAYMENT MAY BE IN THE FORM OF A CHECK OR MONEY ORDER.

NAME _____ INDEX NO. _____

- _____ 1. Index Number must be affixed on all papers submitted. (Fee is \$210 payable to the SUFFOLK COUNTY CLERK)
- _____ 2. Note of issue with Certificate of readiness, together WITH affidavit of service (22NYCRR202.21 CPLR 3402) \$30 fee necessary
- _____ 3. *Marked* Pleadings. (Complaint, Answer, Counterclaim)
- _____ 4. Original Attorney's Certification (22NYCRR 202.16(e))
- _____ 5. Statement of Net Worth WITH signed copy of attorney's retainer agreement (22NYCRR202.16(c)(1)) WITH affidavit of service
And
- _____ 6. Statement of Proposed Disposition WITH affidavit of service

Senior Court Clerk

Date: _____

PLEASE RETURN THIS CHECK SHEET WITH YOUR CORRECTIONS.

**NO CALENDAR NUMBER WILL BE ISSUED UNTIL
THE \$30 NOTE OF ISSUE FEE IS PAID AND YOU
SUBMIT ALL REQUIRED PAPERS.**

All papers must be returned

**SUPREME COURT - SUFFOLK COUNTY
TRIAL TERM - MATRIMONIAL DIVISION
400 CARLETON AVENUE
CENTRAL ISLIP, NEW YORK 11722
(631) 853-5423**

Part Clerk's Submission Requirements After Inquest/Trial

Name: _____ Index #: _____

- _____ 1. Decision of Court (if after Trial)
- _____ 2. Minutes of Inquest/Agreement (if settlement agreement was executed as a written document then submit original agreement)
- _____ 3. Proposed Findings of Fact and Conclusions of Law (not needed if Court Decision After Trial)
- _____ 4. Proposed Judgment of Divorce with *proof of service*
- _____ 5. Proposed Qualified Medical Child Support Order (if required) with *proof of service*
- _____ 6. Notice of Settlement with *proof of service*
- _____ 7. UCS-111 Form
- _____ 8. Original Certificate of Dissolution of Marriage (DOH2168)
- _____ 9. Certification pursuant to section 130-1.1-a of the Rules of the Chief Administrator of the Courts
- _____ 10. Support Collection Unit information sheet when child support is to be paid to the S.C.U.
- _____ 11. Child Support Enforcement Bureau affidavit
- _____ 12. DRL 255 addendum

Assigned Justice _____ Part _____ Phone _____ Date _____

RETURN THIS CHECKLIST TOGETHER WITH MISSING DOCUMENTATION TO THE PART LISTED ABOVE.

Appendix II

NYS

Uncontested
Matrimonial Forms

***NEW YORK STATE
UNIFIED COURT SYSTEM***



***UNIFORM
UNCONTESTED DIVORCE PACKET
FORMS***

REVISED 3/1/2016

NOTICE OF ENTRY OF AUTOMATIC ORDERS (D.R.L. 236) Rev. 1/13
FAILURE TO COMPLY WITH THESE ORDERS MAY BE DEEMED
A CONTEMPT OF COURT

PURSUANT TO the Uniform Rules of the Trial Courts, and DOMESTIC RELATIONS LAW § 236, Part B, Section 2, both you and your spouse (the parties) are bound by the following **AUTOMATIC ORDERS**, which have been entered against you and your spouse in your divorce action pursuant to 22 NYCRR §202.16(a), and which shall remain in full force and effect during the pendency of the action unless terminated, modified or amended by further order of the court or upon written agreement between the parties:

(1) ORDERED: Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2) ORDERED: Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the court ; except that any party who is already in pay status may continue to receive such payments thereunder.

(3) ORDERED: Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) ORDERED: Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) ORDERED: Neither party shall change the beneficiaries of any existing life insurance policies and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

IMPORTANT NOTE: After service of the Summons with Notice or Summons and Complaint for divorce, if you or your spouse wishes to modify or dissolve the automatic orders, you must ask the court for approval to do so, or enter into a written modification agreement with your spouse duly signed and acknowledged before a notary public.

Notice of Guideline Maintenance

If your divorce was commenced on or after January 25, 2016, this Notice is required to be given to you by the Supreme Court of the county where your divorce was filed to comply with the Maintenance Guidelines Law ([S. 5678/A. 7645], Chapter 269, Laws of 2015) because you may not have counsel in this action to advise you. **It does not mean that your spouse (the person you are married to) is seeking or offering an award of "Maintenance" in this action. "Maintenance" means the amount to be paid to the other spouse for support after the divorce is final.**

You are hereby given notice that under the Maintenance Guidelines Law (Chapter 269, Laws of 2015), there is an obligation to award the guideline amount of maintenance on income up to \$178,000 to be paid by the party with the higher income (the maintenance payor) to the party with the lower income (the maintenance payee) according to a formula, unless the parties agree otherwise or waive this right. Depending on the incomes of the parties, the obligation might fall on either the Plaintiff or Defendant in the action.

There are two formulas to determine the amount of the obligation. If you and your spouse have no children, the higher formula will apply. If there are children of the marriage, the lower formula will apply, but only if the maintenance payor is paying child support to the other spouse who has the children as the custodial parent. Otherwise the higher formula will apply.

Lower Formula

1-Multiply Maintenance Payor's Income by 20% .

2- Multiply Maintenance Payee's Income by 25% .

Subtract Line 2 from Line 1: = **Result 1**

Subtract Maintenance Payee's Income from 40 % of Combined Income* = **Result 2**.

Enter the lower of **Result 2** or **Result 1**, but if less than or equal to zero, enter zero.

THIS IS THE CALCULATED GUIDELINE AMOUNT OF MAINTENANCE WITH THE LOWER FORMULA

Higher Formula

1-Multiply Maintenance Payor's Income by 30%

2- Multiply Maintenance Payee's Income by 20%

Subtract Line 2 from Line 1= **Result 1**

Subtract Maintenance Payee's Income from 40 % of Combined Income*= **Result 2**

Enter the lower of **Result 2** or **Result 1**, but if less than or equal to zero, enter zero

THIS IS THE CALCULATED GUIDELINE AMOUNT OF MAINTENANCE WITH THE HIGHER FORMULA

***Combined Income equals Maintenance Payor's Income up to \$178,000 plus Maintenance Payee's Income**

Note: The Court will determine how long maintenance will be paid in accordance with the statute.

(Rev. 1/31/16)

**NOTICE CONCERNING CONTINUATION OF
HEALTH CARE COVERAGE**
(Required by section 255(1) of the Domestic Relations Law)

PLEASE TAKE NOTICE that once a judgment of divorce is signed in this action, both you and your spouse may or may not continue to be eligible for coverage under each other's health insurance plan, depending on the terms of the plan.

1 SUPREME COURT OF THE STATE OF NEW YORK
23 COUNTY OF _____
4 -----X
5
6

Index No.: _____
Date Summons filed: _____
Plaintiff designates _____
County as the place of trial
The basis of venue is: _____

7
8
Plaintiff,
-against-

SUMMONS WITH NOTICE
Plaintiff/Defendant resides at: _____

Defendant.
-----X

ACTION FOR A DIVORCE

To the above named Defendant:

9 **YOU ARE HEREBY SUMMONED** to serve a notice of appearance on the ☐ Plaintiff
OR ☐ Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive
of the day of service (or within thirty (30) days after the service is complete if this summons is not
personally delivered to you within the State of New York); and in case of your failure to appear,
judgment will be taken against you by default for the relief demanded in the notice set forth below.

10, 11 Dated _____

☐ Plaintiff
☐ Attorney(s) for Plaintiff
Phone No.:
Address:

12
13 **NOTICE:** The nature of this action is to dissolve the marriage between the parties, on the
grounds: **DRL § 170 subd. _____ - _____

The relief sought is a judgment of absolute divorce in favor of the Plaintiff dissolving the marriage
between the parties in this action.

14 The nature of any ancillary or additional relief requested (see p.14 of Instructions) is:

- ☐ Additional page describing ancillary relief requested is attached;
☐ Marital property to be distributed pursuant to separation agreement/stipulation;
☐ I waive distribution of Marital property;

For divorces commenced on or after 1/25/16 only: ☐ I am not seeking maintenance as payee as
described in the Notice of Guideline Maintenance (the "Notice") other than what was already agreed
to in a written agreement/stipulation ; OR ☐ I seek maintenance as payee, as described in the Notice

☐ **NONE** - I am not requesting any ancillary relief;

AND any other relief the court deems fit and proper

**Read pp. 3-5 of Instructions and insert the grounds for the divorce:

DRL § 170(1) - cruel and inhuman treatment

DRL § 170(4) - adultery

DRL § 170(2) - abandonment

DRL § 170(5) - living apart one year after separation decree or judgment of separation

DRL § 170(3) - confinement in prison

DRL § 170(6) - living apart one year after execution of a separation agreement

DRL § 170(7) - irretrievable breakdown in relationship

1 SUPREME COURT OF THE STATE OF NEW YORK
2 3 COUNTY OF _____
4 -----X
5

Index No.: _____

Date Summons filed: _____

Plaintiff designates _____

County as the place of trial

The basis of venue is: _____

6 Plaintiff,

-against-

7 Defendant.
8 -----X

SUMMONS

Plaintiff/Defendant resides at: _____

ACTION FOR A DIVORCE

To the above named Defendant:

9 **YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve
a copy of your answer on the ☐ Plaintiff **OR** ☐ Plaintiff's Attorney(s) within twenty (20) days
after the service of this summons, exclusive of the day of service, where service is made by delivery
upon you personally within the state, or within thirty (30) days after completion of service where
service is made in any other manner. In case of your failure to appear or answer, judgment will be
taken against you by default for the relief demanded in the complaint.

10, 11 Dated _____

☐ Plaintiff

☐ Attorney(s) for Plaintiff

Address: _____

12

Phone No.: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Index No.:

Plaintiff,

-against-

VERIFIED COMPLAINT

ACTION FOR DIVORCE

Defendant.

-----X

FIRST:

Plaintiff *herein / by* _____, complaining of the Defendant, alleges that the parties are over the age of 18 years and;

SECOND:

A) ☐ The ☐ *Plaintiff*
☐ *Defendant* has resided in New York State for a continuous period of at least two years immediately preceding the commencement of this divorce action.

OR

B) ☐ The ☐ *Plaintiff*
☐ *Defendant* resided in New York State on the date of commencement of this divorce action and for a continuous period of one year immediately preceding the commencement of this divorce action

AND:

a. ☐ the parties were married in New York State.

or

b. ☐ the parties have resided as married people in New York State.

OR

C) ☐ The cause of action occurred in New York State and ☐ *Plaintiff*
☐ *Defendant* resided in New York State for a continuous period of at least one year immediately preceding the commencement of this divorce action.

OR

D) ☐ The cause of action occurred in New York State and both parties were residents at the time of commencement of this divorce action.

THIRD: The Plaintiff and the Defendant were married on _____
in (city, town or village; and state or country) _____.

8

The marriage was *not* performed by a clergyman, minister or by a leader of the Society for Ethical Culture.

(If the word "not" is deleted above check the appropriate box below).

- ☐ *To the best of my knowledge I have taken all steps solely within my power to remove any barrier to the Defendant's remarriage.* **OR**
- ☐ *I will take prior to the entry of final judgment all steps solely within my power to the best of my knowledge to remove any barrier to the Defendant's remarriage.* **OR**
- ☐ *The Defendant has waived in writing the requirements of DRL §253 (Barriers to Remarriage).*

9

FOURTH: ☐ There are no children of the marriage (see definition on p.7 of Instructions) **OR**

☐ There is (are) _____ child(ren) of the marriage (see definitions on p.7 of Instructions), namely:

<u>Name</u>	<u>Date of Birth</u>	<u>Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

10 The Plaintiff resides at _____
The Defendant resides at _____

11 The parties are covered by the following group health plans:

Plaintiff

Defendant

Group Health Plan: _____
Address: _____
Identification Number: _____
Plan Administrator: _____
Type of Coverage: _____

Group Health Plan: _____
Address: _____
Identification Number: _____
Plan Administrator: _____
Type of Coverage: _____

12 **FIFTH:** The grounds for divorce that are alleged as follows:

Cruel and Inhuman Treatment (DRL §170(1)):

- ☐ At the following times Defendant committed the following act(s) which endangered the Plaintiff's physical or mental well being and rendered it unsafe or improper for Plaintiff to continue to reside with Defendant.

(State the facts that demonstrate cruel and inhuman conduct giving dates, places and specific acts. Conduct may include physical, verbal, sexual or emotional behavior.)

(Attach an additional sheet, if necessary).

Abandonment (DRL 170(2)):

- ☐ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant left the marital residence of the parties located at _____, and did not return. Such absence was without cause or justification, and was without Plaintiff's consent.
- ☐ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant refused to have sexual relations with the Plaintiff despite Plaintiff's repeated requests to resume such relations. Defendant does not suffer from any disability which would prevent *her / him* from engaging in such sexual relations with Plaintiff. The refusal to engage in sexual relations was without good cause or justification and occurred at the marital residence located at _____.
- ☐ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant willfully and without cause or justification abandoned the Plaintiff, who had been a faithful and dutiful spouse, by depriving Plaintiff of access to the marital residence located at _____. This deprivation of access was without the consent of the Plaintiff and continued for a period of greater than one year.

Imprisonment (DRL §170(3)):

- ☐ That after the marriage of Plaintiff and Defendant, Defendant was confined in prison for a period of three or more consecutive years, to wit: that Defendant is/was confined in _____ prison on the _____ day of _____, _____, and remained confined until the _____ day of _____, _____; **OR** ☐ remains confined to this date.
- Name of correctional facility*
Month *Year*
Month *Year*

Adultery (DRL §170(4)):

- ☐ That on the _____ day of _____, _____, at _____ the Defendant voluntarily committed of an act of sexual or deviate sexual intercourse with a person other than the Plaintiff after the marriage of Plaintiff and Defendant.
- Month* *Year* *Location*

Living Separate and Apart Pursuant to a Separation Decree or Judgment of Separation(DRL §170(5)):

- ☐ (a) That the _____ Court, _____ County, _____ (Country or State) rendered a decree or judgment of separation on _____, under Index Number _____; and
- (b) that the parties have lived separate and apart for a period of one year or longer after the granting of such decree; and
- (c) that the Plaintiff has substantially complied with all the terms and conditions of such decree or judgment.

Living Separate and Apart Pursuant to a Separation Agreement (DRL §170(6)):

- ☐ (a) That the Plaintiff and Defendant entered into a written agreement of separation, which they subscribed and acknowledged on _____, in the form required to entitle a deed to be recorded; and
- (b) that the *agreement / memorandum of said agreement* was filed on _____ in the Office of the Clerk of the County of _____, wherein *Plaintiff / Defendant* resided; and
- (c) that the parties have lived separate and apart for a period of one year or longer after the execution of said agreement; and
- (d) that the Plaintiff has substantially complied with all terms and conditions of such agreement.

Irretrievable Breakdown in Relationship for at Least Six Months (DRL §170(7)):

- ☐ That the relationship between Plaintiff and Defendant has broken down irretrievably for a period of at least six months.

13 SIXTH: There is no judgment of divorce and no other matrimonial action between the parties pending in this court or in any other court of competent jurisdiction.

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:
A judgment dissolving the marriage between the parties

AND

14 The nature of any ancillary or additional relief requested (see p.16 of Instructions) is:

- ☐ Additional page describing ancillary relief requested is attached;
☐ Marital property to be distributed pursuant to separation agreement/stipulation;
☐ I waive distribution of Marital property;
For divorces commenced on or after 1/25/16 only: ☐ I am not seeking maintenance as payee as described in the Notice of Guideline Maintenance (the "Notice") other than what was already agreed to in a written agreement/stipulation ; OR ☐ I seek maintenance as payee, as described in the Notice.
☐ **NONE** - I am not requesting any ancillary relief;
AND any other relief the court deems fit and proper

15 Dated: _____

16 ☐ Plaintiff
☐ Attorney(s) for Plaintiff
Address: _____

17 STATE OF NEW YORK, COUNTY OF _____ ss:

I _____ (Print Name), am the Plaintiff in the within action for a divorce. I have read the foregoing complaint and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Subscribed and Sworn to
before me on

Plaintiff's Signature

NOTARY PUBLIC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiff,

Index No.:

-against-

AFFIDAVIT OF SERVICE

Defendant.

-----X

STATE OF _____ }

ss:

COUNTY OF _____ }

_____ being duly sworn, says:

1. I am not a party to the action, am over 18 years of age and reside at:

2. On _____, at _____ a.m./p.m. at _____
I served the ☐ *summons with notice* OR ☐ *summons and verified complaint*, and the notice of automatic orders, and, if the divorce was commenced on or after January 25, 2016, the notice of guideline maintenance

on _____, the Defendant named by delivering a true copy to the Defendant personally.

☐ In addition I served a copy of the Child Support Standards Chart.

☐ In addition I served a copy of the Notice of Continuation of Health Care Coverage

3. The notice required by the Domestic Relations Law, Section 232 -- "ACTION FOR A DIVORCE" -- was legibly printed on the face of the summons served on the Defendant.

4. I knew the person so served to be the person described in the summons as the Defendant. My knowledge of the Defendant and how I acquired it is as follows: (select one)

☐ I have known the defendant for _____ years and _____

OR

☐ I identified the Defendant by a photograph annexed to this affidavit and which was given to me by the Plaintiff.

OR

☐ Plaintiff accompanied me and pointed out the Defendant.

OR

☐ I asked the person served if he/she was the person named in the summons and Defendant admitted being the person so named.

5. Deponent describes the individual served as follows:

<u>Sex</u>	<u>Height</u>	<u>Weight</u>	<u>Age</u>	<u>Color of Skin</u>	<u>Color of Hair</u>
<input type="checkbox"/> Male	<input type="checkbox"/> Under 5'	<input type="checkbox"/> Under 100 Lbs.	<input type="checkbox"/> 14-17 Yrs.	Describe color: _____	<input type="checkbox"/> Black
<input type="checkbox"/> Female	<input type="checkbox"/> 5'0"-5'3"	<input type="checkbox"/> 100-130 Lbs.	<input type="checkbox"/> 18-20 Yrs.	_____	<input type="checkbox"/> Brown
	<input type="checkbox"/> 5'4"-5'8"	<input type="checkbox"/> 131-160 Lbs.	<input type="checkbox"/> 21-35 Yrs.	_____	<input type="checkbox"/> Blond
	<input type="checkbox"/> 5'9"-6'0"	<input type="checkbox"/> 161-200 Lbs.	<input type="checkbox"/> 36-50 Yrs.	_____	<input type="checkbox"/> Gray
	<input type="checkbox"/> Over 6'	<input type="checkbox"/> Over 200 Lbs.	<input type="checkbox"/> 51-65 Yrs.	_____	<input type="checkbox"/> Red
			<input type="checkbox"/> Over 65 Yrs.		<input type="checkbox"/> White
					<input type="checkbox"/> Balding
					<input type="checkbox"/> Bald

Other identifying features, if any: _____.

- 10 ☐ 6a. *At the time I served the Defendant, I asked him/her if he/she was in the military service of this state, any other state, or this nation, and the Defendant responded in the negative.*
- ☐ 6b. *The Defendant stated that he/she is in the following military service _____.*
- ☐ 6c. The Defendant refused to answer.

