Report of the **Matrimonial Practice Advisory and Rules Committee**

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

January 2018

Tribute to John J. Grimes, Esq.

On December 4, 2017, we learned of the loss of our esteemed member of the Matrimonial Practice Advisory and Rules Committee, John J. Grimes. A 1973 graduate of Harvard Law School, Mr. Grimes was founding partner at the law firm of Grimes & Zimet, with offices located in Chappaqua and New York City. As an experienced litigator with advanced training in mediation and collaborative divorce law, he focused his legal practice on matrimonial and family law and appeals.

Mr. Grimes served on the Executive Committee of the Family Law Section of the New York State Bar Association for many years. In Westchester County where he lived and practiced, he served on the Grievance Committee for the Ninth Judicial District and was an active member of the matrimonial bar. He was also a member of a number of collaborative law professional associations. He was the Second Vice- President of the Westchester Black Bar Association, a Co-Chair of the Collaborative Law Committee of the Westchester Woman's Bar Association, and a member of the National Bar Association and the New York City Bar Association, where he served as a member of the Matrimonial Law Committee. Mr. Grimes served on the Executive Committee of the Family Law Section of the Westchester County Bar Association and he was a former member of the Board of Directors of the Family & Divorce Mediation Council of Greater New York.

Mr. Grimes was appointed to our Committee in June, 2014 by then Chief Administrative Judge A. Gail Prudenti. Until his recent illness, he almost never missed a meeting, often volunteering to drive members of the Committee from Westchester to Manhattan for meetings. As a member of the Education Subcommittee, he has given presentations to Judges at the Judicial Institute on various aspects of matrimonial law, especially regarding counsel fee and pendente lite applications in divorce proceedings. He also made presentations for the New York State Bar Association and for local bar associations and was a former Adjunct Professor at Northeastern University.

Mr. Grimes was held in the highest esteem and friendship by his colleagues in the legal profession. Not only was Mr. Grimes a prominent matrimonial and family law attorney and scholar recognized by his profession, he was also a friend, whose bright smile, courtesy, graciousness, kindness, intelligence and good humor brightened every occasion, even serious professional meetings and courtroom proceedings. Above all, John J. Grimes was a gentleman, and he will be sorely missed by all who had the good fortune to know him.

Our Committee expresses our deepest condolences to his wife and office manager and legal assistant at Grimes & Zimet, Linda Phelps Grimes, as well as to his family, and to Barbara T.R. Zimet, his law partner at Grimes & Zimet.

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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 Committee, its Chair 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

In 2017, the Committee continued its efforts to meet the challenge posed by Chief Judge Janet DiFiore at her investiture on February 8, 2016, when she said: "Starting today, and every day that I serve as Chief Judge, my team and I will be working to improve all aspects of our system and services towards achieving operational and decisional excellence in everything we do."[1] During 2017, the Committee proposed several important new matrimonial rule reforms which met with approval of the Chief Administrative Judge and were adopted by administrative order with approval of the Administrative Board of the Courts. These reforms followed the major legislative and rule reforms recommended by the Committee during 2015 and 2016 which were approved by the Chief Administrative Judge and in turn were successfully adopted by the Legislature or by administrative order of the Chief Administrative Judge with approval of the Administrative Board of the Courts. "The cumulative effect of these changes continues to increase excellence in matrimonial cases."[2]

Review of Committee's Legislative and Rule Proposals Adopted in 2015, 2016 and 2017

The Committee was established in June 2014 when it held its organizational meeting. It met monthly beginning in September 2014 and prepared its 2015 Annual Report after only four

[1] See Investiture Remarks of Chief Judge Janet DiFiore, February 8, 2016 available at http://www.nycourts.gov/whatsnew/pdf/CHDiFioreInvestiture.pdf

[2] See Article by Hon. Jeffrey Sunshine, "*2015-16 Changes in Matrimonial Legislation and Rules for Matrimonial Matters*," NYLJ, Friday, November 18, 2016, p. 4, Col. 4.

meetings. It continued to meet monthly from January 2015 through May 2015, and after a summer hiatus, from September 2015 through December 2015. After submitting its 2016 Annual Report, the Committee resumed monthly meetings from February 2016 through June 2016, and again from September 2016 through November 2016. After submitting its 2017 Annual Report, the Committee met from January through May, and from September through December of 2017.

Maintenance Guidelines Law and Simplification of Counsel Fee Affidavits for Self-Represented Litigants

In the very first year of the Committee's existence, the Maintenance Guidelines Law (L. 2015, c. 269) and the law eliminating the requirement for self-represented litigants to provide a supporting affidavit from counsel regarding fee arrangements when making application for counsel fees as the non-monied spouse in a divorce action (L.2015, c. 447) were enacted into law, after having been adopted as part of the Office of Court Administration's Legislative Program upon the recommendation of our Committee. Both laws were significant accomplishments in furthering "decisional excellence," a goal of the Chief Judge's Excellence Initiative.

The Committee considers the passage of the maintenance guidelines law as one of the most significant accomplishments in the field of matrimonial law since the enactment of no-fault divorce in 2010. Our maintenance guidelines proposal was a compromise reached by a working group[3] with widely divergent positions, brought together by Justice Jeffrey Sunshine, Chair of the Committee, in order to end the divisions within the matrimonial community that had existed over the enactment of post-divorce maintenance guidelines and over whether there should be a continuation of temporary maintenance guidelines enacted in 2010 [L. 2010, c. 371]. It assured the less affluent spouse a minimum amount of maintenance for a reasonable period of time without overly burdening those maintenance payors who are also paying household expenses or who are also Child Support Payors. The Maintenance Guidelines Law also promoted greater judicial efficiency, by allowing judges the option to justify their decisions about guidelines deviations on the record, rather than having to produce a written decision in every case, as had been required by the previous Temporary Maintenance Guidelines Law (L. 2010, c 371.

The elimination of the attorney's affirmation about counsel fee arrangements enables self-represented litigants to more easily exercise their right to apply for counsel fees as the non-monied spouse in a divorce action pursuant to D.R.L. § 237. Prior to this reform, self-represented litigants had often been unable to obtain the affidavit from attorneys who did not want to be committed to represent the party in the action if the fee application was denied.

Later in this report, we discuss a proposal to reform the matrimonial court rules regarding motions for counsel fees by the non-monied spouse pursuant to D.R.L. §237, not only as to the

[3] The organizations represented in the working group included 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. 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. (now Hon. Emily Ruben) and Kate Wurmfeld, Esq. represented the NYS Maintenance Standards Coalition.

elimination of the attorney's affirmation, but also as to adoption of a form of affidavit to be used by self-represented litigants in applying for counsel fees. Our rule amendment proposal also makes clear what should be obvious from the statute but unfortunately is not always understood, namely, that when the non-monied spouse is represented by an attorney, the attorney for the monied spouse must submit the required billing documentation with the answering papers for the motion for counsel fees by the non-monied spouse, just as the attorney for the non-monied spouse must submit the documentation with the moving papers. Otherwise the non-monied spouse will be at a disadvantage by having to reveal details that the monied spouse would keep confidential. We also discuss our proposal to permit attorneys to make a limited appearance to apply for counsel fees on behalf of the non-monied spouse in a divorce action. The totality of these changes will further the Excellence Initiative by increasing access to justice for self-represented litigants and non-monied spouses in matrimonial litigation.

Law Strengthening Enforcement by Contempt in Supreme Court Enacted in 2016

In the summer of 2016, we were gratified by the passage of a measure we proposed which the Chief Administrative Judge had approved as part of the Office of Court Administration's 2015 and 2016 Legislative Programs, to strengthen enforcement by contempt in Supreme Court (L. 2016, C. 365). On September 30, 2016, the Governor signed this measure into law. This legislation is another significant reform in matrimonial law.

The passage of this legislation meant that Supreme Court would finally have relatively the same standard as Family Court regarding applications for contempt. Family Court Act § 454[4] allows Family Court Judges to immediately enforce non-compliance of support obligations with contempt without exhausting other remedies (see New York Court of Appeals decision in *Powers v. Powers*).[5]

Because of this important reform, non-monied spouses awarded child and spousal support have a better chance to receive funds needed to support their families without having to take out loans or sell assets; and non-monied spouses awarded counsel fees have a better chance to hire counsel to represent them early in the case so that they can have their matters fairly heard. The discrimination against the non-monied spouse inherent in the prior version of D.R.L. §245 which allowed monied spouses to obstruct or delay enforcement in Supreme Court of monetary obligations in a divorce was eliminated. The legislation also relieves Family Court overburdened

[4] Family Court Act § 454(3)(a) reads as follows:
"3. Upon a finding by the court that a respondent has willfully failed to obey any lawful order of support, the court shall order respondent to pay counsel fees to the attorney representing petitioner pursuant to section four hundred thirty-eight of this act and may in addition to or in lieu of any or all of the powers conferred in subdivision two of this section or any other section of law:
(a) commit the respondent to jail for a term not to exceed six months. For purposes of this subdivision, failure to pay support, as ordered, shall constitute prima facie evidence of a willful violation …."

[5] *Powers v. Powers*, 86 N.Y.2d 63, 71, 653 N.E.2d 1154 (1995). In addition to holding that, unlike D.R.L. § 245 as then written, F.C.A. § 454 does not require exhaustion of remedies before enforcement by contempt, the court also stated: "For purposes of section 454, moreover, failure to pay support as ordered itself constitutes "prima facie evidence of a willful violation" (Family Ct. Act § 454[3][a]). Thus, proof that respondent has failed to pay support as ordered alone establishes petitioner's direct case of willful violation, shifting to respondent the burden of going forward …" *Powers v. Powers*, 86 N.Y.2d 63, 69, 653 N.E.2d 1154, 1157 (1995).

caseloads by removing the incentive to bring enforcement actions in Family Court rather than Supreme Court. In addition, hearings on contempt are shorter and less time consuming, which provides litigants access to relief in a more timely manner.

