Report of the Matrimonial Practice Advisory and Rules Committee

to the Chief Administrative Judge of the Courts of the State of New York

January 2015

MATRIMONIAL PRACTICE ADVISORY AND RULES COMMITTEE REPORT

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I. Introduction and Executive Summary

Introduction

The Matrimonial Practice Advisory and Rules Committee is one of the standing advisory committees established by the Chief Administrative Judge pursuant to section 212(1) (q) of the Judiciary Law, consisting of Judges and Attorneys from around the State. The Committee annually recommends to the Chief Administrative Judge legislative proposals in the field of matrimonial law to be considered for the Chief Administrative Judge's Legislative Program. These proposals are based on the Committee's observations and studies, review of case law and legislation, and suggestions received from the bench and bar. In addition, the Committee provides its comments and recommendations to the Chief Administrative Judge on pending legislative proposals concerning matrimonial law. The Committee also assesses existing court rules and court forms, and advises the Chief Administrative Judge on the need for additional rules and forms, and on the development of practices to assist Judges, litigants and attorneys in the timely and productive management of matrimonial matters. On behalf of the Chief Administrative Judge, the Chair of the Committee maintains liaisons with bar associations, legislators, and other groups active in the matrimonial field. The Committee also assists the New York State Judicial Institute (established pursuant to section 219-a of the Judiciary Law) with providing legal education for Judges and Court Attorneys handling matrimonial matters.

Executive Summary

The Committee was established in June, 2014 when it held its organizational meeting. It has met monthly beginning in September, 2014. Inasmuch as the Committee is so new and has held only four operational meetings since September, the Committee has tried to address the most pressing priorities of the matrimonial community first. Our recommendations to the Chief Administrative Judge include a number of new statutory and rule proposals.

The Committee recommends a new compromise statutory proposal for maintenance guidelines which will address the needs of all constituent communities and resolve the dispute over maintenance guidelines which has divided the matrimonial bar for so long. The Committee supports this version of maintenance guidelines as an alternative to the current Temporary Maintenance Guidelines. To accompany this proposal, we are recommending development of a calculator to assist the courts and matrimonial community with computations which will be required under the new statute. On a related subject, we endorse a legislative proposal put forth by the Family Court Advisory and Rules Committee which would make uniform the treatment of maintenance and spousal support on the calculation of maintenance payments includable as income for calculating child support.

Regarding matrimonial venue, at the request of the New York County Matrimonial Judges, our Committee has three recommendations to address the need for venue in matrimonial actions to be related to residence: a statutory proposal to amend the Civil Practice Law and Rules, a rule proposal to amend the Uniform Rules regarding Judgments of Divorce, and a proposal to amend the matrimonial rules to adopt a form order to expedite transfers of venue.

The Committee also recommends reintroduction of a proposal to amend section 245 of the Domestic Relations Law to give greater enforcement powers to the Supreme Court in matrimonial matters (consistent with the powers of the Family Courts). We also support a proposal originally recommended by the Matrimonial Commission to ease the burden of applications for counsel fees by unrepresented litigants by making clear no affidavit of financial arrangements with counsel is needed.

The issue of unilateral discontinuances of matrimonial actions at the time of, or shortly before, trial exists because of the unique nature of matrimonial actions which involve personal relationships and highly charged emotions. As a result, parties in divorce cases frequently delay filing complaints and other pleadings until late in the action, sometimes years after service of the summons, and then suddenly discontinue the action without need for court approval pursuant to CPLR § 3217(a) at the time of or just before trial. At this point in the litigation, much time, effort and judicial resources have been expended. To remedy this procedural delaying tactic, the Committee proposes an amendment to the matrimonial rules to adopt a Supplemental Order/Stipulation after the Preliminary Conference Order has been signed.

The Committee's work for next year will include projects to revise the Net Worth Statement to make it gender neutral and simpler to understand. The Committee will also look further into whether the requirement for the Judgment of Divorce to contain the parties' full social security numbers can be changed without impacting child support enforcement or causing other unintended consequences. We will also explore the feasibility of allowing a limited appearance by attorneys at the outset of a case to assist unrepresented parties make application for counsel fees for the non-monied spouse pursuant to D.R.L. 237(a) without becoming attorney of record, as recommended by the Matrimonial Commission. Finally we will explore the issue of redacting personal information from divorce decisions and forms.

We include our suggestions for consideration of amendments to the prior legislative proposal (2013-2014 Weinstein A. 8342-A) on access to forensic reports in custody cases. The Committee reviewed A. 8342-A as last amended in June, 2014 which was never enacted. A new version of said bill was introduced as 2015-2016 Weinstein A. 290 on January 7, 2015. The Committee's concerns as to A.8342-A to be discussed later in this report continue to be applicable to the 2015 version. In reviewing A. 8342-A, the Committee revisited the issues

which the former Matrimonial Practice Advisory Committee had addressed[1]. While the Committee supports the Weinstein proposal, we recommend certain important changes in the bill before it is enacted. Mindful that there are differing views among the Family Court and matrimonial communities as to dissemination of forensic reports in custody cases to unrepresented litigants, the Committee has developed some suggestions for resolving these differences which will be discussed.

Related to the subject of access to forensic reports is the competency of the forensic evaluators selected. The Committee recommends that Judges be encouraged to evaluate mental health evaluators on a regular basis, and recommends trainings on this issue be conducted by the Judicial Institute for Judges in the 1st and 2nd Departments where evaluators must be certified.

In addition to the above, the Committee is responsible for keeping the Uncontested Divorce Packets up to date in accordance with law and for maintaining the Divorce Resources Website at http://www.nycourts.gov/divorce/ where the Uncontested Divorce Packet and other Divorce forms are posted, along with useful information about Divorce. The Committee also maintains the Child Support Resources Website at http://www.nycourts.gov/divorce/childsupport/ forms which contains useful information relating to child support in Supreme Court.

The Committee encourages comments and suggestions concerning legislative proposals and the ongoing revision of matrimonial rules and forms from interested members of the bench, bar, academic community and public, and invites submission of comments, suggestions and inquiries to:

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[1] The former Matrimonial Practice Advisory Committee ceased operations in March, 2014 and was reconstituted as a new standing committee in June, 2014.

II. New Statutory and Rule Proposals

II (A). Maintenance Guidelines Legislative Proposal and Development of Calculator for Maintenance and Child Support in Supreme Court [D.R.L. § 236(B) 1(a), D.R.L. § 236(B) (5) (d) (7), D.R.L. § 236(B) [5-a], D.R.L. § 236(B) (6), D.R.L. § 236(B) (9); D.R.L. § 248; F.C.A §412]

One of the Committee's highest priorities is a statutory proposal for new maintenance guidelines for both Temporary and Post-Divorce Maintenance. Following his appointment in June of 2014 as Chair of the new Committee, Justice Jeffrey Sunshine informally brought together lawyers belonging to different interest groups in an attempt to achieve a compromise on maintenance guidelines that addresses their sometimes conflicting concerns. Over the next several months, a series of meetings were held with participation by the Family Law Section of the New York State Bar Association, the New York Maintenance Standards Coalition, the Women's Bar Association of the State of New York, and the New York Chapter of the American Academy of Matrimonial Lawyers.[2] The result of the informal group's collective efforts is the proposed bill. It was crafted based upon reasonable and fair compromises, including recognition of the need to address the concerns of the lower income communities, the domestic violence communities, families with middle class economics and families with exceptional wealth. The resulting bill was achieved with no acrimony based on a shared goal of "doing right" by all concerned. The compromise put forth by the informal working group was adopted by the Matrimonial Practice Advisory and Rules Committee by a vote of 26-1. As of this date, the organizations who sent representatives to the informal working group have all endorsed the compromise proposal as follows: Women's Bar Association of the State of New York, the Executive Committee of the Family Law Section of the New York State Bar Association, the Board of Managers of the New York Chapter of the American Academy of Matrimonial Lawyers, and the New York State Maintenance Standards Coalition.

A summary of the highlights of the proposal follows:

1. The income cap for the formula portion of temporary maintenance awards would be lowered from the current $543,000 to $175,000 of the payor's income. The same $175,000 cap would apply to post- divorce maintenance awards.

2. There will be two formulas: one where child support is being paid and one where child support is not being paid. Those formulas are as follows:

[2] Sandra Rivera, Esq. and Michelle Haskins, Esq. represented the Women's Bar Association of the State of New York; Alton Abramowitz, Esq. and Eric Tepper, Esq. represented the Family Law Section of the New York State Bar Association; Elena Karabatos, Esq. represented the New York Chapter of the American Academy of Matrimonial Lawyers; and Emily Ruben, Esq. and Kate Wurmfeld, Esq. represented the NYS Maintenance Standards Coalition.

a. With child support: (i) subtract 25% of the payee's income from 20% of the payor's income; (ii) multiply the sum of the payor's income and the payee's income by 40% and subtract the payee's income from the result; (iii) the lower of the two amounts will be the guideline amount of maintenance;

b. Without child support: (i) subtract 20% of the payee's income from 30% of the payor's income; (ii) multiply the sum of the payor's income and the payee's income by 40% and subtract the payee's income from the result; (iii) the lower of the two amounts will be the guideline amount of maintenance.

3. The court may adjust the guideline amount of maintenance up to the cap where it finds that the guideline amount of maintenance is unjust or inappropriate after consideration of one or more factors, which shall be set forth in the court's written or on the record decision. Where there is income over the cap, additional maintenance may be awarded after consideration of one or more factors, which shall be set forth in the court's decision or on the record.

4. Temporary maintenance terminates no later than the issuance of a judgment of divorce or the death of either party – i.e., clarifies that the court has the power to limit the duration of temporary maintenance.

5. Post-divorce maintenance terminates on the death of ether party or the remarriage of the payee former spouse.

6. In determining temporary maintenance, the court can allocate the responsibility for payment of specific family expenses between the parties.

7. The definition of income for post-divorce maintenance will include income from income producing property that is being equitably distributed (also see "8" below).

8. New factors in post-divorce maintenance will include: termination of child support; income or imputed income on assets being equitably distributed; etc.

9. Durational formula for post-divorce maintenance is advisory, and the durational periods contain ranges to afford courts more discretion. The advisory durational formula in the proposed bill contains more realistic durations for the payment of post-divorce maintenance than had been included in the legislation which was nearly enacted last spring. However nothing in the proposed bill shall prevent the court from awarding non-durational post-divorce maintenance in an appropriate case.

10. In determining the duration of maintenance, the court is required to consider anticipated retirement assets, benefits and retirement eligibility age.

11. Actual or partial retirement will be a ground for modification of post-divorce maintenance assuming it results in a substantial diminution of income.

12. Elimination of enhanced earning capacity as a marital asset.

13. D.R.L. section 248 made gender neutral.

14. Spousal support guidelines are established for Family Court using the same two formulas set forth for maintenance guidelines in Item 2 above as follows: one where child support is being paid and one where child support is not being paid. The same $175, 000 income cap applies. The court may adjust the guideline amount of spousal support up to the cap where it finds that the guideline amount of spousal support is unjust or inappropriate after consideration of one or more factors, which shall be set forth in the court's written or on the record decision. Where there is income over the cap, additional spousal support may be awarded after consideration of one or more factors, which shall be set forth in the court's written or on the record decision.

15. A new factor in spousal support awards as well as maintenance awards is termination of a child support award.

16. Spousal support orders set pursuant to the guidelines shall continue until the earliest to occur of a written or oral stipulation/agreement on the record, issuance of a judgment of divorce or other order in a matrimonial proceeding, or the death of either party. This law does not change current law with respect to Family Court's ability to terminate spousal support. In addition, with the advent of no-fault divorce (D.R.L. § 170[7]), payors have the ability to terminate spousal support by obtaining a divorce without having to prove grounds.

The proposal we recommend to the Chief Administrative Judge represents a compromise from the maintenance guidelines bill introduced last year as 2013-14 S. 07266-A/A. 09606-A (Bonacic/Weinstein). This bill would have amended the current temporary maintenance guidelines in effect pursuant to D.R.L. §236(B) [5-a], and would have enacted final maintenance and spousal support guidelines for the first time in New York State.

For the temporary maintenance guidelines currently effect pursuant to D.R.L. §236(B) [5-a], calculations of permanent maintenance are not required. Due to the fact that calculations of permanent maintenance for uncontested divorces will be required for the first time should the proposal we recommend to the Chief Administrative Judge become law, the Committee recommends development of a new calculator for use in Supreme Court. The

temporary maintenance calculator currently in use in Supreme Court was developed by the Office of Court Administration in 2010 when the temporary maintenance guidelines were adopted. It requires the user to calculate income under the Child Support Standards Act separately on a worksheet, and then input the result into calculator.[3] We recommend that the new calculator should perform the calculation of Child Support Standards Act ("CSSA") income for the user.[4] After calculating CSSA income, the calculator would calculate temporary maintenance or permanent maintenance as the case may be, and then if applicable, would also calculate child support. The Committee believes that the introduction of this tool in Supreme Court will make the transition to maintenance guidelines for permanent maintenance and uncontested divorces much easier for the general public and the Judiciary. Under the legislation, judges are required to compute the guideline amount of maintenance in every case up to the income cap of $175,000. This tool will be an asset to the efficiency and smooth operation of the court system.