11

Server's Signature

Subscribed and Sworn to
before me on

NOTARY PUBLIC

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF _____
3 -----X

4 Plaintiff,

Index No.: _____

-against-

**SWORN STATEMENT
OF REMOVAL OF
BARRIERS TO REMARRIAGE**

5 Defendant.
6 -----X

7 STATE OF _____ }

ss:

COUNTY OF _____ }

I _____ (Print Name), state under penalty of perjury that the parties' marriage was solemnized by a minister, clergyman or leader of the Society for Ethical Culture, and that;

- 6 ☐ *To the best of my knowledge I have taken all steps solely within my power to remove all barriers to the Defendant's remarriage following the divorce.*

OR

- ☐ *The Defendant has waived in writing the requirements of DRL §253.*

7 _____
Plaintiff's Signature

Subscribed and Sworn to
before me on

NOTARY PUBLIC

Affidavit of Service

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

_____ being sworn, says, I am not a party to the action, and am over 18 years of age. I reside at _____.

On _____, I served a true copy of the within Removal of Barriers Statement on the Defendant:

☐ *personally at* _____

OR

☐ *by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, to the address designated by the Defendant at* _____

4

Server's Signature

Subscribed and Sworn to
before me on

NOTARY PUBLIC

OR

5 Service of the within document is hereby acknowledged.

☐ *Defendant's Signature* **OR**
☐ *Defendant's Attorney's Signature*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiff,

Index No.:

-against-

AFFIRMATION (AFFIDAVIT)
OF REGULARITY

Defendant.

-----X

STATE OF _____ }

ss:

COUNTY OF _____ }

The undersigned, being duly sworn, deposes and says:

I am ☐ the attorney for **OR** ☐ the Plaintiff herein.

This is a matrimonial action.

The ☐ *Summons with Notice* **OR** ☐ *Summons and Verified Complaint* and the Notice of Automatic Orders and, if the divorce action was commenced on or after January 25, 2016, the Notice of Guideline Maintenance were personally served upon the Defendant herein, ☐ *within* **OR** ☐ *outside* the State of New York as appears in the affidavit of service submitted herewith.

*Defendant has appeared ☐ on his or her own behalf **OR** ☐ by the firm of: _____ and executed an affidavit agreeing that this matter be placed on the matrimonial calendar immediately.*

OR

☐ Defendant is in default for failure to serve a notice of appearance or failure to answer the complaint served in this action in due time, and the time to answer has not been extended by stipulation, court order, or otherwise.

WHEREFORE, I respectfully request that this action be placed on the undefended matrimonial calendar for trial.

I state under the penalties of perjury that the statements herein made are true, except as to such statements as are based on information and belief, which statements I believe to be true.

Dated:

☐ Plaintiff

☐ Attorney(s) for Plaintiff

Subscribed and Sworn to
before me on

NOTARY PUBLIC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiff,

Index No.: _____

-against-

AFFIDAVIT OF PLAINTIFF

Defendant.

-----X

STATE OF _____ }

ss:

COUNTY OF _____ }

_____ being duly sworn, says:

1. The Plaintiff's address is _____,
and social security number is _____. The Defendant's address is _____,
and social security number is _____.

2. A) The ☐ Plaintiff
☐ Defendant has resided in New York State for a continuous period of at least
two years immediately preceding the commencement of this divorce action.

OR

B) The ☐ Plaintiff
☐ Defendant resided in New York State on the date of commencement of this
divorce action and for a continuous period of one year immediately preceding the
commencement of this divorce action:

AND:

a. the parties were married in New York State.

or

b. the parties have resided as married persons in New York State.

OR

C) The cause of action occurred in New York State and ☐ Plaintiff
☐ Defendant resided in New
York State for a continuous period of at least one year immediately preceding the
commencement of this divorce action.

OR

D) The cause of action occurred in New York State and both parties were residents
at the time of commencement of this divorce action.

9 3. I married the Defendant on _____, in the City, Town or Village of _____, County of _____, State or Country of _____. The marriage was *not* performed by a clergyman, minister or by a leader of the Society for Ethical Culture.

10 (If the word "not" is deleted, check one of the following below:)

- ☐ *To the best of my knowledge I have taken all steps solely within my power to remove any barrier to the Defendant's remarriage. OR*
- ☐ *I will take prior to the entry of final judgment all steps solely within my power to the best of my knowledge to remove any barrier to the Defendant's remarriage. OR*
- ☐ *The Defendant has waived in writing the requirements of DRL §253 (Barriers to Remarriage).*

11 4. There is (are) _____ child(ren) of the marriage under the age of 21 (see definition on page 7 of the Instructions)

Name & Social Security Number

Date of Birth

The present address of each minor child of the marriage under the age of 18 (see definition on page 7 of the Instructions) and all other places where each child has lived within the last five (5) years is as follows:

Child

Present Address

Child

Other Address Within Last 5 years

The name(s) and present address(es) of the person(s) with whom each minor child of the marriage under the age of 18 (see definition on page 7 of the Instructions) has lived within the last five (5) years is:

12

I have participated in other litigation concerning the custody of the minor child(ren) of the marriage (see definition on page 7 of the Instructions) in this or another state. Yes ☐ No ☐

I have information of a custody proceeding concerning the minor child(ren) *of the marriage* (see definition on page 7 of the Instructions) pending in a court of this or another state. Yes ☐ No ☐

I know of a person who is not a party to this proceeding who has physical custody of the minor child(ren) *of the marriage* (see definition on page 7 of the Instructions) or claims to have custody or visitation rights with respect to such child(ren). Yes ☐ No ☐

13

The parties are covered by the following group health plans:

Plaintiff

Group Health Plan: _____
Address: _____
Identification Number: _____
Plan Administrator: _____
Type of Coverage: _____

Defendant

Group Health Plan: _____
Address: _____
Identification Number: _____
Plan Administrator: _____
Type of Coverage: _____

OR

☐ Not Applicable.

☐ No health plans are available to the parties
through their employment

14

5. The grounds for dissolution of the marriage are as follows:

Cruel and Inhuman Treatment (DRL §170(1)):

- ☐ At the following times Defendant committed the following act(s) which endangered the Plaintiff's physical or mental well being and rendered it unsafe or improper for Plaintiff to continue to reside with Defendant.

(State the facts that demonstrate cruel and inhuman conduct giving dates, places and specific acts. Conduct may include physical, verbal, sexual or emotional behavior.)

(Attach an additional sheet, if necessary)

Abandonment (DRL 170(2)):

- ☐ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant left the marital residence of the parties located at _____, and did not return. Such absence was without cause or justification, and was without Plaintiff's consent.
- ☐ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant refused to have sexual relations with the Plaintiff despite Plaintiff's repeated requests to resume such relations. Defendant does not suffer from any disability which would prevent *her / him* from engaging in such sexual relations with Plaintiff. The refusal to engage in sexual relations was without good cause or justification and occurred at the marital residence located at _____.
- ☐ That commencing on or about the _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant willfully and without cause or justification abandoned the Plaintiff, who had been a faithful and dutiful spouse, by depriving Plaintiff of access to the marital residence located at _____. This deprivation of access was without the consent of the Plaintiff and continued for a period of greater than one year.

Confinement to Prison (DRL §170(3)):

- ☐ That after the marriage of Plaintiff and Defendant, Defendant was confined in prison for a period of three or more consecutive years, to wit: that Defendant is/was confined in _____ prison on the _____ day of _____, _____, and remained confined until the _____ day of _____, _____; **OR** ☐ remains confined to this date.
- Name of correctional facility
- Month Year
- Month Year

Adultery (DRL §170(4)):

- ☐ That on the _____ day of _____, _____, at _____ the Defendant voluntarily committed of an act of sexual or deviate sexual intercourse with a person other than the Plaintiff after the marriage of Plaintiff and Defendant.
- Month Year Location

Living Separate and Apart Pursuant to a Separation Decree or Judgment of Separation (DRL §170(5)):

- ☐ (a) That the _____ Court, _____ County, _____ (Country or State) rendered a decree or judgment of separation on _____ under Index Number: _____; and

- (b) that the parties have lived separate and apart for a period of one year or longer after the granting of such decree; and
- (c) that the Plaintiff has substantially complied with all the terms and conditions of such decree or judgment.

14 continued

Living Separate and Apart Pursuant to a Separation Agreement (DRL §170(6)):

- ☐ (a) That the Plaintiff and Defendant entered into a written agreement of separation, which they subscribed and acknowledged on _____, in the form required to entitle a deed to be recorded; and
- (b) that the *agreement / memorandum of said agreement* was filed on _____ in the Office of the Clerk of the County of _____, wherein *Plaintiff / Defendant* resided; and
- (c) that the parties have lived separate and apart for a period of one year or longer after the execution of said agreement; and
- (d) that the Plaintiff has substantially complied with all terms and conditions of such agreement.

Irretrievable Breakdown in Relationship for at Least Six Months (DRL §170(7)):

- ☐ That the relationship between Plaintiff and Defendant has broken down irretrievably for a period of at least six months.

15

6a.

In addition to the dissolution of the marriage, I am seeking the following ancillary relief:
The nature of any ancillary or additional relief requested (see p.19 of Instructions) is:

-
- ☐ Additional page describing ancillary relief requested is attached;
 - ☐ Marital property to be distributed pursuant to separation agreement/stipulation;
 - ☐ I waive distribution of Marital property;

For divorces commenced on or after 1/25/16 only: ☐ *I am not seeking maintenance as payee as described in the Notice of Guideline Maintenance (the "Notice") other than what was already agreed to in a written agreement/stipulation ; OR* ☐ *I seek maintenance as payee, as described in the Notice.*

☐ **NONE-** I am not requesting any ancillary relief;
AND any other relief the court deems fit and proper

- 6b. If DRL §170 subd. (7) is the ground alleged, then Plaintiff hereby affirms, by checking the Box A, B, or C or D below (**NOTE: BOX A, B, C or D below must be checked if DRL 170(7) is the ground alleged**), that the following statement is true:

All economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the minor children of the marriage:

- ☐ A. have been resolved by the parties and are to be incorporated into the Judgment of Divorce.
by oral settlement/ stipulation on the record; or
by written Settlement/ Separation Agreement
- ☐ B. will be determined by the Court and are to be Incorporated into the Judgment of Divorce.
- ☐ C. were determined by Family Court order (custody and visitation or child support and/ or spousal support issues only) which will be continued.
- ☐ D. are not to be incorporated into the Judgment of Divorce, since neither party to the divorce has contested any such issues.

- 16** 7. ☐ The Defendant is in the military service and ☐ *has* waived ☐ *his* rights under the New York State Soldiers' and Sailors' Civil Relief Act.
☐ *has not* ☐ *her*

=====OR=====

- ☐ Defendant is not in the active military service of this state, or any other state or this nation.
☐ I know this because: *he/she* admitted it to *me / the process server* on _____.
☐ I have submitted with these papers an *investigator's affidavit / Defendant's affidavit* which states that Defendant is not in the active military service of this state, or any other state or this nation.
- 17** 8. I am *not* receiving Public Assistance. To my knowledge the Defendant is *not* receiving Public Assistance.
- 18** 9. No other matrimonial action is pending in this court or in any other court, and the marriage has not been terminated by any decree of any court of competent jurisdiction.
- 19** 10. *Annexed to the "Affidavit of Service" of Summons and Complaint / Summons With Notice is a photograph. It is a fair and accurate representation of the Defendant.*
- 20** 11A. ☐ I am not the custodial parent of the unemancipated child(*ren*) of the marriage (see definition on page 7 of the Instructions).

OR

- 11B. ☐ I am the custodial parent of the unemancipated child(*ren*) of the marriage (see definition on page 7 of the Instructions) entitled to receive child support pursuant to DRL §236(B)(7)(b),

AND

- ☐ (1) I request child support services through the Support Collection Unit which would authorize collection of the support obligation by the immediate issuance of an income execution for support enforcement.

OR

- ☐ (2) I am in receipt of such services through the Support Collection Unit.

OR

- ☐ (3) I have applied for such services through the Support Collection Unit.

OR

- ☐ (4) I am aware of but decline such services through the Support Collection Unit at this time. I am aware that an income deduction order (also known as an Income Withholding Order/Notice for Support) may be issued pursuant to CPLR §5242(c) without other child support enforcement services and that payment of an administrative fee may be required.

If (1) is selected, the Support Collection Unit Information Sheet (Form UD-8a) should be completed and presented with your papers.

21 ☐ *Plaintiff's* **OR** ☐ *Defendant's* prior surname is: _____

Pursuant to DRL § 240 1 (a-1)-Records Checking Requirements:

☐ An Order of Protection ☐ *has been* ☐ *has never been* issued against me, enjoining me or requiring my compliance.

☐ An Order of Protection ☐ *has* ☐ *has never been* issued in favor of or protecting me or my child(ren) or a member of my household.

List all Family/Criminal Court Docket #'s and Counties, _____
Supreme Court Index #'s and Counties _____

☐ I or my child(ren) or my spouse has been named in a Child Abuse/Neglect Proceeding (FCA Art.10)
List all Family Court Docket #'s _____
and Counties _____

☐ I or my child(ren) or my spouse has never been named in a Child Abuse/Neglect Proceeding (FCA Art.10)

☐ I am registered under New York State's Sex Offender Registration Act
List all names under which _____
you are registered _____

☐ I am not registered under New York State's Sex Offender Registration Act

22 ☐ If my divorce action was commenced on or after January 25, 2016, I acknowledge receipt of the Notice of Guideline Maintenance from the Court pursuant to DRL 236 B(6), Chapter 269 of the Laws of 2015, which was served with the Summons.

23 ☐ I have been provided a copy of Notice Relating to Health Care of the Parties. I fully understand that upon the entrance of this divorce agreement, I may no longer be allowed to receive health coverage under my former spouse's health insurance plan. I may be entitled to purchase health insurance on my own through a COBRA option, if available, otherwise I may be required to secure my own health insurance.

WHEREFORE, I _____ (print name), respectfully request that judgment be entered for the relief sought and for such other relief as the court deems fitting and proper.

24 Subscribed and Sworn to
before me on

Plaintiff's Signature

NOTARY PUBLIC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiff,

Index No.:

-against-

**AFFIDAVIT OF DEFENDANT
IN ACTION FOR DIVORCE**

Defendant.

STATE OF _____ }

ss:

COUNTY OF _____ }

_____ being duly sworn, says:

I am the Defendant in the within action for divorce, and I am over the age of 18. I reside at _____.

1. I admit service of the *Summons with Notice* **OR** *Summons and Complaint* for divorce on ___/___/20___ based upon the following grounds: Insert the grounds alleged in the *Summons with notice* or *Complaint*:

- ☐ DRL §170(1) cruel and inhuman treatment
☐ DRL §170(2) abandonment
☐ DRL §170(3) confinement in prison
☐ DRL §170(4) adultery
☐ DRL §170(5) living apart one year after separation decree or judgment of separation
☐ DRL §170(6) living apart one year after execution of a separation agreement
☐ DRL §170(7) irretrievable breakdown in relationship*(see Defendant's Affidavit Notes)

I also admit service of the *Notice of Automatic Orders*, and, if the divorce was commenced or or after 1/25/16, the *Notice of Guideline Maintenance*, and those of the following forms checked:

- ☐ *Notice Concerning Continuation of Health Care Coverage*:
☐ *other* _____

2. I appear in this action; however, I do not intend to respond to the summons or answer the complaint, and I waive the twenty (20) or thirty (30) day period provided by law to respond to the summons or answer the complaint. I waive the forty (40) day waiting period to place this matter on the calendar, and I hereby consent to this action being placed on the uncontested divorce calendar immediately.

TO THE DEFENDANT:

You should read the Defendant's Affidavit Notes on the last page of this Affidavit before completing this form. For instructions on how to fill out this form, see p. 20 of the instructions for Uncontested Divorces with Children which may be found at any Supreme Court Clerk's Office or online at <http://www.nycourts.gov/divorce/pdfs/divorce-packet-instructions.pdf>

10 3. ☐ I am not a member of the military service of this state, any other state or this nation

OR

- ☐ If in the military: I am aware of my rights under the New York State Soldiers' and Sailors' Civil Relief Act; however, I consent that this matter be placed on the Uncontested Matrimonial calendar and waive any rights I may have under the Act.

11 4a. ☐ I waive the service of all further papers in this action except for a copy of the final Judgment of Divorce.

OR

- b. ☐ I request service of the following documents: *Note of Issue, Request for Judicial Intervention, Barriers to Remarriage Affidavit, Proposed Judgment of Divorce, Proposed Findings of Facts and Conclusions of Law, Notice of Settlement, Qualified Medical Child Support Order, and any other proposed orders.*

12 5a. I am not seeking equitable distribution *other than what was already agreed to in a written stipulation.* I understand that I may be prevented from further asserting my right to equitable distribution.

5b. ***For divorces commenced on or after 1/25/16 only:***

- (i) ☐ I am not seeking maintenance as payee as described in the Notice of Guideline Maintenance (the "Notice") other than what was already agreed to in a written agreement/stipulation ; OR (ii) ☐ *I seek maintenance as payee, as described in the Notice .* **Note:** you must fill out and file with the court the Annual Income Statement (Form UD-8(1)) and a Maintenance Guidelines Worksheet (Form UD-8(2) if you check box (ii).

13 6a. *I will take or have taken all steps solely within my power to remove any barriers to the Plaintiff's remarriage.*

- b. ☐ *I waive the requirements of DRL § 253 subdivisions (2),(3) and (4).*

14 7a. ☐ I am not the custodial parent of the unemancipated child(ren) of the marriage (see definition on page 7 of the Instructions).

OR

- b. ☐ I am the custodial parent of the unemancipated child(ren) of the marriage (see definition on page 7 of the Instructions) entitled to receive child support pursuant to DRL §236(B)(7)(b),

AND

- ☐ (1) I request child support services through the Support Collection Unit which would authorize collection of the support obligation by the immediate issuance of an income execution for support enforcement.

OR

- ☐ (2) I am in receipt of such services through the Support Collection Unit.

OR

- ☐ (3) I have applied for such services through the Support Collection Unit.

OR

- ☐ (4) I am aware of but decline such services through the Support Collection Unit at this time. I am aware that an income deduction order (also known as an Income Withholding Order/Notice for Support) may be issued pursuant to CPLR §5242 (c) without other child support enforcement services and that payment of an administrative fee may be required.

If (1) is selected, a Support Collection Information Sheet (Form UD-8a) must be completed and submitted with your papers.

Pursuant to DRL § 240 1 (a-1) Records Checking Requirements:

- ☐ An Order of Protection ☐ *has been* ☐ *has never been* issued against me, enjoining me or requiring my compliance.
- ☐ An Order of Protection ☐ *has* ☐ *has never been* issued in favor of or protecting me or my child(ren) or a member of my household.
List all Family/Criminal Court Docket #'s and Counties, _____
- Supreme Court Index #'s and Counties _____
- ☐ I or my child(ren) or my spouse has been named in a Child Abuse/Neglect Proceeding (FCA Art.10)
List all Family Court Docket #'s _____
and Counties _____
- ☐ I or my child(ren) or my spouse has never been named in a Child Abuse/Neglect Proceeding (FCA Art.10)
- ☐ I am registered under New York State's Sex Offender Registration Act
List all names and any _____
related information _____
- ☐ I am not registered under New York State's Sex Offender Registration Act

15

8. If DRL §170 subd. (7) is the ground alleged, then Defendant hereby affirms, by checking the Box A, B, or C or D below (**NOTE: BOX A, B, C or D below must be checked if DRL 170(7) is the ground alleged**), that the following statement is true:

All economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the minor children of the marriage:

- ☐ A. have been resolved by the parties and are to be incorporated into the Judgment of Divorce.
☐ by oral settlement/ stipulation on the record; or
☐ by written Settlement/ Separation Agreement
- ☐ B. will be determined by the Court and are to be Incorporated into the Judgment of Divorce.
- ☐ C. were determined by Family Court order (custody and visitation or child support and/ or spousal support issues only) which will be continued.
- ☐ D. are not to be incorporated into the Judgment of Divorce, since neither party to the divorce has contested any such issues.