Revised Matrimonial Form Proposals Adopted in 2016

During 2016 the Chief Administrative Judge adopted a number of our proposals for form revisions with the approval of the Administrative Board of the Courts. The form revision proposals (for a Revised Net Worth Statement and a Revised Preliminary Conference Order) were designed to streamline the efficiency of the matrimonial litigation process by ensuring that financial information about the parties was clearly revealed and available to the parties and the court, and by making sure that contested issues in the action were dealt with in an orderly fashion. The Net Worth Statement and Preliminary Conference Order are two of the most important forms required in contested matrimonial litigation. See our 2017 Annual Report at http://www.nycourts.gov/ip/judiciaryslegislative/pdfs/2017-MatrimonialPractice-ADV-Report.pdf for a detailed description of the revisions in the Net Worth Statement and Preliminary Conference Order. The revisions of these widely used forms further the goal of operational excellence. They also further decisional excellence by assuring that issues are dealt with in a timely manner with all the facts required to be disclosed to the court and the other spouse.

Redaction Rule Proposals Adopted in 2016

On March 1, 2016, new redaction rules for matrimonial actions recommended by our Committee went into effect. First, 22 NYCRR § 202.5(e) was amended to prevent the information or testimony revealed in a matrimonial action from being revealed in another civil action. Second, a limited rule on redaction of personal information from written decisions in contested matrimonial actions was added to the matrimonial rules as 22 NYCRR § 202.16(m) which requires the court to omit or redact certain personal information from written decisions. After public comment, these proposals were adopted by Administrative Order 192/15 available at http://www.nycourts.gov/divorce/pdfs/AO192-15.pdf.

At our suggestion, 22 NYCRR § 202.16(m) was modified by Administrative Order of Chief Administrative Judge Lawrence K. Marks, with the advice and consent of the Administrative Board of the Courts, in June, 2016[6] to limit its application to situations where the court is submitting a decision, order, judgment, or combined decision and order or judgment for publication, while allowing the unpublished version to remain unredacted. The amended rule allowed more flexibility, while retaining the basic protections for which the rule was intended. By making the rule easier to understand and comply with, it would be more widely followed, and

[6] See Memorandum of Ronald Younkins, Executive Director of the Office of Court Administration dated June 23, 2016 with attached Administrative Order 143/16 adopting revisions to 22 NYCRR 202.16(m), which is available at http://www.nycourts.gov/divorce/pdfs/AO143-16.pdf.

would better achieve the goal of protecting privacy and preventing identify theft and abuse. The rule allows the courts to continue to satisfy their statutory mandate to justify in writing their decisions on important matrimonial issues,[7] while still including in orders and judgments such necessary information as is required by statute for child support enforcement and other purposes. In keeping with the goal of operational excellence of the Chief Judge's Excellence Initiative, the revised rule does not burden courts with redaction responsibilities except when publication is going to take place, and it does not require courts to bifurcate orders or judgments from decisions, an unnecessary waste of judicial effort.

New Rule on Page Limitation for Pendente Lite and other Applications [22 NYCRR § 202.16-b] Adopted in 2017

In furtherance of Chief Judge DiFiore's Excellence Initiative, the Committee proposed a new court rule in our 2017 Annual Report imposing a page limitation on pendente lite motion practice in an effort to expedite matrimonial proceedings while a contested divorce is pending. In response to comments received from the Family Law Section of the New York State Bar Association after public comment was sought on the proposed rule,[8] the Committee recommended to the Chief Administrative Judge in April 2017 a modified version of said proposal which was adopted by Administrative Order 99/17 dated May 22, 2017 available at http://www.nycourts.gov/divorce/pdfs/PDF%20B%20AO-99-17-Applications.pdf upon consultation with and approval by the Administrative Board of the Courts, effective July 1, 2017**.**

This rule imposes page limitations on pendente lite applications unless such limitations are waived by the judge for good cause. Attorneys often feel compelled to respond to voluminous motions with voluminous responses. This rule eliminates the incentive for attorneys to have the longest motion papers as a means of impressing their clients. It promotes the Chief Judge's Excellence Initiative by saving judicial time and resources. It speeds the time within which applications can be granted or denied, thereby making the divorce process proceed more quickly.

Where practicable, the rule requires that all motions and orders to show cause and cross motions will be requested in one application so as to avoid repeated motion practice where possible, still recognizing that new issues may arise during the course of the action which could not have been foreseen. Requirements are imposed as to formatting conventions, (including matters such as printing sides, paper size, font, margins, ink, spacing and tabbing of exhibits) to ensure that papers submitted are legible and can be scanned in and copied, while allowing self-represented litigants the option to submit handwritten applications provided they are legible and otherwise comply with the rule. There are specific page limits on different types of affidavits

[7] *See* article by Peter E. Bronstein in the *New York Law Journal* on December 2, 2014.
[8] See Memorandum by John McConnell dated January 18, 2017 available at http://www.nycourts.gov/rules/comments/PDF/MatrimonialApplications.pdf

and affirmations,[9] with a three-inch size limitation on exhibits. However, specific exhibits required by, or necessary in order to comply with, the matrimonial rules or statutes are exempted from the size limitation on exhibits.[10] The rule defers to local practice by providing that nothing therein will prevent a judge or justice of the court or of a Judicial District within which the court sits from having his or her own local part rules to the contrary or in addition to the rule. However, where local practice is silent, the rule provides some basic ground rules to the extent that there is no conflict with the C.P.L.R. or other statute. The provisions of 22 NYCRR § 202.16(k) still apply where applicable.

The rule provides a preference for emergency applications for processing and signature, but provides that designating an application as an emergency without good cause may be punishable by sanctions, thus making it more likely that true emergencies will be dealt with on an emergency basis. A provision was added in the final proposal adopted by the Chief Administrative Judge which states that where any application is designated an emergency without good cause, it shall be processed and considered in the ordinary course of court procedures. This provision satisfies concerns expressed by the Family Law Section of the New York State Bar Association about the possibility of differing views as to what constitutes good cause for designating an emergency. At the suggestion of the Family Law Section, the adopted proposal also includes a clear definition of which types of pendente lite applications (including cross motions) are subject to the rule, and there is also a mechanism for submitting applications exceeding the page limits without creating an overburdening process requiring a party or counsel to seek prior approval which could be difficult when a case has not been assigned to a judge. We thank the Family Law Section for the comments which resulted in many of the changes to the final proposal.

New Divorce Venue Rule Proposal for Post Judgment Enforcement and Modification Applications [22 NYCRR § 202.50(b)(3)] Adopted in 2017

On January 18, 2017, public comment on the Committee's proposal for a new court rule applicable to post judgment applications for modification or enforcement of judgments of divorce in Supreme Court was sought on behalf of the Administrative Board of the Courts by Memorandum of OCA Counsel John W. McConnell.[11] The court rule proposed was contained in our 2017 Annual Report. In response to the request for public comment, the Office of Court Administration received comments from Sanctuary for Families dated March 7, 2017 regarding this proposal, which comments were forwarded to the Committee.[12] In response, the Committee modified its proposal and resubmitted it to the Chief Administrative Judge. By Administrative Order dated May 22, 2017, the Chief Administrative Judge, with the approval of the Administrative Board of the Courts, adopted the new rule effective August 1, 2017.

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[9] In the Rule as adopted, Page limits of Supporting or Opposing Affidavits or Affirmations or Memoranda of Law may be twenty (20) pages, while Page Limits of Expert Affidavits may be eight (8) pages, and Page Limits of Reply Affidavits or Affirmations may be ten (10) pages.

[10] Exempted exhibits include Affidavits of Net Worth, Retainer Agreements, maintenance guidelines worksheets and/ or child support worksheets, and counsel fee billing statements or affirmations or affidavits related to counsel fees.

[11] See Memorandum available at http://www.nycourts.gov/rules/comments/PDF/MatrimonialFormOfJudgment.pdf

[12] See Comments of Sanctuary for Families dated March 7, 2017 attached as Appendix "A" to this report.

The rule adds a new paragraph (3) to 22 NYCRR § 202.50(b) which prescribes new language required to be contained in judgments of divorce, both contested and uncontested.[13] The rule is designed to cure aspects of the problematic venue rules under the C.P.L.R. as they relate to post judgment relief in matrimonial actions, thus allowing quicker and more effective resolutions of matrimonial disputes in furtherance of the Excellence Initiative.

In the past, most post judgment applications seeking enforcement or modification of judgments of divorce were brought in the same county in which the original divorce proceeding occurred. While the designation of that county may have been proper at the time of commencement, often by the time that post judgment litigation ensues neither the parties nor the children have a nexus to that county. Similarly, the initial filing at commencement may have been made pursuant to C.P.L.R. 509, notwithstanding the fact that neither party had any nexus to the jurisdiction at the time, simply because it was a more convenient forum for the attorneys or because of backlogs in one county or another county. This resulted in certain counties being burdened with a disproportionate volume of uncontested and contested divorces in comparison to other counties, which resulted eventually in post judgment litigation subsequently being heard in that same county.

The new court rule lessens the burden on those counties and on litigants. It provides a means for parties to correct the injustice resulting from an initial inappropriate C.P.L.R. 509 designation once post judgment litigation ensues by requiring the post judgment litigation in a more appropriate venue. It also allows parties who have moved away to pursue post judgment litigation without having to travel back to the county where the judgment was entered.

The rule requires that applications should be brought in the county where one of the parties, or a child or the children reside. To address special concerns, there is a good cause exception which leaves it up to the judge's discretion whether there is good cause to make an exception. Such exception might be useful to low income litigants who reside in counties with scarce legal resources and consequently might select venue according to the availability of pro bono or reduced fee legal assistance in a particular county. It might also be useful where neither party is a resident of New York State. However, in order to save victims of domestic violence the burden of having to make application for a good cause exception where confidentiality or danger is at issue, at the suggestion of Sanctuary for Families, the final rule provides that where the address of either party and a child or children is not a matter of public record or is subject to an existing confidentiality order, such applications may be brought in the county where the judgment of divorce was entered. The final rule also clarifies that the retention of jurisdiction for the purpose of modifications of maintenance, support, custody and visitation is only to the extent

[13] 22 NYCRR § 202.50(b) already delineated language requirements for proposed judgments in matrimonial actions. The first part of the rule requires that the Supreme Court specify in the judgment of divorce that it shall retain jurisdiction for enforcement of the settlement agreement or for enforcement or modification of the judgment, provided that such jurisdiction shall be concurrent with the Family Court to hear certain applications to enforce the settlement agreement 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). However, the language in the rule is broader than enforcement of settlement agreements alone, and supersedes said language to the extent of any inconsistency. The second part of the rule requires that the judgment contain an order as to venue related to residence for post judgment enforcement or modification applications in Supreme Court.

permitted by law so as to avoid inadvertently conflicting with statutory provisions regarding such modifications as are contained in D.R.L. §236 (B)(9)(2). It also provides that good cause applications shall be made by motion or order to show cause. The Committee is grateful to Sanctuary for Families for their helpful suggestions.