Section 8 of the proposal provides that the act takes effect 120 days after it becomes law regarding all matrimonial actions commenced after the effective date generally, including the provisions regarding post-divorce maintenance and spousal support awards. However the provisions regarding temporary maintenance take effect 30 days after the act becomes law. The reason there is a shorter effective date for temporary maintenance is that the courts and the public are already familiar with procedures for temporary maintenance awards. There is already in effect a temporary maintenance worksheet and temporary maintenance calculator posted on the Office of Court Administration's Divorce Resources Website at http://www.nycourts.gov/divorce/Temporary_Maintenance.shtml# with respect to implementation of the current temporary maintenance guidelines in effect pursuant to DRL 236(B)[5-a] enacted in 2010. These tools can be easily modified to comply with the new provisions of the proposal. By contrast the post-divorce maintenance and spousal support provisions of the proposal are completely new, and therefore the Office of Court Administration will need additional time for training as well as for creating new forms and procedures to implement the new provisions. Similarly, the bench and the bar will need more time to adapt to the new law. In addition, there was widespread concern that the formula in existence for temporary maintenance yielded significantly unfair awards for payors with child support obligations, thus justifying a shorter startup period.

[3] In Family Court, the calculations are performed automatically in the UCMS system which is not used in Supreme Court.

[4] The proposal requires one variation from calculation of income under the Child Support Standards Act for purposes of calculating maintenance, namely that alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action should not be deducted from Income. This variation from the calculation of income under the Child Support Standards Act in the proposal is necessary because otherwise the formula become circular by requiring deduction of the very amount that is being calculated.

Proposal:

AN ACT to amend the domestic relations law and the family court act, in relation to the duration and amount of maintenance and of spousal support

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

Section 1. Paragraph a of subdivision 1 of part B of section 236 of the domestic relations law, as amended by chapter 371 of the laws of 2010, is amended to read as follows:

a. The term "maintenance" shall mean payments provided for in a valid agreement between the parties or awarded by the court in accordance with the provisions of subdivisions five-a and six of this part, to be paid at fixed intervals for a definite or indefinite period of time, but an award of maintenance shall terminate upon the death of either party or upon the [recipient's] payee's valid or invalid marriage, or upon modification pursuant to paragraph (b) of subdivision nine of section two hundred thirty-six of this part or section two hundred forty-eight of this chapter.

§ 2. Subparagraph 7 of paragraph d of subdivision 5 of part B of section 236 of the domestic relations law, as amended by chapter 281 of the laws of 1980 and as renumbered by chapter 229 of the laws of 2009, is amended to read as follows:

(7) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party. The court shall not consider as marital

property subject to distribution the value of a spouse's enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement. However, in arriving at an equitable division of marital property, the court shall consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse;

§3. Subdivision 5-a of part B of section 236 of the domestic relations law, as added by chapter 371 of the laws of 2010, is amended to read as follows:

5-a. Temporary maintenance awards. a. Except where the parties have entered into an agreement [pursuant to subdivision three of this part] providing for maintenance pursuant to subdivision three of this part, in any matrimonial action the court, upon application by a party, shall make its award for temporary maintenance pursuant to the provisions of this subdivision.

b. For purposes of this subdivision, the following definitions shall be used:

(1) "Payor" shall mean the spouse with the higher income.

(2) "Payee" shall mean the spouse with the lower income.

(3) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of the action.

(4) “Income shall mean[:

(a)] income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act[; and

(b) income from income producing property to be distributed pursuant to subdivision five of this part] without subtracting alimony or maintenance actually paid or to be paid to a

spouse that is a party to the instant action pursuant to subclause (c) of clause (vi) of subparagraph (5) of paragraph (b) of subdivision 1-b of section two hundred forty of this article and subclause (c) of clause (vi) of subparagraph (5) of paragraph (b) of subdivision one of section four hundred thirteen of the family court act.

(5) "Income cap" shall mean up to and including [five hundred] one hundred seventy-five thousand dollars of the payor's annual income; provided, however, beginning January thirty-first, two thousand [twelve] sixteen and every two years thereafter, the [payor's annual] income cap amount shall increase by the [product] sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two [year period] years rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(6) "Guideline amount of temporary maintenance" shall mean the [sum] dollar amount derived by the application of paragraph c or d of this subdivision.

(7) ["Guideline duration" shall mean the durational period determined by the application of paragraph d of this subdivision] "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.

(8) ["Presumptive award" shall mean the guideline amount of the temporary maintenance award for the guideline duration prior to the court's application of any adjustment factors as provided in subparagraph one of paragraph e of this subdivision.

(9) “Self-support reserve” shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act] “Agreement” shall mean any validly executed agreement providing for maintenance pursuant to subdivision three of this part.

c. [The] Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of temporary maintenance [in accordance with the provisions of this paragraph after determining the income of the parties] as follows:

(1) Where [the payor's income is up to and including the income cap] child support will be paid for children of the marriage:

(a) the court shall subtract [twenty] twenty-five percent of the payee's income [of the payee] from twenty percent of the payor's income [up to the income cap of the payor].

(b) the court shall then multiply the sum of the payor's income [up to and including the income cap] and [all of] the payee's income by forty percent.

(c) the court shall subtract the payee's income [of the payee] from the amount derived from [clause (b) of this] subparagraph (b) of this paragraph.

(d) the court shall determine the lower of the two amounts derived by subparagraphs (a) and (c) of this paragraph.

(e) the guideline amount of temporary maintenance shall be the [lower of the amounts] amount determined by [clauses (a) and (c) of this] subparagraph [;] (d) of this paragraph except that, if the amount determined by [clause (c) of this] subparagraph (d) of this paragraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

(f) temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.

(2) Where [the income of the payor exceeds the income cap:

(a) the court shall determine the guideline amount of temporary maintenance for that portion of the payor's income that is up to and including the income cap according to subparagraph one of this paragraph, and, for the payor's income in excess of the income cap, the court shall determine any additional guideline amount of temporary maintenance through consideration of the following factors:

(i) the length of the marriage;

(ii) the substantial differences in the incomes of the parties;

(iii) the standard of living of the parties established during the marriage;

(iv) the age and health of the parties;

(v) the present and future earning capacity of the parties;

(vi) the need of one party to incur education or training expenses;

(vii) the wasteful dissipation of marital property;

(viii) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

(ix) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(x) 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;

(xi) the availability and cost of medical insurance for the parties;

(xii) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment;

(xiii) the inability of one party to obtain meaningful employment due to age or absence from the workforce;

(xiv) the need to pay for exceptional additional expenses for the child or children, including, but not limited to, schooling, day care and medical treatment;

(xv) the tax consequences to each party;

(xvi) marital property subject to distribution pursuant to subdivision five of this part;

(xvii) the reduced or lost earning capacity of the party seeking temporary maintenance as a result of having foregone or delayed education, training, employment or career opportunities during the marriage*;*

(xviii) the contributions and services of the party seeking temporary maintenance as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and

(xix) any other factor which the court shall expressly find to be just and proper.] child support will not be paid for children of the marriage:

(a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from subparagraph (b) of this paragraph.

(d) the court shall determine the lower of the two amounts derived by subparagraphs (a) and (c) of this paragraph.

(e) the guideline amount of temporary maintenance shall be the amount determined by subparagraph (d) of this paragraph except that, if the amount determined by subparagraph (d) of this paragraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

[(3) Notwithstanding the provisions of this paragraph, where the guideline amount of temporary maintenance would reduce the payor's income below the self-support reserve for a single person, the presumptive amount of the guideline amount of temporary maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there is a rebuttable presumption that no temporary maintenance is awarded.]

d. [The] Where the payor's income exceeds the income cap, the court shall determine the guideline [duration] amount of temporary maintenance [by considering the length of the marriage. Temporary maintenance shall terminate upon the issuance of the final award of maintenance or the death of either party, whichever occurs first] as follows:

(1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of the payor up to and including the income cap; and

(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph h of this subdivision; and

(3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

e. [(1) The court shall order the presumptive award of temporary maintenance in accordance with paragraphs c and d of this subdivision, unless the court finds that the presumptive award is unjust or inappropriate and adjusts the presumptive award of temporary maintenance accordingly based upon consideration of the following factors:

(a) the standard of living of the parties established during the marriage;

(b) the age and health of the parties;

(c) the earning capacity of the parties;

(d) the need of one party to incur education or training expenses;

(e) the wasteful dissipation of marital property;

(f) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

(g) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(h) 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;

(i) the availability and cost of medical insurance for the parties;

(j) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment;

(k) the inability of one party to obtain meaningful employment due to age or absence from the workforce;

(l) the need to pay for exceptional additional expenses for the child or children, including, but not limited to, schooling, day care and medical treatment;

(m) the tax consequences to each party;

(n) marital property subject to distribution pursuant to subdivision five of this part;

(o) the reduced or lost earning capacity of the party seeking temporary maintenance as a result of having foregone or delayed education, training, employment or career opportunities during the marriage;

(p) the contributions and services of the party seeking temporary maintenance as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and

(q) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the presumptive award of temporary maintenance is unjust or inappropriate and the court adjusts the presumptive award of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written order, the amount of the unadjusted presumptive award of temporary maintenance, the factors it considered, and the reasons that the court adjusted the presumptive award of temporary maintenance. Such written order shall not be waived by either party or counsel.

(3) Where either or both parties are unrepresented, the court shall not enter a temporary maintenance order unless the unrepresented party or parties have been informed of the presumptive award of temporary maintenance] Notwithstanding the provisions of this subdivision, where the guideline amount of temporary maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of temporary maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no temporary maintenance is awarded.

f. [A validly executed agreement or stipulation voluntarily entered into between the parties in an action commenced after the effective date of this subdivision presented to the court for incorporation in an order shall include a provision stating that the parties have been

advised of the provisions of this subdivision, and that the presumptive award provided for therein results in the correct amount of temporary maintenance. In the event that such agreement or stipulation deviates from the presumptive award of temporary maintenance, the agreement or stipulation must specify the amount that such presumptive award of temporary maintenance would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount. Such provision may not be waived by either party or counsel. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the presumptive award of temporary maintenance provided such agreements or stipulations comply with the provisions of this subdivision.] The court shall [, however, retain discretion with respect to temporary, and post-divorce maintenance awards pursuant to this section. Any court order incorporating a validly executed agreement or stipulation which deviates from the presumptive award of temporary maintenance shall set forth the court's reasons for such deviation] <u>determine the duration of temporary maintenance by considering the length of the marriage</u>.

g. [When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order the temporary maintenance award based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of newly discovered or obtained evidence.] <u>Temporary maintenance shall terminate no later</u>

than the issuance of the judgment of divorce or the death of either party, whichever occurs first.

h. [In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order] (1) The court shall order the guideline amount of temporary maintenance up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the guideline amount of temporary maintenance is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of temporary maintenance accordingly based upon such consideration:

(a) the age and health of the parties;

(b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(c) the need of one party to incur education or training expenses;

(d) the termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child support not been awarded;

(e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;

(f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(g) 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;

(h) the availability and cost of medical insurance for the parties;

(i) 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;

(j) the tax consequences to each party;

(k) the standard of living of the parties established during the marriage;

(1) 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; and

(m) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the guideline amount of temporary maintenance is unjust or inappropriate and the court adjusts the guideline amount of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the guideline amount of temporary maintenance, the factors it considered, and the reasons that the court adjusted the guideline amount of temporary maintenance. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.

(3) Where either or both parties are unrepresented, the court shall not enter a temporary maintenance order unless the court informs the unrepresented party or parties of the guideline amount of temporary maintenance.

i. [In any decision made pursuant to] Nothing contained in this subdivision [the court] shall[, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in this subdivision] be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the presumptive award of temporary maintenance.

j. When a payor has defaulted and/or the court is otherwise presented with insufficient evidence to determine income, the court shall order the temporary maintenance award based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of newly discovered or obtained evidence.

k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into

prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

m. In determining temporary maintenance, the court shall consider and allocate, where appropriate, the responsibilities of the respective spouses for the family's expenses during the pendency of the proceeding.

n. The temporary maintenance order shall not prejudice the rights of either party regarding a post-divorce maintenance award.

§ 4. Subdivision 6 of part B of section 236 of the domestic relations law, as amended by chapter 371 of the laws of 2010, is amended to read as follows:

6. Post-divorce maintenance awards. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action, the court [may order], upon application by a party, shall make its award for post-divorce maintenance [in such amount as justice requires, having regard for the standard of living of the parties established during the marriage, whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs and whether the other party has sufficient property or income to provide for the reasonable needs of the other and the circumstances of the case and of the respective parties. Such order shall be effective as of the date of the application therefor, and any retroactive amount of maintenance due shall be paid in one sum or periodic sums, as the court

shall direct, taking into account any amount of temporary maintenance which has been paid. In determining the amount and duration of maintenance the court shall consider~~:~~

(1) the income and property of the respective parties including marital property distributed pursuant to subdivision five of this part;

(2) the length of the marriage;

(3) the age and health of both parties;

(4) the present and future earning capacity of both parties;

(5) the need of one party to incur education or training expenses;

(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 ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefor;

(9) reduced or lost lifetime earning capacity of the party seeking maintenance as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage;

(10) the presence of children of the marriage in the respective homes of the parties;

(11) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity;

(12) the inability of one party to obtain meaningful employment due to age or absence from the workforce;

(13) the need to pay for exceptional additional expenses for the child/children, including but not limited to, schooling, day care and medical treatment;

(14) the tax consequences to each party;

(15) the equitable distribution of marital property;

(16) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;

(17) the wasteful dissipation of marital property by either spouse;

(18) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

(19) the loss of health insurance benefits upon dissolution of the marriage, and the availability and cost of medical insurance for the parties; and

(20) any other factor which the court shall expressly find to be just and proper] pursuant to the provisions of this subdivision.

b. [In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel] For purposes of this subdivision, the following definitions shall be used:

(1) "Payor" shall mean the spouse with the higher income.

(2) "Payee" shall mean the spouse with the lower income.

(3) "Income" shall mean:

(a) income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act, without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (c) of clause (vi) of subparagraph (5) of paragraph (b) of subdivision 1-b of section two hundred forty of this article and subclause (c) of clause (vi) of subparagraph (5) of paragraph (b) of subdivision one of section four hundred thirteen of the family court act; and

(b) income from income-producing property distributed or to be distributed pursuant to subdivision five of this part.