16 ☐ If my divorce action was commenced on or after January 25, 2016, I acknowledge receipt of the Notice of Guideline Maintenance from the Court pursuant to DRL 236 B(6), Chapter 269 of the Laws of 2015 which was served with the Summons.

17 ☐ I have been provided a copy of Notice Relating to Health Care of the Parties. I fully understand that upon the entrance of this divorce agreement, I may no longer be allowed to receive health coverage under my former spouse's health insurance plan. I may be entitled to purchase health insurance on my own through a COBRA option, if available, otherwise I may be required to secure my own health insurance.

18

Defendant's Signature

Subscribed and Sworn to
before me on

NOTARY PUBLIC

Defendant's Affidavit Notes

- If you have been served with a Summons with Notice or a Summons and Complaint in an action for Divorce, ask yourself these two questions:
Do I oppose the divorce itself?
Do I oppose anything else my spouse is asking for in the divorce papers?
- You may want to discuss your situation with a lawyer before deciding on your final answers to these questions. If you answered “Yes” to *either* of the two questions, do *not* sign this form. If you are opposing the divorce or anything else your spouse is asking for, you should talk with a lawyer *immediately, since there are time limits for you to respond to the divorce*. The Supreme Court Clerk's Office in the county where you live (if you live in New York State) may be able to help you with information about lawyer referral services, but cannot give you legal advice.
- If you have decided to agree to the divorce and to the other things your spouse is asking for, **or** if you and your spouse have worked out a written Settlement Agreement about everything involved in the divorce, you can sign the Affidavit of Defendant form and have it notarized before a notary public, and send it back to your spouse.
- *If DRL §170 subd. (7) is the ground alleged in the summons with notice or complaint, then all economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the minor children of the marriage must have been resolved by the parties or determined by the court and incorporated into the judgment of divorce. If you have decided to agree to the divorce on the ground of irretrievable differences alleged by your spouse pursuant to DRL §170 subd. (7), and to all the relief requested by your spouse, and if you have no additional relief you wish to request, you should fill out Paragraph 8 at Field 15 of this Affidavit.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF**

-----X

Plaintiff,

Index No.: _____4

-against-

**ANNUAL
INCOME WORKSHEET
Form UD-8(1)**

Defendant.

-----X

This Worksheet was prepared by ☐ Plaintiff ☐ Defendant,

To assist you in making the calculations on this Worksheet, you may use the Maintenance/Child Support Calculators posted on the Court's Divorce Resources website at <http://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml>. They are provided for your convenience as a tool. They have been tested with many scenarios to assure accuracy with appropriate entry of data. You may wish to make the calculations yourself on the Appendices to this Worksheet. Neither this Worksheet nor the Calculators are meant to predict what the court will order as to maintenance or child support in your case. Comments and questions about this Worksheet or the Calculators should be sent to NYMatCalc@nycourts.gov

If you decide to use the Calculators, you must copy your work onto Appendix A.

Complete Income Computations for Plaintiff and Defendant:

1. ENTER INCOME OF PARTIES: CHECK THE BOX TO INDICATE HOW YOU MADE THE CALCULATION

- ☐ Use the Maintenance/ChildSupport Calculators posted at <http://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml> OR
☐ Use **Appendix A** to make the calculation

A. Enter Plaintiff's Annual Income from **Line 18 of Appendix A** or
Line 18 of Part A of the Calculator.....

\$ _____

B. Enter Defendant's Annual Income from **Line 18 of Appendix A**
or **Line 18 of Part A of the Calculator**.....

\$ _____

NOTE: If you do not know your spouse's income write "unknown."

7 I have carefully read this Annual Income Worksheet and attest that it is true and accurate to the best of my knowledge.

Signature of ☐ Plaintiff ☐ Defendant

Print or Type Name

Subscribed and Sworn to before me

on _____

Notary Public

SEE APPENDIX A ATTACHED

Appendix A. Itemization of Income and Expenses

APPENDIX A

Itemization of Income and Deductions

I. GROSS INCOME *(Annual Figures Only)*

1. Gross (total) income (as should have been or should be

	PLAINTIFF	DEFENDANT
reported in most recent federal income tax return)	\$ _____	\$ _____
2. Investment income (not already included in item 1) reduced by amount expended in connection with the investments	_____	_____
3. Income or compensation from the following sources (not already included in items 1 or 2)	_____	_____
a. deferred compensation	_____	_____
b. worker's compensation	_____	_____
c. disability benefits	_____	_____
d. unemployment insurance benefits	_____	_____
e. social security benefits	_____	_____
f. veterans benefits	_____	_____
g. pensions and retirement benefits	_____	_____
h. fellowships and stipends	_____	_____
i. annuity payments	_____	_____
4. Former income or resources voluntarily reduced	_____	_____
5. Self-employment deductions (not already included in items 1 or 2) . . .	_____	_____
a. depreciation deduction in excess of straight-line	_____	_____
b. entertainment and travel allowances if they reduce personal expenditures	_____	_____
6. Other Income not already listed above (including but not limited to: Income from non-income producing assets; employment "perks" and reimbursed expenses to the extent that they reduce personal expenses; fringe benefits as a result of employment; money, goods and services provided by friends and relatives)	_____	_____
7. Income from Income Producing Property distributed or to be distributed pursuant to a final judgment of divorce.		
8. GROSS ANNUAL INCOME <i>(Add lines 1-7)</i>	\$ _____	\$ _____
	PLAINTIFF	DEFENDANT

II. DEDUCTIONS *(Annual Figures Only)*

	PLAINTIFF	DEFENDANT
9. Unreimbursed employee business expenses (except to extent expenses reduce personal expenditures)	\$ _____	\$ _____
10. Alimony or maintenance actually paid to non-party spouse pursuant to court order or agreement.	_____	_____
11. Child support actually paid pursuant to court order or agreement for non-party child	_____	_____
12. Public assistance <i>Note: enter zero unless included in Gross Income</i>	_____	_____
13. Supplemental social security Income <i>Note: enter zero unless included in Gross Income</i>	_____	_____
14. N.Y.C. or Yonkers taxes	_____	_____
15. Federal Insurance Contributions Act (FICA) Social Security taxes. . .	_____	_____
16. Federal Insurance Contributions Act (FICA) Medicare taxes	_____	_____
17. TOTAL ANNUAL DEDUCTIONS <i>(Add lines 9-16)</i>	\$ _____	\$ _____

III. NET INCOME

18. NET ANNUAL INCOME <i>(Subtract line 17 from line 8 and insert on lines 1A and 1B of the Worksheet)</i>	\$ _____	\$ _____
	PLAINTIFF	DEFENDANT

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

2

Plaintiff,

Index No.: _____ 4

-against-

3

**MAINTENANCE GUIDELINES
WORKSHEET (FORM UD-8(2))
Rev. 3/1/16**

Defendant.

**IMPORTANT NOTE: DO NOT FILL OUT THIS FORM IF YOUR ACTION WAS COMMENCED
BEFORE JANUARY 25, 2016, ¹**

To assist you in making the calculations on this Worksheet, you may use the Maintenance/Child Support Calculators posted on the Court's Divorce Resources website at <http://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml>. They are provided for your convenience as a tool. They have been tested with many scenarios to assure accuracy with appropriate entry of data. You may wish to make the calculations yourself on the Appendices to this Worksheet. Neither this Worksheet nor the Calculators are meant to predict what the court will order as to maintenance or child support in your case. Comments and questions about this Worksheet or the Calculators should be sent to NYMatCalc@nycourts.gov \

If you decide to use the Calculators, you must copy your work onto Appendix B.

5 This Worksheet was prepared by ☐ Plaintiff ☐ Defendant,

NOTE: If you and your spouse have entered into an agreement about maintenance² check the box below and submit a copy of the agreement or agreements to the court along with the completed Worksheet.

☐ Plaintiff and Defendant have entered into a written agreement about maintenance.

¹ January 25, 2016 is the date the new Maintenance Guidelines Law (L. 2015, c. 269,) became effective. If your divorce action was commenced before that date, include any request for maintenance as "Ancillary" or other relief in the Summons with Notice or the Summons and Verified Complaint. See pages 14 and 16 of the Uncontested Divorce Packet Instructions.

² Note that "maintenance" is support to be paid by one party to the marriage for the support of the other party to the marriage after the divorce is final. Because it is to be paid after the divorce is final, it is sometimes referred to as "post-divorce" maintenance, or simply as "maintenance."

6 1. Enter Income of Parties by copying the amounts from the Annual Income Worksheet, Line 1A and Line 1B (Form UD- 8(1)).

A. Enter Plaintiff's Annual Income

\$ _____

B. Enter Defendant's Annual Income

\$ _____

7 2. DETERMINE WHO IS THE PAYOR AND WHO IS THE PAYEE:

A. Enter the higher of Lines 1A and 1B.

The person with the higher income is the **MAINTENANCE PAYOR**.....\$ _____

B. Enter the lower of Lines 1A and 1B.

The person with the lower income is the **MAINTENANCE PAYEE**.....\$ _____

8 3. CALCULATE GUIDELINE MAINTENANCE AWARD ON INCOME UP TO AND INCLUDING \$178,000.

A. Check the box to indicate how you made the calculation:

☐ Use the Maintenance/Child Support Calculators posted at <http://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml> and enter the Annual Guideline Maintenance Award from Line 19 of Part B of the Calculators in **Line 3B**.

OR

☐ Use **Appendix B** to make the calculation and enter the amount from **Line 19 of Appendix B** in **Line 3B** below

B. The Guideline Award of Maintenance (based on Maintenance Payor's

Income up to \$178,000) \$ _____

9. THE COURT WILL DETERMINE HOW LONG THE MAINTENANCE AWARD WILL BE PAID ³

4a., please enter:

i) The date of your marriage _____; The date your divorce _____

³The court **must** determine how long the maintenance award will be paid using the 15 Factors for Post-Divorce Maintenance in Appendix. D. and the court **may** also consider the Advisory Schedule for Duration of Award in Appendix E setting forth percentages of the length of the marriage for which maintenance may be paid.

action was commenced _____; The number of years you were married to the date your divorce action was commenced : _____

- ii) The range that maintenance would be payable according to the Advisory Schedule for Duration of Award in Appendix E _____

Note: Multiply the number of years you have been married by the percentages in Appendix E to give the range on the schedule for that number of years married. For example, if you have been married 10 years on the date your action was commenced, the Advisory Schedule advises a duration of 15%-30% times the number of years married. Multiply $10 \times 15\% = 1.5$; Next Multiply $10 \times 30\% = 3$. Write 1.5 – 3 years on line ii) above.

- iii) How many years are you asking the Court to order that maintenance shall be payable? _____

- iv) Please describe retirement assets, benefits and retirement eligibility (age and other requirements) of you and your spouse if you can on the lines below. If you do not know them, write, "unknown."

Attach an additional page if needed and check the box below:

☐ Additional Page Attached

4b. Review the 15 factors for post – divorce maintenance in Appendix D, and list any factors you would like the court to know about when deciding how long maintenance will be paid..

Attach an additional page if needed and check the box below:

☐ Additional Page Attached

10 **5. After reviewing the 15 factors for post-divorce maintenance, check the applicable box or boxes to ask the Court to adjust the award of maintenance on income of the payor up to \$178,000 or to order maintenance on income of the Payor in excess of \$178,000 per year. Then list the factors you would like the Court to consider in making such decision.**

☐ Adjust Award of Maintenance on income up to \$178,000 because you believe it is unjust ⁴

☐ Order Maintenance on Income in Excess of \$178,000 per year⁵

Attach an additional page if needed and check the box below:

☐ Additional Page Attached

11 I have carefully read this statement and attest that it is true and accurate to the best of my knowledge.

Signature of ☐ Plaintiff ☐ Defendant,

Print or Type Name

Subscribed and Sworn to before me

on _____

⁴ **Unjust or Inappropriate Awards:** If a party believes that the Guideline Maintenance Award on income up to \$178,000 is unjust or inappropriate, the party can ask the Court to order the Maintenance Payor to pay an adjusted amount. In making such decision, the Court shall consider the **15 factors for post-divorce maintenance**.

⁵ **Awards on Income of the Payor above \$178,000.** If the Maintenance Payor's income exceeds \$178,000, the Court may award an additional amount of maintenance. In making such decision, the Court shall consider the **15 factors for post-divorce maintenance**.

Notary Public

See APPENDICES B, D, and E Attached

APPENDIX B.

**Calculation of Guideline Amount of Maintenance up to and Including
\$178,000 and Adjustment for Low Income**

APPENDIX D.

**15 Factor for Court to Consider for Post-Divorce Maintenance* Where
Income Exceeds \$178,000 or in Connection with Adjustment of Award or
in Considering Duration of Award.**

APPENDIX E.

Advisory Schedule for Duration of Post-Divorce* Maintenance

* Note that "maintenance" is support to be paid by one party to the marriage for the support of the other party to the marriage after the divorce is final. Because it is to be paid after the divorce is final, it is sometimes referred to as "post-divorce" maintenance, or simply as "maintenance."

APPENDIX B

Calculation of Guideline Maintenance Award on Maintenance Payor's Income up to and Including \$178,000; Includes Possible Low Income Adjustment

I. BASIC CALCULATION

STEP A: INCOME OF MAINTENANCE PAYOR AND MAINTENANCE PAYEE

1. Enter Maintenance Payor's income from Line 2A on page 1 of the Worksheet:
If this amount is greater than \$178,000, enter \$178,000 \$ _____
2. Enter Maintenance Payee's income from Line 2B on page 1 of the Worksheet \$ _____

STEP B:

**CALCULATE RESULT 1 and RESULT 2 USING FORMULAS B(1) AND B(2) BELOW;
THEN ANSWER QUESTIONS IN STEP C AND STEP D TO DETERMINE WHETHER
RESULT 1 OR RESULT 2 APPLIES**

STEP B(1)(3): Multiply Line 1 (Maintenance Payor's Income) by 20% \$ _____

STEP B(1)(4): Multiply Line 2 (Maintenance Payee's Income) by 25% \$ _____

STEP B(1)(5): Subtract Line 4 from Line 3: **Result 1** \$ _____

STEP B(2)(3): Multiply Line 1 (Maintenance Payor's Income) by 30% \$ _____

STEP B(2)(4): Multiply Line 2 (Maintenance Payee's Income) by 20% \$ _____

STEP B(2)(5): Subtract Line 4 from Line 3: **Result 2** \$ _____

STEP C: 6 Will child support be paid for children of the marriage? **YES**__ **NO**__

STEP D: 7. Is the Maintenance Payor the Non-Custodial Parent? **YES**__ **NO**__

**RESULT 1 OF STEP B(1) WILL APPLY IF THE ANSWERS TO BOTH OF THE QUESTIONS
IN STEP C AND STEP D IS YES. RESULT 2 OF STEP B(2) WILL APPLY IF THE ANSWER
TO EITHER QUESTION IN STEP C OR STEP D IS NO.**

STEP E: COMPLETE THE CALCULATIONS BELOW to arrive at Result 3:

8. Add Lines 1 and 2 \$ _____

9. Multiply 40% of Line 8. \$ _____

10. Subtract Line 2 from Line 9: **Result 3** \$ _____

11. Enter the lower of **Result 3** from Line 10 and Line 5 (from STEP B,
Result 1 or **Result 2**, whichever applies), but if Line 11 is less than or
equal to zero, enter zero \$ _____

THIS IS THE CALCULATED GUIDELINE AMOUNT

II. THE LOW INCOME ADJUSTMENT

STEP F: *(Determine if the low income adjustment applies)*

12. Enter Maintenance Payor's Income from Line 1 \$ _____
13. Enter calculated guideline amount from Line 11. - \$ _____
14. Subtract Line 13 from Line 12. \$ _____
- ▶ *If Line 14 is greater than \$16,038, there is no low income adjustment.
Enter the amount from Line 11 in Line 18.*
- ▶ *If Line 14 is less than \$16,038, there is a low income adjustment.
Go to Step G to calculate the amount of the award.*

STEP G: *(Determine the amount of the award after the low income adjustment)*

15. Enter Maintenance Payor's income from Line 1 \$ _____
16. Enter \$16,038 (the Self Support Reserve)*. - \$ _____
17. Subtract Line 16 from Line 15. \$ _____
- ▶ *If the amount on Line 17 is greater than zero, enter that amount in Line 18.*
- ▶ *If the amount on Line 17 is less than or equal to zero, enter zero in Line 18.*
18. Amount owed after low income adjustment. \$ _____

III. AWARD

19. Enter the amount as directed in either Step F or Step G, whichever applies.
Also enter this amount in Line 3B of the Worksheet. \$ _____

* Every March 1st the Self -Support Reserve changes. You may find the most current figures at https://newyorkchildsupport.com/quick_links.html. The current level of the Self-Support Reserve is \$16,038.

APPENDIX D

15 FACTORS FOR POST-DIVORCE MAINTENANCE PURSUANT TO DRL §236B(6)(E)(1) FOR ADJUSTMENT OF AWARD, FOR DURATION OF AWARD, OR WHERE PAYOR'S INCOME EXCEEDS \$178,000

1. the age and health of the parties;
2. the present or future earning capacity of the parties, including a history of limited participation in the workforce;
3. the need of one party to incur education or training expenses;
4. the termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;
5. the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;;
6. the existence and duration of a pre-marital joint household or a pre-divorce separate household;
7. acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;
8. the availability and cost of medical insurance for the parties;
9. the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;;
10. the tax consequences to each party;
11. the standard of living of the parties established during the marriage;
12. the reduced or lost earning capacity of the payee as a result of having foregone or delayed education, training, employment or career opportunities during the marriage;
13. the equitable distribution of marital property and the income or imputed income on the assets so distributed;
14. the contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and
15. any other factor which the court shall expressly find to be just and proper.

APPENDIX E

THE COURT MAY DETERMINE THE DURATION OF POST-DIVORCE MAINTENANCE IN ACCORDANCE WITH THE FOLLOWING ADVISORY SCHEDULE: BUT IN ANY EVENT, THE COURT MUST CONSIDER THE 15 POST-DIVORCE MAINTENANCE FACTORS SET FORTH IN APPENDIX D.

Length of Marriage	Percent of the length of the marriage for which maintenance will be payable
0 up to and including 15 years	15% - 30%
More than 15 up to and including 20 years	30% - 40%
More than 20 years	35% - 50%

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF**

-----X

Plaintiff,

Index No.: _____ 4

-against-

**CHILD SUPPORT
WORKSHEET (Form UD-8(3))
Rev. 3/1/16**

Defendant.

-----X

To assist you in making the calculations on this Worksheet, you may use the Maintenance/Child Support Calculators posted on the Court's Divorce Resources website at <http://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml>. They are provided for your convenience as a tool. They have been tested with many scenarios to assure accuracy with appropriate entry of data. You may wish to make the calculations yourself on the Appendices to this Worksheet. Neither this Worksheet nor the Calculators are meant to predict what the court will order as to maintenance or child support in your case. Comments and questions about this Worksheet or the Calculators should be sent to NYMatCalc@nycourts.gov

If you decide to use the Calculators, you must copy your work onto Appendix G.

1. This Worksheet was prepared by ☐ Plaintiff ☐ Defendant,
2. If you and your spouse have entered into a written agreement about child support, check the box below
- ☐ Plaintiff and Defendant have entered into a written agreement about Child Support.
3. If you and your spouse have entered into a written agreement about child support, submit a copy of the agreement to the court along with the completed Worksheet and check the box below.
- ☐ A copy of the written agreement about child support was submitted to the court with this Worksheet.
4. ☐ If I am not represented by an attorney, I have received a copy of the Child Support Standards Act Chart

5. CALCULATE BASIC ANNUAL CHILD SUPPORT OBLIGATION

If there are unemancipated children of the marriage, calculate the amount of child support that must be paid to the custodial parent by the non-custodial parent.