On August 1, 2017, the effective date of the rule, a revised form of UD-11 Judgment of Divorce was posted on the Divorce Resources website at http://www.nycourts.gov/divorce/forms_instructions/ud-11.pdf. This revised form, which was adopted by Administrative Order 138/17 of the Chief Administrative Judge, contains the provisions required by the new rule, providing some relief to the overburdened counties and litigants. See Memorandum from Ronald Younkins, OCA Executive Director, dated July 20, 2017 attaching Administrative Order and New Rule on Divorce Venue Post Judgment Enforcement and Modification (22 NYCRR 202.50(b)(3)), attached as Appendix "B" to this report.

Ultimately, we hope that our omnibus statutory proposal for a new divorce venue proposal applicable to matrimonial actions will be enacted so that the burden on certain counties of plaintiffs' inappropriate designation of venue in the initial divorce action will cease. See our omnibus statutory special matrimonial venue proposal for a new C.P.L.R. 514 set forth in our 2017 Annual Report, which was adopted by the Office of Court Administration as 2017 OCA#52 and introduced by Senator Bonacic in 2017 as S. 5736. Later in this report, we propose a modification to said proposal to deal with the concerns of Sanctuary for Families that we addressed with the rule proposal as well as concerns of the Family Law Section of the New York State Bar Association regarding sua sponte transfers of venue. The key provisions of the proposal as so modified will be described later in this report.

New or Modified Legislative Proposals for 2018

Our proposal on access to forensic reports in custody cases and our statutory proposal on divorce venue remain our major legislative priorities again this year. Both these proposals were adopted as part of the OCA 2017 Legislative Program (2017 OCA#38 and 2017 OCA#52, respectively), and were introduced in the Legislature during 2017 as S. 6579 Avella and S. 5736 Bonacic, respectively. To take into account suggestions and comments we received about these proposals since they were introduced, we are recommending certain modifications to these proposals this year. We believe these changes can be made without detracting from the essential purpose of the measures.

Modified Proposal on Access to Forensics in Custody Cases [D.R.L.§§ 70, 240; F.C.A. §§ 251, 651]

We recommend two changes to our proposal on access to forensics in custody cases (2017 OCA #38 S. 6579 Avella) in order to address issues raised by members of the Chief Administrative Judge's Family Court Advisory and Rules Committee. First, we propose revision of the definition of "court-ordered evaluators" to include only forensic mental health professionals in custody and visitation proceedings, **not** court-ordered ordered evaluators in statutorily

mandated investigations in child protective, permanency, destitute child or other proceedings. This change was recommended by the Family Court Advisory and Rules Committee because proceedings under Article 6 of the Family Court Act are often consolidated or held jointly with child protective or other proceedings in which assessments other than clinical evaluations are ordered and in which other considerations are relevant. This change also avoids conflicts with confidentiality laws and possible loss of federal funding for state child protective programs.[14]

Second, we recommend deletion of a provision we had included in our prior proposal at the suggestion of the Family Law Section of the New York State Bar Association. That provision governed the times when the court may read or review the forensic report. In this report, at the suggestion of the Family Court Advisory and Rules Committee, we propose instead to authorize the Chief Administrative Judge to promulgate rules and regulations authorizing a court, in particular cases where a party does not raise a legally valid objection thereto, to read or review a forensic report at particular times as the rules shall permit. By allowing the Chief Administrative to promulgate rules and regulations for a court rather than impose uniform rules on all courts, we allow for the differences between the types of custody and visitation proceedings which may be handled in Family Court as contrasted with Supreme Court.

The changes described above are set forth in greater detail later in this report together with an analysis of the pertinent provisions of the proposal as modified. The proposed revisions make the proposal more workable in Family Court and Supreme Court simultaneously, without detracting from the essential feature of our proposal which provides access to the reports and notes and evaluator's file to attorneys and litigants while ensuring greatly increased protections (as compared to A.1533/S.6300),[15] to prevent confidential information in the report from being disseminated indiscriminately. In our modified proposal, we retain the additional protections preventing unauthorized dissemination by everyone involved, including attorneys, attorneys for children, experts, independent forensic evaluators hired to assist attorneys or self-represented litigants, and represented and self-represented litigants. We also retain the provisions giving self-represented litigants access to the reports and files and the ability to take notes thereon at the court or other location, as well as the ability to employ forensic evaluators who will themselves be permitted a copy of the report and access to the file upon execution of an affidavit assuring against dissemination.

We also retain a clause designed to reduce the number of trial days in custody and visitation proceedings by incorporating a provision from 22 NYCRR § 202.16(g)(2), which provides that written reports may be used to substitute for direct testimony at trial, that the reports shall be submitted by the expert under oath, and that the expert shall be present and available for cross-examination. Custody and visitation trials in matrimonial cases are already too lengthy. The efficiency of the court system and the needs of the litigants to have a resolution

[14] We reviewed comments from the New York Public Welfare Association, Inc., which opposed both A.1533 / S.6300 and S. 6579 because the definition of "court-ordered evaluators" included court-ordered child protective examinations. This could result in multiple problems under confidentiality laws and might also impact federal funding, which is conditioned on states following federal rules on confidentiality of child abuse and neglect reports. A copy of the New York Public Welfare Association, Inc.'s letter of comments dated June 9, 2017 is attached as Appendix "C" to this report.

[15] A.1533/S. 6300 is the 2017-18 version of 2015-16 A.290 which we used as a starting point for drafting S.6579 with its increased protections against dissemination of forensic reports.

of these important issues requires this provision which was not included in A. 290 or its successor A. 1533/S.6300.

We believe our revised proposal, continues to merit serious consideration because it strikes a fair compromise between protecting the due process rights of represented and self-represented litigants, while protecting the vulnerable against indiscriminate dissemination of the most private details of their lives. It establishes uniform standards on a statewide basis to determine access to forensic reports and files by all who need them during custody and visitation litigation. At the same time, it prevents trials on custody and visitation from becoming excessively long as a result of questions whether the forensic report should be admitted into evidence. Thus, it serves the dual goals of decisional and operational excellence for the court system, in furtherance of Chief Judge DiFiore's Excellence Initiative.

Last spring, memoranda in opposition to A.1533/S.6300 and in support of S. 6579 were sent to legislators by the Family Law Section of the New York State Bar Association, the Women's Bar Association of the State of New York, the New York Chapter of the Academy of Matrimonial Lawyers, and the New York City Bar Matrimonial Law Committee and Committee on Children and the Law.[16] The Children's Law Center of Brooklyn also supported our proposal. Their Letter to the Editor entitled "Parties Deserve to See Forensic Evaluations," published in the *New York Law Journal* on March 22, 2017, emphasized that our proposal should be viewed as necessary insofar as it affords vital protections to vulnerable children, stating:

> "*Thus, we support the Matrimonial Practice Advisory and Rules Committee recommendation that would give both represented and pro se litigants access to, but not possession of, forensic evaluations. Such an approach would simultaneously afford parents and other parties due process while adequately safeguarding the interests of the children caught in the middle of contentious litigation. This proposal is not simply acceptable, as Mr. Tippins suggests,*[17] *but necessary to avoid placing vulnerable children at greater risk than they already are as the subjects of a custody or visitation proceeding."* [18]

We hope that our revised proposal will continue to meet with approval of the Chief Administrative Judge, legislators,[19] and the numerous Bar Associations and commentators who have endorsed it as well as the Family Court Advisory and Rules Committee and the New York Public Welfare Association, Inc. whose concerns have been addressed in the modified proposal.

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[16] See Bar Association Letters in support of S.6579 and in opposition to A.1533/S.6300 set forth in Appendix "D" to this report.

[17] See Timothy M. Tippins, "Forensic Reform: The Time is Now!" (NYLJ March 2, 2017), to which the foregoing quotation by The Children's Law Center refers.

[18] Children's Law Center, Letters to the Editor, "Parties Deserve to See Forensic Evaluations,"(*NYLJ* March 22, 2017).

[19] Senator Avella introduced *both* our original proposal as S. 6579 last year as well as the Senate version of A.1533 known as S.6300.

Modified Statutory Proposal for Divorce Venue in Matrimonial Cases [C.P.L.R. 514]

Our second legislative priority for 2018 is our previously-endorsed legislative proposal (2017 OCA#52, S. 5736 Bonacic). This proposal is for an omnibus special matrimonial venue statute which requires that venue be related to residence in all divorce actions 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)(2).

We have this year modified our proposal, to eliminate the sua sponte good cause exception, which raised questions from the Family Law Section of the New York State Bar Association whether judges might deem it good cause to transfer a case to another county for reasons of convenience (e.g. this county's judges handling matrimonial cases are overburdened while the other county's judges handling matrimonial cases have more time), even though the designated venue had a proper nexus to the parties or their children. We left in place the exception allowing the court to retain venue where designated even if improper for good cause. This requires that venue have been proper in the first place, and avoids long delays caused by venue transfers. We have also conformed the legislative proposal to changes we made in response to suggestions by Sanctuary for Families regarding our rule proposal on divorce venue post judgment applications which was adopted in 2017. Rather than require a victim of domestic violence to make application for a good cause exception, a C.P.L.R 509 designation is allowed as an option where the address of both parties is not a matter of public record or is subject to a confidentiality order.

We believe that our revised proposal continues to accomplish the goals of the Excellence Initiative by eliminating excessive designations of venue in counties without a proper nexus to the parties or their children. If enacted, this revised proposal will relieve the overburdened counties who currently bear the burden of excessive divorce venue designations. Our proposal is supported not just by New York County, but by many upstate counties similarly burdened. Moreover, divorce venue unrelated to residence of children and parties denies access to justice on the most important matters concerning children and families undergoing divorce. At the same time, it strains the limited judicial resources of the courts by encouraging venue transfers, defaults by parties unwilling to travel to distant jurisdictions, and post judgment relief.