(4) "Income cap" shall mean up to and including one hundred seventy-five thousand dollars of the payor's annual income; provided, however, beginning January thirty-first, two thousand sixteen and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(5) "Guideline amount of post-divorce maintenance" shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.

(6) "Guideline duration of post-divorce maintenance" shall mean the durational period determined by the application of paragraph f of this subdivision.

(7) "Post-divorce maintenance guideline obligation" shall mean the guideline amount of post-divorce maintenance and the guideline duration of post-divorce maintenance.

(8) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of the action.

(9) "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.

(10) “Agreement” shall mean any validly executed agreement providing for maintenance pursuant to subdivision three of this part.

c. [The court may award permanent maintenance, but an award of maintenance shall terminate upon the death of either party or upon the recipient's valid or invalid marriage, or upon modification pursuant to paragraph b of subdivision nine of this part or section two hundred forty-eight of this chapter] Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:

(1) Where child support will be paid for children of the marriage:

(a) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from subparagraph (b) of this paragraph.

(d) the court shall determine the lower of the two amounts derived by subparagraphs (a) and (c) of this paragraph.

(e) the guideline amount of post-divorce maintenance shall be the amount determined by subparagraph (d) of this paragraph except that, if the amount determined by subparagraph (d) of this paragraph is less than or equal to zero, the guideline amount of post-divorce maintenance shall be zero dollars.

(f) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.

(g) maintenance shall be calculated prior to child support because the amount of maintenance shall be subtracted from the payor’s income and added to the payee’s income as part of the calculation of the child support obligation.

(2) Where child support will not be paid for children of the marriage:

(a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from subparagraph (b) of this paragraph.

(d) the court shall determine the lower of the two amounts derived by subparagraphs (a) and (c) of this paragraph.

(e) the guideline amount of post-divorce maintenance shall be the amount determined by subparagraph (d) of this paragraph except that, if the amount determined by subparagraph (d) of this paragraph is less than or equal to zero, the guideline amount of post-divorce maintenance shall be zero dollars.

(f) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.

d. [In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph a of this subdivision]

Where the payor's income exceeds the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:

(1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of payor up to and including the income cap; and

(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph e of this subdivision; and

(3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

e. (1) The court shall order the post-divorce maintenance guideline obligation up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the post-divorce maintenance guideline obligation accordingly based upon such consideration:

(a) the age and health of the parties;

(b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(c) the need of one party to incur education or training expenses;

(d) 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;

(e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;

(f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(g) 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;

(h) the availability and cost of medical insurance for the parties;

(i) 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;

(j) the tax consequences to each party;

(k) the standard of living of the parties established during the marriage;

(l) 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;

(m) the equitable distribution of marital property and the income or imputed income on the assets so distributed;

(n) 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

(o) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate and the court adjusts the post-divorce maintenance guideline obligation pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the unadjusted post-divorce maintenance guideline obligation, the factors it considered, and the reasons that the court adjusted the post-divorce maintenance obligation. Such decision shall not be waived by either party or counsel.

f. The duration of post-divorce maintenance may be determined as follows:

(1) The court may determine the duration of post-divorce maintenance in accordance with the following advisory schedule:

Length of the 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%

(2) In determining the duration of post-divorce maintenance, whether or not the court utilizes the advisory schedule, it shall consider the factors listed in subparagraph one of paragraph e of this subdivision and shall set forth, in a written decision or on the record, the factors it considered. Such decision shall not be waived by either party or counsel. Nothing herein shall prevent the court from awarding non-durational maintenance in an appropriate case.

(3) Notwithstanding the provisions of subparagraph one of this paragraph, post-divorce maintenance shall terminate upon the death of either party or upon the payee's valid or invalid marriage, or upon modification pursuant to paragraph (b) of subdivision nine of this part or section two hundred forty-eight of this chapter.

(4) Notwithstanding the provisions of subparagraph one of this paragraph, when determining duration of post-divorce maintenance, the court shall take into consideration anticipated retirement assets, benefits, and retirement eligibility age of both parties if ascertainable at the time of decision. If not ascertainable at the time of decision, the actual full or partial retirement of the payor with substantial diminution of income shall be a basis for a modification of the award.

g. Where either or both parties are unrepresented, the court shall not enter a maintenance order or judgment unless the court informs the unrepresented party or parties of the post-divorce maintenance guideline obligation.

h. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the post-divorce maintenance guideline obligation.

i. When a payor has defaulted and/or the court makes a finding at the time of trial that it was presented with insufficient evidence to determine income, the court shall order the post-divorce maintenance based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be

retroactively modified upward without a showing of change in circumstances upon a showing of substantial newly discovered or obtained evidence.

j. Post-divorce maintenance may be modified pursuant to paragraph b of subdivision nine of this part.

k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such agreement.

m. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.

n. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into

prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.

o. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph e of this subdivision.

§ 5. Subparagraph (1) of paragraph b of subdivision 9 of part B of section 236 of the domestic relations law, as amended by chapter 182 of the laws of 2010, is amended to read as follows:

(1) Upon application by either party, the court may annul or modify any prior order or judgment made after trial as to maintenance, upon a showing of the [recipient's] payee's inability to be self-supporting or upon a showing of a substantial change in circumstance [or termination of child support awarded pursuant to section two hundred forty of this article], including financial hardship or upon actual full or partial retirement of the payor if the retirement results in a substantial change in financial circumstances. Where, after the effective date of this part, [a separation] an agreement remains in force, no modification of [a prior] an order or judgment incorporating the terms of said agreement shall be made as to maintenance without a showing of extreme hardship on either party, in which event the judgment or order as modified shall supersede the terms of the prior agreement and judgment for such period of time and under such circumstances as the court determines. The court shall not reduce or annul any arrears of maintenance which have been reduced to final judgment pursuant to

section two hundred forty-four of this article. No other arrears of maintenance which have accrued prior to the making of such application shall be subject to modification or annulment 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 and the facts and circumstances constituting good cause are set forth in a written memorandum of decision. Such modification may increase maintenance nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of maintenance due shall, except as provided for herein, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. The provisions of this subdivision shall not apply to an agreement made prior to the effective date of this part.

§6. Section 248 of the domestic relations law, as amended by chapter 604 of the laws of 1975, is amended to read as follows:

§ 248. Modification of judgment or order in action for divorce or annulment. Where an action for divorce or for annulment or for a declaration of the nullity of a void marriage is brought by a [husband or wife] spouse, and a final judgment of divorce or a final judgment annulling the marriage or declaring its nullity has been rendered, the court, by order upon the application of the [husband] payor on notice, and on proof of the marriage of the [wife] payee after such final judgment, must modify such final judgment and any orders made with respect thereto by annulling the provisions of such final judgment or orders, or of both, directing payments of money for the support of the [wife] payee. The court in its discretion upon application of the [husband] payor on notice, upon proof that the [wife] payee is habitually

living with another [man] person and holding himself or herself out as [his wife] the spouse of such other person, although not married to such [man] other person, may modify such final judgment and any orders made with respect thereto by annulling the provisions of such final judgment or orders or of both, directing payment of money for the support of such [wife] payee.

§7. Section 412 of the family court act, as amended by chapter 281 of the laws of 1980, is amended to read as follows:

§ 412. Married person's duty to support spouse. 1. A married person is chargeable with the support of his or her spouse and, [if possessed of sufficient means or able to earn such means, may be required to pay for his or her support a fair and reasonable sum, as] except where the parties have entered into an agreement pursuant to section four hundred twenty-five of this article providing for support, the court [may determine, having due regard to the circumstances of the respective parties], upon application by a party, shall make its award for spousal support pursuant to the provisions of this part.

2. For purposes of this section, the following definitions shall be used:

(a) "payor" shall mean the spouse with the higher income.

(b) "payee" shall mean the spouse with the lower income.

(c) "income" shall mean income as defined in the child support standards act and codified in section two hundred forty of the domestic relations law and section four hundred thirteen of this article without subtracting spousal support actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (c) of clause (vi) of

subparagraph (5) of paragraph (b) of subdivision 1-b of section two hundred forty of the domestic relations law and subclause (c) of clause (vi) of subparagraph (5) of paragraph (b) of subdivision one of section four hundred thirteen of this article.

(d) "income cap" shall mean up to and including one hundred seventy-five thousand dollars of the payor's annual income; provided, however, beginning January thirty-first, two thousand sixteen and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(e) "guideline amount of spousal support" shall mean the sum derived by the application of subdivision three or four of this section.

(f) "self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of the domestic relations law and section four hundred thirteen of this article.

(g) “agreement” shall mean any validly executed agreement providing for maintenance pursuant to subdivision three of part B of section two hundred thirty-six of the domestic relations law.

3. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of spousal support as follows:

(a) Where child support will be paid for children of the marriage:

(1) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(2) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(3) the court shall subtract the payee's income from the amount derived from subparagraph (2) of this paragraph.

(4) the court shall determine the lower of the two amounts derived by subparagraphs (1) and (3) of this paragraph.

(5) the guideline amount of spousal support shall be the amount determined by subparagraph (4) of this paragraph except that, if the amount determined by subparagraph four of this paragraph is less than or equal to zero, the guideline amount of spousal support shall be zero dollars.

(6) spousal support shall be calculated prior to child support because the amount of spousal support shall be subtracted from the payor’s income and added to the payee’s income as part of the calculation of the child support obligation.

(b) Where child support will not be paid for children of the marriage:

(1) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(2) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(3) the court shall subtract the payee's income from the amount derived from subparagraph (2) of this paragraph.

(4) the court shall determine the lower of amounts derived by subparagraphs (1) and (3) of this paragraph.

(5) the guideline amount of spousal support shall be the amount determined by subparagraph (4) of this paragraph except that, if the amount determined by subparagraph (4) of this paragraph is less than or equal to zero, the guideline amount of spousal support shall be zero dollars.

4. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of spousal support as follows:

(a) the court shall perform the calculations set forth in subdivision three of this section for the income of the payor up to and including the income cap; and

(b) for income exceeding the cap, the amount of additional spousal support awarded, if any, shall be within the discretion of the court which shall take into consideration any one ore more of the factors set forth in paragraph (a) of subdivision six of this section; and

(c) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

5. Notwithstanding the provisions of this section, where the guideline amount of spousal support would reduce the payor's income below the self-support reserve for a single person, the guideline amount of spousal support shall be the difference between the payor's

income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no spousal support is awarded.

6. (a) The court shall order the guideline amount of spousal support up to the cap in accordance with subdivision three of this section, unless the court finds that the guideline amount of spousal support is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of spousal support accordingly based upon consideration of the following factors:

(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 during the pendency of the spousal support award when the calculation of spousal support was based upon child support being awarded which resulted in a spousal support 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 support proceeding without fair consideration;

(6) the existence and duration of a pre-marital joint household or a pre-support proceedings 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 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;

(14) any other factor which the court shall expressly find to be just and proper.

(b) Where the court finds that the guideline amount of spousal support is unjust or inappropriate and the court adjusts the guideline amount of spousal support pursuant to this subdivision, the court shall set forth, in a written decision or on the record, the guideline amount of spousal support, the factors it considered, and the reasons that the court adjusted the guideline amount of spousal support. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.

(c) Where either or both parties are unrepresented, the court shall not enter a spousal support order unless the court informs the unrepresented party or parties of the guideline amount of spousal support.

7. When a party has defaulted and/or the court makes a finding at the time of trial that it was presented with insufficient evidence to determine income, the court shall order the spousal support award based upon the needs of the payee or the standard of living of the parties prior to commencement of the spousal support proceeding, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of substantial newly discovered or obtained evidence.

8. In any action or proceeding for modification of an order of spousal support existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this section, brought pursuant to this article, the spousal support guidelines set forth in this section shall not constitute a change of circumstances warranting modification of such spousal support order.

9. In any action or proceeding for modification where spousal support or maintenance was established in a written agreement providing for spousal support made pursuant to section four hundred twenty-five of this article or made pursuant to subdivision three of part B of section two hundred thirty-six of the domestic relations law entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this section, brought pursuant to this article, the spousal support guidelines set forth in this section shall not constitute a change of circumstances warranting modification of such spousal support order.

10. Any order for spousal support issued pursuant to this section shall continue until the earliest to occur of the following:

(a) a written stipulation or agreement between the parties;

(b) an oral stipulation or agreement between the parties entered into on the record in open court;

(c) issuance of a judgment of divorce or other order in a matrimonial proceeding:

(d) the death of either party.

§ 8. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to matrimonial actions and family court actions for spousal support commenced on or after such effective date; provided however that section 3 of this act shall take effect on the thirtieth day after it shall have become a law and shall apply to matrimonial actions commenced on or after such effective date. Nothing in this act shall be deemed to affect the validity of any agreement made pursuant to subdivision 3 of part B of section 236 of the domestic relations law or section 425 of the family court act prior to the effective date of this act.

II (B). Support for Recommendations of Family Court Advisory and Rules Committee On Effect of Maintenance and Spousal Support on Child Support Calculations

[F.C.A. §413(1) (b) (5) (iii) (I) (new); F.C.A. § 413(1) (b) (5) (vii) (c)];
[D.R.L. §240 (1-b) (b) (v) (iii) (I) (new); D.R.L. § 240 (1-b) (b) (5) (vii) (c)]

On a related subject to maintenance guidelines, we endorse a legislative proposal put forth by the Family Court Advisory and Rules Committee which would make uniform the treatment of the effect of maintenance and spousal support on child support calculations.