A. Check the box to indicate how you made the calculation:

☐ Use the Maintenance/Child Support Calculators posted at the link above and enter the amount from Part C - IV, Line 1 of the Calculator in **Line 5B** below.

OR

☐ Use **Appendix G** to make the calculation and enter the amount from **Section IV Line 1 of Appendix G** in **Line 5B** below

B. The Annual Basic Child Support Obligation \$ _____

8

6. If you believe the Annual Basic Child Support Obligation is unjust and should be changed,¹ list the factors you would like the Court to consider in its decision, after reviewing the **10 child support adjustment factors** in Appendix F.

Attach an additional page if needed and check the box below:
Additional Page Attached ☐

9

7. If you would like the Court to award child support on Combined Parental Income in excess of \$143,000, please list the factors you would like the Court to consider in its decision, after reviewing the 10 child support adjustment factors in Appendix F.²

Attach an additional page if needed and check the box below:
Additional Page Attached ☐

10

8. I have carefully read this statement and attest that it is true and accurate to the best of my knowledge.

Signature ☐ Plaintiff ☐ Defendant

Subscribed and Sworn to
before me on

print or type name

Notary Public

¹ If a party believes that NCP's Annual Child Support Obligation is unjust or inappropriate, the party can ask the Court to order the NCP to pay an adjusted amount after considering the **10 child support adjustment factors**. The **10 child support adjustment factors** pursuant to DRL §240(1 -b) (f) are listed on Appendix F.

² If the Combined Parental Income exceeds \$143,000, the Court may award an additional amount of child support. In making such decision, the Court will consider the **10 child support adjustment factors** and/or the child support percentages as shown for information only on Appendix G Section 1 lines 9- 9c and on Part C- 1 line 8 of the Calculators.

SEE APPENDICES F AND G ATTACHED

APPENDIX F.

**10 Child Support Adjustment Factors Where Income Exceeds \$143,000 or
When Considering Adjustment of Award (see DRL 240(1-b)(f))**

APPENDIX G.

Calculation of Annual Basic Child Support Obligation

APPENDIX F

10 CHILD SUPPORT ADJUSTMENT FACTORS PURSUANT TO DRL §240(B-1)(F) FOR ADJUSTMENT OF AWARD OR WHERE COMBINED PARENTAL INCOME EXCEEDS \$143,000

1. The financial resources of the custodial and non-custodial parent, and those of the child;
2. The physical and emotional health of the child and his/her special needs and aptitudes;
3. The standard of living the child would have enjoyed had the marriage or household not been dissolved;
4. The tax consequences to the parties;
5. The non-monetary contributions that the parents will make toward the care and well-being of the child;
6. The educational needs of either parent;
7. A determination that the gross income of one parent is substantially less than the other parent's gross income;
8. The needs of the children of the non-custodial parent for whom the non-custodial parent is providing support who are not subject to the instant action and whose support has not been deducted from income pursuant to subclause (D) of clause (vii) of subparagraph five of paragraph (b) of this subdivision, and the financial resources of any person obligated to support such children, provided, however, that this factor may apply only if the resources available to support such Children are less than the resources available to support the children who are subject to the instant action;
9. Provided that the child is not on public assistance (i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof; and
10. Any other factors the court determines are relevant in each case, the court shall order the non-custodial parent to pay his or her pro rata share of the basic child support obligation, and may order the non-custodial parent to pay an amount pursuant to paragraph (e) of this subdivision.

APPENDIX G

CALCULATION OF ANNUAL BASIC CHILD SUPPORT OBLIGATION

I. ADJUST FOR MAINTENANCE AND COMPUTE BASIC CHILD SUPPORT BEFORE LOW INCOME ADJUSTMENT OR ADD-ONS

1. Enter the amount of the guideline award of maintenance on Income of Maintenance Payor up to \$178,000 from Line 3B of Maintenance Guidelines Worksheet Form UD-8(2); OR, if you have a written agreement as to maintenance with your spouse, enter the agreed amount instead (and provide the agreement to the court to prove the correct amount). **Note: if neither party seeks maintenance, enter zero instead**..... \$ _____

2. Net Annual Income of Party with lower income, adjusted for Maintenance (Line 1 above plus Line 1A or 1B of Annual Income Worksheet Form UD-8(1), whichever is lower)..... \$ _____

3. Net Annual Income of Party with higher income adjusted for Maintenance (Line 1A or 1B of Annual Income Worksheet Form UD-8(1), whichever is higher, minus line 1 above). \$ _____

4. Combined Parental Income adjusted for Maintenance
(Total 2 plus 3) \$ _____

5. Determine whether the Non-Custodial parent (NCP) is the party with the higher or lower income and enter the Income of the NCP from Line 2 or 3, whichever applies \$ _____

ALSO ENTER THIS AMOUNT IN Section II, Line 1

5a. Enter the NCP's Percentage Share of Combined Parental Income %

Note: Divide Line 5 by Line 4

Note: The percentage share is sometimes referred to as the "pro rata share."
You will use this same percentage for the NCP's share of Mandatory Add-on Expenses in Section III below.

5b. Enter the CP's Percentage Share of Combined Parental Income. %

Note: Divide Custodial Parent ("CP")'s Income (from Line 2 or Line 3, whichever applies), by Line 4

Note: The percentage share is sometimes referred to as the "pro rata share." You will use this same percentage for the CP's share of Mandatory Health Insurance Expenses in Section III below

6. Enter the percentage that applies based on the number of children %

% 1 child =17%; 2 children =25%; 3 children =29%; 4 children =31%;

5 children= 35% (minimum)

7. Multiply the percentage in Line 6 by Combined Parental Income from Line 4, but only up to \$143,000 of Combined Parental Income \$ _____

This is the Combined Child Support on Combined Income up to \$143,000

Example: If Combined Parental Income in Line 4 is \$150,000, and if there are 2 children, multiply \$143,000 by 25%.

8. Multiply amount in Line 7 by percentage in Line 5a \$ _____

This is the NCP's Annual Percentage Share of Child Support on Combined Parental Income up to and including \$143,000.

ALSO ENTER THIS AMOUNT IN SECTION II, Line 2

Lines 9-9c below are for information only and are not to be included in the totals in this worksheet.

9. Compute Child Support on Combined Parental Income Above \$143,000, if any.

If there is none, skip to Section II below.

9a. If there is Combined Parental Income above \$143,000, enter the amount of such Income you asking the Court to use for child support. \$ _____

9b. Multiply amount in Line 9a by percentage in Line 6

This is Combined Child Support on Income above \$143,000 you are asking the court to consider for Child Support \$ _____

9c. Multiply Line 9b by the percentage in Line 5a

This is the NCP's Annual Percentage Share of Income Above \$143,000 that you are asking the court to consider for Child Support. \$ _____

NCP'S ANNUAL BASIC PAYMENT will be the total of Line 8 plus any possible increase at the court's discretion after consideration of the 10 child support adjustment factors and
/or the child support percentage for child support on combined parental income in excess of \$143,000, if any. This is the amount the NCP must pay to the CP for all of the children's costs and expenses, before possible low income adjustment (See Section II), Add On Ex- penses (see Section III), and possible adjustment at the Court's discretion if the Court finds such amount to be unjust and inappropriate based on consideration of the 10 child support adjustment factors (See Appendix F).

II. DETERMINE WHETHER LOW INCOME EXEMPTION APPLIES

1. NCP's Annual Income (Line 5 of Section I) \$ _____
2. Basic Child Support Obligation (Line 8 of Section I) \$ _____
3. Subtract Line 2 from Line 1 \$ _____

This is the NCP's Annual Income after the Basic Child Support Obligation \$ _____

- ▶ *If Line 3 is less than the Self-Support Reserve (SSR) of \$16,038, there will be a low income adjustment.*
- ▶ *If Line 3 is less than the SSR of \$16,038 but greater than \$11,880 (poverty level), child support shall be the greater of \$600 or the difference between NCP Income and the SSR of \$16,038. Proceed to Line 4a to compute the difference. Enter the greater of \$600 or the difference in Line 4b. (Note: Add-on expenses may apply in the Court's discretion).*
- ▶ *If Line 3 is equal to or greater than the Self-Support Reserve (SSR) of \$16,038, there will be no low income adjustment. Skip the rest of this section and proceed to Section III below.*
- ▶ *If Line 3 is less than \$11,880 (the poverty level), the Basic Child Support shall be \$300 ¹;*
Enter \$300 in Line 4b below. Add on Expenses will not apply.

4a. NCP Income minus SSR: Subtract \$16,038 from amount in Line 1 \$ _____

4b. Enter the Basic Child Support Obligation with Low Income

Exemption if applicable \$ _____

In Line 4b, enter \$300 if Line 3 is less than \$11,880.

ALSO ENTER THIS AMOUNT ON LINE 5B at page 2 of the Worksheet.

Skip Section III.

OR

In Line 4b, enter the greater of \$600 and Line 4a, if Line 3 is greater than \$11,880 but less than \$16,038. Then proceed to Section III.

OR

In Line 4b, enter amount from Line 2 if Line 3 is equal to or greater than \$16,038. Then Proceed to Section III.

¹ = however, if the Court finds such amount to be unjust and inappropriate, based on the factors in DRL§ 240 (1-b)(f), the Court can order the NCP to pay less than \$300 per year.

III. ADD-ON EXPENSES (SKIP THIS SECTION IF THE BASIC CHILD SUPPORT OBLIGATION WITH LOW INCOME EXEMPTION IS \$300) IF LINE 3 of SECTION II IS LESS THAN THE SSR BUT GREATER THAN THE POVERTY LEVEL, THE COURT HAS DISCRETION WHETHER OR NOT TO AWARD THE MANDATORY ADD ON EXPENSES (see DRL 240(1-b)(d)).

A. Mandatory Child Care Expenses

1. Enter annual cost of child care (child care costs from custodial parent's working, or receiving elementary, secondary or higher education or vocational training leading to employment.) \$ _____
2. NCP's Percentage Share of Child Care Expenses (from Line 5a of Section I) _____ %
3. NCP's Dollar Share of Child Care Expenses (multiply Line 1 x line 2) . . . \$ _____

B. Mandatory Health Expenses (health insurance premiums and future unreimbursed health-related expenses)

- 4a. NCP's % share of health insurance premiums and future unreimbursed health-related expense _____ %
- 4b. CP's % share of health insurance premiums and future unreimbursed health-related expense _____ %
5. Annual cost of health insurance for the children \$ _____
6. Does the NCP provide the =ealth Insurance? **YES** **NO** _____
- 6a. If No, NCP's dollar share of =ealth Insurance (added to the Basic Child Support Obligation) (multiply Line 4a x line 5) . . \$ _____
- 6b. If yes, CP's dollar Share of =ealth Insurance (deducted from Basic Child Support Obligation)(multiply Line 4b x line 5). . \$ _____
7. =ealth Care Adjustment (Add amount from Line 6a or subtract amount from Line 6b, whichever applies) \$ _____
8. Total Mandatory Add-On Expenses (Total Lines 3 and 7) \$ _____
9. For Information Only, (not to add to the totals in this Worksheet), enter the total Discretionary Expenses for Child Care and Education if you are asking the Court to consider awarding . them ** \$ _____

**** Note:** In addition to Mandatory Add-On Expenses in A and B above, the Court may determine and apportion additional Discretionary Expenses for child care expenses, and additional Discretionary Expenses for education.

IV. BASIC ANNUAL CHILD SUPPORT OBLIGATION*

Add Line 4b of Section II and Line 8 of Section III, BUT

IF LINE 3 of SECTION II IS LESS THAN THE SSR BUT GREATER THAN THE POVERTY LEVEL (the "SSR Adjustment") KEEP IN MIND THAT THE TOTAL MAY BE LOWER AFTER THE COURT DECIDES WHETHER TO AWARD THE ADD-ON EXPENSES.

NCP's Basic Child Support Obligation Adjusted for low income
from Line 4b of Section II \$ _____

NCP's Total Share of Mandatory Child Care Expenses
from Line 3 of Section III \$ _____

NOTE: Leave this blank for the Court to fill in if there is an SSR Adjustment

NCP's Total Share of Mandatory Health Insurance Premiums for the Children
from Line 7 of Section III \$ _____

NOTE: Leave this blank for the Court to fill in if there is an SSR Adjustment

Total Line 1 Section IV \$ _____

**This is the NCP's Annual Basic Payment Adjusted for Low Income
If any, Including Add On Expenses and Health Insurance
Adjustment, if applicable**

ENTER THIS AMOUNT ON LINE 5B of the Worksheet

* **Note:** The Basic Annual Child Support Obligation will also include whatever the Court may order the NCP to pay in child support on combined parental income above \$143,000, if any, after considering the 10 child support adjustment factors and/or the child support percentage.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiff,

Index No. _____

-against-

SUPPORT COLLECTION UNIT
INFORMATION SHEET

Defendant.

The following information is required pursuant to Section 240(1) of the Domestic Relations Law:

PLAINTIFF: _____

Address: _____

Date of Birth _____ SS #: _____

DEFENDANT: _____

Address: _____

Date of Birth _____ SS #: _____

Date and Place of Marriage: _____

☐ *Plaintiff* OR ☐ *Defendant* is the custodial parent and ☐ *is* OR ☐ *is not* receiving public assistance.

UNEMANCIPATED CHILDREN: Name Date of Birth

SUPPORT: Maintenance \$ _____ ☐ *per week* OR ☐ *bi-weekly* OR ☐ *Semi-monthly* OR ☐ *per month*
Child Support \$ _____ ☐ *per week* OR ☐ *bi-weekly* OR ☐ *Semi-monthly* OR ☐ *per month*
Total Support \$ _____ ☐ *per week* OR ☐ *bi-weekly* OR ☐ *Semi-monthly* OR ☐ *per month*

Support payments are to be made to the Support Collection Unit for the benefit of ☐ *Plaintiff* OR ☐ *Defendant* OR ☐ *Third Party*.

If third party, list name and address: _____

Non-custodial parent's employer: _____

Address: _____

Dated: _____

1
2
3

At a term of the Supreme Court of the
State of New York, held in and for the
County of _____
at _____, New York
on _____

4 PRESENT: Hon. _____
Justice/Referee

5
6

Plaintiff,

Index No.: _____

-against-

**QUALIFIED MEDICAL
CHILD SUPPORT ORDER**

7

Defendant.

NOTICE: YOUR WILLFUL FAILURE TO OBEY THIS ORDER MAY, AFTER A COURT HEARING,
RESULT IN YOUR COMMITMENT TO JAIL FOR A TERM NOT TO EXCEED SIX MONTHS, FOR
CONTEMPT OF COURT.

8 Pursuant to DRL §240(1). This Qualified Medical Child Support Order (QMCSO) orders and directs
that the unemancipated dependents named herein:

Name: _____ Date of Birth: _____ Soc. Sec.#: _____ Mailing Address: _____

are entitled to be enrolled in and receive the benefits for which the legally responsible relative named
herein is eligible, under the group health plan named herein in accordance with Section 609 of the
Federal Employee Retirement Income Security Act.

9 The Participant (legally responsible relative) is:

Name: _____ Soc. Sec.#: _____ Mailing Address: _____

10 The Dependents' Custodial Parent or Legal Guardian who is to be provided with any identification
cards and benefit claim forms on behalf of dependents:

Name: _____ Soc. Sec.#: _____ Mailing Address: _____

11 The group health plan subject to this order is:
Name: Address:

Identification No.:

12 The administrator of said plan is:
Name: Address:

13 The type of coverage provided is:

14 ORDERED that coverage shall include all plans covering the health, medical, dental, pharmaceutical and optical needs of the aforementioned Dependents named above for which the Participant is eligible.

15 ORDERED that said coverage shall be effective as of (give date) _____
and shall continue as available until the respective emancipation of the aforementioned dependents.

ENTER:

16 DATED: _____

JSC/Referee

TO: [Health Insurer]

NOTICE: Pursuant to Section 5241(g)(4) of the Civil Practice Laws and Rules, if an employer, organization or group health plan fails to enroll eligible dependents or to deduct from the debtor's income the debtor's share of the premium, such employer, organization or group health plan administrator shall be jointly and severally liable for all medical expenses incurred on behalf of the debtor's dependents named in the execution while such dependents are not so enrolled to the extent of the insurance benefits that should have been provided under such execution.

The group health plan is not required to provide any type or form of benefit or option not otherwise provided under the group health plan except to the extent necessary to meet the requirements of a law relating to medical child support described in section one thousand three hundred and ninety six g-1 of title forty-two of the United States Code.

NOTE OF ISSUE - UNCONTESTED DIVORCE

For Use of Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiff,

Index No.:

Calendar No.:

- against -

Defendant.

-----X

NO TRIAL

FILED BY: ☐ Plaintiff OR ☐ Plaintiff's Attorney OR ☐ Defendant OR
☐ Defendant's Attorney

DATE SUMMONS FILED: _____

DATE SUMMONS SERVED: _____

DATE ISSUE JOINED: NOT JOINED - ☐ Waiver OR ☐ Default OR
☐ Stipulation/Separation Agreement

NATURE OF ACTION: UNCONTESTED DIVORCE

RELIEF: ABSOLUTE DIVORCE

☐ Plaintiff OR ☐ Attorney(s) for Plaintiff
Office and P.O. Address:

Phone No.:

Fax No.:

☐ Defendant OR ☐ Attorney(s) for Defendant
Office and P.O. Address:

Phone No.:

Fax No.:

At the Matrimonial/IAS Part _____
of New York State Supreme Court at
the Courthouse, _____
County, on _____.

Present:

Hon. _____ Justice/Referee

-----X

Index No.:

Calendar No.:

Plaintiff,

-against-

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

Defendant.

The issues of this action having ☐ *been submitted to* OR ☐ *been heard* before me as one of the *Justices/Referees* of this Court at Part _____ hereof, held in and for the County of _____ on _____, and having considered the allegations and proofs of the respective parties, and due deliberation having been had thereon.

NOW, after ☐ *reading and considering the papers submitted* ☐ *hearing the testimony*, I do hereby make the following findings of essential facts which I deem established by the evidence and reach the following conclusions of law.

FINDINGS OF FACT

FIRST: Plaintiff and Defendant were both eighteen (18) years of age or over when this action was commenced.

SECOND:

A) ☐ The ☐ *Plaintiff*
☐ *Defendant* has resided in New York State for a continuous period of at least two years immediately preceding the commencement of this divorce action.

OR

B) ☐ The ☐ *Plaintiff*
☐ *Defendant* resided in New York State on the date of commencement of this

divorce action and for a continuous period of one year immediately preceding the commencement of this divorce action **AND:**

a. ☐ the parties were married in New York State.

or

b. ☐ the parties have resided as married persons in New York State.

OR

C) ☐ The cause of action occurred in New York State and ☐ Plaintiff ☐ Defendant resided in New York

State for a continuous period of at least one year immediately preceding the commencement of this divorce action.

OR

D) ☐ The cause of action occurred in New York State and both parties were residents at the time of commencement of this divorce action.

11 **THIRD:** The Plaintiff and the Defendant were married on the date of _____ in the City, Town or Village of _____, County of _____, State or Country of _____; in a ☐ civil **OR** ☐ religious ceremony.

12 **FOURTH:** That no decree, judgment or order of divorce, annulment or dissolution of marriage has been granted to either party against the other in any Court of competent jurisdiction of this state or any other state, territory or country, and that there is no other action pending for divorce by either party against the other in any Court.

13 **FIFTH:** That this action was commenced by filing the ☐ *Summons With Notice* **OR** ☐ *Summons and Verified Complaint* with the County Clerk on _____. Defendant was served ☐ personally **OR** ☐ pursuant to Court order dated _____ with the above stated pleadings and the Notice of Automatic Orders. Defendant ☐ *defaulted in appearance* **OR** ☐ *appeared and waived his / her right to answer* **OR** ☐ *filed an answer / amended answer withdrawing any previous pleading, and neither admitting nor denying the allegations in plaintiff's complaint, and consenting to entry of judgment.*

14 **SIXTH:** ☐ That Defendant is not in the military service of the United States of America, the State of New York, or any other state. **OR** ☐ Defendant is a member of the military service of the _____ and ☐ has appeared by affidavit and does not oppose the action **OR** ☐ is in default.