Our divorce venue proposal is needed more than ever this year. Possible expansion of e-filing to matrimonial actions will increase the burden on overburdened counties frequently designated as the county of venue in such actions pursuant to C.P.L.R. 509.[20] When utilizing e-filing, it is easy to select venue in any county of the state without regard to nexus to the parties solely because of the expectation that the divorce will be processed more quickly in that county.

[20] In 2017, ch. 99, L.2017 eliminated the prohibition against the authority of the Appellate Divisions to remove the consent requirements for participation in e-filing in appeals in matrimonial actions. The prohibition has not yet been removed at the trial level where e-filing in matrimonial actions must still be on consent, but it is conceivable that the prohibition at the trial level in matrimonial actions may also be eliminated in the future. See our Committee's comments on e-filing in matrimonial actions later in this report.

In addition, the recent signing by the Governor of chapter 366, Laws of 2017,[21] which allows as an additional venue option under C.P.L.R 503(a) [22] the choice of venue in a county in which a substantial part of the events or omissions giving rise to the claim occurred, will be problematic insofar as matrimonial actions are concerned.[23] The bill memo in support of chapter 366 when it was before the Legislature justifies the new law as needed where neither plaintiff nor defendant was a resident of the county where the acts or omissions giving rise to the claim occurred because:

> *"...absent residence of a party in the subject county, that county's court system has no authority to hear controversies about unsafe premises, unsafe worksites, unsafedriving and a myriad of other scenarios within its borders."* [24]

Notably, the bill memo in support did not include divorce actions in the list of such case types. This new law clearly was not designed with matrimonial actions in mind and only underscores the immediate need for our omnibus matrimonial divorce venue legislation.

Modified Proposal for Amendment of Biennial Adjustment of "Income Cap" in Maintenance Guidelines Law [F.C.A §412(2)(d), D.R.L. § 236(B)(5-a) (b)(5), and D.R.L § 236(B)(6)(b)(4)]

Our third modified legislative proposal concerns the adjustment of the date of the income cap under the Maintenance Guidelines Law to accord with the date of adjustment of the combined income cap under the Child Support Standards Act. This measure will allow the courts to adjust the income caps under the Maintenance Guidelines Law and the Child Support Standards Act simultaneously. It will prevent confusion by the public, counsel, and the court as to which cap has been increased, thereby reducing litigation delays and increasing access to justice. It will also avoid unnecessary court system expenses in revising court forms and calculators to reflect the cap increases twice rather than once within a two-month period, thus promoting the Excellence Initiative's goal of operational efficiency. This proposal has been coupled with other measures in the last two years, and has not been enacted. It is our hope that this measure will be considered on its own merits this year. Although this measure seems ministerial in nature, enactment of the measure would further the goals of both operational and decisional excellence.

Re-submission of Previously-Endorsed Legislative Proposals

First, we resubmit our proposal to allow a limited appearance by counsel to apply for counsel fees on behalf of the non-monied spouse which took on new significance last year, when

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[21] A.8032/ S. 6031.

[22] C.P.L.R § 503(a) previously required venue related to residence but could be overcome by a plaintiff's C.P.L.R § 509 designation. Under the new statute, venue must be either the county of residence or the county where a substantial part of the events or omissions giving rise to the claim occurred, and can still be overcome by a C.P.L.R § 509 designation.

[23] In a matrimonial action where the ground designated is the no-fault ground or one of the other grounds, it is unclear how the new provision would be interpreted.

[24] Bill Memo to A.8032/S.6031.

both the NYSBA House of Delegates[25] and the New York courts[26] endorsed the concept of limited scope representation. Since it relates to limited scope representation, our proposal is clearly an access to justice measure furthering the Chief Judge's Excellence Initiative.
The second previously-endorsed legislative proposal is our proposal to amend the domestic relations law to require marriage licenses in all cases. If this proposal is adopted, courts will no longer be required to examine questions of the validity of marriages if the loopholes in the law requiring marriage licenses are eliminated, thus ensuring the age of consent legislation enacted in 2017 cannot be evaded by religious marriages.[27] Our third previously-endorsed legislative proposal is a proposal to amend the C.P.L.R. to prevent parties from voluntarily discontinuing actions once a notice of appearance has been filed in the action. The adoption of the revised Preliminary Conference Order form by court rule adopted by Administrative Order did much to prevent parties from voluntarily discontinuing matrimonial actions after the expenditure of time and resources. However, the proposed C.P.L.R. amendment would still be desirable as discussed later in this report. All three of our previously-endorsed legislative proposals promote the Chief Judge's Excellence Initiative by promoting judicial efficiency and access to justice.

Re-Submission of Previously-Endorsed Rule Proposal

We are also restating in this report our previously-endorsed rule proposal relating to statewide orders to expedite changes in venue, designed to cure aspects of the problematic venue rules under the C.P.L.R. as they relate to matrimonial actions, thus allowing quicker and more effective resolutions of matrimonial disputes. Should e-filing be extended to all matrimonial actions in the future on a mandatory basis, the process of transferring cases for changes in venue will be simpler, but currently there is still need for our rule proposal. We also restate our custody severance rule proposal designed to speed custody and visitation decisions. Both proposals further both decisional and operational excellence by promoting faster and fairer resolutions. We also restate our proposed amendment to 22 NYCRR § 202.16(k)(3) and adoption of form of application for counsel fees by unrepresented litigants which will provide greater access to justice for self-represented litigants and non-monied spouses.

[25] At their November 5, 2016 meeting, the NYSBA House of Delegates adopted a report of the State Bar's Committee on Access to Justice endorsing Limited Scope Representation for low and moderate-income individuals in certain civil cases (see New York State Bar Association, State Bar News, "Limited scope, diversity/inclusion CLE among items House considers," November/December 2016, Vol. 58, No. 6, pg.1).
[26] See Joel Stashenko, "NY Courts Endorse 'Limited-Scope' Representation," *NYLJ,* 12/20/16, Pg.1, Col. 5.
[27] See our discussion later in this report of our efforts to implement the new Age of Consent Law (ch. 35, Laws of 2017).

Past, Pending and Future Projects

Finally, we discuss a number of new and ongoing projects our Committee has been considering, including a project to revise and streamline the uncontested divorce packets. We also discuss a project to clarify the obligations of matrimonial counsel under the client's rights and responsibilities required in matrimonial actions. We also comment on matrimonial mediation pilot projects in Erie, Kings and Suffolk Counties which are being planned in coordination with the Office of ADR Programs for the New York State Unified Court System. In addition, this report includes discussion of our efforts, in cooperation with Hon. Sherri Klein Heitler, UCS Chief of Policy and Planning, to amend the matrimonial rules relating to the transfer of properties in matrimonial actions to protect spouses in subsequent foreclosure actions. We also discuss our Committee's efforts to respond to the Office of Court Administration's request for public comment on the parent education rule amendment proposal, we express our views on e-filing in matrimonial actions, and we describe our Committee's efforts to implement the new legislation on age of consent to marry which was enacted this year. Other Committee ongoing projects include the study of alternative parenting arrangements, access rights of same sex and non-biological couples, and the Revised Parent Child Security Act in light of the landmark Court of Appeals decision in *Matter of Brooke S.B v. Elizabeth A.C.C.* (2016 NY Slip Op 05903), as well as the topic of New York's treatment of joint custody under the Child Support Standards Act, mentoring of new or newly-assigned matrimonial judges, and the impact of the new Federal Child Support Guidelines on child support in New York.

We will also discuss our Committee's intention to explore the ramifications of changes in the Federal tax code and their effect on the New York maintenance and child support laws.

In 2018, the Chair of the Committee, Hon. Jeffrey S. Sunshine, will continue the extensive outreach to members of the matrimonial bench and bar on behalf of the Committee. During 2018, with the encouragement of Chief Administrative Judge Marks, Judge Sunshine will continue to travel around the State to conduct and participate in CLE programs and panels, and to gather input and insights from the bench and bar on matrimonial issues.

The Committee encourages comments and suggestions from interested members of the bench, bar, academic community and public concerning legislative proposals and the ongoing revision of matrimonial rules and forms. We especially seek comments concerning the uncontested divorce packets and the client's rights and responsibilities required pursuant to 22 NYCRR § 1400.2, which will be under review by our Committee in the coming year. We invite submission of comments, suggestions and inquiries to:

Matrimonial Practice Advisory and Rules Committee:

CHAIR:
Honorable Jeffrey S. Sunshine
Justice of the Supreme Court, Kings County and
Supervising Judge for Matrimonial Matters, Supreme Court, Kings County
360 Adams Street
Brooklyn, New York 11201

COUNSEL:
Susan Kaufman, Esq.
Counsel, Matrimonial Practice Advisory and Rules Committee
140 Grand Street, Suite 701
White Plains, New York 10601-4836

II. New or Modified Legislative and Proposals

1. Modified Proposal on Forensics in Custody Cases [D.R.L.§§ 70, 240; F.C.A. §§ 251, 651]

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. 8342-A). Consideration of the proposals by the Administrative Board of the Courts was suspended pending possible action on this legislation. A new version of said bill was introduced as A. 290 on January 7, 2015. The Committee's concerns as to A. 8342-A continued to be applicable to the 2015-16 version. The Committee expressed these concerns in our 2016 Annual Report to the Chief Administrative Judge. On January 12, 2017, a 2017-18 version of said bill was introduced as A.1533/S.6300. As stated in our 2016 and 2017 Annual Reports, we believe that there is a real danger that the dissemination to the public of the reports or copies thereof on the Internet 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, while parties, including self-represented litigants, face only potential contempt charges which are unlikely to result in a meaningful remedy for innocent victims including children whose personal lives are exposed.