The proposal would amend FCA § 413(1) (b) (5) (iii) and D.R.L. § 240 (1-b) (b) (v) (iii) to add to each a new sub-clause (I) which would require that alimony or maintenance paid to a spouse that is a party to the action always be included in the payee's income in determining child support, and that the order or agreement must require an adjustment to be made in child support upon termination of alimony or maintenance. The proposal would also amend FCA § 413(1) (b) (5) (vii) (c) and D.R.L. § 240 (1-b) (b) (5) (vii) (c) to require that alimony or maintenance paid to a spouse that is a party to the action always be deducted from the payor's income in determining child support, and that the order or agreement must provide for an adjustment in child support upon termination of alimony or maintenance. The purpose of the proposal is to assure statewide uniformity in the treatment of alimony or maintenance in calculating child support among the Judicial Departments, since at the moment there is considerable disparity in treatment.

It should be noted that our Committee's proposal for maintenance guidelines set forth earlier in this Report is consistent with this proposal because it requires that "maintenance shall be calculated prior to child support because the amount of maintenance shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligations."[5] Since the special formula in our proposal applies when child support is being paid to "children of the marriage," it is clear that the deduction from payor's income and addition to payee's income of the maintenance award before calculation of child support refers to a maintenance award in the same proceeding to a spouse that is a party to the action.

[5]It should also be noted that our Committee's proposal for maintenance guidelines adopts the same formula for adjustment of the income cap as the recently amended formula for adjustment of the combined parental income cap under the Child Support Standards Act which uses the sum rather than the product of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States Department of Labor Bureau of Labor Statistics for the prior two years multiplied by the existing income "cap" and then rounded to the nearest $1000. (*See* L. 2014, c. 466; S 6784-a, effective February 19, 2015). This is a technical correction designed to make adjustments in the Income caps better reflect the total amount of inflation during the two year period.

Proposal

AN ACT to amend the family court act and the domestic relations law, in relation to spousal maintenance and child support in supreme and family court

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

Section 1. Clause (iii) of subparagraph 5 of paragraph (b) of subdivision 1 of section 413 of the family court act is amended by adding a new sub-clause (I) to read as follows:

(I) alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse;

§2. Sub-clause (C) of clause (vii) of subparagraph 5 of paragraph (b) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, is amended to read as follows:

(C) alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, [provided] in which event the order or agreement [provides] shall provide for a specific adjustment, in accordance with this

subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse,

§3. Clause (iii) of subparagraph 5 of paragraph (b) of subdivision 1-b of section 240 of the domestic relations law is amended by adding a new sub-clause (I) to read as follows:

(I) alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, in which event the order or agreement shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse;

§4. Sub-clause (C) of clause (vii) of subparagraph 5 of paragraph (b) of subdivision 1-b of section 240 of the domestic relations law, as amended by chapter 567 of the laws of 1989, is amended to read as follows:

(C) alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, [provided] in which event the order or agreement [provides] shall provide for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse,

§5. This act shall take effect on the ninetieth day after it shall have become a law.

II (C). Divorce Venue Proposals

II(C) (1). Statutory Proposal for Divorce Venue [CPLR §514 (new)]

Another priority of the Committee was to address the problem of venue rules in matrimonial actions pursuant to the request of the New York County Matrimonial Judges. Plaintiffs regularly utilize the mechanism allowed by CPLR § 509 to designate venue in the county of their choice (often New York County), even though none of the parties are residents of that county. The reason why CPLR § 509 designations of venue are so frequent is partly for the convenience of attorneys who do not want to travel to file papers, and partly to take advantage of what is widely believed to be expedited processing of divorces in certain counties such as New York County. The problems arising from being "A Mecca for Matrimonial Matters" were pointed out in *Castaneda v Castaneda*, 36 Misc 3d 504, at 506 [Sup Ct 2012], where Justice Matthew Cooper discussed the burden on New York County's judicial resources, especially for uncontested divorces. [6]

Besides pointing out the huge burden on resources of New York County and the unfairness to residents of New York County who must compete for limited judicial resources, Judge Cooper noted that CPLR § 509 designations increase the likelihood that defendants who reside in foreign counties will not respond to a summons and will default in the action. Rather than travel to a distant county which may be expensive and time consuming, defendant is more likely to do nothing or mail back the defendant's affidavit consenting to the uncontested divorce. Justice Cooper suggests that one of the reasons plaintiffs in distant counties may choose to file in New York County is that they know their spouse will be likely to default if they must travel to Manhattan. As a result, divorce mills flourish, and the number of uncontested divorces processed in counties like New York County increases. When these defendants begin to understand the consequences of having defaulted in that important issues relating to spousal support, custody and support of children, and distribution of marital property have

[6] Court statistics show that in 2011 there were 49,785 uncontested divorces filed statewide of which 14,352 were filed in New York County and 27,687 were filed in all of New York City. Thus, in 2011, approximately 29% of the statewide uncontested filings were filings in New York County and approximately 52% of New York City uncontested filings were in New York County. In 2012, there were 46,201 uncontested divorces filed statewide of which 13,519 were filed in New York County and 24,465 were filed in all of New York City. Thus, in 2012, approximately 29% of the statewide uncontested filings were filings in New York County and approximately 55% of New York City uncontested filings were in New York County. In 2013, there were 47,500 uncontested divorces filed statewide of which 14,479 were filed in New York County and 26,051were filed in all of New York City. Thus, in 2013, approximately 30% of the statewide uncontested filings were filings in New York County and approximately 56% of New York City uncontested filings were in New York County. These figures show that the burden on New York County is increasing rather than decreasing since 2011. *See* Appendix A showing court statistics attached.

been inadequately addressed in the action, they try to vacate the default judgment or bring actions for post judgment relief to modify the terms. As Justice Cooper observes about New York County: "A good portion of the post judgment matrimonial motions heard in this county are those brought by out-of-county defendants seeking to vacate default judgments." (*Castaneda v Castaneda*, supra, at 511).

A number of thoughtful proposals have been made in the last few years of ways to change the CPLR rules in matrimonial actions by bar association groups and judges and clerks in New York County. These proposals would have overridden the ability of plaintiff to designate the place of trial in divorce actions by amending CPLR § 509. Under existing CPLR § 509, only the plaintiff has this ability, and under existing CPLR § 511, only the defendant may demand a change in the designation. Courts do not have the power to change designations of venue in matrimonial actions made by plaintiffs outside of the county of residence of one of the parties if defendants do not ask for a change in venue, even though CPLR § 503(a) requires venue to be the county of residence.[7] One such proposal to change the divorce venue rules would have applied only to divorces involving minor children of the marriage. The Committee agrees that divorces involving minor children are in need of venue related to residence so that the courts can make appropriate decisions as to custody and parenting time and support as to the child, having, where appropriate, the involvement of an attorney for the child familiar with the services available where the child resides. However, our Committee believes that all divorce actions should have venue related to residence. Another such proposal by the New York State Bar Standing CPLR Committee which our Committee was asked to review, would have applied to all matrimonial actions, but that proposal requires venue to be the county of residence of one of the parties, not taking into account at all the residence of the children.

The Committee has put forth its own proposal to adopt a new CPLR § 514, which is an omnibus matrimonial venue proposal which applies to all divorce actions, not just uncontested divorces, as well as actions in Supreme Court for custody and visitation, all applications to modify a supreme court order of custody or visitation, all post judgment proceedings, and all matrimonial actions described in D.R.L. §236(B). By providing a good cause exception to the requirement that venue in matrimonial actions shall be the residence of one of the parties, it allows courts to take into account the residence of the children where there are children, resources of various legal services organizations, or issues related to protecting the location of alleged domestic violence victims. It avoids courts' having to change improper venue designations *sua sponte* because it supersedes CPLR § 509. Rather than allow courts to transfer

[7] "A change of venue requires a motion. That the change cannot be made by the court *sua sponte* is an old rule, generally still followed."(16 Siegel, N.Y. Prac. § 116 (5th ed.)).

venue to the proper county, a time consuming process fraught with delays, this proposal requires that venue be proper in the first place, but gives the court authority for good cause shown to allow the trial to proceed in the county where it was brought even if the venue is not the county of residence. Thus delays in transferring venue *sua sponte* will be avoided, although the defendant is still free to demand a change of venue pursuant to CPLR § 511. It is only when the court decides not to allow the trial to proceed when a venue transfer will be needed. Thus the percentage of transfers of venue will be much smaller. Moreover, by having a separate CPLR rule for matrimonial venue, much the way as there is a separate rule for consumer credit in CPLR § 513, the Committee's new proposal avoids the cumbersome drafting problems entailed in amending sections of the CPLR (such as CPLR § § 509 and 511) intended to apply to all types of actions.

The Committee is aware of concerns that CPLR § 509 plaintiff designations of venue in uncontested divorces are necessary for the efficient processing of uncontested divorces by the courts. The Committee believes that efficient processing of uncontested divorces is possible throughout the State, and that the burden on particular counties such as New York County must be lessened. Above all, fairness to litigants must take precedence over concerns about processing. The Committee is also aware that certain attorneys will find the rule burdensome. The Committee intends that the good cause exception will address this issue. [8]

As discussed later in this Report, the Committee also recommends a uniform form venue order requiring expedited transfer of files to the proper county.

Proposal

AN ACT to amend the civil practice law and rules, in relation to venue in matrimonial actions

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

Section 1. The civil practice law and rules is amended by adding a new section 514 to read as follows:

[8] The Committee acknowledges that a rule which requires venue in the county of residence may require lawyers upstate to travel long distances to file papers and may inconvenience *pro bono* and legal aid attorneys handling large caseloads who must travel to a different county to file papers. The Committee intends that the good cause exception in the proposal should include situations where it is not practical to travel to file papers.

§ 514. Venue in Matrimonial Actions. a. This section applies to all actions wherein all or part of the relief granted is divorce, all actions brought in supreme court for custody or visitation, all applications to modify a supreme court order of custody or visitation, all actions wherein all or part of the relief granted is the dissolution, annulment or declaration of the nullity of a marriage, all proceedings to obtain a distribution of marital property following a foreign judgment of divorce, and all post- judgment proceedings.

b. Notwithstanding anything to the contrary in rule 503 or elsewhere in this article, the place of trial in an action subject to subdivision (a) of the section shall be in a county in which either party resides, except for good cause shown.

c. Notwithstanding anything to the contrary in rule 509 or elsewhere in this article, the place of trial designated by the plaintiff in an action specified in subdivision (a) of this section shall be as specified in subdivision (b) of this section.

d. In any action specified in subdivision (a) of this section, the court may for good cause shown, allow the trial to proceed before it, notwithstanding that venue would not lie pursuant to subdivision (b) of this section.

§ 2. This act shall take effect immediately.

II(C) (2). Divorce Venue Rule Proposal for Post Judgment Enforcement

[22NYCRR 202.50(b) (3) (new)]

The Committee also proposes a rule to address venue in post judgment enforcement applications in Supreme Court. The proposal would add a new subdivision (3) to 22 NYCRR § 202.50(b) to require that all judgments of divorce, whether contested or uncontested, require that any application for post judgment enforcement be brought in the county where one of the parties resides; provided that where there are minor children of the marriage, such applications shall be brought in the county where one of the parties, or the child or the children reside, except for good cause.

This proposal grew out of concerns about the numerous post judgment applications to enforce, vacate or modify judgments entered in uncontested divorces in New York County as discussed by Justice Cooper in *Castenada*.[9] To reduce the workload for judicial staff of New York County and other counties frequently designated as the county of venue pursuant to CPLR § 509, and to provide a venue related to residence where there are children of the marriage, the idea was proposed that the uncontested judgment of divorce Form (UD-11) be amended to include an order that post judgment applications for matters relating to child support, custody and visitation be brought in the county where one of the parties resides rather than in the county where the judgment was entered (as is the current practice) to be included in the same decretal paragraph where the Supreme Court's retains jurisdiction in such matters concurrent with Family Court.

While our Committee would have preferred to recommend the proposal as applicable to all post judgment applications (including applications for modifying, vacating and enforcing Judgments of Divorce) so as to provide the maximum relief to counties burdened by CPLR § 509 designations, we are proposing this measure as a court rule applicable only to applications for post judgment enforcement after an action is completed, in order not to conflict with the controlling venue rules in Article 5 of the CPLR which pertain to the trial of an action.[10] As so limited to post judgment enforcement, the rule proposal will not change the venue rules as to applications to set aside or amend a judgment of divorce (e.g. defendant never served, error in judgment, etc.). Until the CPLR is amended either through enactment of a new CPLR § 514 changing venue rules applicable to the trial of an action as proposed earlier in this Report, or by

[9] *Castaneda v. Castaneda, supra.*

[10] CPLR §509 reads as follows: "Notwithstanding any provision of this article, the place of trial of an action shall be in the county designated by the plaintiff, unless the place of trial is changed to another county by order upon motion, or by consent as provided in subdivision (b) of rule 511."

some other proposal, such applications would still have to be heard in the court where judgment was entered if our rule proposal were adopted since the existing venue statute would be applicable to such proceedings as they pertain to the trial of the action. Nevertheless, the new rule, if adopted, would at least provide some significant relief regarding enforcement of judgments and orders in matrimonial matters in Supreme Court.