15

SEVENTH: ☐ There are no children of the marriage OR ☐ There *is/are* _____

child(ren) of the marriage. Their name(s), social security number(s), address(es) and date(s) of birth are:

<u>Name & Social Security Number</u>	<u>Date of Birth</u>	<u>Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

16

EIGHTH: The grounds for divorce that are alleged in the Verified Complaint were proved as follows:

Cruel and Inhuman Treatment (DRL §170(1)):

- ☐ At the following times Defendant committed the following act(s) which endangered the Plaintiff's physical or mental well being and rendered it unsafe or improper for Plaintiff to continue to reside with Defendant.

(State the facts that demonstrate cruel and inhuman conduct giving dates, places and specific acts. Conduct may include physical, verbal, sexual or emotional behavior).

(Attach an additional sheet, if necessary).

Abandonment (DRL 170(2)):

- ☐ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant left the marital residence of the parties located at _____, and did not return. Such absence was without cause or justification, and was without Plaintiff's consent.
- ☐ That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant refused to have sexual relations with the Plaintiff despite Plaintiff's repeated requests to resume such relations. Defendant does not suffer from any disability which would prevent *her* / *him* from engaging in such sexual relations with Plaintiff. The refusal to engage in sexual relations was without good cause or justification and occurred at the marital residence located at _____.

☐

That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant willfully and without cause or justification abandoned the Plaintiff, who had been a faithful and dutiful spouse, by depriving Plaintiff of access to the marital residence located at _____. This deprivation was without the consent of the Plaintiff and continued for a period of greater than one year.

Confinement to Prison (DRL §170(3)):

☐ That after the marriage of Plaintiff and Defendant, Defendant was confined in prison for a period of three or more consecutive years, to wit: that Defendant is/was confined in

_____ prison on the
Name of correctional facility
_____ day of _____, _____, and remained confined until the
Month Year
_____ day of _____, _____; **OR** ☐ remains confined to this date.
Month Year

Adultery (DRL §170(4)):

☐ That on the _____ day of _____, _____, at _____
Month Year Location
the Defendant voluntarily committed of an act of sexual or deviate sexual intercourse with a person other than the Plaintiff after the marriage of Plaintiff and Defendant.

Living Separate and Apart Pursuant to a Separation Decree or Judgment of Separation (DRL §170(5)):

- ☐ (a) That the _____ Court, _____ County, _____ (Country or State) rendered a decree or judgment of separation on _____, under Index Number _____; and
- (b) that the parties have lived separate and apart for a period of one year or longer after the granting of such decree; and
- (c) that the Plaintiff has substantially complied with all the terms and conditions of such decree or judgment.

Living Separate and Apart Pursuant to a Separation Agreement (DRL §170(6)):

- ☐ (a) That the Plaintiff and Defendant entered into a written agreement of separation, which they subscribed and acknowledged on _____, in the form required to entitle a deed to be recorded; and
- (b) that the *agreement / memorandum of said agreement* was filed _____ in the Office of the Clerk of the County of _____, wherein *Plaintiff / Defendant* resided; and
- (c) that the parties have lived separate and apart for a period of one year or longer after the execution of said agreement; and
- (d) that the Plaintiff has substantially complied with all terms and conditions of such agreement.

Irretrievable Breakdown in Relationship for at Least Six Months (DRL §170(7)):

☐ That the relationship between Plaintiff and Defendant has broken down irretrievably for a period of at least six months as stated in ☐ the Plaintiff's Affidavit or ☐ a sworn statement of Defendant.

☐ **B) No maintenance was awarded because:**

i) ☐ *Neither party seeks maintenance* **OR**

ii) ☐ *the Guideline Award of Maintenance under the Maintenance Guidelines Law, if applicable, was zero; OR*

iii) ☐ *The Court has denied the request for maintenance*

(Skip the rest of Paragraph TENTH and Go on to Paragraph ELEVENTH)

OR

☐ **C) Court Determination Where the Action for Divorce was Commenced Before January 25, 2016**

The court has determined that ☐ *Plaintiff* will pay maintenance to ☐ *Plaintiff* in the
☐ *Defendant* ☐ *Defendant*
☐ *per week*
sum of \$ ☐ *bi-weekly* , for a period of _____;
☐ *per month*
☐ *semi-monthly*

commencing on _____, and expiring on _____. In making such award, the court has considered the factors contained in DRL § 236(B)(6)(a) as it existed before January 25, 2016, which are incorporated herein by reference. The court has set forth the reasons for its decision in a writing.

☐ **D) Court Determination Where the Action for Divorce was Commenced on or after January 25, 2016**

1. Fill in the the following information:

(i)- The adjusted gross income of the Plaintiff is \$ _____ and the adjusted gross income of the Defendant is _____ per year (copy your answers from Form UD-8(1) Annual Income Worksheet Lines 1A and 1B)

(ii) The date of your marriage _____; The date your divorce action was commenced _____;
The number of years you were married to the date your divorce action was commenced : _____

(iii) The range that maintenance would be payable according to the Advisory Schedule for Duration of Award in Appendix E _____ (copy your answers from Line 4a of Maintenance Guidelines Worksheet (form UD-8(2))).

2. Check which boxes below apply:

☐ *Child Support will not be paid for children of the marriage; OR* ☐ *Child Support will be paid for children of the marriage (Note: see page 7 of the Instructions for the definition of "children of the Marriage."*

☐ *Maintenance Payor is the custodial parent; OR* ☐ *Maintenance Payee is the custodial parent (copy your answers from Lines 2A and 2B of the Maintenance Guidelines Worksheet.*

3. Based on the foregoing, the court has determined that:

(i) ☐ Plaintiff ☐ Defendant

is the Maintenance Payor ("Maintenance Payor") under the "Maintenance Guidelines Law" pursuant to DRL § 236(B)(6) who will pay maintenance to ☐ Plaintiff ☐ Defendant (The "Maintenance Payee") in the sum of \$ _____ ☐ per week ☐ bi-weekly ☐ per month ☐ semi-monthly (the "Award") for a period of _____; commencing on _____, and expiring on _____.

(ii) The guideline amount of maintenance that would be payable under the Maintenance Guidelines on income of Maintenance Payor up to \$178,000 is \$ _____ per year (from Paragraph 3B of Maintenance Guidelines Worksheet). ☐ The Award includes an annual award of \$ _____ on income of Maintenance Payor up to \$178,000 per year. In computing said Award, the court ☐ applied the Maintenance Guidelines Law; OR ☐ adjusted the guideline award of maintenance due under the Maintenance Guidelines Law because it is unjust and inappropriate based on one or more of the factors in DRL 236B(6)(e)(1), as follows, including the effect of a barrier to remarriage on said factors where appropriate:

(iii) If Income of Maintenance Payor exceeds \$178,000 per year:

☐ The Award includes an award of maintenance on \$ _____ of Maintenance Payor's income in excess of \$178,000 per year based on one or more of the factors in DRL 236B(6)(e)(1), as follows, including the effect of a barrier to remarriage on said factors where appropriate:

OR

☐ The Award did not include any maintenance on income of Maintenance Payor in excess of \$178,000 per year based on one or more of the factors in DRL 236B(6)(e)(1), as follows, including the effect of a barrier to remarriage on said factors where appropriate: _____

(iv) ☐ Since the Maintenance Payor has defaulted, and/or the court was provided with insufficient evidence, the award of maintenance was based on the needs of the Maintenance Payee or the standard of living of the parties prior to the marriage, whichever is greater.

(v) The court determined that the Award should be paid until _____. In determining how long the Award should be paid, the court considered the factors in DRL § 236(B)(6)(e)(1), and based its decision on one or more of said factors as stated below, including the effect of a barrier to remarriage on said factors where appropriate,

In determining how long the Award should be paid, the court also ☐ *considered* ☐ *did not consider* the Advisory Schedule in DRL § 236(B)(6)(f)(1) pursuant to which the award would have been paid for _____ years.

In determining how long the Award should last, the court

☐ *considered anticipated retirement assets, benefits, and retirement eligibility age of both parties* OR

☐ *anticipated retirement assets, benefits, and retirement eligibility age of both parties was not ascertainable;*

19 ELEVENTH: The minor children of the marriage now reside with ☐ *Plaintiff* OR ☐ *Defendant* OR ☐ *third party*, namely _____. The ☐ *Plaintiff* OR ☐ *Defendant* is entitled to visitation away from the custodial residence. The ☐ *Plaintiff* OR ☐ *Defendant* OR ☐ *Third Party*, namely _____ is entitled to custody. OR ☐ No award of custody due to the minor child(ren) of the marriage not residing in New York State. OR ☐ Other custody arrangement (specify) _____

Allegations of domestic violence and/or child abuse ☐ were or ☐ were not made in this case; Where such allegations were made, the Court ☐ has found that they were supported by a preponderance of the evidence, and has set forth on the record or in writing how such findings, facts and circumstances were factored into the custody or visitation direction or ☐ has found that they were not supported by a preponderance of the evidence.

20 TWELFTH: Equitable Distribution and ancillary issues shall be ☐ *in accordance with the settlement agreement* OR ☐ *pursuant to the decision of the court* OR ☐ *Equitable*

Distribution is not an issue.

21 **THIRTEENTH:** ☐ There *is/are* no unemancipated child(ren) of the marriage. **OR**

☐ The award of child support is based upon the following:

(A) The unemancipated children of the marriage entitled to receive support are:

<u>Name</u>	<u>Date of Birth</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(B) (1) By order of _____ Court, _____ County, *Index/Docket No.* _____ dated _____ the *Plaintiff/Defendant* was directed to pay the sum of _____ per _____ for child support. Said Order shall continue.

OR

(2) The adjusted gross income of the Plaintiff who is the ☐ *custodial* **OR** ☐ *non-custodial* parent is _____ per year, and the adjusted gross income of the Defendant who is the ☐ *custodial* **OR** ☐ *non-custodial* parent is _____ per year, and the combined parental annual income is _____. The gross incomes of the parties has been adjusted to deduct maintenance paid to, and to add maintenance received by, a party spouse. The applicable child support percentage is 17/25/29/31/35 %. The combined basic child support obligation attributable to both parents is _____ per year on combined income up to \$143,000 as adjusted for low income if applicable and _____ per year on income over \$143,000. The Plaintiff's pro rata share of the combined parental income is _____% and the Defendant's pro rata share of the combined parental income is _____. The non-custodial parent's pro rata share of the child support obligation on combined income up to \$143,000 is _____ per year or _____ ☐ *per week* ☐ *bi-weekly* ☐ *semi-monthly* ☐ *per month*. The non-custodial parent's pro rata share of the child support obligation on combined income over \$143,000 is _____ per year or _____ ☐ *per week* ☐ *bi-weekly* ☐ *semi-monthly* ☐ *per month*. The non-custodial parent's pro rata share of future health care expenses not covered by insurance is ____%. The non-custodial parent's pro rata share of reasonable child care expenses is \$ _____ per year or _____ ☐ *per week* ☐ *bi-weekly* ☐ *semi-monthly* ☐ *per month* or ____%. The non-custodial parent's share

of educational or extraordinary expenses for the children if any is \$ _____ per year or ____%.

The cost of Health Insurance premiums for the children is \$ _____ per year or \$ _____ ☐ per week ☐ bi-weekly ☐ semi-monthly ☐ per month. The party who maintains the health insurance for the children is the ☐ non-custodial parent ☐ custodial parent.

CHECK a) or b) below:

a) ☐ The custodial parent's pro rata share of health insurance premiums for the children is \$ _____ per year or \$ _____ ☐ per week ☐ bi-weekly ☐ semi-monthly ☐ per month which will be deducted from the child support obligation if the non-custodial parent provides the health insurance for the children;

OR

b) ☐ The non-custodial parent's pro rata share of health insurance premiums for the children is \$ _____ per year or \$ _____ ☐ per week ☐ bi-weekly ☐ semi-monthly ☐ per month. which is to be added to the basic child support obligation if the custodial parent provides the health insurance for the children.

OR

- (3) The parties entered into a stipulation/agreement on _____ wherein the ☐ Plaintiff **OR** ☐ Defendant agrees to pay _____ ☐ per week **OR** ☐ bi-weekly **OR** ☐ per month child support ☐ directly **OR** ☐ through the Support Collection Unit to ☐ Plaintiff **OR** ☐ Defendant **OR** ☐ Third Party, namely _____. The parties agree to ☐ waive **OR** ☐ apply the Child Support Standards Act to combined income over \$143,000. The parties have agreed that health care expenses not covered by insurance shall be paid by ☐ Plaintiff **OR** ☐ Defendant in the amount of ____% of the uncovered expenses. The parties have agreed that reasonable child care expenses shall be paid by ☐ Plaintiff **OR** ☐ Defendant to ☐ Plaintiff **OR** ☐ Defendant in the amount of \$ _____ ☐ per week **OR** ☐ bi-weekly **OR** ☐ semi-monthly **OR** ☐ per month **OR** ☐ ____% of said child care expenses. The parties have agreed that educational and extraordinary expenses and shall be paid by ☐ Plaintiff **OR** ☐ Defendant to ☐ Plaintiff **OR** ☐ Defendant in the amount of \$ _____ ☐ per week **OR** ☐ bi-weekly **OR** ☐ semi-monthly **OR** ☐ per month **OR** ☐ ____% of said expenses. Said agreement reciting in compliance with DRL §2401-b(h): The parties have been advised of the Child Support Standards Act. The basic child support obligation presumptively results in the correct amount of child support. The unrepresented party, if any, has received a copy of the Child Support Standards Chart promulgated by Commissioner of Social Services pursuant to Social Services Law Section 111-I. The presumptive amount of child support attributable to the non-custodial parent is _____ ☐ per week **OR** ☐ bi-weekly **OR** ☐ semi-monthly **OR** ☐ per month. The amount of child support agreed to ☐ conforms with the non-custodial parent's basic child support obligation **OR** ☐ deviates from the non-custodial parent's basic child support obligation for the following reasons:

If the amount of child support agreed to be paid deviates from the non-custodial parent's basic child support obligation, the court finds said amount to be just and appropriate for the following reasons:

22 **FOURTEENTH:** The Plaintiff's address is _____,
and social security number is _____. The Defendant's address is _____
_____, and social security number is _____.

- 23 ☐ There are no unemancipated children of the marriage. OR
☐ There are no health plans available to the parties through their employment. OR
☐ The parties are covered by the following group health plans through their employment:

Plaintiff

Defendant

Group Health Plan: _____
Address: _____
Identification Number: _____
Plan Administrator: _____
Type of Coverage: _____

Group Health Plan: _____
Address: _____
Identification Number: _____
Plan Administrator: _____
Type of Coverage: _____

☐ *The parties have agreed or stipulated* OR ☐ *the court has determined* that the
☐ *Plaintiff* OR ☐ *Defendant* shall be the legally responsible relative and that the unemancipated
child(ren) shall be enrolled in his / her group health plan as specified above *until the age of 21 years*
OR *until the child(ren) is / are sooner emancipated.*

24 **FIFTEENTH:** The _____ Court entered the following order(s) under Index
No(s). / Docket No(s): _____

_____ ☐ Not Applicable

25 **SIXTEENTH:** ☐ *Plaintiff* OR ☐ *Defendant* may resume use of the prior surname:

_____.

26 **SEVENTEENTH:** Compliance with DRL § 255 (1) and (2) has been satisfied as follows:

A) ☐ The parties entered into a Stipulation of Settlement/Agreement dated _____

AND:

1. ☐ the stipulation of settlement complies with the requirements of DRL § 255 (2).

or

2. ☐ the parties entered into an addendum to the stipulation of settlement/agreement which complies with the requirements of DRL § 255 (2).

B) ☐ There is no stipulation of settlement/agreement

=====

1. ☐ each party has been provided notice as required by DRL § 255(1)

or

2. ☐ the plaintiff has been notified pursuant to DRL § 255(1). Notice to the defendant cannot be effectuated due to the defendant's whereabouts being unknown. Since the cost of publication would present an undue burden, notice to the defendant is hereby dispensed with.

EIGHTEENTH: Where applicable, registry checks were completed pursuant to DRL §240 1 (a-1).

27 **NINETEENTH:**

The Judgment of Divorce incorporates all ancillary issues, including the payment of counsel and experts' fees and expenses, which issues:

☐ were settled by written settlement/separation agreement

☐ were settled by oral settlement/ stipulation on the record

☐ were determined by the Court

☐ were determined by Family Court order (custody and visitation or child support and/or spousal support issues only)

☐ are not to be incorporated into the Judgment of Divorce, in that neither party to the divorce has contested any such issues based on the Affidavit of Plaintiff (which Defendant has not contested).

28 TWENTIETH: The Court or the Support Collection Unit (where a party is currently receiving child support services or an application has been made for such services) shall issue an income deduction order or an income execution simultaneously herewith unless either of the following boxes is checked;

☐ an agreement providing for an alternative arrangement has been reached between the parties or ☐ for the following reason(s) which the court finds to constitute good cause pursuant to DRL 240(2) (b):

[specify]: _____

CONCLUSIONS OF LAW

FIRST: Residency as required by DRL § 230 has been satisfied.

SECOND: The requirements of DRL § 255 have been satisfied.

THIRD: The requirements of DRL § 240 1 (a) including the Records Checking Requirements in DRL § 240 1 (a-1) have been satisfied.

FOURTH: The requirements of DRL § 240 (1-b) have been satisfied.

FIFTH: The requirements of DRL § 236(B)(2)(b) have been satisfied.

SIXTH: The requirements of DRL § 236(B)(6) have been satisfied.

SEVENTH: If DRL §170 subd. (7) is the ground alleged, then all economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the minor children of the marriage have been resolved by the parties or determined by the court and incorporated into the judgment of divorce.

29 EIGHTH: ☐ *Plaintiff* OR ☐ *Defendant* is entitled to a judgment of divorce on the ground of DRL §170 subd. _____ and granting the incidental relief awarded.

30 Dated: _____

J.S.C./Referee

At the Matrimonial/IAS Part _____ of New
York State Supreme Court at
the Courthouse, _____
County, on _____.

Present:

Hon. _____ *Justice/Referee* -----X

Plaintiff,
-against-

Index No.:
Calendar No.:
Social Security No.:

JUDGMENT OF DIVORCE

Defendant. -----X

EACH PARTY HAS A RIGHT TO SEEK A MODIFICATION OF THE CHILD SUPPORT ORDER UPON A SHOWING OF: (I) A SUBSTANTIAL CHANGE IN CIRCUMSTANCES; OR (II) THAT THREE YEARS HAVE PASSED SINCE THE ORDER WAS ENTERED, LAST MODIFIED OR ADJUSTED; OR (III) THERE HAS BEEN A CHANGE IN EITHER PARTY'S GROSS INCOME BY FIFTEEN PERCENT OR MORE SINCE THE ORDER WAS ENTERED, LAST MODIFIED, OR ADJUSTED; HOWEVER, IF THE PARTIES HAVE SPECIFICALLY OPTED OUT OF SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH IN A VALIDLY EXECUTED AGREEMENT OR STIPULATION, THEN THAT BASIS TO SEEK MODIFICATION DOES NOT APPLY.