Last year, our Committee developed a new proposal on access to forensics in custody cases, which we hoped would resolve the differences as to treatment of self-represented litigants by providing access to the report and the complete evaluator's files to the parties including self-represented litigants, attorneys, independent forensic experts hired to assist the attorneys, and the attorney for the child, on terms which respect the due process rights of self-represented and represented litigants, while providing better protections against unauthorized dissemination than were contained in the original bill. As in A.1533/S.6300, access to the evaluator's file would include access to 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. Our proposal was accepted as part of the Office of Court Administration's 2017 Legislation program and was introduced in the Legislature by Senator Avella as S. 6579 who also introduced S.6300, the Senate version of A.1533. Last spring, memoranda in opposition to A.1533/S.6300 and in support of S. 6579 were sent to legislators by the Family Law Section of the New York State Bar Association, the Women's Bar Association of the State of New York, the New York City Bar Matrimonial Law Committee and Committee on Children and the Law and the New York

Chapter of the Academy of Matrimonial Lawyers. Also supporting our proposal was the Children's Law Center of Brooklyn. [28]

During 2017 we also received some suggestions for improving our proposal from the Chief Administrative Judge's Family Court Advisory and Rules Committee and the New York Public Welfare Association, Inc. We have incorporated some of these suggestions into a revised proposal for this year's report. The key provisions in the revised proposal, many of which are retained from the previous version, are as follows:

Access to the Forensic Report and Files

The revised proposal continues to differ from A.1533/S.6300 in that the degree of protections against dissemination are more stringent for parties and self-represented litigants than they are for attorneys and attorneys for the children who are officers of the court. While our draft permits attorneys and independent forensic evaluators hired to assist attorneys and self-represented litigants to have a copy of the forensic report upon execution of an affidavit containing assurances to the court against further dissemination and return of the report and files at conclusion of the litigation, our draft does not permit parties or self-represented litigants to have a copy of the report. Instead, we allow represented parties to read the report in the office of their attorney, to discuss the report with their attorney, and to make notes about the report, while we allow self-represented parties to read the report at the court or other location and to make notes about the report.

Similarly, our proposal continues to permit independent forensic evaluators hired to assist attorneys or self-represented litigants to have access to the complete evaluator's file upon execution of an affidavit containing assurances to the court against further dissemination and return of the report and files at conclusion of the litigation.

As in our original proposal, attorneys are provided access to the file for inspection and photocopying without having to make a demand under C.P.L.R. 3120. This avoids needless motion practice which results in delays and expense. The complete file must also be forwarded and made available to self-represented litigants at a court or other location for inspection and note taking, but not for photocopying. The proposal strikes a common-sense compromise. By assuring self-represented litigants the right to inspect and take notes on what is in the file, and by giving access to the complete evaluator's file to independent forensic evaluators hired by self-represented litigants, we enable self-represented litigants to represent themselves at trial, but guard against dissemination of materials in the file by photocopying. The revised proposal retains the language in the bill that access to the report and files in all cases is subject to the provisions of C.P.L.R. 3101 as to the court's issuance of a protective order.

Definition of Court-Ordered Evaluators

In accordance with a suggestion from the Family Court Advisory and Rules Committee, we have this year revised our proposal's definition of "court-ordered evaluators" to include only forensic mental health professionals in custody and visitation proceedings, **not** court-ordered

[28] See note 18, *supra.*

evaluators in statutorily-mandated investigations such as Probation Departments, local Departments of Social Services or the NYC Administration for Children's Services who perform investigations in child protective, permanency, destitute child or other proceedings in which assessments other than clinical evaluations are ordered and in which different considerations are relevant. A similar suggestion was made in comments received from the New York Public Welfare Association, Inc. who opposed both A.1533/ S.6300 and S. 6579 on the basis that, if the requirements in said bills about turning over forensic reports and notes and contents of files are applicable to child protective examinations, there could be multiple problems under various state confidentiality laws which in turn might also impact federal funding requirements that states follow federal rules on confidentiality of reports in child protective proceedings.[29] The modified definition of "court-ordered evaluators" addresses this issue.

The Remedy of Contempt

Our revised proposal retains the provision in A.1533/S.6300 that willful failure to comply with a court order conditioning or limiting access to a forensic report shall be contempt of court. Because contempt for dissemination in violation of a court order years after a case is resolved is not a practical or legally enforceable remedy as the case law now requires,[30] S. 6579 and our revised proposal provide that the court shall retain jurisdiction for purposes of an application for contempt and expand the contempt provisions to apply not just to violations of a protective order issued by the court, but also to violations of the statute regarding restrictions on dissemination of the report or the file or of an affidavit with regard thereto. Our revised proposal, like S.6579, allows the moving party to seek counsel fees to enforce or defend the application for contempt, which helps alleviate the unfair burden and expense of making such a motion while recognizing that movants would nevertheless face a hardship in moving for contempt. While these provisions do not make the remedy of contempt sufficient in itself to protect against dissemination of private information of innocent parties, and do not protect non parties, we recommend them as an additional safeguard to the essential protections against dissemination.

Admissibility of Forensic Reports into Evidence

A. 1533/S.6300 contains a provision that forensic reports and the evaluator's file shall be subject to objection pursuant to the rules of evidence and subject to cross-examination. In custody and visitation trials and hearings, such a rule will result in substantial delays if the report is not admitted in lieu of direct testimony. Instead, we inserted into our original proposal last year and continue to recommend in our revised proposal this year a provision from 22 NYCRR § 202.16(g)(2) which provides that written reports may be used to substitute for direct testimony at

[29] New York Public Welfare Association, Inc.'s comments are attached to this report as Appendix "C".

[30] See *Blatt v. Rae*, 37 Misc. 2d 85, 233 N.Y.S.2d 54 (Sup. Ct. 1962) stating that "A judgment determines the rights of the parties to an action (Civ. Prac. Act, § 472) and after the entry thereof the action is no longer pending and the provisions of section 753 of the Judiciary Law have no application since, by the very language of such section, its provisions are limited to pending actions." See also *Kenford Co. v. Cty. of Erie*, 185 A.D.2d 658, 587 N.Y.S.2d 877 (1992), stating: "A motion must be addressed to a pending action, and Supreme Court was without jurisdiction to entertain a motion almost two years after final judgment was entered." See also *EB v. EFB,* 7 Misc. 3d 423, 427–28, 793 N.Y.S.2d 863 (Sup. Ct.), *aff'd sub nom. Bjornson v. Bjornson,* 20 A.D.3d 497, 799 N.Y.S.2d 250 (2005), *Little Prince Prods., Ltd. v. Scoullar,* 258 A.D.2d 331, 685 N.Y.S.2d 442 (1999).

trial, that the reports shall be submitted by the expert under oath, and that the expert shall be present and available for cross-examination. Without this provision, trial days will be increased. This provision is part of the matrimonial rules for calendar control contained in 22NYCRR §202.16, first filed on January 9, 1986. This provision respects the rights of the parties to confront the expert through cross-examination. The right to object to portions of the report is in accordance with a suggestion made by Judge Alan Scheinkman in West McKinney's Forms.[31] At the same time, it avoids wasting the court's time ruling on motions about admissibility. It is designed to reduce delays in divorce proceedings in furtherance of the Excellence Initiative.

Review of the Report in Advance of a Trial or Hearing

In our proposal last year, at the request of the Family Law Section of the New York State Bar Association, we included a provision restricting the court from reading or reviewing the forensic report until it is received in evidence at a trial or hearing, unless the parties consent by agreement on the record or by stipulation submitted to the court, or upon application to the court for good cause shown. We also included in last year's proposal a proviso that the court may read or review the report at commencement of a trial or hearing (so as to avoid the need to halt a trial or hearing to first read the report), subject to further objection, or before accepting an agreement between the parties in its determination concerning child custody in its role as *parens patriae,* also subject to further objection.

Concerns were expressed by the Chief Administrative Judge's Family Court Advisory and Rules Committee about these provisions insofar as they might involve different considerations for custody and visitation proceedings in Family Court than for matrimonial proceedings involving custody and visitation in Supreme Court. Therefore, in our 2018 Annual Report, we propose to eliminate these provisions and instead authorize the Chief Administrative Judge to promulgate rules and regulations authorizing a court, in particular cases where a party does not raise a legally-valid objection thereto, to read or review a forensic report at particular times as the rules shall permit. We believe our revised proposal protects due process because the rules and regulations to be promulgated authorize the report to be read or reviewed only where a party does not raise a legally valid objection. A legally valid objection might be raised where the forensic report is filled with unscientific and/or unsubstantiated or non-professionally reliable hearsay allegations.[32] It is conceivable that courts could sustain an objection after having reviewed the report, but take into account inadmissibility of evidence just as courts take into account admissibility of evidence they see every day in the courtroom as they must do under

[31] See § 17:35. Court rules governing matrimonial actions—Expert witnesses; reports and testimony as follows: "In an effort to reduce trial time, the court may allow the written report of the expert to be used in lieu of direct testimony at trial. 22 NYCRR § 202.16(g)(2); N.Y. Ct. Rules, § 202.16(g)(2) (Uniform Civil Rules for the Supreme Court and the County Court). However, doing so may run the risk that inadmissible material, such as inadmissible hearsay, set forth in the report comes into evidence. The court may need to offer the parties the opportunity to object to admission of particular portions of the report. (West McKinney's Forms, 2016 Update)."

32 See *State v. Hall*, 96 A.D.3d 1460, 947 N.Y.S.2d 856 (2012); *Greene v. Robarge*, 104 A.D.3d 1073, 1074–75, 962 N.Y.S.2d 470 (2013); and *In re Kaitlyn X.*, 122 A.D.3d 1170, 1171–72, 997 N.Y.S.2d 777 (2014), all upholding lower courts' reliance on the professionally reliable hearsay exception "which enables an expert witness to provide opinion evidence based on otherwise inadmissible hearsay, provided it is demonstrated to be the type of material commonly relied on in the profession" (*Hinlicky v. Dreyfuss*, 6 N.Y.3d 636, 648, 848 N.E.2d 1285 (2006)).

New York law (see *Johnson v. Lutz,* 253 N.Y. 124, (1930)). The rules and regulations to be promulgated will have to balance the equities of the need for redaction of the inadmissible portion with the need to allow the court to have information it requires (e.g. information as to domestic violence or abuse which is statutorily-mandated to be factored into a custody decision). Also, forensic reports sometimes enable courts to encourage settlements because the court is aware of detrimental information against the parties.