At the same time that our Committee limited its proposal to post judgment enforcement so as not to conflict with existing CPLR rules governing venue of the trial of an action, we expanded this proposal to apply all types of divorce actions, whether contested or uncontested. The Committee also recommends that the proposal should apply to all post-judgment enforcement, even where there are no minor children. To deal with the special concerns when there are minor children of the marriage, our Committee recommends that applications for post judgment enforcement should be brought in the county where one of the parties, or a child or the children reside, except for good cause. To specify that enforcement applications involving minor children always be in the county where the child or children reside might be too rigid in certain cases. Similarly, to specify that enforcement applications involving children always be in the county where one of the parties resides might result in forum shopping by the parents, without taking into account the child(ren)'s needs. Thus the proposal allows some flexibility in specifying that enforcement proceedings shall be brought where of the parties, or a child or the children reside, while leaving it up to the discretion of the Judge whether there is good cause to make an exception.[11]

22 NYCRR § 202.50 (b) already delineates language requirements for proposed judgments in matrimonial actions. Subdivision (b) deals with approved forms of judgments in matrimonial actions and has two parts: (1) relating to contested actions and (2) relating to uncontested actions. Since our proposed rule relates to judgments in both contested and uncontested matrimonial actions, our Committee proposes it as a new subdivision (3) relating to both types of matrimonial actions. The first part of the rule would require that the Supreme Court specify in the judgment of divorce that it shall retain jurisdiction for enforcement or modification of the Judgment, provided that such jurisdiction shall be concurrent with the Family Court to hear certain applications with regard to maintenance, support, custody, or visitation. Similar language is already required in the forms approved under subdivisions 1 and 2 of 22 NYCRR § 202.50 (b) regarding retention of jurisdiction for enforcement of settlement agreements between the parties incorporated in the judgment of divorce. However, our language is broader than enforcement of settlement agreements alone. The language tracks the proviso in the language as to settlement agreements that, with respect to matters concerning maintenance, support,

[11] The same considerations about good cause should protect attorneys who must travel long distances to file papers with respect to the rule venue proposal as apply to the statutory venue proposal discussed above.

custody or visitation, the retained jurisdiction of the Supreme Court is concurrent with that of the Family Court. The second part of the rule we propose contains an order by the court that all future applications for enforcement of the judgment be brought in the county related to the residence as discussed above. This order as to venue would apply to all types of enforcement applications, including enforcement of settlement agreements.

Proposal:

Subdivision (3) is hereby added to 22 NYCRR § 202.50 (b), as follows (new):

3) Additional Requirement with Respect to Uncontested and Contested Judgments of Divorce. In addition to satisfying the requirements of subdivisions 1 and 2 of section 202.50 (b), every judgment of divorce, whether uncontested or contested, shall include the following decretal paragraphs:

ORDERED AND ADJUDGED, that the Supreme Court shall retain jurisdiction to hear any applications to enforce and or modify the provisions of this Judgment, provided the court retains jurisdiction of the matter concurrently with the Family Court for the purpose of specifically enforcing such of the provisions of that (separation agreement)(stipulation agreement) as are capable of specific enforcement, to the extent permitted by law, and of making such further judgment with respect to maintenance, support, custody or visitation 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

ORDERED AND ADJUDGED, that any applications brought in Supreme Court to enforce the provisions of this Judgment shall be brought in a County wherein one of the parties reside; provided that if there are minor children of the marriage, such applications shall be brought in a

County wherein one of the parties or the child or children reside, except for good cause shown;

and it is further

II(C) (3). Rule Proposal relating to Statewide Orders to Expedite Changes in Venue [22 NYCRR § 202.16-b (new)]

The third recommendation of the Committee regarding matrimonial venue is the amendment of the Matrimonial Rules to add a new section 202.16-b requiring a statewide order to expedite and prioritize transfer of files in matrimonial venue. Compounding the issues discussed herein regarding improper designations of venue in counties where none of the parties reside is the fact that when courts do order changes in venue, the process of getting the case and files transferred to the Supreme Court in the newly designed county is fraught with delays. A number of reasons may contribute to these delays, including slow mail, incorrect service by attorneys on the County Clerk, and short staffed clerk's offices due to budget problems. The order to be adopted by the new rule would require attorneys to serve the change of venue order on the County Clerk of the transferor county rather than merely filing it with the transferor county. The attorney would have to fill in the correct room and window number so that the order will be properly received. Upon receipt of service of the Order, the order requires the County Clerk of the transferor county to transfer all the papers and the file to the County Clerk of the county to which venue is transferred pursuant to CPLR § 511(d) expeditiously. Upon receipt of the file, the County Clerk of the latter county must issue a new index number without fee and transfer any pending documents to the Supreme Court for assignment and calendaring. The order also requires that it be entered forthwith. The order will clarify and compel what needs to happen to transfer venue efficiently. Keeping in mind the problems faced in *Mendon Ponds Neighborhood Ass'n. v. Dehm,* 98 N.Y.2d 745, 781 N.E.2d 883 (2002), the order will avoid mistakes which may result in venue transfer orders being held in the wrong office, as the order requires the attorney to serve a specific window or room number in the office of the County Clerk.

Proposal:

A new 22 NYCRR §202.16-b is added to read as follows:

§202.16-b. Order to Expedite Changes in Venue. (a) Applicability. This section shall be applicable to all matrimonial actions and proceedings in the Supreme Court authorized by subdivision (2) of Part B of section 236 of the Domestic Relations Law.

(b) Whenever a Judge orders venue to be transferred to another county in a matrimonial action, the order shall read substantially as follows: [*see* Appendix B to this Report]

II (D). Measure to Strengthen Enforcement by Contempt in Supreme Court [D.R.L. § 245]

The Committee recommends that the Legislature should amend D.R.L. § 245 to eliminate the requirement that other enforcement remedies be exhausted before contempt can be sought against a person who fails to pay child support, spousal support or combined child and spousal support pursuant to a court order in a matrimonial proceeding.

Even though Family Court and Supreme Court often have concurrent jurisdiction over support, the Family Court Act does not require a party to exhaust remedies before asking for contempt for failure to pay support. In contrast, D.R.L. § 245 expressly prohibits a party from seeking contempt without first exhausting other remedies. To exhaust a remedy can take months or even longer. For example, if a money judgment is obtained for the amount due, it may take some months to enforce the judgment. To exhaust every remedy could mean delay after delay for the families who need the support for their immediate needs. This ability to delay the case in Supreme Court works to the detriment of the non-monied spouse, the custodial parent, and children while a divorce proceeding is ongoing unless the Supreme Court refers the case to Family Court where the exhaustion of remedies requirements do not apply or unless a party seeks post-judgment relief in Family Court and not Supreme Court. It allows parties who owe support to delay further, knowing that contempt remedies for enforcement are a last resort.

Such a proposal was introduced in 2009-10 by Assemblywoman Weinstein as A. 5979, S. 2977 (Sampson) which would have amended D.R.L. § 245 to delete the requirement for exhaustion of remedies and also amended D.R.L. § 243 to allow the court to require posting of security to ensure payment of equitable distribution awards as well as child and spouse support (*see* http://www.assembly.state.ny.us/leg/?bn=A05979&term=2009). Although we support the change to D.R.L. § 243 as well, we believe the amendment to D.R.L. § 245 is of great significance. While we recognize that the contempt remedy is not always effective, contempt is a powerful tool, and there is no reason why the Supreme Court should not have the same resources at its disposal as the Family Court.

Proposal:

AN ACT to amend the domestic relations law, in relation to providing additional enforcement mechanisms for collection of spousal or child support

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

Section 1. Section 245 of the domestic relations law, as amended by chapter 809 of the laws of 1985, is amended to read as follows:

§ 245. Enforcement by contempt proceedings of judgment or order in action for divorce, separation or annulment. Where a spouse, in an action for divorce, separation, annulment or declaration of nullity of a void marriage, or for the enforcement in this state of a judgment for divorce, separation, annulment or declaration of nullity of a void marriage rendered in another state, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, [and it appears presumptively, to the satisfaction of the court, that payment cannot be enforced pursuant to section two hundred forty-three or two hundred forty-four of this chapter or section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules,] the aggrieved spouse may make application pursuant to the provisions of section seven hundred fifty-six of the judiciary law to punish the defaulting spouse for contempt, and where the judgment or order directs the payment to be made in installments, or at stated intervals, failure to make such single payment or installment may be punished as therein provided, and such punishment, either by fine or commitment, shall not be a bar to a subsequent proceeding to punish the defaulting spouse as for a contempt for failure to pay subsequent installments, but for such purpose such spouse may be proceeded against under the said order in the same manner and with the same effect as though such installment payment was directed to be paid by a separate and distinct order, and the provisions of the civil rights law are hereby superseded so far as

they are in conflict therewith. Such application may also be made without any previous sequestration or direction to give security **[**where the court is satisfied that they would be ineffectual**]** or any application for enforcement by any other means. No demand of any kind upon the defaulting spouse shall be necessary in order that he or she be proceeded against and punished for failure to make any such payment or to pay any such installment; personal service upon the defaulting spouse of an uncertified copy of the judgment or order under which the default has occurred shall be sufficient.

§ 2. This act shall take effect immediately and apply to all actions whenever commenced as well as all judgments or orders previously entered.

II (E). Simplification of Applications by Unrepresented Litigants for Counsel Fees [D.R.L. § 237(a)]

In its Report to the Chief Judge of the State of New York dated February 26, 2006, the former Matrimonial Commission chaired by the Hon. Sondra Miller (who serves as Honorary Chair of this Committee), recommended an amendment to D.R.L. § 237 to make clear that indigent pro se litigants may make an application for an award of fees necessary to obtain counsel without the formal requirement of an affidavit detailing fee arrangements with counsel, provided proof has been submitted of inability to afford counsel. [12] Although the Second Department in the seminal opinion of *Prichep v Prichep* 52 A.D.3d 61, 858 N.Y.S.2d 667 (App. Div. 2008, Prudenti, P.J.), suggests that an affidavit by unrepresented litigants detailing fee arrangements with counsel ought not to be required by courts, unrepresented litigants may not be aware of case law and may be intimidated by the requirement. The Committee recommends that the statute be amended to eliminate any doubt and to codify the requirements of *Prichep* on a statewide basis. The purpose of the statute, to ensure that each party will be adequately represented, should not be thwarted by unnecessary obstacles to justice.

Proposal

AN ACT to amend the domestic relations law, in relation to counsel fees and expenses in matrimonial actions

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

Section 1. Subdivision (a) of section 237 of the domestic relations law, as amended by chapter 329 of the laws of 2010, is amended to read as follows:

[12] Matrimonial Commission, Report to the Chief Judge of the State of New York at p. 25 [Feb 2006], available at www.courts.state. ny.us/ip/matrimonial-commission

(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 declare the validity or nullity of a judgment of divorce rendered against a spouse who was the defendant in any action outside the State of New York and did not appear therein where such spouse asserts the nullity of such foreign judgment, (5) to obtain maintenance or distribution of property following a foreign judgment of divorce, or (6) to enjoin the prosecution in any other jurisdiction of an action for a divorce, the court may direct either spouse or, where an action for annulment is maintained after the death of a spouse, may direct the person or persons maintaining the action, to pay counsel fees and fees and expenses of experts directly to the attorney of the other spouse to enable the other party to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. There shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In exercising the court's discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceeding and their respective attorneys, shall file an affidavit with the court detailing the financial agreement between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any

additional costs, disbursements or expenses. An unrepresented litigant shall not be required to file such an affidavit detailing fee arrangements when making an initial application for an award of counsel fees and expenses at the commencement of the proceeding; provided he or she has submitted an affidavit that he or she is unable to afford counsel with supporting proof, including a statement of net worth, and, if available, W-2 statements and income tax returns for himself or herself. Any applications for fees and expenses may be maintained by the attorney for either spouse in his or her own name in the same proceeding. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

§ 2. This act shall take effect immediately and apply to all actions whenever commenced.

II (F). Proposed PC Conference Order/Stipulation Where Grounds are Resolved to Limit Discontinuances at the Time of Trial Pursuant to CPLR § 3217(a) [22NYCRR § 202.16 (f) (2) (v)]

In the leading New York decision on discontinuances in matrimonial actions, the Court of Appeals reversed a Third Department decision overturning an Albany Supreme Court decision, thereby allowing a party to discontinue a divorce action to take advantage of the change in equitable distribution law, (*see Battaglia v. Battaglia*, 90 A.D.2d 930, 934, 457 N.Y.S.2d 915 (1982) rev'd, 59 N.Y.2d 778, 451 N.E.2d 472 (1983). This case upheld the right of the parties to discontinue cases at the time of trial without court approval pursuant to CPLR § 3217(a). However, this rule can work unfairly in matrimonial actions where parties may use the rule to discontinue to litigate another day when they believe their chances will be better, even though they have already spent years in discovery, wasting judicial resources, time and money.

The Committee believes that a special rule on discontinuances for matrimonial actions is needed because pleadings are often not served or waived in divorce actions. Parties often do not file pleadings in such cases while they negotiate, and may not even be aware of all the ancillary issues until later in the case. With the advent of D.R.L § 170(7), a party may not even file an answer and counterclaim, believing, erroneously, that it is unnecessary. It is unfair to the court and the other party and to the children to let a party discontinue after considerable resources and effort have been spent on the case. One solution would be to seek legislation amending CPLR § 3217(a) to provide that a party may not discontinue a matrimonial action without a court order after a preliminary conference or once there has been a stipulation as to grounds. Rather than recommend an amendment to the CPLR containing an outright prohibition, the Committee believes the objective of limiting discontinuances at the time of trial can be achieved by a rule adopting a uniform statewide form of preliminary conference supplemental order/stipulation. Once grounds have been resolved at the preliminary conference and the preliminary conference order is signed, a supplemental order/stipulation could follow in recordable form with acknowledgements pursuant to which the parties stipulate as to grounds and waive their right to discontinue at the time of trial pursuant to CPLR § 3217(a) if pleadings are not filed within a 60 day total time period. Rather than compel the parties to file pleadings within that time period, the form merely provides that the parties waive their rights to discontinue without court approval if they do not proceed to do so. If this form were used uniformly, issue would be joined and discontinuance would not be possible. The validity of this type of so ordered stipulation has been upheld (*see Tutt v. Tutt*, 61 A.D. 3d 967 (2nd Dept. 2009)).