THE FOLLOWING NOTICE IS ☐ APPLICABLE OR ☐ NOT APPLICABLE

NOTICE REQUIRED WHERE PAYMENTS THROUGH SUPPORT COLLECTION UNIT

NOTE:

- (1) THIS ORDER OF CHILD SUPPORT SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER THIS ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. UPON APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT, AN ADJUSTED ORDER SHALL BE SENT TO THE PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING TO SUBMIT A WRITTEN OBJECTION TO THE COURT INDICATED ON SUCH ADJUSTED ORDER. UPON RECEIPT OF SUCH WRITTEN OBJECTION, THE**

COURT SHALL SCHEDULE A HEARING AT WHICH THE PARTIES MAY BE PRESENT TO OFFER EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH THE CHILD SUPPORT STANDARDS ACT.

- (2) A RECIPIENT OF FAMILY ASSISTANCE SHALL HAVE THE CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.
- (3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION TWO HUNDRED FORTY-B OF THE DOMESTIC RELATIONS LAW, TO WHICH AN ADJUSTED ORDER CAN BE SENT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

- 9 This action was submitted to ☐ *the referee* OR ☐ *this court* for ☐ *consideration* this ____ day of _____ OR for ☐ *inquest* on this ____ day of _____.
- 10 The Defendant was served ☐ *personally* OR ☐ *pursuant to court order dated* _____
☐ *within* OR ☐ *outside* the State of New York.
- 11 Plaintiff presented a ☐ *Verified Complaint and Affidavit of Plaintiff constituting the facts of the matter*
OR ☐ *Summons With Notice and Affidavit of Plaintiff constituting the facts of the matter.*
- 12 The Defendant has ☐ *not appeared and is in default* OR ☐ *appeared and waived his or her right to answer* OR ☐ *filed an answer or amended answer withdrawing any prior pleadings and neither admitting nor denying the allegations in the complaint and consenting to the entry of judgment* OR ☐ *the parties settled the ancillary issues by* ☐ *written stipulation* OR ☐ *oral stipulation on the record dated* _____.
- 13 The Court accepted ☐ *written* OR ☐ *oral* proof of non-military status.

14 The Plaintiff's address is _____, and social security number is _____.
_____. The Defendant's address is _____, and
social security number is _____.

15 Now on motion of _____, the ☐ *attorney for Plaintiff* OR ☐ *Plaintiff*, it is:

16 **ORDERED AND ADJUDGED** that the Referee's Report, if any, is hereby confirmed; and it further

17 **ORDERED, ADJUDGED AND DECREED** that the application of plaintiff is hereby granted to
dissolve the marriage between _____, plaintiff, and _____, defendant,
by reason of:

- ☐ (a) the cruel and inhuman treatment of ☐ *Plaintiff by Defendant* OR ☐ *Defendant by Plaintiff* pursuant to D.R.L. §170(1); and/or
- ☐ (b) the abandonment of ☐ *Plaintiff* OR ☐ *Defendant* by ☐ *Plaintiff* OR ☐ *Defendant*, for a period of one or more years, pursuant to D.R.L. §170(2); and/or
- ☐ (c) the confinement of ☐ *Plaintiff* OR ☐ *Defendant* in prison for a period of three or more consecutive years after the marriage of Plaintiff and Defendant, pursuant to D.R.L. §170(3); and/or
- ☐ (d) the commission of an act of adultery by ☐ *Plaintiff* OR ☐ *Defendant*, pursuant to D.R.L. §170(4); and/or
- ☐ (e) the parties having lived separate and apart pursuant to a decree or judgment of separation dated _____ for a period of one or more years after the granting of such decree or judgment, pursuant to D.R.L. §170(5); and/or
- ☐ (f) the parties having lived separate and apart pursuant to a Separation Agreement dated _____ in compliance with the provisions of D.R.L. §170(6); and/or
- ☐ (g) the relationship between Plaintiff and Defendant has broken down irretrievably for a period of at least six months pursuant to D.R.L. §170(7); and

18 The requirements of D.R.L. §240 1(a-1) have been met and the Court having considered the results of said inquiries, it is

ORDERED AND ADJUDGED that ☐ *Plaintiff* **OR** ☐ *Defendant* **OR** ☐ *third party*,
namely: _____ shall have custody of the minor child(ren) of the marriage, i.e.:

19	<u>Name</u>	<u>Date of Birth</u>	<u>Social Security No.</u>
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

OR ☐ *There are no minor children of the marriage; and*

20 The requirements of D.R.L. §240 1 (a-1) have been met and the Court having considered the results of said inquires, it is

ORDERED AND ADJUDGED that ☐ *Plaintiff* **OR** ☐ *Defendant* shall have visitation with the minor child(ren) of the marriage ☐ *in accordance with the parties' settlement agreement* **OR** ☐ *according to the following schedule:* _____

OR ☐ *Visitation is not applicable; and it is further*

21 **ORDERED AND ADJUDGED** that the existing _____ County, _____ Court order(s) under ☐ *Index No.* _____ **OR** ☐ *Docket No.* _____ as to ☐ *custody* **OR** ☐ *visitation* shall continue; **OR** ☐ *There are no court orders with regard to custody or visitation to be continued; and it is further*

22 **ORDERED AND ADJUDGED** that ☐ *Plaintiff* **OR** ☐ *Defendant* shall pay to ☐ *Plaintiff* **OR** ☐ *Defendant* **OR** ☐ *third party*, namely: _____, as and for the support of the parties' unemancipated children of the marriage, the sum of \$ _____ per _____, pursuant to an existing order issued by the _____ County, _____ Court, under ☐ *Index* **OR** ☐ *Docket* Number _____, the terms of which are hereby continued. **OR** ☐ *There are no orders from other courts to be continued; and it is further*

ORDERED AND ADJUDGED that:

- A) ☐ Pursuant to the ☐ *agreement of the parties*
☐ *Court's decision*
- the ☐ *Plaintiff* shall pay to ☐ *Plaintiff*
☐ *Defendant* ☐ *Defendant*

the sum of \$ _____ as ☐ *per week*
☐ *bi-weekly* and for maintenance:
☐ *semi-monthly*
☐ *monthly*

☐ *payments to be made as set forth in the agreement;*

☐ *commencing on the _____ day of _____, _____, and continuing until the _____ day of _____, _____;*
month year month year

Payment shall be ☐ *a direct payment,*
☐ *by an Income Deduction Order issued simultaneously herewith;*

OR

- B) ☐ *that there is no award of maintenance per the court's decision;*
☐ *that there is no request for maintenance;*
☐ *that the guideline award of maintenance under the Maintenance Guidelines Law (L.2015 c. 269), if applicable, was zero.*
and it is further;

OR

- C) Pursuant to the court's decision for cases commenced before 1/25/16
the ☐ *Plaintiff* ☐ *Defendant* shall pay to ☐ *Plaintiff* ☐ *Defendant*

the sum of ☐ \$ _____ *per week;* ☐ \$ _____ *bi-weekly;* ☐ \$ _____ *semi-*
monthly ☐ \$ _____ *per month*

as and for maintenance

commencing on the _____ day of _____, _____, and continuing until the _____ day of _____, _____;
month year

Payment shall be ☐ *a direct payment,* ☐ *by an Income Deduction Order issued simultaneously herewith;*

OR

- D) Pursuant to the court's decision for cases commenced on or after 1/25/16

the ☐ *Plaintiff* ☐ *Defendant* shall pay to

☐ *Plaintiff* ☐ *Defendant*

the sum of ☐ \$ _____ *per week;* ☐ \$ _____ *bi-weekly;* ☐ \$ _____ *semi-*
monthly ☐ \$ _____ *per month*

as and for maintenance (the "Award") *commencing on the _____ day of _____, _____, and*
continuing until the _____ day of _____, _____;
month year

Payment shall be ☐ a direct payment,
☐ by an Income Deduction Order issued simultaneously herewith;

The guideline award of maintenance under the Maintenance Guidelines Law is \$ _____

For the reasons stated in the Findings of Fact and Conclusions of Law, which are incorporated here in by
reference: (Check the applicable boxes:)

☐ The Award includes an award on income of maintenance payor up to \$178,000 per year. In computing said award, the Court applied the Maintenance Guidelines Law (L.2015, c.269) ; **OR**
☐ the court adjusted the guideline award of maintenance due under the Maintenance Guidelines Law because it is unjust and inappropriate.

☐ The Award includes maintenance on income of maintenance payor in excess of \$178,000 per year **OR** ☐ The Award does not include maintenance on income of maintenance payor in excess of \$178,000 per year.

24 **ORDERED AND ADJUDGED** that ☐ Plaintiff **OR** ☐ Defendant shall pay
to ☐ Plaintiff **OR** ☐ Defendant **OR** ☐ third party, namely: _____, **OR** ☐
because a party is already receiving child support services or an application has been made for such
services, through the NYS Child Support Processing Center, PO Box 15363, Albany, NY 12212-5363;
as and for the support of the parties' unemancipated child(Ren) of the marriage, namely:

<u>Name</u>	<u>Date of Birth</u>
_____	_____
_____	_____
_____	_____
_____	_____

the sum of \$ _____ ☐ per week **OR** ☐ bi-weekly **OR** ☐ semi-monthly ☐ per month,
commencing on _____, and to be paid ☐ directly to ☐ Plaintiff **OR** ☐
Defendant **OR** ☐ third party, namely: _____, **OR** ☐ through the NYS
Child Support Processing Center, PO Box 15363, Albany, NY 12212-5363, together with such dollar
amounts or percentages for ☐ child care **OR** ☐ education **OR** ☐ health care as set forth below
in accordance with ☐ the Court's decision **OR** ☐ the parties' Settlement Agreement.
OR ☐ This section is not applicable because there are no unemancipated children of the marriage;

Such Settlement Agreement, if applicable, is in compliance with D.R.L. §240(1-b)(h) because:

The parties have been advised of the provisions of D.R.L. Sec. 240(1-b); the
unrepresented party, if any, has received a copy of the Child Support Standards
Chart promulgated by the Commissioner of Social Services pursuant to Social
Services Law Sec. 111-I;

the basic child support obligation, as defined in D.R.L. Sec. 240(1-b),
presumptively results in the correct amount of child support to be awarded, and
the agreed upon amount substantially conforms to the basic support obligation
attributable to the non-custodial parent;
the amount awarded is neither unjust nor inappropriate, and the Court has
approved such award through the Findings of Fact and Conclusions of Law;

OR

The basic support obligation, as defined in DRL Sec. 240 (1-b), presumptively
results in the correct amount of child support to be awarded, and the amount
attributable to the non-custodial parent is \$_____ per _____;
the amount of child support agreed to in this action deviates from the amount
attributable to the non-custodial parent, and the Court has
approved of such agreed-upon amount based upon the reasons set
forth in the Findings of Fact and Conclusions of Law, which are incorporated
herein by reference;

OR ☐ *This provision is not applicable;* and it is further

ORDERED AND ADJUDGED that,
if maintenance is to be paid pursuant to this Judgment of Divorce, then, subject to
the terms of DRL 240(1-b), upon termination of the maintenance award, the amount
of child support payable shall be adjusted, without prejudice to either party's right to
seek a modification pursuant to DRL 236 (B)(9)(2); and it is further

25

ORDERED AND ADJUDGED that ☐ *Plaintiff* **OR** ☐ *Defendant*
shall pay to ☐ *Plaintiff* **OR** ☐ *Defendant* **OR** ☐ *third party, namely: _____* and
for reasonable child care expenses pursuant to ☐ *written agreement of the parties* **OR** ☐
the court's decision, the amount of \$_____ per year or
_____ ☐ *per week* ☐ *bi-weekly* ☐ *semi-monthly* ☐ *per month*.

OR ☐ *Not applicable;* and it is further

26

ORDERED AND ADJUDGED

1- that ☐ *Plaintiff* **OR** ☐ *Defendant* shall pay to ☐ *Plaintiff* **OR** ☐

Defendant **OR** ☐ *third party, namely: _____*, **OR** ☐ *through the Support Collection
Unit (because a party is currently receiving child support services or an application has been made for
such services)* as and for non-custodial parent's pro rata share of future health care expenses not

covered by insurance, _____% of such expenses pursuant to ☐ written agreement of the parties
OR ☐ the court's decision
OR ☐ Not applicable;

2- Check which box or boxes apply:

- a) ☐ *if the custodial parent provides the health insurance for the children:*
☐ Plaintiff **OR** ☐ Defendant shall pay to ☐ Plaintiff **OR** Defendant **OR**
☐ third party, namely: _____, **OR** ☐ through the Support Collection Unit
(because a party is currently receiving child support services or an application has been
made for such services) as and for ☐ The non-custodial parent's pro rata share of
health insurance premiums for the children, \$ _____ per year or _____ ☐
per week ☐ bi-weekly ☐ semi-monthly ☐ per month **OR**
- b) ☐ *if the non-custodial parent provides the health insurance for the children:*
The custodial parent's pro rata share of health insurance premiums for the children,
\$ _____ per year or _____ ☐ per week ☐ bi-weekly ☐ semi-monthly ☐ per
month will be deducted from the child support obligation.

3- ☐ Plaintiff **OR** ☐ Defendant shall apply to the state sponsored health insurance
plan for coverage for the unemancipated children of the marriage. The costs shall be
allocated pursuant to ☐ written agreement of the parties **OR** ☐ the court's decision **OR**
☐ Not applicable; and it is further

27 **ORDERED AND ADJUDGED** that ☐ Plaintiff **OR** ☐ Defendant shall pay
to ☐ Plaintiff **OR** ☐ Defendant **OR** ☐ third party, namely: _____ **OR** ☐
through the Support Collection Unit (because a party is currently receiving child support services or an
application has been made for such services) ☐ For education or extraordinary expenses of the children
\$ _____ per year or _____ ☐ per week ☐ bi-weekly ☐ semi-monthly ☐ per month or
_____ % of such expenses pursuant to ☐ written agreement of the parties **OR** ☐ the court's
decision **OR** ☐ Not applicable; and it is further

28 **ORDERED AND ADJUDGED** that ☐ Plaintiff **OR** ☐ Defendant is hereby awarded
exclusive occupancy of the marital residence located at _____
_____, together with its contents until further order of the court, **OR** ☐ as follows: _____

_____; **OR** ☐ Not applicable; and it is further

29 **ORDERED AND ADJUDGED** that the Settlement Agreement entered into between the parties on the _____ day of _____, ☐ *an original* **OR** ☐ *a transcript* of which is on file with this Court and incorporated herein by reference, shall survive and shall not be merged into this judgment, and the parties are hereby directed to comply with all legally enforceable terms and conditions of said agreement as if such terms and conditions were set forth in their entirety herein, and this Court retains jurisdiction of this matter concurrently with the Family Court for the purposes of specifically enforcing such of the provisions of said Agreement as are capable of specific enforcement to the extent permitted by law with regard to maintenance, child support, custody and/or visitation, and of making such further judgment as it finds appropriate under the circumstances existing at the time application for that purpose is made to it, or both; and it is further

30 **ORDERED AND ADJUDGED** that a separate Qualified Medical Child Support Order shall be issued simultaneously herewith **OR** ☐ Not applicable; and it is further

31 **ORDERED AND ADJUDGED** that, pursuant to the ☐ *parties' Settlement Agreement* **OR** ☐ *the court's decision*, a separate Qualified Domestic Relations Order shall be issued simultaneously herewith or as soon as practicable **OR** ☐ *Not applicable*; and it is further

32 **ORDERED AND ADJUDGED** that, ☐ *pursuant to the Court's decision* **OR** ☐ *pursuant to the parties' agreement*, the Court Court or the Support Collection Unit (where a party is currently receiving child support services or an application has been made for such services) shall issue an income deduction order simultaneously herewith **OR** ☐ Not applicable because the Court has made a finding in the Findings of Fact and Conclusions of Law that alternative arrangements have been made between the parties, or that good cause exists not to require such an order; and it is further

33 **ORDERED AND ADJUDGED** that both parties are authorized to resume the use of any prior surname, and it is further

34 **ORDERED AND ADJUDGED** that ☐ *Plaintiff* **OR** ☐ *Defendant* is authorized to resume use of the prior surname _____; and it is further

35 **ORDERED AND ADJUDGED** that ☐ *Plaintiff* **OR** ☐ *Defendant* is hereby awarded counsel and/or expert's fees as follows:

_____**OR** ☐ *Not applicable*; and it is further

36 **ORDERED AND ADJUDGED** that ☐ *Plaintiff* **OR** ☐ *Defendant* shall be served with a copy of this judgment, with notice of entry, by the ☐ *Plaintiff* **OR** ☐ *Defendant*, within _____ days of such entry.

37 Dated:

ENTER:

J.S.C./Referee

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

-----X

Plaintiff,

Index No. _____

-against-

**PART 130
CERTIFICATION**

Defendant.

-----X

CERTIFICATION: I hereby certify that all of the papers that I have served, filed or submitted to the court in this divorce action are not frivolous as defined in subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator of the Courts.

Dated: _____

SIGNATURE

Print or type name below signature

UNCONTESTED MATRIMONIAL REQUEST FOR JUDICIAL INTERVENTION

UD-13
(rev. 5/2011)

For Court Clerk Use Only:

IAS Entry Date

Judge Assigned

RJI Date

____ COURT, _____ COUNTY

Index No: _____ Date Index Issued: ____/____/____

CAPTION: Enter the complete case caption. Do not use et al or et ano.

Plaintiff

-against-

Defendant

STATUS OF ACTION OR PROCEEDING:

Answer YES or NO, and provide additional information where indicated.

Has a summons been filed?	YES	NO	If yes, date filed: ____/____/____
Has a summons been served?	<input type="checkbox"/>	<input type="checkbox"/>	If yes, date served: ____/____/____
Are there children of the marriage under the age of 18?	<input type="checkbox"/>	<input type="checkbox"/>	If yes, complete and attach the MATRIMONIAL RJI Addendum (UCS-840M).

NATURE OF JUDICIAL INTERVENTION:

EX PARTE APPLICATION FOR THE DISSOLUTION OF MARRIAGE

ADDITIONAL RELIEF: Check all that apply

- ☐ Poor Person Application
- ☐ Application for Alternate Service
- ☐ Other (specify): _____

PARTIES:

For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

Un-Rep	Parties	Attorneys	Issue Joined (Y/N):
	List party names.	Provide attorney name, firm name, business address, phone number and e-mail address.	
<input type="checkbox"/>	Name: Role: PLAINTIFF		N/A
<input type="checkbox"/>	Name: Role: DEFENDANT		<input type="checkbox"/> YES <input type="checkbox"/> NO

RELATED CASES:

List any related cases, include any related criminal and/or Family Court cases.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: ____/____/____

SIGNATURE

ATTORNEY REGISTRATION NUMBER

PRINT OR TYPE NAME

MATRIMONIAL Request for Judicial Intervention Addendum

Supreme

COURT, COUNTY OF

INDEX NO.

For use when there are children under the age of 18 who are subject to the matrimonial action.

PlaintiffLast Name: First Name: Date of Birth: Gender: ☐ Male ☐ Female

Prior Names (List any other names used, including maiden and/or former married names):

Last Name: First Name:

Last Name: First Name:

Last Name: First Name:

Present Address: (Street Address) (City) (State) (Zip)

Address History
for past 3 years: (Street Address) (City) (State) (Zip)

(Street Address) (City) (State) (Zip)

(Street Address) (City) (State) (Zip)

DefendantLast Name: First Name: Date of Birth: Gender: ☐ Male ☐ Female

Prior Names (List any other names used, including maiden and/or former married names):

Last Name: First Name:

Last Name: First Name:

Last Name: First Name:

Present Address: (Street Address) (City) (State) (Zip)

Address History
for past 3 years: (Street Address) (City) (State) (Zip)

(Street Address) (City) (State) (Zip)

(Street Address) (City) (State) (Zip)

ChildrenLast Name: First Name: Date of Birth: Gender: ☐ M ☐ FLast Name: First Name: Date of Birth: Gender: ☐ M ☐ FLast Name: First Name: Date of Birth: Gender: ☐ M ☐ FLast Name: First Name: Date of Birth: Gender: ☐ M ☐ FLast Name: First Name: Date of Birth: Gender: ☐ M ☐ F

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

2,3 Index No.: _____

Plaintiff.