Self-Represented Litigants

Our Committee continues to believe that our proposal strikes a fair balance between due process concerns, as expressed in the First Department decision in *Sonbuchner v. Sonbuchner*, 96 A.D.3d 566, 947 N.Y.S.2d 80, 83 (App. Div. 2012), and rights of innocent parties not to have the most intimate details of their lives disseminated over the Internet and by other improper means. Self-represented litigants are often individuals who could afford counsel or who could have assigned counsel appointed for them pursuant to Judiciary Law § 35(8) or Family Court Act § 262 in a custody and visitation proceeding, but who choose to represent themselves. If self-represented litigants refuse assigned counsel, or discharge their counsel in order to represent themselves, they in effect assume the risk that they will not be given a copy of the report and the file, but will only be allowed to read it and take notes, and could be so allocuted. For those few self-represented litigants who would like to be represented by counsel but do not qualify for assigned counsel, there are help centers and law libraries at courthouses around the state where self-represented litigants may read and take notes on forensic reports and research issues that arise with regard to custody issues raised by the forensic reports. In addition, programs by many bar associations throughout the state provide low cost legal consultations, and many legal service organizations provide low cost and/or no cost legal services for low income individuals who qualify.[33]

In addition, we note that there are other circumstances where attorneys and self-represented litigants are treated differently in the judicial process and these instances do not constitute due process violations. 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.

Summary

Some have argued that forensic reports should be subject to higher standards of scientific reliability and that the preparers of such reports should be subject to more rigorous examination as to their qualifications. We share these concerns and recommend that Counsel and the parties should be encouraged to utilize the Mental Health Professionals Certification Committee

[33] See the CourtHelp website on the UCS Internet Site designed for self-represented litigants at http://www.nycourts.gov/courthelp/GoingToCourt/gettingHelp.shtml

established in the First and Second Departments to review qualifications and report complaints as to forensic evaluators.[34] When prepared competently and utilized by the court, forensic reports are a valuable and necessary tool for the court to access important information prepared by experts in the field which can lead to better custody and visitation decisions. It is important that uniform standards be established on a statewide basis to determine access to such reports and files by all who need them during custody and visitation litigation. It is also important to set rules as to admissibility into evidence and reading of the report which allow the court to have the information it needs but which protect the rights of parties to raise objections to the qualifications of the expert or to inadmissible hearsay in the report and to cross examine the expert. We believe our proposal continues to accomplish these goals in a fair manner, protecting due process with adequate safeguards against violation of privacy, while at the same time promoting the efficiency of the custody and visitation litigation process by eliminating unnecessary motion practice and trials related to direct testimony contributing to delays in custody determinations where practicable.

The changes we have made in our revised proposal in response to suggestions from the Family Court Advisory and Rules Committee and others make the measure more workable in types of cases other than matrimonial, and avoid conflicts with confidentiality laws and possible loss of federal funding in connection with state child protective, permanency and other proceedings. It is our hope that these revisions will be supported by the Chief Administrative Judge, members of the Legislature, and by members of the Bench and Bar.

Proposal:

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

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

Section 1. Section 70 of the domestic relations law is amended by adding a new subdivision (c) to read as follows:

(c) Court-ordered forensic evaluations in proceedings involving child custody and visitation. Where a court order is issued for an evaluation or investigation of the parties or a

[34] See 22NYCRR §623, Rules of the Supreme Court, Appellate Division, First Department, at http://inside-ucs.org/ji/MatriSeminar/2011/materials/Part_623_Mental_Health_Professionals_Panel.pdf, and 22 NYCRR § 680, Rules of the Supreme Court, Appellate Division, Second Department,, at http://inside-ucs.org/ji/MatriSeminar/2011/materials/Part_680_Mental_Health_Professionals_Panel.pdf

child by a forensic mental health professional in a custody or visitation proceeding, (other than by a probation service, a child protective service or any other person authorized by statute**),** appointed by the court to assist with the determination of child custody or visitation pursuant to this article, (hereinafter considered for purposes of this subdivision "court-ordered evaluators"), then for purposes of such court-ordered forensic evaluations and investigations:

(1) The court will determine which party is responsible for payment of the fee of the court-ordered evaluator, or in what proportions payment of the fee of the court-ordered evaluator will be shared between the parties, or otherwise paid on behalf of a party or parties, if applicable. Any report or evaluation prepared by the court-ordered evaluator, to be known as a "forensic report" for the purposes of this subdivision, shall be confidential and kept under seal except that all attorneys and the attorney for the child shall have a right to receive a copy of any such forensic report upon receipt of such a report by the court**,** provided that they execute an affidavit acknowledging that they will not give a copy of the report or the evaluator's file as provided for under paragraph two of this subdivision to a party or further disseminate the report or said file except as otherwise expressly permitted under this subdivision without the consent of the court, and will return the report and file to the court upon conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules. Provided, however, in no event shall a party or his or her counsel be prevented from access to or review of a forensic report in advance of and during trial. Any conditions or limitations imposed by the court pursuant to this subdivision relating to disclosure of the forensic report shall accommodate for language access and disability, except that no party to the action shall be

permitted to have a copy of the report or to reproduce or disseminate all or any portion thereof. If a party is self-represented, the court shall make reasonable accommodations for the self-represented party to review said report at a court or other location, and to make notes about the report; and if a party is represented, the party shall have a right to read the forensic report in his or her attorney's office, to discuss the report with the attorney representing him or her in the action, and to make notes about the report. Upon application by counsel or a self-represented litigant, the court shall permit a copy of the forensic report and a copy of the court-ordered evaluator's files as provided for under paragraph two of this subdivision to be provided to any independent forensic evaluator retained to assist counsel or a self-represented litigant, provided that the independent forensic evaluator executes an affidavit acknowledging that he or she may not further disseminate the report or the files absent court permission, and will return the report and the files to the court at the conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; and

(2) The court order appointing said evaluators shall provide to a party's 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, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; except if an individual is self-represented, the court shall make reasonable accommodations for the self-represented party to review said entire file, including, without

limitation, everything that a party's attorney or the attorney for the child is entitled to review as described above, at a court or other location and forward those items to that location for inspection and note taking, but not for photocopying or photographing or scanning; and

(3) A willful failure to comply with a court order conditioning or limiting access to a forensic report, or a willful violation of the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto, shall be contempt of court and may be punishable as such as provided under section seven hundred fifty or seven hundred fifty-three of the judiciary law, as the case may be. The court shall notify the parties and counsel on the record that a willful failure to comply with the court order or the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto shall be contempt of court which may include punishment by a fine or imprisonment or both; and the court shall retain jurisdiction for the purposes of determining any application for contempt based on a willful failure to comply with a court order or a willful violation of the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto; and a party may seek counsel fees to enforce or defend said application for contempt pursuant to section seven hundred fifty or seven hundred fifty-three of the judiciary law, as the case may be; and

(4) In the discretion of the court, or upon stipulation of the parties, written reports may be used to substitute for direct testimony at the trial, but the reports shall be submitted by the expert under oath, and the expert shall be present and available for cross-examination. The court shall

determine who is responsible for the payment of any fees for said appearance(s) by the expert; and

(5) The chief administrator of the courts may adopt rules authorizing a court, in particular cases where a party does not raise a legally-valid objection thereto, to read or review a forensic report at one or more of the following times as the rules shall permit:

(i) before the report is received in evidence at a trial or at a hearing;

(ii) at the commencement of a trial or a hearing;

(iii) before accepting an agreement between the parties to its determination concerning child custody or visitation; or

(iv) at any other time if:

(A) agreed to by the parties and their counsel in a written stipulation submitted to the court or in an agreement on the record in open court; or

(B) permitted by the court upon application thereto showing good cause therefor; and

(6) No forensic report or any portion or portions thereof shall be attached to, or quoted in, any motions, pleadings or other documents by counsel or a party.

§2. Subdivision 1 of section 240 of the domestic relations law is amended by adding a new paragraph (a-3) to read as follows:

(a-3) Court-ordered forensic evaluations in proceedings involving child custody and visitation. Where a court order is issued for an evaluation or investigation of the parties or a child by a forensic mental health professional in a custody or visitation proceeding, (other than by a probation service, a child protective service or any other person authorized by statute), appointed by the court to assist with the determination of child custody or visitation pursuant to

this paragraph, (hereinafter considered for purposes of this paragraph "court-ordered evaluators"), then for purposes of such court-ordered forensic evaluations and investigations:

(1) The court will determine which party is responsible for payment of the fee of the court-ordered evaluator, or in what proportions payment of the fee of the court-ordered evaluator will be shared between the parties, or otherwise paid on behalf of a party or parties, if applicable. Any report or evaluation prepared by the court-ordered evaluator, to be known as a "forensic report" for the purposes of this paragraph, shall be confidential and kept under seal except that all attorneys and the attorney for the child shall have a right to receive a copy of any such forensic report upon receipt of such a report by the court, provided that they execute an affidavit acknowledging that they will not give a copy of the report or the evaluator's file as provided for under subparagraph two of this paragraph to a party or further disseminate the report or said file except as otherwise expressly permitted under this paragraph without the consent of the court, and will return the report and file to the court upon conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules. Provided, however, in no event shall a party or his or her counsel be prevented from access to or review of a forensic report in advance of and during trial. Any conditions or limitations imposed by the court pursuant to this paragraph relating to disclosure of the forensic report shall accommodate for language access and disability, except that no party to the action shall be permitted to have a copy of the report or to reproduce or disseminate all or any portion thereof. If a party is self-represented, the court shall make reasonable accommodations for the self-represented party to review said report at a court or other location, and to make notes about the

report; and if a party is represented, the party shall have a right to read the forensic report in his or her attorney's office, to discuss the report with the attorney representing him or her in the action, and to make notes about the report. Upon application by counsel or a self-represented litigant, the court shall permit a copy of the forensic report and a copy of the court-ordered evaluator's files as provided for under subparagraph two of this paragraph to be provided to any independent forensic evaluator retained to assist counsel or a self-represented litigant, provided that the independent forensic evaluator executes an affidavit acknowledging that he or she may not further disseminate the report or the files absent court permission, and will return the report and the files to the court at the conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; and