Proposal:

22 NYCRR § 202.16(f) (2) (v) is amended to read as follows:

(v) the completion of a preliminary conference order substantially in the form contained in Appendix "G " to these rules, with attachments; and, in addition, in those cases where grounds are resolved, the completion of a supplemental preliminary conference order/stipulation where grounds are resolved substantially in the form contained in Appendix "G " to these rules; and

See Appendix C of this Report for the Form Supplemental Preliminary Conference Stipulation/Order to be added to Appendix "G."

II (G). Exploration of Ways to Prevent Identify Theft:
II (G) 1-Prior Surname in Judgment of Divorce
[D.R.L. §240-a]

The Committee considered the issue of identity theft as it relates to matrimonial cases in two respects, both as required by D.R.L. § 240-a.[13] First, the practice of ordering that the parties resume use of a prior surname or maiden name without requiring proof of the surname may result in identify theft. Frequently the party simply asserts the name, and the court incorporates it into the judgment of divorce, at times with no appearance by the other side. Rather than require proof of the maiden name or surname prior to the signing of the judgment of divorce which might unfairly burden a party at a difficult time, the Committee recommends that the judgment of divorce merely order the use of the surname or maiden name without specifying what it is.[14] In this way, the court will not use its judicial authority to order resumption of a name as to which it has no proof. The divorce will have been final, use of the maiden name or surname will be allowed, and the stress of producing documentation such as a birth certificate or prior marriage certificate to prove identity will be less taxing on the party who must produce the proof under less trying circumstances than a divorce.

II (G) 2-Last 4 digits of Social Security Number in Judgment of Divorce
[D.R.L. 240-a]

The Committee also considered recommending a change in Domestic Relations Law § 240-a to require only the last four digits of the social security number in the judgment of divorce. However, the Committee is mindful that this change will impact child support

[13] DRL § 240-a reads as follows: "In any action or proceeding brought under the provisions of this chapter wherein all or part of the relief granted is divorce or annulment of a marriage any interlocutory or final judgment or decree shall contain, as a part thereof, the social security numbers of the named parties in the action or proceeding, as well as a provision that each party may resume the use of his or her premarriage surname or any other former surname." (D.R.L. § 240-a)

[14] We recommend an amendment to the form of the UD-11 Uncontested Judgment of Divorce posted at http://www.nycourts.gov/divorce/forms_instructions/ud-11.pdf to delete Field 34 requiring the specific surname to be inserted and leaving Field 33 which reads "ORDERED AND ADJUDGED, that both parties are authorized to resume the use of any prior surname, and it is further." While we recognize that contested Judgments of Divorce are required to contain a clause allowing resumption of a former surname with a blank for insertion of the name under Chapter III, Subchapter B of Subtitle D pursuant to the directive in Uniform Rules for Trial Courts section 202.50 (22 NYCRR § 202.50) , we believe that judgments of divorce in contested matters would substantially comply with said requirements if the blank were not filled in.

enforcement,[15] and believes that further study of court operations is necessary to ensure that the full social security number records remain available for child support enforcement. The Committee also wants to make sure there would be no other unintended consequences if the requirement were changed. The Committee is mindful that D.R.L. § 235 does at least provide protection from identify theft by restricting access to certain contents of matrimonial court files, including judgments, to the parties and their attorneys. Admittedly, this protection may not be sufficient in this age of cyber fraud, and the Committee will continue to explore this issue.

[15] D.R.L. § 240-a was amended to include the requirement of social security numbers in 1997 as part of an effort to strengthen child support enforcement. However, D. R. L § 240-a applies to all judgments of divorce, not just those which include child support orders. (*See* Scheinkman, Practice Commentaries, N.Y. D.R.L. § 240-a, McKinney).

III. Pending and Future Projects

III (A). Project to Simplify Net Worth Statement and make it Gender Neutral [(Chapter III, Subchapter A of Subtitle D (Forms), 22 NYCRR § 202.16(b)]

Our Committee plans a revision of the Net Worth Statement required pursuant to the Domestic Relations Law and the Uniform Rules to simplify its terms and make it gender neutral.

III (B). Explore Proposal for Limited Appearance by Attorneys for Counsel Fee Applications [D.R.L. § 237(a)]

We plan to explore a statutory amendment or rule change in accordance with professional ethics rules to allow attorneys to make a special or limited appearance to make an application for counsel fees pursuant to D.R.L. §237(a) for a non-monied spouse at the commencement of the divorce action. This proposal is designed to ease the burden on litigants who would otherwise have to make the application pro se, and to encourage attorneys to make such applications without the fear they will thereby become of attorney of record and have to continue the representation without compensation if the application is denied.[16]

III(C). Redaction of Personal Information from Decisions and Divorce Forms

In addition to studying whether the last four digits of social security numbers can be substituted for the full social security numbers in judgments of divorce, the Committee is also studying the larger issue of redaction of personal information. Despite the protections of D.R.L. § 235, information about the most private details of the parties' lives can be found on the pages of newspapers. Some of this information may be revealed online or to the media by the parties themselves, and some may be revealed in related actions to divorce proceeding such as tort actions between the parties. Recently a new court rule, 22 NYCRR § 202.5(e), was adopted concerning redaction of personal information, effective January 1, 2015. This new rule does not apply to matrimonial actions, not only because of the protections of D.R.L § 235, but also because certain information relating to names and addresses of parties and children and information as to financial assets and accounts is necessary in matrimonial

[16] *See* Matrimonial Commission Report, *supra* note 11, at p. 65.

actions. Nevertheless the Committee plans to explore whether redaction of some of the information required on court forms is possible.[17]

[17] The Committee will also study a suggestion by Peter E. Bronstein in the *New York Law Journal* on December 2, 2014 for a new matrimonial rule as to redaction of information in matrimonial decisions.

IV. Forensics in Custody Cases

IV (A). Recommendations on Existing Legislative Proposal [Weinstein 2014 A. 8342-A]

The subject of access to forensic reports has been widely discussed among the legal community in the last few years. In January, 2013, three different rule proposals were put out for public comment on this subject. The Family Court Advisory and Rules Committee (FCARC), the former Matrimonial Practice Advisory Committee, and the New York State Bar Association Committee on Children and the Law (NYSBA) each submitted a proposal for a court rule regarding access to forensic evaluation reports in child custody cases by counsel, parties and self-represented litigants (*see* http://www.nycourts.gov/rules/comments/PDF/Forensic-Reports-PC-packet.pdf). The proposals differed with respect to the terms on which self-represented litigants would have access to the reports.

Before any court rule was adopted, legislation on the subject was introduced (A. 8432). Consideration of the proposals by the Administrative Board of the Courts was suspended pending possible action on this legislation. The former Committee was asked to review the legislation proposed by Assemblywoman Helene Weinstein, dated December 27, 2013, and the Matrimonial Practice Advisory and Rules Committee was asked to review the amended legislation which seeks to amend the Domestic Relations Law and the Family Court Act, in relation to child custody disputes (A. 8432-A). A new version of said bill was introduced as 2015-2016 Weinstein A. 290 on January 7, 2015. The Committee's concerns as to A. 8342-A continue to be applicable to the 2015 version.

Mindful that there are differing views among the Family Court and matrimonial communities as to dissemination of forensic reports in custody cases to unrepresented litigants, the Committee has developed some suggestions for resolving these differences which are discussed below in footnote 19 to this Report. It is the hope of this Committee that these suggestions can begin to bridge the differences among bench and bar on this important subject.

The memorandum in support of the bill states that the purpose of the bill is to provide "uniform access to court ordered forensic mental health evaluation reports and underlying data by litigants, their counsels and the attorney for the child in child custody and visitation cases."

The salient provisions of the amended bill seeking to amend D.R.L. §§ 70 and 240 and F. C. A. §§ 251 and 651 are as follows:

1. All parties, their attorneys and the attorney for the child shall have the right to receive a copy of any such forensic report.

2. Upon application by counsel or a party the court shall permit a copy of the forensic report and a copy of the court ordered evaluator's files to be provided to any person retained to assist counsel or any party subject to the discovery provisions of the CPLR and Family Court Act.

3. Pursuant to the relevant statutory demands, the evaluator shall provide to a party, his or her attorney or the attorney for the child the entire file related to the proceeding including, but not limited to, all underlying notes, test data, raw test materials, underlying materials provided to or relied upon by the court ordered evaluator and any records, photographs or other evidence for inspection and photocopying.

4. Willful failure to comply with a court order conditioning or limiting access to a forensic report shall be contempt of court.

5. Admissibility into evidence of the forensic report or the court ordered evaluator's file shall be subject to objection of any party, his or her attorney or the attorney for the child pursuant to the rules of evidence and subject to the right of cross examination.

The members of this Committee endorse the amended bill in principle. We recognize the need to reform the custody forensic process and procedures, and recognize the need for uniformity. Please see attached as Appendix D the former Committee's Proposal Regarding Access to Forensic Reports in Custody Cases dated October 24, 2012 (" 10.24.12 Proposal") submitted to the Honorable A. Gail Prudenti, Chief Administrative Judge of the Office of Court Administration.[18]

The Committee also recognizes that there are significant issues raised by this amended bill which must be addressed and resolved. The following is a synthesis of the comments from the members of the Matrimonial Practice Advisory and Rules Committee:

1. A majority of the Matrimonial Practice Advisory and Rules Committee do not endorse the dissemination of the forensic report or the file "to any party". We continue to endorse the

[18] The recommendations of the former Committee dated October 24, 2012 related to access to forensic reports in custody cases as well as to a proposal regarding deposition of experts. The former Committee's recommendations regarding deposition of experts referred to 22 NYCRR § 202.26(g), a section of the matrimonial rules also discussed in point 5 of the synthesis of the Committee's comments below. However, only the former Committee's recommendations concerning access to forensic reports in custody cases are relevant here, not their recommendations regarding depositions of experts.

position articulated in the 10.24.12 Proposal: "Each party shall be permitted to read the report and make notes concerning it but shall not be permitted to have a copy. A represented party may read it in his or her attorneys' office. An unrepresented party may read it in the courthouse or other secure location after executing an affidavit in the form attached as Exhibit "B"."[19]

2. There is no consensus among the members of the reconstituted Committee whether depositions may be conducted of the forensic expert.

3. The forensic report and the evaluator's file should be made available to another expert for review but not to "any person retained to assist counsel or any party".

---

[19]The Committee has carefully considered the due process and access to justice arguments put forth relating to the treatment of pro se litigants as opposed to litigants represented by attorneys. The Committee appreciates the concern expressed by the Appellate Division, First Department, in *Sonbuchner v. Sonbuchner*, 96 A.D.3d 566, 947 N.Y.S.2d 80, 83 (App. Div. 2012). There is a real danger that the dissemination to the public of the reports could prove to cause long lasting damage and embarrassment to many, and those concerns must outweigh reasonable restrictions imposed on self-represented litigants. Attorneys and other forensic experts are subject to professional discipline if reports are released. The safeguarding of the reports in professional offices is easier, and dissemination or viewing of the reports by children and other non-party household members could cause irreparable harm. To impose upon a moving party the obligation and cost to prove contempt places an unfair burden and expense on innocent parties to the action. The remedy of contempt does not protect non-parties as well from improper dissemination of reports. In addition, contempt for dissemination in violation of a court order years after a case is resolved is not a practical remedy. The enactment of Judiciary Law § 35 (8) which provides for the appointment of counsel for those who cannot afford to hire counsel, does limit the number of self-represented litigants in custody disputes. Even those who decline the appointment of counsel can be assigned counsel for the limited purpose of supervising the review of the report and trial preparation related thereto. For those who remain self-represented, the Committee wholly endorses a statutory requirement for the appointment of counsel for self-represented litigants for such limited purpose, so that the self-represented litigant will be able to review the report in counsel's office with counsel and have access to the report to prepare for trial on the same terms as a represented litigant. However, even with such requirements in place, the Committee notes that there will be times that attorneys and self-represented litigants are treated differently in the judicial process. These differences in treatment range from how litigants enter a courthouse, to the screening that they must undergo, to the requirements as to attorneys being escrow agents while self-represented litigants are not. In certain instances, judicial discretion allows self-represented litigants greater leeway than represented litigants, such as the ability to testify in the narrative or to introduce an exhibit without formality. The Committee believes that reasonable advantages afforded to self-represented litigants along with reasonable restrictions imposed upon self-represented litigants are, to some extent, unavoidable consequences of the fact that self-represented litigants are not trained and licensed members of the bar.

4. The attorney for the child does not have the obligation to show the report/notes to the child.

5. The amended bill addresses the admissibility of the forensic report, but 22 NYCRR § 202.16(g) addresses a different point, absent from the bill. The relevant provisions of § 202.16(g) provide: "(i)n the discretion of the Court, written reports may be used to substitute for direct testimony at trial…and the expert shall be present and available for cross-examination". No doubt this provision saves an enormous amount of court time. Thus, the members of the reconstituted Committee endorse the inclusion of this rule in the statute.

6. In order to ensure statewide uniformity, the provisions of the statute as revised should be applicable in all courts statewide.

IV (B). Best Practices Regarding Judicial Evaluation of Mental Health Evaluators

Related to the issue of access to forensic reports in custody cases, is the quality of the reports themselves. The quality of the reports in turn depends on the competence and training of the evaluators. The Committee considered a proposal for a statewide rule on certification of mental health professionals in custody cases because the current rule is applicable in the 1st and 2nd Departments only. However members of the Committee from the 3rd and 4th Departments believe that a statewide rule would create more problems because of the limited number of mental health professionals in certain parts of the State.

Proposal:

Instead of a statewide rule on certification, the Committee recommends training on the use of an evaluation form by jurists in the 1st and 2nd Department so that there will be greater reporting when a professional does not act competently. Judges should be encouraged to use the form so that the Appellate Division knows when a mental health professional does not act competently.