-against-

NOTICE OF ENTRY

4 Defendant.

-----X

5 PLEASE TAKE NOTICE that the attached is a true copy of a judgment of divorce in
6 this matter that was entered in the Office of the County Clerk of _____ County, on the
7 _____ day of _____.

8 Dated: _____

9 ☐ Plaintiff OR ☐ Attorney(s) for Plaintiff

Address

10 TO:

☐ Defendant OR ☐ Attorney for Defendant

Address

**STATE OF NEW YORK SUPREME COURT
COUNTY OF _____**

**Index No.
RJI No.:**

Plaintiff,

**AFFIDAVIT OF SERVICE
BY MAIL OF
JUDGMENT OF DIVORCE
WITH NOTICE OF ENTRY**

- against -

Defendant.

STATE OF NEW YORK)

COUNTY OF _____)

SS.:

_____, residing at _____, being sworn,
says, I am not a party to the action, and am over 18 years of age.

On _____, I served a copy of the Judgment of Divorce with Notice of Entry upon
the Defendant by mailing a true copy of such papers enclosed and properly sealed in an envelope
which I deposited in an official United States Post Office depository under the exclusive care and
custody of the United States Postal Service addressed to:

_____.

Dated: _____

Server's

Signature: _____

Print Name: _____

SWORN to before me on this

____ day of _____, 20____.

NOTARY PUBLIC

(UD-15 Eff. 1/25/16)

LOCAL INDEX NUMBER

STATE FILE NUMBER

**New York State
Department of Health
CERTIFICATE OF DISSOLUTION OF MARRIAGE**

TYPE, OR
PRINT IN
PERMANENT
BLACK INK

4

9

11

15

23

Wife/Spouse	1A. NAME: FIRST MIDDLE LAST			1B. BIRTH NAME, IF DIFFERENT		1C. SOCIAL SECURITY NUMBER		
	2A. DATE OF BIRTH Month Day Year		2B. STATE OF BIRTH (COUNTRY IF NOT USA)		3. SEX (Optional)		4A. RESIDENCE: STATE	
							4B. COUNTY	
							4C. LOCALITY (CHECK ONE AND SPECIFY) <input type="checkbox"/> CITY OF <input type="checkbox"/> TOWN OF <input type="checkbox"/> VILLAGE OF	
	4D. STREET AND NUMBER OF RESIDENCE (INCLUDE ZIP CODE)						4E. IF CITY OR VILLAGE, IS RESIDENCE WITHIN CITY OR VILLAGE LIMITS? YES <input type="checkbox"/> NO <input type="checkbox"/> IF NO, SPECIFY TOWN:	
	5A. ATTORNEY - NAME					5B. ADDRESS (INCLUDE ZIP CODE)		
Wife/Husband/Spouse	6A. NAME: FIRST MIDDLE LAST			6B. BIRTH NAME, IF DIFFERENT		6C. SOCIAL SECURITY NUMBER		
	7A. DATE OF BIRTH Month Day Year		7B. STATE OF BIRTH (COUNTRY IF NOT USA)		8. SEX (Optional)		9A. RESIDENCE: STATE	
							9B. COUNTY	
							9C. LOCALITY (CHECK ONE AND SPECIFY) <input type="checkbox"/> CITY OF <input type="checkbox"/> TOWN OF <input type="checkbox"/> VILLAGE OF	
	9D. STREET AND NUMBER OF RESIDENCE (INCLUDE ZIP CODE)						9E. IF CITY OR VILLAGE, IS RESIDENCE WITHIN CITY OR VILLAGE LIMITS? YES <input type="checkbox"/> NO <input type="checkbox"/> IF NO, SPECIFY TOWN:	
	10A. ATTORNEY - NAME					10B. ADDRESS (INCLUDE ZIP CODE)		
	11A. PLACE OF THIS MARRIAGE - CITY, TOWN OR VILLAGE			11B. COUNTY		11C. STATE (COUNTRY IF NOT USA)		
	12A. DATE OF THIS MARRIAGE Month Day Year		12B. APPROXIMATE DATE COUPLE SEPARATED Month Year		13A. NUMBER OF CHILDREN EVER BORN ALIVE OF THIS MARRIAGE (SPECIFY)		13B. NUMBER OF CHILDREN UNDER 18 IN THIS FAMILY (SPECIFY)	
DECREE	14A. I CERTIFY THAT A DECREE OF DISSOLUTION OF THE ABOVE MARRIAGE WAS RENDERED ON Month Day Year			14B. DATE OF ENTRY: Month Day Year		14C. TYPE OF DECREE - DIVORCE, ANNULMENT, OTHER DISSOLUTION (SPECIFY)		
	14D. COUNTY OF DECREE			14E. TITLE OF COURT				
	14F. SIGNATURE OF COUNTY CLERK							

CONFIDENTIAL INFORMATION

24

25

QR

QS

Wife/Spouse	15. RACE: WHITE, BLACK, AMERICAN INDIAN, OTHER (SPECIFY)		16. NUMBER OF THIS MARRIAGE - FIRST, SECOND, ETC. (SPECIFY)		17. IF PREVIOUSLY MARRIED HOW MANY ENDED BY A. DEATH NUMBER _____ NONE <input type="checkbox"/>		B. DIVORCE OR ANNULMENT NUMBER _____ NONE <input type="checkbox"/>		18. EDUCATION: INDICATE HIGHEST GRADE COMPLETED ONLY <table style="width: 100%; text-align: center;"> <tr> <th colspan="8">ELEMENTARY</th> <th colspan="4">HIGH SCHOOL</th> <th colspan="4">COLLEGE</th> </tr> <tr> <td>0</td><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td> <td>8</td><td>9</td><td>10</td><td>11</td><td>12</td> <td>1</td><td>2</td><td>3</td><td>4</td> <td>5+</td> </tr> <tr> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>00</td><td>01</td><td>02</td><td>03</td><td>04</td><td>05</td><td>06</td><td>07</td> <td>08</td><td>09</td><td>10</td><td>11</td><td>12</td> <td>13</td><td>14</td><td>15</td><td>16</td> <td>17</td> </tr> </table>																ELEMENTARY								HIGH SCHOOL				COLLEGE				0	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5+	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17
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Wife/Husband/Spouse	19. RACE: WHITE, BLACK, AMERICAN INDIAN, OTHER (SPECIFY)		20. NUMBER OF THIS MARRIAGE - FIRST, SECOND, ETC. (SPECIFY)		21. IF PREVIOUSLY MARRIED HOW MANY ENDED BY A. DEATH NUMBER _____ NONE <input type="checkbox"/>		B. DIVORCE OR ANNULMENT NUMBER _____ NONE <input type="checkbox"/>		22. EDUCATION: INDICATE HIGHEST GRADE COMPLETED ONLY <table style="width: 100%; text-align: center;"> <tr> <th colspan="8">ELEMENTARY</th> <th colspan="4">HIGH SCHOOL</th> <th colspan="4">COLLEGE</th> </tr> <tr> <td>0</td><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td> <td>8</td><td>9</td><td>10</td><td>11</td><td>12</td> <td>1</td><td>2</td><td>3</td><td>4</td> <td>5+</td> </tr> <tr> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> <td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td>00</td><td>01</td><td>02</td><td>03</td><td>04</td><td>05</td><td>06</td><td>07</td> <td>08</td><td>09</td><td>10</td><td>11</td><td>12</td> <td>13</td><td>14</td><td>15</td><td>16</td> <td>17</td> </tr> </table>																ELEMENTARY								HIGH SCHOOL				COLLEGE				0	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5+	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17
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23. PLAINTIFF:					24. DECREE GRANTED TO:					25. LEGAL GROUNDS FOR DECREE (SPECIFY)																																																																																				
26. SIGNATURE OF PERSON PREPARING CERTIFICATE																		ATTORNEY AT LAW																																																																												

NOTE: Social Security Numbers of the parties to the marriage are mandatory. They are required by New York State Public Health Law Section 4139 and 42 U.S.C. 666(a). They may be used for child support enforcement purposes.

SUPREME COURT : COUNTY OF _____

_____ **VS.** _____ **Index No.** _____

- ☐ Submitted divorce papers insufficient. Please go to the Court Clerk's Office to review papers for corrections and bring new self-addressed stamped post card.
- ☐ Judgment of Divorce signed _____. You may go to the County Clerk's Office to obtain a certified copy of the judgment.
- ☐ Judgment of Divorce signed. Please call _____ for instructions on how to retrieve your papers for filing with the County Clerk's Office.

Post Card - Matrimonial Action.

Instructions: Complete, affix postage and give to Matrimonial Clerk with divorce papers.
Be sure to indicate your name and address on the reverse side of the post card.

**CHILD SUPPORT SUMMARY FORM
SUPREME COURT**

COMPLETE FORM FOR EACH BASIC CHILD SUPPORT OBLIGATION ORDER¹

A. Court: ☐ Supreme

B. County: _____

C. Index #: _____

D. Date Action Commenced:

____ / ____ / ____

E. Date Judgment/Order Submitted or Signed:

____ / ____ / ____

F. # Of Children Subject to Child Support Order:

G. Annual Gross Income Adjusted for Maintenance:

1. Plaintiff: \$ _____ Defendant: \$ _____

H. Amount of Child Support Payment:

1. By Plaintiff: \$ _____ annually 2. By Defendant: \$ _____ annually

I. Additional Child Support:
(Circle as many as appropriate)

By Plaintiff: By Defendant:

- | | |
|----------------------|----------------------|
| 1. Medical/Med. Ins. | 1. Medical/Med. Ins. |
| 2. Child Care | 2. Child Care |
| 3. Education | 3. Education |
| 4. Other | 4. Other |

J. Did the court make a finding that the child support award varied from the Child Support Standards Act amount? (Circle one)

1. Yes 2. No

K. If answer to "J" was yes, circle court's reason(s):

1. Financial resources of parents/child.
2. Physical/emotional health of child: special needs or aptitudes.
3. Child's expected standard of living had household remained intact.
4. Tax consequences.
5. Non-monetary contribution toward care and well-being of child.
6. Educational needs of either parent.
7. Substantial differences in gross income of parents.
8. Needs of other children of non-custodial parent.
9. Extraordinary visitation expenses of non-custodial parent.
10. Other (specify):

L. Maintenance/Spousal Support: (Circle one)

1. None 2. By Plaintiff 3. By Defendant

M. Value of Maintenance/Spousal Support:

\$ _____ annually

SUPREME COURT ONLY

N. Allocation of Property:

_____ % To Plaintiff _____ % To Defendant

¹ Defined by FCA 413(2) and DRL §240(1-b)(b)(2): "Child Support" shall mean a sum to be paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.

**NEW YORK STATE UNIFIED COURT SYSTEM
SUPPORT SUMMARY FORM: FAMILY & SUPREME COURT**

INSTRUCTION SHEET

Prepare one report for each proposed judgment or final order granted pursuant to Article 4 or 5 of the Family Court Act and DRL §240 and §236 B(9)(b) which includes a provision for child support (including modification of order).

SUBMIT COMPLETED FORM TO:

**Office of Court Administration
Office of Court Research
25 Beaver Street, Room 975
New York, New York 10004**

GENERAL INSTRUCTIONS: → ALL ITEMS MUST BE ANSWERED

- If a number or amount in dollars is required and the answer is none, write 0.
- If a certain item is not applicable, write NA.
- If the information is unknown or not known to the party filling out the form, write UK.
- "mm/dd/yy" means "month/day/year".

SPECIAL INSTRUCTIONS FOR PARTICULAR ITEMS:

- G. Use gross income figures from the last complete calendar year. Include maintenance received from a party spouse as income and deduct maintenance paid to a party spouse from income, but do not include child support.
- H. If the child support award is calculated weekly, multiply it by 52 for the annual amount; if biweekly, multiply it by 26, if semi-monthly, multiply it by 24, if monthly, multiply it by 12.
- M. If the maintenance award is calculated weekly, multiply it by 52 for the annual amount; if biweekly, multiply it by 26; if semi-monthly, multiply it by 24, if monthly, multiply it by 12. If the maintenance award calls for decreasing or increasing amounts (for example, a certain amount for five years and half that amount for another three years), then provide the average of the awards (total amount for all years divided by the number of years).

NOTE: THIS INFORMATION IS CONFIDENTIAL AND WILL BE USED FOR STATISTICAL PURPOSES ONLY.
IT WILL NOT BE RETAINED IN THE CASE FILE.

**ADDENDUM TO STIPULATION OF SETTLEMENT/AGREEMENT
RE: COMPLIANCE WITH DOMESTIC RELATIONS LAW 255(2)**

_____ Vs _____ Index #: _____

Each party is aware that he or she will no longer be covered by the other party's health insurance plan and that each party shall be responsible for his or her own health insurance coverage, and may be entitled to purchase health insurance on his or her own through a COBRA option, if available.

Dated: _____, 20____

Plaintiff's Signature

Print Name

SS: STATE OF _____, COUNTY OF _____

On this _____ day of _____ 20____, before me; the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Dated: _____, 20____

Defendant's Signature

Print Name

SS: STATE OF _____, COUNTY OF _____

On this _____ day of _____ 20____, before me; the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Important Notice

If you are issuing a Non-IV-D Income Withholding Order for child support or combined child and spousal support, you must serve the completed **LDSS-5037** as follows:

- **Part A:** serve only upon the NYS Child Support Processing Center (SDU), PO Box 15363, Albany, NY 12212-5363.
- **Part B:** serve upon all of the following:
 1. employer/income withholder;
 2. employee/obligor;
 3. custodial party/obligee; and
 4. NYS Child Support Processing Center (SDU)
PO Box 15363, Albany, NY 12212-5363.

Court Information

<input type="checkbox"/> Family Court: _____ County	Order ID (Index/Docket Number)
<input type="checkbox"/> Supreme Court: _____ County	

Employee/Obligor Information

Name (Last, First, Middle)	
Mailing Address	
Social Security Number - -	Date of Birth (MM/DD/YYYY) / /

Custodial Party/Obligee Information

Name (Last, First, Middle)	
Mailing Address	
Social Security Number - -	Date of Birth (MM/DD/YYYY) / /

INCOME WITHHOLDING FOR SUPPORT

- ☐ ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
☐ AMENDED IWO
☐ ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT
☐ TERMINATION OF IWO

Date: _____

☐ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☐ Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions www.acf.hhs.gov/programs/css/resource/income-withholding-for-support-instructions). If you receive this document from someone other than a state or tribal CSE agency or a court, a copy of the underlying order must be attached.

State/Tribe/Territory _____ Remittance ID (include w/payment) _____
 City/County/Dist./Tribe _____ Order ID _____
 Private Individual/Entity _____ New York Case ID _____

RE: _____

Employer/Income Withholder's Name _____

Employee/Obligor's Name (Last, First, Middle) _____

Employer/Income Withholder's Address _____

Employee/Obligor's Social Security Number _____

Custodial Party/Obligee's Name (Last, First, Middle) _____

Employer/Income Withholder's FEIN _____

Child(ren)'s Name(s) (Last, First, Middle) _____

Child(ren)'s Birth Date(s) _____

ORDER INFORMATION: This document is based on the support or withholding order from New York State. You are required by law to deduct these amounts from the employee/obligor's income until further notice.

\$ _____ Per _____ current child support
 \$ _____ Per _____ past-due child support - **Arrears greater than 12 weeks?** ☐ Yes ☐ No
 \$ _____ Per _____ current cash medical support
 \$ _____ Per _____ past-due cash medical support
 \$ _____ Per _____ current spousal support
 \$ _____ Per _____ past-due spousal support
 \$ _____ Per _____ other (must specify) _____
 for a **Total Amount to Withhold** of \$ _____ per _____.

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ _____ per weekly pay period \$ _____ per semimonthly pay period (twice a month)
 \$ _____ per biweekly pay period (every two weeks) \$ _____ per monthly pay period
 \$ _____ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

Employer's Name: _____ Employer FEIN: _____
Employee/Obligor's Name: _____ SSN: _____
New York Case Identifier: _____ Order Identifier: _____

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is New York State, you must begin withholding no later than the first pay period that occurs 14 days after the date of service of this notice. Send payment within 7 working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, see *Withholding Limits* on page 3. If the obligor is a non-employee, obtain withholding limits from *Supplemental Information* on page 3. If the employee/obligor's principal place of employment is not New York State, obtain withholding limitations, time requirements, and any allowable employer fees at www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information for the employee/obligor's principal place of employment.

For electronic payment requirements and centralized payment collection and disbursement facility information (State Disbursement Unit (SDU)), contact the SDU at 888-208-4485 or see www.acf.hhs.gov/programs/css/employers/electronic-payments.

Include the **Remittance ID** (until a New York Case Identifier is received), **pay date**, and write "**Non-IV-D Services**" on the payment.

Remit payment to **NYS Child Support Processing Center (SDU)**
at PO Box 15363, Albany, NY 12212-5363

☐ **Return to Sender [Completed by Employer/Income Withholder].** Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see *Payments to SDU* below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

Signature of Judge/Issuing Official (if required by State or Tribal Law): _____

Print Name of Judge/Issuing Official: _____

Title of Judge/Issuing Official: _____

Date of Signature: _____

If the employee/obligor works in a state or for a tribe that is different from the state or tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.

☐ If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at: www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information.

Priority: Withholding for support has priority over any other legal process under State law against the same income (42 USC §666(b)(7)). If a federal tax levy is in effect, please notify the sender.

Combining Payments: When remitting payments to an SDU or tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

Payments To SDU: You must send child support payments payable by income withholding to the appropriate SDU or to a tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a court, attorney, or private individual/entity and the initial order was entered before January 1, 1994 or the order was issued by a tribal CSE agency, you must follow the "Remit payment to" instructions on this form.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the state (or tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

Multiple IWOs: If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to federal, state, or tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the state or tribal law/procedure of the employee/obligor's principal place of employment to determine the appropriate allocation method.

Employer's Name: _____ Employer FEIN: _____
Employee/Obligor's Name: _____ SSN: _____
New York Case Identifier: _____ Order Identifier: _____

Lump Sum Payments: You may be required to notify a state or tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

Liability: If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by state or tribal law/procedure, together with interest and reasonable attorney's fees. If you comply with this IWO you will not be subject to civil liability to any individual or agency for conduct in compliance with this IWO. In New York State, pursuant to Civil Practice Law and Rules (CPLR) §5241, upon a finding by the Family Court that you failed to withhold or remit withholdings as directed in this IWO, the Court shall issue an order directing your compliance and may direct the payment of a civil penalty not to exceed \$500 for the first instance and \$1,000 per instance for the second and subsequent instances of noncompliance.

Anti-discrimination: You are subject to a fine determined under state or tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO. In New York State, pursuant to CPLR §5252, the court may direct a civil penalty not to exceed \$500 for the first instance and \$1,000 per instance for the second and subsequent instances of such discrimination.

Withholding Limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 USC §1673(b)); or 2) the amounts allowed by the state of the employee/obligor's principal place of employment or tribal law if a tribal order (see *Remittance Information*). Disposable income is the net income after mandatory deductions such as: state, federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% - - to 55% and 65% - - if the arrears are greater than 12 weeks. If permitted by the state or tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For tribal orders, you may not withhold more than the amounts allowed under the law of the issuing tribe. For tribal employers/income withholders who receive a state IWO, you may not withhold more than the limit set by tribal law.

Depending upon applicable state or tribal law, you may need to consider amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

Arrears greater than 12 weeks? If the *Order Information* does not indicate that the arrears are greater than 12 weeks, then the employer should calculate the CCPA limit using the lower percentage.