(2) The court order appointing said evaluator shall provide to a party's 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, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; except if an individual is self-represented, the court shall make reasonable accommodations for the self-represented party to review said entire file, including, without limitation, everything that a party's attorney or the attorney for the child is entitled to review as described above, at a court or other location and forward those items to that location for inspection and note taking, but not for photocopying or photographing or scanning; and

(3) A willful failure to comply with a court order conditioning or limiting access to a forensic report or a willful violation of the provisions of this paragraph,regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto, shall be contempt of court and may be punishable as such as provided under section seven hundred fifty or seven hundred fifty-three of the judiciary law as the case may be. The court shall notify the parties and counsel on the record that a willful failure to comply with the court order or the provisions of this paragraph,regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto shall be contempt of court which may include punishment by a fine or imprisonment or both; and the court shall retain jurisdiction for the purposes of determining any application for contempt based on a willful failure to comply with a court order or a willful violation of the provisions of this paragraph,regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto; and a party may seek counsel fees to enforce or defend said application for contempt pursuant to section seven hundred fifty or seven hundred fifty-three of the judiciary law as the case may be; and

(4) In the discretion of the court, or upon stipulation of the parties, written reports may be used to substitute for direct testimony at the trial, but the reports shall be submitted by the expert under oath, and the expert shall be present and available for cross-examination. The court shall determine who is responsible for the payment of any fees for said appearance(s) by the expert; and

(5) The chief administrator of the courts may adopt rules authorizing a court, in particular cases where a party does not raise a legally-valid objection thereto, to read or review a forensic report at one or more of the following times as the rules shall permit:

(i) before the report is received in evidence at a trial or at a hearing;

(ii) at the commencement of a trial or a hearing;

(iii) before accepting an agreement between the parties to its determination concerning child custody or visitation; or

(iv) at any other time if:

(A) agreed to by the parties and their counsel in a written stipulation submitted to the court or in an agreement on the record in open court; or

(B) permitted by the court upon application thereto showing good cause therefor; and

(6) No forensic report or any portion or portions thereof shall be attached to, or quoted in, any motions, pleadings or other documents by counsel or a party.

§3. Subdivision (c) of section 251 of the family court act is relettered subdivision (d) and a new subdivision (c) is added to read as follows:

(c) Court-ordered forensic evaluations in proceedings involving child custody and visitation. Notwithstanding the provisions of this section to the contrary, where a court order is issued for an evaluation or investigation of the parties or a child by a forensic mental health professional in a custody or visitation proceeding, (other than by a probation service, a child protective service or any other person authorized by statute), appointed by the court to assist with the determination of child custody or visitation pursuant to article four or six of this act,

(hereinafter considered for purposes of this subdivision "court-ordered evaluators"), then for purposes of such court-ordered forensic evaluations and investigations:

(1) Notwithstanding section one hundred sixty-five of this act and section four hundred eight of the civil practice law and rules, the provisions and limitations of sections three thousand one hundred one and three thousand one hundred three of the civil practice law and rules shall apply; and

(2) The court will determine which party is responsible for payment of the fee of the court-ordered evaluator, or in what proportions payment of the fee of the court-ordered evaluator will be shared between the parties, or otherwise paid on behalf of a party or parties, if applicable. Any report or evaluation prepared by the court-ordered evaluator, to be known as a "forensic report" for the purposes of this subdivision, shall be confidential and kept under seal except that all attorneys and the attorney for the child shall have a right to receive a copy of any such forensic report upon receipt of such a report by the court, provided that they execute an affidavit acknowledging that they will not give a copy of the report or the evaluator's file as provided for under paragraph three of this subdivision to a party or further disseminate the report or said file, except as otherwise expressly permitted under this subdivision without the consent of the court, and will return the report and file to the court upon conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules. Provided, however, in no event shall a party or his or her counsel be prevented from access to or review of a forensic report in advance of and during trial. Any conditions or limitations imposed by the court pursuant to this subdivision relating to disclosure of the forensic report shall

accommodate for language access and disability, except that no party to the action shall be permitted to have a copy of the report or to reproduce or disseminate all or any portion thereof. If a party is self-represented, the court shall make reasonable accommodations for the self-represented party to review said report at a court or other location, and to make notes about the report; and if a party is represented, the party shall have a right to read the forensic report in his or her attorney's office, to discuss the report with the attorney representing him or her in the action, and to make notes about the report. Upon application by counsel or a self-represented litigant, the court shall permit a copy of the forensic report and a copy of the court-ordered evaluator's files as provided for under paragraph three of this subdivision to be provided to any independent forensic evaluator retained to assist counsel or a self-represented litigant, provided that the independent forensic evaluator executes an affidavit acknowledging that he or she may not further disseminate the report or the files absent court permission, and will return the report and the files to the court at the conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; and

(3) The court order appointing said evaluator shall provide to a party's 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, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; except if an individual is self-represented, the court shall make reasonable

accommodations for the self-represented party to review said entire file, including, without limitation, everything that a party's attorney or the attorney for the child is entitled to review as described above, at a court or other location and forward those items to that location for inspection and note taking, but not for photocopying or photographing or scanning; and

(4) A willful failure to comply with a court order conditioning or limiting access to a forensic report or a willful violation of the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto, shall be contempt of court and may be punishable as such as provided under section seven hundred fifty or seven hundred fifty-three of the judiciary law as the case may be. The court shall notify the parties and counsel on the record that a willful failure to comply with the court order or the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto shall be contempt of court which may include punishment by a fine or imprisonment or both; and the court shall retain jurisdiction for the purposes of determining any application for contempt based on a willful failure to comply with a court order or a willful violation of the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto; and a party may seek counsel fees to enforce or defend said application for contempt pursuant to section seven hundred fifty or seven hundred fifty-three of the judiciary law as the case may be; and

(5) In the discretion of the court, or upon stipulation of the parties, written reports may be used to substitute for direct testimony at the trial, but the reports shall be submitted by the expert

under oath, and the expert shall be present and available for cross-examination. The court shall determine who is responsible for the payment of any fees for said appearance(s) by the expert, and

(6) The chief administrator of the courts may adopt rules authorizing a court, in particular cases where a party does not raise a legally-valid objection thereto, to read or review a forensic report at one or more of the following times as the rules shall permit:

(i) before the report is received in evidence at a trial or at a hearing;

(ii) at the commencement of a trial or a hearing;

(iii) before accepting an agreement between the parties to its determination concerning child custody or visitation; or

(iv) at any other time if:

(A) agreed to by the parties and their counsel in a written stipulation submitted to the court or in an agreement on the record in open court; or

(B) permitted by the court upon application thereto showing good cause therefor; and

(7) No forensic report or any portion or portions thereof shall be attached to, or quoted in, any motions, pleadings or other documents by counsel or a party.

§4. Section 651 of the family court act is amended by adding a new subdivision (g) to read as follows:

(g) Court-ordered forensic evaluations in proceedings involving child custody and visitation. Notwithstanding the provisions of this section to the contrary, where a court order is issued for an evaluation or investigation of the parties or a child by a forensic mental health professional in a custody or visitation proceeding, (other than by a probation service, a child protective service or any other person authorized by statute), appointed by the court to assist with the determination of child custody or visitation pursuant to this pursuant to this article or article four of this act, (hereinafter considered for purposes of this subdivision "court-ordered evaluators"), then for purposes of such court-ordered forensic evaluations and investigations:

(1) Notwithstanding section one hundred sixty-five of this act and section four hundred eight of the civil practice law and rules, the provisions and limitations of sections three thousand one hundred one and three thousand one hundred three of the civil practice law and rules shall apply; and

(2) The court will determine which party is responsible for payment of the fee of the court-ordered evaluator, or in what proportions payment of the fee of the court-ordered evaluator will be shared between the parties, or otherwise paid on behalf of a party or parties, if applicable. Any report or evaluation prepared by the court-ordered evaluator, to be known as a "forensic report" for the purposes of this subdivision, shall be confidential and kept under seal except that all attorneys and the attorney for the child shall have a right to receive a copy of any such

forensic report upon receipt of such a report by the court; provided that they execute an affidavit acknowledging that they will not give a copy of the report or the evaluator's file as provided for under paragraph three of this subdivision to a party or further disseminate the report or said file except as otherwise expressly permitted under this subdivision without the consent of the court, and will return the report and file to the court upon conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules. Provided, however, in no event shall a party or his or her counsel be prevented from access to or review of a forensic report in advance of and during trial. Any conditions or limitations imposed by the court pursuant to this subdivision relating to disclosure of the forensic report shall accommodate for language access and disability; except that no party to the action shall be permitted to have a copy of the report or to reproduce or disseminate all or any portion thereof. If a party is self-represented, the court shall make reasonable accommodations for the self-represented party to review said report at a court or other location, and to make notes about the report; and if a party is represented, the party shall have a right to read the forensic report in his or her attorney's office, to discuss the report with the attorney representing him or her in the action, and to make notes about the report. Upon application by counsel or a self-represented litigant, the court shall permit a copy of the forensic report and a copy of the court-ordered evaluator's files as provided for under paragraph three of this subdivision to be provided to any independent forensic evaluator retained to assist counsel or a self-represented litigant; provided that the independent forensic evaluator executes an affidavit acknowledging

that he or she may not further disseminate the report or the files absent court permission, and will return the report and the files to the court at the conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; and

(3) The court order appointing said evaluator shall provide to a party's 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, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; except if an individual is self-represented, the court shall make reasonable accommodations for the self-represented party to review said entire file, including, without limitation, everything that a party's attorney or the attorney for the child is entitled to review as described above, at a court or other location and forward those items to that location for inspection and note taking, but not for photocopying or photographing or scanning; and

(4) A willful failure to comply with a court order conditioning or limiting access to a forensic report or a willful violation of the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto, shall be contempt of court and may be punishable as such as provided under seven hundred fifty or section seven hundred fifty-three of the judiciary law as the case may be. The court shall notify the parties and counsel on the record that a willful failure to comply with the court order or the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's

file or of an affidavit executed with respect thereto shall be contempt of court which may include punishment by a fine or imprisonment or both; and the court shall retain jurisdiction for the purposes of determining any application for contempt based a on a willful failure to comply with a court order or a willful violation of the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto; and a party may seek counsel fees to enforce or defend said application for contempt pursuant to section seven hundred fifty or seven hundred fifty-three of the judiciary law as the case may be; and

(5) In the discretion of the court, or upon stipulation of the parties, written reports may be used to substitute for direct testimony at the trial, but the reports shall be submitted by the expert under oath, and the expert shall be present and available for cross-examination. The court shall determine who is responsible for the payment of any fees for said appearance(s) by the expert, and

(6) The chief administrator of the courts may adopt rules authorizing a court, in particular cases where a party does not raise a legally-valid objection thereto, to read or review a forensic report at one or more of the following times as the rules shall permit:

(i) before the report is received in evidence at a trial or at a hearing;

(ii) at the commencement of a trial or a hearing;

(iii) before accepting an agreement between the parties to its determination concerning child custody or visitation; or

(iv) at any other time if:

(A) agreed to by the parties and their counsel in a written stipulation submitted to the court or in an agreement on the record in open court; or

(B) permitted by the court upon application thereto showing good cause therefor; and

(7) No forensic report or any portion or portions thereof shall be attached to, or quoted in, any motions, pleadings or other documents by counsel or a party.