The Committee recommends use of the form attached as Appendix E to this Report and believes it will not be unduly burdensome on Judges.

V. Subcommittees

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Christopher S. Mattingly
Stephen P. McSweeney
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Hon. Hope Zimmerman

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Hon. Jacqueline Silbermann
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Bruce J. Wagner
Hon. Hope Zimmerman

VI. Conclusion

The Committee will continue to meet regularly to study and discuss all significant matrimonial law proposals with the goal of improving the divorce process for litigants and their children. We stand ready to confer with the Chief Administrative Judge's other Advisory Committees on issues of mutual interest and concern. We are grateful to the Chief Judge and to the Chief Administrative Judge for their support and for the opportunity to assist in their efforts to improve the administration of justice.

January, 2015

Respectfully submitted,

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VII. APPENDICES A-E TO REPORT TO CHIEF ADMINISTRATIVE JUDGE

MATRIMONIAL PRACTICE ADVISORY AND RULES COMMITTEE
JANUARY 2015

APPENDIX A

SUPREME COURT CIVIL - MATRIMONIALS FILED & DISPOSED
COMPARISON REPORT: 2010 vs 2011

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	Full Year 2010 (01/04/2010 - 01/02/2011)		Full Year 2011 (01/03/2011 - 01/01/2012)		2010 vs 2011		Full Year 2010 (01/04/2010 - 01/02/2011)		Full Year 2011 (01/03/2011 - 01/01/2012)		2010 vs 2011	
	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed
TOTAL STATE	**45,618**	**47,263**	**49,785**	**47,379**	**9%**	**0%**	**13,849**	**14,238**	**14,538**	**14,736**	**5%**	**3%**
NYC	25,470	26,266	27,687	24,094	9%	-8%	3,185	3,169	3,426	3,213	8%	1%
NEW YORK	12,737	12,591	14,352	14,143	13%	12%	971	1,147	995	1,140	2%	-1%
BRONX	2,086	3,012	2,647	2,620	27%	-13%	267	252	434	260	63%	3%
KINGS	5,068	5,546	5,267	2,646	4%	-52%	723	729	797	760	10%	4%
QUEENS	4,992	4,581	4,818	4,403	-3%	-4%	857	705	819	736	-4%	4%
RICHMOND	587	536	603	282	3%	-47%	367	336	381	317	4%	-6%
Outside NYC	20,148	20,997	22,098	23,285	10%	11%	10,664	11,069	11,112	11,523	4%	4%
ALBANY	524	596	677	671	29%	13%	181	266	232	319	28%	20%
ALLEGANY	146	139	135	123	-8%	-12%	38	41	46	33	21%	-20%
BROOME	319	386	381	442	19%	15%	164	179	166	231	1%	29%
CATTARAUGUS	135	162	199	186	47%	15%	72	85	60	83	-17%	-2%
CAYUGA	134	157	151	181	13%	15%	54	88	75	89	39%	1%
CHAUTAUQUA	304	274	401	384	32%	40%	160	127	160	119	0%	-6%
CHEMUNG	196	191	230	214	17%	12%	60	64	66	67	10%	5%
CHENANGO	134	112	163	155	22%	38%	54	45	44	56	-19%	24%
CLINTON	264	268	255	266	-3%	-1%	65	67	91	78	40%	16%
COLUMBIA	121	121	88	142	-27%	17%	47	39	57	47	21%	21%
CORTLAND	137	127	175	176	28%	39%	35	36	32	35	-9%	-3%
DELAWARE	95	81	92	61	-3%	-25%	41	37	27	24	-34%	-35%
DUTCHESS	607	582	670	677	10%	16%	296	252	341	329	15%	31%
ERIE	1,187	1,291	1,476	1,634	24%	27%	1,305	1,313	1,159	1,287	-11%	-2%
ESSEX	75	59	95	113	27%	92%	25	36	32	27	28%	-25%
FRANKLIN	113	106	144	127	27%	20%	40	38	36	55	-10%	45%
FULTON	174	189	163	180	-6%	-5%	65	60	51	89	-22%	48%
GENESEE	111	128	133	150	20%	17%	76	89	51	67	-33%	-25%
GREENE	100	104	131	98	31%	-6%	41	28	56	57	37%	104%
HAMILTON	0	0	0	0	0%	0%	0	0	0	0	0%	0%
HERKIMER	125	124	112	117	-10%	-6%	81	89	66	75	-19%	-16%
JEFFERSON	478	539	537	651	12%	21%	132	145	85	131	-36%	-10%
LEWIS	63	73	81	78	29%	7%	24	29	18	15	-25%	-48%
LIVINGSTON	152	174	166	186	9%	7%	62	36	50	49	-19%	36%
MADISON	142	141	152	135	7%	-4%	47	68	79	47	68%	-31%
MONROE	1,403	1,399	1,294	1,542	-8%	10%	734	719	655	891	-11%	24%
MONTGOMERY	101	80	129	130	28%	63%	37	41	42	44	14%	7%
NASSAU	1,826	1,825	1,826	1,850	0%	1%	1,168	1,185	1,208	1,067	3%	-10%
NIAGARA	311	318	349	340	12%	7%	282	261	270	253	-4%	-3%
ONEIDA	383	334	452	393	18%	18%	259	260	282	292	9%	12%
ONONDAGA	959	1,355	1,014	1,380	6%	2%	521	564	615	549	18%	-3%
ONTARIO	188	231	211	273	12%	18%	125	130	148	114	18%	-12%
ORANGE	318	641	214	743	-33%	16%	356	327	391	363	10%	11%
ORLEANS	94	96	85	136	-10%	42%	28	30	34	34	21%	13%
OSWEGO	214	215	273	273	28%	27%	147	174	181	171	23%	-2%
OTSEGO	113	109	134	120	19%	10%	37	46	62	51	68%	11%
PUTNAM	137	136	147	144	7%	6%	117	133	97	95	-17%	-29%
RENSSELAER	288	320	371	387	29%	21%	120	170	151	191	26%	12%
ROCKLAND	393	416	424	417	8%	0%	221	287	238	325	8%	13%
ST LAWRENCE	279	271	334	322	20%	19%	70	80	87	73	24%	-9%
SARATOGA	583	542	687	624	18%	15%	204	199	295	236	45%	19%
SCHENECTADY	349	334	438	400	26%	20%	145	136	132	91	-9%	-33%
SCHOHARIE	47	44	83	68	77%	55%	20	15	29	23	45%	53%
SCHUYLER	46	42	53	54	15%	29%	11	19	9	22	-18%	16%
SENECA	56	64	43	67	-23%	5%	20	25	36	36	80%	44%
STEUBEN	178	241	215	279	21%	16%	68	48	79	78	16%	63%
SUFFOLK	2,403	2,384	2,589	2,506	8%	5%	1,563	1,773	1,630	1,768	4%	0%
SULLIVAN	197	202	174	183	-12%	-9%	42	49	51	63	21%	29%
TIOGA	159	161	166	209	4%	30%	51	34	46	51	-10%	50%
TOMPKINS	242	222	277	247	14%	11%	48	37	56	58	17%	57%
ULSTER	304	279	515	394	69%	41%	127	145	180	143	42%	-1%
WARREN	185	178	221	218	19%	22%	78	72	77	71	-1%	-1%
WASHINGTON	184	170	194	185	5%	9%	50	69	58	54	16%	-22%
WAYNE	156	165	175	181	12%	10%	96	84	76	103	-21%	23%
WESTCHESTER	2,083	1,959	2,031	1,894	-2%	-3%	688	620	728	720	6%	16%
WYOMING	112	110	135	135	21%	23%	40	43	59	50	48%	16%
YATES	21	30	38	44	81%	47%	26	37	30	34	15%	-8%

SUPREME COURT CIVIL - MATRIMONIALS FILED & DISPOSED
COMPARISON REPORT: 2012 vs 2013

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	Full Year 2012 (01/02/2012 - 12/30/2012)		Full Year 2013 (12/31/2012 - 01/05/2014)		2012 vs 2013		Full Year 2012 (01/02/2012 - 12/30/2012)		Full Year 2013 (12/31/2012 - 01/05/2014)		2012 vs 2013	
	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed
TOTAL STATE	**46,201**	**49,804**	**47,500**	**49,023**	**3%**	**-2%**	**13,652**	**15,115**	**13,208**	**15,525**	-3%	3%
NYC	24,465	26,362	26,051	25,745	6%	-2%	3,379	3,161	3,434	3,437	2%	9%
NEW YORK	13,519	13,413	14,479	15,139	7%	13%	911	1,023	851	1,068	-7%	4%
BRONX	3,356	3,485	3,926	3,490	17%	0%	741	290	783	534	6%	84%
KINGS	3,379	5,358	3,497	3,498	3%	-35%	628	737	722	759	15%	3%
QUEENS	3,662	3,328	3,621	3,036	-1%	-9%	722	736	737	716	2%	-3%
RICHMOND	549	778	528	582	-4%	-25%	377	375	341	360	-10%	-4%
Outside NYC	21,736	23,442	21,449	23,278	-1%	-1%	10,273	11,954	9,774	12,088	-5%	1%
ALBANY	644	664	610	697	-5%	5%	174	338	186	303	7%	-10%
ALLEGANY	120	137	92	93	-23%	-32%	42	46	39	50	-7%	9%
BROOME	416	434	446	470	7%	8%	196	178	137	255	-30%	43%
CATTARAUGUS	193	204	170	155	-12%	-24%	64	84	66	80	3%	-5%
CAYUGA	174	186	150	155	-14%	-17%	65	90	73	98	12%	9%
CHAUTAUQUA	383	394	351	360	-8%	-9%	137	162	133	135	-3%	-17%
CHEMUNG	215	208	223	223	4%	7%	70	54	50	68	-29%	26%
CHENANGO	145	133	139	121	-4%	-9%	55	51	34	64	-38%	25%
CLINTON	281	287	294	285	5%	-1%	69	96	75	77	9%	-20%
COLUMBIA	86	124	129	129	50%	4%	43	31	66	61	53%	97%
CORTLAND	149	135	150	134	1%	-1%	24	39	49	41	104%	5%
DELAWARE	101	99	74	89	-27%	-10%	28	30	33	49	18%	63%
DUTCHESS	658	691	668	673	2%	-3%	295	382	308	371	4%	-3%
ERIE	1,446	1,745	1,972	2,251	36%	29%	1,118	1,191	997	1,103	-11%	-7%
ESSEX	88	100	108	100	23%	0%	29	40	18	29	-38%	-28%
FRANKLIN	120	122	118	115	-2%	-6%	24	77	35	55	46%	-29%
FULTON	161	187	166	169	3%	-10%	66	83	47	68	-29%	-18%
GENESEE	143	159	140	142	-2%	-11%	69	81	58	74	-16%	-9%
GREENE	111	105	122	124	10%	18%	29	46	35	33	21%	-28%
HAMILTON	0	0	0	0	0%	0%	0	0	0	0	0%	0%
HERKIMER	94	122	81	101	-14%	-17%	44	57	54	61	23%	7%
JEFFERSON	558	615	515	584	-8%	-5%	106	122	144	127	36%	4%
LEWIS	71	72	71	88	0%	22%	25	14	21	38	-16%	171%
LIVINGSTON	148	157	117	141	-21%	-10%	44	56	44	71	0%	27%
MADISON	142	111	115	142	-19%	28%	63	61	53	79	-16%	30%
MONROE	1,370	1,512	1,455	1,444	6%	-4%	645	898	656	741	2%	-17%
MONTGOMERY	106	136	88	103	-17%	-24%	34	33	33	59	-3%	79%
NASSAU	1,822	1,681	1,680	1,739	-8%	3%	1,097	1,038	1,053	1,387	-4%	34%
NIAGARA	366	358	261	251	-29%	-30%	262	303	237	277	-10%	-9%
ONEIDA	439	350	459	368	5%	5%	269	308	256	221	-5%	-28%
ONONDAGA	972	1,368	962	1,277	-1%	-7%	606	561	593	621	-2%	11%
ONTARIO	208	248	244	307	17%	24%	103	135	115	157	12%	16%
ORANGE	755	814	367	672	-51%	-17%	367	422	378	381	3%	-10%
ORLEANS	48	107	59	130	23%	21%	31	41	31	39	0%	-5%
OSWEGO	262	258	249	230	-5%	-11%	153	176	144	135	-6%	-23%
OTSEGO	135	134	129	112	-4%	-16%	46	34	40	41	-13%	21%
PUTNAM	160	167	123	133	-23%	-20%	112	90	109	103	-3%	14%
RENSSELAER	303	377	299	298	-1%	-21%	122	211	115	159	-6%	-25%
ROCKLAND	373	459	393	415	5%	-10%	269	372	196	290	-27%	-22%
ST LAWRENCE	276	291	286	268	4%	-8%	100	96	60	87	-40%	-9%
SARATOGA	621	688	583	564	-6%	-18%	233	299	227	258	-3%	-14%
SCHENECTADY	396	415	396	444	0%	7%	116	106	126	176	9%	66%
SCHOHARIE	68	82	59	70	-13%	-15%	41	33	26	39	-37%	18%
SCHUYLER	44	43	51	54	16%	26%	14	18	14	21	0%	17%
SENECA	51	69	45	71	-12%	3%	30	43	22	35	-27%	-19%
STEUBEN	198	264	201	263	2%	0%	64	78	66	89	3%	14%
SUFFOLK	2,456	2,760	2,514	2,762	2%	0%	1,368	1,912	1,328	2,022	-3%	6%
SULLIVAN	188	203	159	242	-15%	19%	43	75	48	94	12%	25%
TIOGA	176	136	130	208	-26%	53%	44	52	36	44	-18%	-15%
TOMPKINS	218	212	223	266	2%	25%	69	54	62	79	-10%	46%
ULSTER	381	406	438	368	15%	-9%	149	139	126	154	-15%	11%
WARREN	232	238	231	237	0%	0%	62	70	77	82	24%	17%
WASHINGTON	184	216	192	192	4%	-11%	59	69	47	54	-20%	-22%
WAYNE	181	209	212	204	17%	-2%	84	98	73	71	-13%	-28%
WESTCHESTER	1,958	1,903	1,796	1,903	-8%	0%	742	699	675	718	-9%	3%
WYOMING	104	90	99	94	-5%	4%	40	44	32	37	-20%	-16%
YATES	38	57	45	48	18%	-16%	20	38	18	27	-10%	-29%

APPENDIX B

Appendix B

At an IAS Term, Part ____ of the Supreme Court of the State of New York, held in and for the County of _____, at the Courthouse, located at _____, New York on the ___ day of _____ 201___.