Supplemental Information: (1) **PART A** of this form contains sensitive information and must be served only upon the NYS Child Support Processing Center (SDU); **PART B**, which consists of 4 pages, must be served upon the SDU, employer/income withholder, employee/obligor, and custodial party/obligee. (2) Priority of withholding pursuant to CPLR §5241(h) is current support, followed by health insurance premiums, and then arrears payments. (3) If there are multiple IWOs against this employee/obligor, withhold the maximum amount permitted under the CCPA (see *Withholding Limits*, above) and pay to each creditor the proportion thereof which such creditor's claim bears to the combined total. (4) Where the income is compensation that is not paid or payable to the obligor for personal services, there is no limit to the amount you must withhold. (5) If the employee/obligor is reinstated or reemployed within 90 days after termination, this IWO is still in effect.

Employer's Name: _____ Employer FEIN: _____
Employee/Obligor's Name: _____ SSN: _____
New York Case Identifier: _____ Order Identifier: _____

NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS: If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, you must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the *Contact Information* below:

☐ This person has never worked for this employer nor received periodic income.

☐ This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: _____ Last known phone number: _____

Last known address: _____

Final payment date to SDU/tribal payee: _____ Final payment amount: _____

New employer's name: _____

New employer's address: _____

CONTACT INFORMATION:

To Employer/Income Withholder: If you have questions, contact _____ (issuer name)

by phone: _____, by fax: _____, by e-mail or website: _____

Send termination/income status notice and other correspondence to: _____

_____ (issuer address).

To Employee/Obligor: If the employee/obligor has questions, contact _____ (issuer name)

by phone: _____, by fax: _____, by e-mail or website: _____

The Paperwork Reduction Act of 1995

This information collection and associated responses are conducted in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. This form is designed to provide uniformity and standardization. Public reporting burden for this collection of information is estimated to average 5 minutes per response for Non-IV-D CPs; 2 minutes per response for employers; 3 seconds for e-IWO employers, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Important Notice

If you are issuing a Spousal Support Only Income Withholding Order, you must serve the completed **LDSS-5038** as follows:

- **Part A:** serve only upon the employer/income withholder.
- **Part B:** serve upon all of the following:
 1. employer/income withholder;
 2. employee/obligor; and
 3. obligee.

Court Information

<input type="checkbox"/> Family Court: _____ County	Order ID (Index/Docket Number)
<input type="checkbox"/> Supreme Court: _____ County	

Employee/Obligor Information

Name (Last, First, Middle)	
Social Security Number - -	Date of Birth (MM/DD/YYYY) / /

Obligee Information

Name (Last, First, Middle)
Mailing Address

NOTE: Grayed out areas of this form are NOT applicable to spousal support only cases

**Part
B**

INCOME WITHHOLDING FOR SUPPORT

- ☐ ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
☐ AMENDED IWO
☐ ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT
☐ TERMINATION OF IWO

Date: _____

☐ Child Support Enforcement (CSE) Agency
 ☐ Court
 ☐ Attorney
 ☐ Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions www.acf.hhs.gov/programs/css/resource/income-withholding-for-support-instructions). If you receive this document from someone other than a state or tribal CSE agency or a court, a copy of the underlying order must be attached.

State/Tribe/Territory _____ Remittance ID (include w/payment) _____
 City/County/Dist./Tribe _____ Order ID _____
 Private Individual/Entity _____ **New York Case ID** _____

Employer/Income Withholder's Name _____ RE: _____
 Employee/Obligor's Name (Last, First, Middle) _____
 Employer/Income Withholder's Address _____ Employee/Obligor's Social Security Number _____
 _____ Custodial Party/Obligee's Name (Last, First, Middle) _____

Employer/Income Withholder's FEIN _____

Child(ren)'s Name(s) (Last, First, Middle) _____ Child(ren)'s Birth Date(s) _____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ORDER INFORMATION: This document is based on the support or withholding order from New York State. You are required by law to deduct these amounts from the employee/obligor's income until further notice.

\$ _____	Per _____	current child support
\$ _____	Per _____	past-due child support - Arrears greater than 12 weeks? <input type="checkbox"/> Yes <input type="checkbox"/> No
\$ _____	Per _____	current cash medical support
\$ _____	Per _____	past-due cash medical support
\$ _____	Per _____	current spousal support
\$ _____	Per _____	past-due spousal support
\$ _____	Per _____	other (must specify) _____

for a **Total Amount to Withhold** of \$ _____ per _____.

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ _____	per weekly pay period	\$ _____	per semimonthly pay period (twice a month)
\$ _____	per biweekly pay period (every two weeks)	\$ _____	per monthly pay period

\$ _____ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

Employer's Name: _____ Employer FEIN: _____
Employee/Obligor's Name: _____ SSN: _____
New York Case Identifier: _____ Order Identifier: _____

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is New York State, you must begin withholding no later than the first pay period that occurs 14 days after the date of service of this notice. Send payment within 7 working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, see *Withholding Limits* on page 3. If the obligor is a non-employee, obtain withholding limits from *Supplemental Information* on page 3. If the employee/obligor's principal place of employment is not New York State, obtain withholding limitations, time requirements, and any allowable employer fees at www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information for the employee/obligor's principal place of employment.

Include the **Remittance ID**, **pay date** and **employee/obligor's name** on the payment.

- Make payments payable in the name of the obligee identified on PART A.
- Remit payment to obligee's address identified on PART A.

☐ Return to Sender [Completed by Employer/Income Withholder]. Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see *Payments to SDU* below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

Signature of Judge/Issuing Official (if required by State or Tribal Law): _____
Print Name of Judge/Issuing Official: _____
Title of Judge/Issuing Official: _____
Date of Signature: _____

If the employee/obligor works in a state or for a tribe that is different from the state or tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.

☐ If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at: www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information.

Priority: Withholding for support has priority over any other legal process under State law against the same income (42 USC §666(b)(7)). If a federal tax levy is in effect, please notify the sender.

Combining Payments: When remitting payments to an SDU or tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

Payments To SDU: You must send child support payments payable by income withholding to the appropriate SDU or to a tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a court, attorney, or private individual/entity and the initial order was entered before January 1, 1994 or the order was issued by a tribal CSE agency, you must follow the "Remit payment to" instructions on this form.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the state (or tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

Multiple IWOs: If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to federal, state, or tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the state or tribal law/procedure of the employee/obligor's principal place of employment to determine the appropriate allocation method.

Employer's Name: _____ Employer FEIN: _____
Employee/Obligor's Name: _____ SSN: _____
New York Case Identifier: _____ Order Identifier: _____

Lump Sum Payments: You may be required to notify a state or tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

Liability: If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and any penalties set by state or tribal law/procedure, together with interest and reasonable attorney's fees. If you comply with this IWO you will not be subject to civil liability to any individual or agency for conduct in compliance with this IWO. In New York State, pursuant to Civil Practice Law and Rules (CPLR) §5241, upon a finding by the Family Court that you failed to withhold or remit withholdings as directed in this IWO, the Court shall issue an order directing your compliance and may direct the payment of a civil penalty not to exceed \$500 for the first instance and \$1,000 per instance for the second and subsequent instances of noncompliance.

Anti-discrimination: You are subject to a fine determined under state or tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of this IWO. In New York State, pursuant to CPLR §5252, the court may direct a civil penalty not to exceed \$500 for the first instance and \$1,000 per instance for the second and subsequent instances of such discrimination.

Withholding Limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 USC §1673(b)); or 2) the amounts allowed by the state of the employee/obligor's principal place of employment or tribal law if a tribal order (see *Remittance Information*). Disposable income is the net income after mandatory deductions such as: state, federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% -- to 55% and 65% -- if the arrears are greater than 12 weeks. If permitted by the state or tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For tribal orders, you may not withhold more than the amounts allowed under the law of the issuing tribe. For tribal employers/income withholders who receive a state IWO, you may not withhold more than the limit set by tribal law.

Depending upon applicable state or tribal law, you may need to consider amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

Arrears greater than 12 weeks? If the *Order Information* does not indicate that the arrears are greater than 12 weeks, then the employer should calculate the CCPA limit using the lower percentage.

Supplemental Information: (1) **PART A** of this form contains sensitive information and must be served only upon the employer/income withholder for purposes of processing the income withholding; **PART B**, which consists of 4 pages, must be served upon the employer/income withholder, employee/obligor, and obligee. (2) Priority of withholding pursuant to CPLR §5241(h) is current support, followed by health insurance premiums, and then arrears payments. (3) If there are multiple IWOs against this employee/obligor, withhold the maximum amount permitted under the CCPA (see *Withholding Limits*, above) and pay to each creditor the proportion thereof which such creditor's claim bears to the combined total. (4) Where the income is compensation that is not paid or payable to the obligor for personal services, there is no limit to the amount you must withhold. (5) If the employee/obligor is reinstated or reemployed within 90 days after termination, this IWO is still in effect.

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.

Employer's Name: _____ Employer FEIN: _____
Employee/Obligor's Name: _____ SSN: _____
New York Case Identifier: _____ Order Identifier: _____

NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS: If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, you must promptly notify the CSE agency and/or the sender by returning this form to the address listed in the *Contact Information* below:

- ☐ This person has never worked for this employer nor received periodic income.
- ☐ This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: _____ Last known phone number: _____

Last known address: _____

Final payment date to Obligee /tribal payee: _____ Final payment amount: _____

New employer's name: _____

New employer's address: _____

CONTACT INFORMATION:

To Employer/Income Withholder: If you have questions, contact _____ (issuer name)

by phone: _____, by fax: _____, by e-mail or website: _____.

Send termination/income status notice and other correspondence to: _____

_____ (issuer address).

To Employee/Obligor: If the employee/obligor has questions, contact _____ (issuer name)

by phone: _____, by fax: _____, by e-mail or website: _____.

The Paperwork Reduction Act of 1995

This information collection and associated responses are conducted in accordance with 45 CFR 303.100 of the Child Support Enforcement Program. This form is designed to provide uniformity and standardization. Public reporting burden for this collection of information is estimated to average 5 minutes per response for Non-I-D CPs; 2 minutes per response for employers; 3 seconds for e-IWO employers, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OM control number.

New York State Case Registry Filing Form *

For Use With Child Support Orders and Combined Child and Spousal Support Orders Payable To Other Than A Child Support Collection Unit*

*Domestic Relations Law § 240(5) and Family Court Act § 440(5) direct that such orders be promptly provided to the State Case Registry. The Office of Temporary and Disability Assistance has indicated that the information sought on this form satisfies the requirement to maintain a record of the order pursuant to Social Services Law § 111-b(4-a)(a)(2) and no order is to be filed unless specifically requested.

Note: Full Social Security Numbers are required on this form. Redaction is not allowed.

Name of Court: _____ County Name: _____ Index Number: _____

Child Support Payor: _____ (first) _____ (last) _____ (middle initial) _____ Social Security #: _____ - ____ - ____ Date of Birth: ____ / ____ / ____ (Payor)

Child Support Payee: _____ (first) _____ (last) _____ (middle initial) _____ Social Security #: _____ - ____ - ____ Date of Birth: ____ / ____ / ____ (Payee)

Child #1 Name: _____ (first) _____ (last) _____ (middle initial) _____ Social Security #: _____ - ____ - ____ Date of Birth: ____ / ____ / ____ (Child #1)

Child #2 Name: _____ (first) _____ (last) _____ (middle initial) _____ Social Security #: _____ - ____ - ____ Date of Birth: ____ / ____ / ____ (Child #2)

Child #3 Name: _____ (first) _____ (last) _____ (middle initial) _____ Social Security #: _____ - ____ - ____ Date of Birth: ____ / ____ / ____ (Child #3)
(If more children, please use additional form.)

The order expires on: ☐ the youngest child's 21st birthday, OR ____ / ____ / ____ (MM/DD/YYYY)

FAMILY VIOLENCE INQUIRY

Has a Temporary or Final Order of Protection been granted on behalf of either party?

If yes, which party: ☐ Payor ☐ Payee

☐ Yes

☐ No

☐ Do not know

Has a request for confidentiality of address been granted on behalf of either party?

If yes, which party: ☐ Payor ☐ Payee

☐ Yes

☐ No

INSTRUCTIONS FOR COMPLETING THE NEW YORK STATE CASE REGISTRY FILING FORM

Field	Instruction
Name of Court	Enter either "Supreme Court" or "Family Court."
County Name	Enter the name of the County entering the support order.
Index/Docket Number	Enter the Index Number (Supreme Court) or Docket Number (Family Court).
Child Support Payor	Enter, at a minimum, the first and last name of the child support payor. If there is more than one child support payor, please use a separate form to record the information for the additional child support payor.
Social Security Number (Payor)	Enter the full Social Security number of the child support payor. Enter "None" if the court record indicates that the individual has not been issued a Social Security number. Enter "Not on Record" if the Social Security number is not in the court record. Redaction is not allowed. An entry of "N/A," "not available," or "not applicable" is not allowed.
Date of Birth (Payor)	Enter the date of birth of the child support payor in the format MM/DD/YYYY.
Child Support Payee	Enter, at a minimum, the first and last name of the child support payee. An entry of "guardian" or other title is not allowed. If there is more than one child support payee, please use a separate form to record the information for the additional child support payee.
Social Security Number (Payee)	Enter the full Social Security number of the child support payee. Enter "None" if the court record indicates that the individual has not been issued a Social Security number. Enter "Not on Record" if the Social Security number is not in the court record. Redaction is not allowed. An entry of "N/A," "not available," or "not applicable" is not allowed.
Date of Birth (Payee)	Enter the date of birth of the child support payee in the format MM/DD/YYYY.
Child Name	Enter, at a minimum, the first and last name of each child covered by the order. If more than three (3) children are covered by the order, please use a separate form to record the information for the additional children.
Social Security Number (Child)	Enter the full Social Security number of each child covered by the order. Enter "None" if the court record indicates that the individual has not been issued a Social Security number. Enter "Not on Record" if the Social Security number is not in the court record. Redaction is not allowed. An entry of "N/A," "not available," or "not applicable" is not allowed.
Date of Birth (Child)	Enter the date of birth of each child covered by the order in the format MM/DD/YYYY.
Order Expiration	Provide the expiration date for the child support order. You may either check the first box to indicate that the order expires on the youngest child's 21 st birthday, or you may check the second box and provide any alternative date provided for under the terms of the support order. Provide the expiration date in the format MM/DD/YYYY.
Family Violence Inquiry	Check the appropriate box to indicate whether a Temporary or Final Order of Protection has been granted on behalf of either party to the order. If "yes" is selected, check the appropriate box to indicate which party has been granted the Order of Protection.
	Check the appropriate box to indicate whether a request for confidentiality of address has been granted on behalf of either party. If "yes" is selected, check the appropriate box to indicate the party on whose behalf the confidentiality authorization was made.

**SUPPLEMENTAL
APPENDIX
OF
FORMS**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

-----X

Plaintiff,

Index No. _____

-against-

**NOTICE OF
SETTLEMENT**

Defendant.

-----X

PLEASE TAKE NOTICE that the annexed ☐ *Proposed Judgment of Divorce*,
OR ☐ *Qualified Medical Child Support Order*, **OR** ☐ *Order*: _____
of which the within is a true copy, will be presented for signature to the Supreme Court
Clerk's Office, at _____, on

Dated: _____

Yours, etc.

☐ *Plaintiff*; ☐ *Attorney(s) for Plaintiff*
☐ *Defendant*; ☐ *Attorney(s) for Defendant*
Address: _____

Tel No. _____

TO: _____
☐ *Plaintiff*; ☐ *Attorney(s) for Plaintiff*
☐ *Defendant*; ☐ *Attorney(s) for Defendant*
Address: _____

Tel No. _____

At the Supreme Court of the State of
New York, held in and for the County
of _____ at the County
Courthouse at _____, New
York, on the ____ day of _____

PRESENT: HON. _____
Justice of the Supreme Court

In the Matter of the Application of

Index No.: _____

_____,
Plaintiff,
For Permission to Prosecute an Action as a Poor Person
-against-

POOR PERSON ORDER

_____,
Defendant.
-----X

Upon the annexed affidavit of _____,

And it being alleged that said Plaintiff _____ has a good cause of
action or claim based upon **DRL § 170 subd. ____ - _____, and that
he/she is unable to pay the costs, fees and expenses to prosecute this action, and that there is no other
person beneficially interested in the action, thereof

NOW on motion of _____, Plaintiff, it is hereby

ORDERED that _____ is permitted to prosecute this action as a poor
person against _____ and it is further

ORDERED that any recovery by Judgment or Settlement in favor of Plaintiff shall be paid to
the Clerk of the Court to await distribution pursuant to court order, and it is further

ORDERED that the Clerk of this Court is directed to make no charge for costs or fees in
connection with the prosecution of this action, including one (1) certified copy of the judgment.

ENTER:

J.S.C.

**Insert the grounds for the divorce:

DRL § 170(1) - cruel and inhuman treatment
DRL § 170(2) - abandonment
DRL § 170(3) - confinement in prison

DRL § 170(4) - adultery
DRL § 170(5) - living apart one year after separation decree or judgment of separation
DRL § 170(6) - living apart one year after execution of a separation agreement
DRL § 170(7) - irretrievable breakdown in relationship

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X
In the Matter of the Application of

_____,
Plaintiff.
For Permission to Prosecute as a Poor Person

- against -

Index No.: _____

**AFFIDAVIT IN SUPPORT OF
APPLICATION TO PROCEED
AS A POOR PERSON**

_____,
Defendant.
-----X

STATE OF NEW YORK }

ss:

COUNTY OF _____ }

_____, being duly sworn, says:

1. I reside at _____ in the City, Town or
Village of _____, County of _____, State of New York, and I have resided
in the State of New York for the past _____ years.

2. I am about to commence a lawsuit for divorce. This lawsuit is based upon **DRL §170
_____.

3. My sole source of income is: _____

I earn \$_____ per _____.

4. My property and its value are as follows:

5. I make this application pursuant to Section 1101 of the Civil Practice Law and Rules upon
the ground that I am unable to pay costs, fees and expenses necessary to pursue my case and
am unable to obtain the funds to do so, and unless an order is entered relieving me from the
obligation to pay, I will be unable to prosecute my case.

- 12 6. No other person is beneficially interested in the recovery sought herein.
- 13 7. No previous application for the same or similar relief has been made by me in this case except: _____

WHEREFORE, I respectfully ask for an order permitting me to prosecute an action as a poor person.

The foregoing statements have been carefully read by the undersigned who states that they are true and correct.

14

Plaintiff

Subscribed and sworn to
before me on

NOTARY PUBLIC

**Insert the grounds for the divorce:

DRL § 170(1) - cruel and inhuman treatment
DRL § 170(2) - abandonment
DRL § 170(3) - confinement in prison

DRL § 170(4) - adultery
DRL § 170(5) - living apart one year after separation decree or judgment of separation
DRL § 170(6) - living apart one year after execution of a separation agreement
DRL § 170(7) - irretrievable breakdown in relationship

STATE OF NEW YORK SUPREME COURT
COUNTY OF _____

Index No. _____

RJI No.: _____

**AFFIDAVIT OF SERVICE OF
PROPOSED POOR PERSON'S
ORDER**

Plaintiff,
- against -

Defendant.

STATE OF NEW YORK)

COUNTY OF _____)

SS.:

_____, residing at _____, being sworn,
says, I am not a party to the action, and am over 18 years of age.

On _____, I served a copy of the ☐ Summons with Notice or the ☐ Summons and Verified Complaint, and the Affidavit In Support Of Application To Proceed as a Poor Person , income verification and proposed Poor Person Order upon Defendant at the address designated by Defendant and upon:

(check which box applies):

☐ The (insert name of County) _____ County Attorney

OR

☐ The Corporation Counsel of the City of New York

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to :

Server's

Dated: _____

Signature: _____

Print Name: _____

SWORN to before me on this

____ day of _____, 20____.

NOTARY PUBLIC

Eff. 1/25/16