P R E S E N T:

_____,
Justice.

- -x

Index No.:

Plaintiff,

EXPEDITED
CHANGE OF VENUE ORDER
FOR A
MATRIMONIAL ACTION

- against -

Defendant.

- -x

Upon ☐ motion or ☐ consent, it is hereby,

ORDERED, that the above captioned matrimonial action pending in the County of _____, captioned _____v. _____, index number _____/_____ is hereby transferred to the County of _____.

ORDERED, that the attorney for the _____ shall serve a copy of this order upon the County Clerk of this county by delivering a copy of this order to room _____, window _____.

ORDERED, that the County Clerk of this county shall forthwith deliver to the County Clerk to which venue is changed all papers filed in the action and certified copies of all minutes and entries, which shall be filed, entered or recorded, as the case requires, in the office of the

latter clerk pursuant to CPLR §511 (d)

ORDERED, that upon receipt of the file and a copy of this Order, the County Clerk of the latter county shall issue a new index number, without fee, and transfer any pending documents to the Supreme Court for assignment and calendaring of the matter.

This shall constitute the order of the court.

E N T E R Forthwith,

_____

J. S. C.

APPENDIX C

Appendix C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF
----------X

Plaintiff,

Index No.:_____

- against -

Part No.:_____

Defendant.
----------X

SUPPLEMENTAL PRELIMINARY CONFERENCE STIPULATION/ORDER WHERE GROUNDS ARE RESOLVED

PRESIDING:_____
Justice of the Supreme Court

The parties and counsel appeared before this Court on _____ for a preliminary conference in this matter, pursuant to 22 NYCRR §202.16, at which they agreed to and the Court so ordered a Preliminary Conference Stipulation/Order. As stated in Paragraph B of the Preliminary Conference Stipulation/Order, the parties agree that the plaintiff shall proceed to a divorce on the grounds of DRL §170( ).

The parties further agree:

a- If Plaintiff does not file a verified complaint within 30 days of today's date, plaintiff waives the right to file a voluntary discontinuance without court permission pursuant to CPLR 3217(a), and agrees that Defendant shall be permitted to file a counterclaim for divorce absent a complaint, and Defendant shall be deemed to have filed a reply neither admitting nor denying the allegations in the complaint.

b- If Defendant has not filed a counterclaim for divorce within 60 days of today's date, defendant waives the right to file a voluntary discontinuance without court permission pursuant to CPLR 3217(a).

_____	_____
Plaintiff	Defendant
_____	_____
Attorney(s) for Plaintiff	Attorney(s) for Defendant

Dated:

SO ORDERED:

_____

Justice of the Supreme Court

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

On the _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for the State, 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

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

On the _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for the State, 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

APPENDIX D

SUPREME COURT CHAMBERS
Supreme Court State of New York
92 Franklin Street
Buffalo, NY 14202
e-mail: stownsen@courts.state.ny.us

SHARON S. TOWNSEND, J.S.C.
Vice Dean, Family & Matrimonial Law
New York State Judicial Institute

716-845-2502
Fax: 716-845-7503

October 24, 2012

Hon. A. Gail Prudenti
Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

Re: Proposal by the NYSBA Children and the Law Committee and Discovery of Experts

Dear Judge Prudenti:

The Matrimonial Practice Advisory Committee considered the proposal by the New York State Bar Association Children and the Law Committee regarding access to forensic reports in custody cases (see attached as Exhibit 1). Judge Pfau had referred said proposal to both the Matrimonial Practice Advisory Committee ("MPAC") and the Family Court Advisory and Rules Committee ("FCARC") for their feedback and guidance. The MPAC overwhelmingly was not in favor of this proposal .

The MPAC also considered a proposal crafted by the FCARC that relied on the recently decided case of *Sonbuchner v Sonbuchner*, 96 AD3d 566 [1st Dept 2012], which requires Judges to set the same conditions for access to forensic reports by counsel and pro se litigants, i.e., requiring "parity," but without specifying exactly what those conditions should be. I understand that Jan Fink, counsel to the FCARC, will be submitting that proposal to you as a separate document.

Instead of supporting the Children and the Law Committee proposal, or a "parity rule" based on *Sonbuchner*, MPAC has crafted a third proposal that you and the Administrative Board might consider adopting as a uniform rule regarding access to forensic reports in custody cases (please see Exhibit 2 attached). The proposal in Exhibit 2, like the Miller Commission recommendation (see Report of the Matrimonial Commission to the Chief Judge, at p. 54 [Feb. 2006] attached as Exhibit 3), would allow attorneys to uniformly have copies of the forensic reports in custody matters.

The MPAC believes that its proposal will allow preparation for trial in most contested cases without the risk that copies of the reports may be shown to children or third parties. Such instances of improper use of the reports by parties to matrimonial litigation were reported at hearings before the Miller Commission. The MPAC proposal also requires an affirmation of counsel, and affidavits of pro se litigants and mental health professionals as assurance that improper dissemination of the forensic reports will not occur.

On a related subject, the MPAC also recommends that you consider adopting an amendment to 22 NYCRR §202.16(g) regarding Disclosure of Experts in contested matrimonial actions as outlined in Exhibit 4 (copy attached). The proposal would not only expand upon the contents of reports exchanged and filed with the Court by experts as required by the existing rule, but would set procedures for pretrial discovery of experts, including in custody cases.

Because the MPAC believes that full details as to expert disclosure in advance of trial in contested matrimonials is necessary to assure fairness in today's increasingly complex litigation, the requirements as to what the written reports filed and exchanged prior to trial must contain are more specific than what is otherwise required in the existing rule. As currently written, 22NYCRR §202.16(g) of the matrimonial rules requires reports of expert witnesses expected to be called at trial to be exchanged and filed with the Court within 60 days in advance of trial, including information as to the expert's qualifications, but does not specify what must be contained in the reports or what information as to qualifications is required. The proposed rule requires specifics, including publications authored, cases testified in, and the compensation to be received.

The MPAC proposal would also create a uniform rule which would allow parties to depose experts in matrimonial matters, subject to the discretion of the Court after considering such factors as it deems "fair, relevant, and reasonable," and the cost and time involved. If the testimony is offered with respect to access, child custody, visitation or abuse, the party seeking the pretrial deposition or disclosure must make an application to the Court, and the Court shall consider, in addition to the other factors named above, the effect of such deposition upon a Court appointed expert's availability in future cases. *(see also Howard S. v Lillian S.*, 14 NY3d 431 [2010]). To the extent that discovery of experts in matrimonial actions is properly controlled as provided in the proposed rule, MPAC believes it assures that issues are vetted prior to trial.

Please do not hesitate to contact me if you have any questions. Thank you.

Very truly yours,

Hon. Sharon S. Townsend, J.S.C.
Chair, Matrimonial Practice Advisory Committee

SST/sdh
cc: Susan Kaufman, Counsel
Janet Fink, Counsel
Members of the Matrimonial Practice Advisory Committee

Exhibit 2 Matrimonial Practice Advisory Committee Proposal Regarding Access to Forensic Reports in Custody Cases, 9.21.12

WHEREAS the Matrimonial Commission recommended that there be a uniform policy on access to forensic reports under which each counsel would be given one copy of the report, and each litigant, whether represented or not, would not be given a copy, but would be permitted to review it; and

WHEREAS the Matrimonial Practice Advisory Committee has concluded that it would be advisable to have a uniform state-wide policy with regard to forensic reports,

The Matrimonial Practice Advisory Committee recommends that the Chief Administrator of the Courts adopt a uniform rule regarding access to forensic reports ordered by the courts for use in custody, visitation, and other cases concerning children, which shall include the following provisions:

1. Upon receipt of the forensic report, the court shall advise counsel for the parties and counsel for the child(ren), that it has received the report, and shall provide to each counsel an affirmation in the form annexed hereto as Exhibit A.
2. The court shall provide one copy of the forensic report to each counsel from whom it has received an executed affirmation.
3. Each attorney shall retain his/her copy of the report in confidence and may make an additional copy for her/his own use in preparing for litigation, which copy shall also be kept in confidence when not being used.
4. Each party shall be permitted to read the report and make notes concerning it but shall not be permitted to have a copy. A represented party may read it in his or her attorney's office. An unrepresented party may read it in the courthouse or other secure location after executing an affidavit in the form attached hereto as Exhibit B. .
5. Upon application by counsel or a party for permission to give a copy of the report to a mental health professional to assist counsel or the party, the court shall provide to the mental health professional an affidavit in the form annexed hereto as Exhibit C. The court shall provide one copy of the forensic report to a mental health professional from whom it has received an executed affidavit.
6. In the event that an unrepresented litigant is unable to read the forensic report in the courthouse because of language skills or disability, the court may make appropriate accommodations.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

----------X

Plaintiff, **Index No.:_____**

- against -

AFFIRMATION OF COUNSEL REGARDING FORENSIC REPORT

Defendant.

----------X

_____, an attorney admitted to practice in the State of New York, affirms the following to be true under penalties of perjury:

1. I am a member of _____, attorneys for _____ _____ in this action. I make this affirmation in connection with the report of the forensic evaluator, Dr._____, and specifically to affirm my understanding and agreement to abide by the Court's directions accompanying its provision of a copy of the report to counsel, as follows:

(a) I and the other persons affiliated with my firm will see to it that no copies of the report are made by us or by anyone else without the Court's explicit direction.

(b) While our copy of the report may be shown to our client (provided our client is a party), no copy will be given to the client, nor will the client be permitted to make a copy or to leave the premises of our office with our copy.

2. Unless specifically permitted by the court, counsel will not directly quote any language from the report of the forensic expert in any papers or other documents submitted by counsel to the court.

3. In the event that I or my firm ceases to represent our client in this matter, we will return our copy of the forensic report to the court.

Dated: _____, New York
_____, 2012

_____
Attorney's Signature

_____
(Please Print Name)

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART

----------X

,

Plaintiff, **Index No.**

- against -

AFFIDAVIT
REGARDING
,
Defendant. **FORENSIC REPORTS**

----------X

, Plaintiff/Defendant in this action, swears or affirms as follows:

1. I make this affidavit with respect to the report of the forensic evaluator, Dr. , a copy of which I understand will be provided to me to read upon my execution of this affidavit.

2. I will not remove the report from the courthouse.

3. I will see to it that no copies of the report are made by me or by anyone else without the Court's explicit direction.

4. Unless specifically permitted by the court, I will not directly quote any language from the report of the forensic expert in any papers or other documents submitted to the court.

_____

Sworn to or affirmed before me

on _____, 2012

_____

Notary Public

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

----------X

Plaintiff, **Index No.:_____**

- against -

AFFIDAVIT REGARDING

Defendant. **FORENSIC REPORT**

----------X

STATE OF NEW YORK)

ss:

COUNTY OF _____)

I, _____, swear or affirm as follows:

1. I have been retained as an expert witness for plaintiff/defendant [circle one].

2. I make this affirmation in connection with the report of the forensic evaluator, Dr._____ _____ (the Forensic Report) and specifically to affirm my understanding and agreement to abide by the Court's directions accompanying its provision of a copy of the Forensic Report to counsel, as follows:

(a) I and the other persons affiliated with my office will see to it that no copies of the Forensic Report are made by us or by anyone else without the Court's explicit direction.

(b) While my copy of the Forensic Report may be shown to the party, no copy will be given to the party, nor will the party be permitted to make a copy or to leave the premises of my office with my copy.

3. In the event that I issue a written report, I understand that my report will also be confidential, and that it will not be used for any purposes other than this litigation, and that I will not provide copies to anyone except the attorney for the party for whom I will appear as a witness, the Court, the attorney representing the opposing party, and the child's attorney, if any.

4. At the conclusion of my services in this matter, I will return my copy of the Forensic Report to the court.

_____

Signature

_____

(Please Print Name)

Sworn to before me
the ____ day of_____, 2012

_____

Notary Public

APPENDIX E

Judicial Evaluation of Forensic Services

Name of Expert.

Case name_____Docket No. _____

Timeliness

1. Was the report submitted timely as stipulated in the order?

Yes _ No _____

Content

1. Was the expert given specific judicial directions as to the issues you wished addressed?

Yes___ No _____

2. Were the issues addressed? Yes __ No_____

3. Was further clarification by the court necessary regarding the issues to be addressed?

Yes___ No _____

4. Was the report focused and well organized? Yes ___ No_____

5. Was the report helpful in rendering a decision or resolving the matter?

Yes No

Testimony

1. Has the expert previously participated in cases before you?

Yes___ No_

On how many occasions? _____

2. Were the presentations helpful in rendering a decision or resolving the matter?

Yes No

Costs

1. Were the hours billed proportional to the issues involved?

Yes___ No_

2. Did the bill exceed the maximum amount as provided in the order?

Yes___ No_

Any other comments _____

Judge (print).

Date

Judge's Signature