§5. This act shall take effect on the ninetieth day after it shall have become a law, provided, however, that effective immediately the chief administrator of the courts, with the approval of the administrative board of the courts, is authorized and directed to promulgate any rules necessary to implement the provisions of this act on or before such effective date.

2. Modified Statutory Proposal for Divorce Venue in Matrimonial Cases [C.P.L.R. 514]

Continued from 2015, 2016, and 2017, are our efforts to address the problem of venue rules in matrimonial actions pursuant to the request of the New York County Matrimonial Judges with our omnibus matrimonial venue proposal. We believe this measure furthers the Chief Judge's Excellence Initiative by improving the efficient operation of the courts' disposition of uncontested divorce cases while at the same time furthering access to justice. Thus, it promotes both "operational" and "decisional" excellence.

Plaintiffs regularly utilize the mechanism allowed by C.P.L.R. 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 C.P.L.R. 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.[35]

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, he noted that C.P.L.R. 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

[35] 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. In 2014, there were 46,974 uncontested divorces filed statewide of which 13,662 were filed in New York County and 25,990 were filed in all of New York City. Thus, in 2014 approximately 29% of the statewide uncontested filings were filings in New York County and approximately 53% of New York City uncontested filings were in New York County. In 2015, there were 47,358 uncontested divorces filed statewide of which 12,799 were filed in New York County and 26,295 were filed in all of New York City. Thus, in 2015 approximately 27% of the statewide uncontested filings were filings in New York County and approximately 49% of New York City uncontested filings were in New York County. In 2016, there were 45,150 uncontested divorces filed statewide of which 11,340 were filed in New York County and 24,327 were filed in all of New York City. Thus, in 2016 approximately 25% of the statewide uncontested filings were filings in New York County and approximately 47% of New York City uncontested filings were in New York County. These figures show that the burden on New York County has remained constant since 2011, but has decreased from 29% to 25% of statewide uncontested filings and from 52% to 47% of New York City uncontested filings. *See* Appendix "E" showing court statistics attached which have been updated through 2016.

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 been inadequately addressed in the action, they try to vacate the default judgment or bring actions for post judgment relief to modify the terms. "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). Clearly, C.P.L.R. 509 designations of venue in counties not related to the residence of the parties or their children works at cross purposes to the goals of efficiency and access to justice.

During 2015, we learned that the problem is not limited to New York County. On a trip, upstate in the fall of 2015, Justice Sunshine, Chair of the Committee, met with members of the matrimonial Bench in Buffalo and Rochester.[36] He learned that a major concern of matrimonial judges in these areas is the large number of uncontested divorce actions filed in their counties. Court Research Statistics on Uncontested Divorce Filings show that Erie County where Buffalo is located and Monroe County where Rochester is located both have sizable numbers of filings, as do Nassau, Suffolk and Westchester.[37] The other boroughs of New York City, aside from Richmond, each have an even greater number.[38] New York County unquestionably still bears the greatest burden with its 12,799 uncontested divorce filings in 2015 and 11,340 uncontested

[36] These meetings were arranged by Hon. Sharon Townsend in Buffalo and by Hon. Richard Dollinger and Sharon Sayers, Esq. in Rochester. Justice Townsend, now retired, was then a member of the Committee, and Ms. Sayers continues to be a member of the Committee. The trip was in connection with a presentation by Justice Sunshine at the Family Violence Task Force Seminar in Rochester on October 7, 2015.

[37] In 2014, Erie County, where Buffalo is located, had 2,130 uncontested divorce filings, and Monroe County, where Rochester is located, had 1,281 uncontested divorce filings. Similarly, uncontested divorce filings for 2014 for Nassau County were 1,633, for Suffolk County were 2,423, and for Westchester County were 1,978 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2013 and 2014 contained in Appendix "E"). In 2015, Erie County had 1,909 uncontested divorce filings, and Monroe County had 1,367 uncontested divorce filings. Similarly, uncontested divorce filings for 2015 for Nassau County were 2,014, for Suffolk County were 2,366, and for Westchester County were 2,097 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2014 and 2015 contained in Appendix "E"). In 2016, Erie County had 1,762 uncontested divorce filings, and Monroe County had 1,339 uncontested divorce filings. Similarly, uncontested divorce filings for 2016 for Nassau County were 1,818, for Suffolk County were 2,396, and for Westchester County were 2,004 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2015 and 2016 contained in Appendix "E").

[38] In 2014 Uncontested divorce filings for the Bronx were 3,914, for Kings were 4,331, for Queens were 3,556, and for Richmond were 527 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2013 and 2014 contained in Appendix "D"). In 2015, Uncontested divorce filings for the Bronx were 3,845, for Kings were 4,389, for Queens were 4,719, and for Richmond were 543 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2014 and 2015 contained in Appendix "D"). In 2016, Uncontested divorce filings for the Bronx were 4,382, for Kings were 3,983, for Queens were 4,013, and for Richmond were 609 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2015 and 2016 contained in Appendix "E").

divorce filings in 2016.[39] Nevertheless there can be no doubt that the need for divorce venue reform is a statewide issue, not limited to New York County.

Also contributing to the burden faced by courts in these overburdened counties is the increasing number of E-filed applications for matrimonial relief that have no nexus to the jurisdiction because it will be easy to do so using C.P.L.R. 509.[40] Compounding the need for the omnibus matrimonial venue statute we propose is a new law enacted in 2017 amending C.P.L.R. 503 (a) to permit as another option to venue related to residence of the parties, venue in which a substantial part of the events or omissions giving rise to the claim occurred. This new law does not affect plaintiff's ability to designate a venue unrelated to residence pursuant to C.P.L.R 509 which remains intact. This new law (chapter 366 of the Laws of 2017) was not designed with matrimonial actions in mind, and only underscores the immediate need for our omnibus matrimonial divorce venue legislation. Not only does our proposal override C.P.L.R. 509 designations except where expressly permitted in cases where addresses of the parties are not a matter of public record or where confidentiality orders exist, it also overrides the provisions of the new law.

A number of thoughtful proposals have been made in the last few years concerning ways to change the C.P.L.R. rules in actions by bar association groups and judges and clerks in New York County. These proposals would have overridden the ability of plaintiffs to designate the place of trial in divorce actions by amending C.P.L.R. 509. Under existing C.P.L.R. 509, only the plaintiff has this ability, and under existing C.P.L.R. 510(1), only the defendant may demand a change in the designation.[41] 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.[42] 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 C.P.L.R. 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.

In our 2015, 2016, and 2017 Annual Reports, the Matrimonial Practice Advisory and

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[39] See Appendix "E" showing court statistics for uncontested divorce filings in 2015 and 2016..

[40] See our Committee's discussion of the advantages of E-Filing in Matrimonial matters later in this report.

[41] In the Practice Commentaries, Vincent Alexander explains: "CPLR 510 specifies three grounds for a motion to change venue. Subdivision (1) provides for such motion when venue is improper, *i.e.,* plaintiff has failed to comply with the rules specified in CPLR 501 and 503-508 or some other venue-regulating statute (e.g., CPLR 7502(a)). Only the defendant may make this motion; if the plaintiff places venue in an improper county, she forfeits the right to select a proper one." See N.Y. C.P.L.R. 510 (McKinney).

[42] "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.)).

Rules Committee put forth its own proposal to adopt a new C.P.L.R. 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). The proposal was included as part of the Office of Court Administration's 2017 Legislative Program as OCA 2017-52, and introduced by Senator Bonacic as S. 5736.

This year we decided to modify our proposal to make it even stronger in several major respects related to good cause exceptions. First, in our previous proposal, we required that venue be the residence of one of the parties but allowed courts to take into consideration the residence of a child or children of the marriage through a good cause exception that also allowed courts to consider situations where addresses are unknown or subject to a confidentiality order. In this modified proposal, we provide that venue in matrimonial actions shall be in a county in which either party resides, or if there are minor children of the marriage, in the county where one of the parties or a child or children of the marriage resides. Thus, good cause applications will not be necessary where there are children.

In this modified proposal, we also address concerns expressed by Sanctuary for Families regarding our divorce venue post judgment application rule proposal about when the address of either party and their child(ren) is not a matter of public record or is subject to an existing confidentiality order. The revised proposal provides that, in such cases where confidentiality and safety are paramount concerns, the place of trial designated by plaintiff may be as specified pursuant to C.P.L.R. 509. This conforms the legislative proposal to the rule on divorce venue post judgment applications adopted in 2017 which we discussed earlier in this report.[43]

Another change in the modified proposal is that there is only one good cause exception rather than two. One of the good cause exceptions in our original proposal could be read as allowing sua sponte transfers of venue by judges. Concerns were expressed to us by the New York State Bar Association Family Law Section about the possibility of sua sponte transfers of venue to a county with no nexus to the parties simply because the judges in that county were less busy, when the venue originally designated was proper to begin with. Therefore, our revised proposal retains only the second good cause exception. Rather than allow courts to transfer venue to another county, a time-consuming process fraught with delays, the second good cause exception, which is retained by our modified 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. This provision might be used where neither party to the divorce action or their child(ren) resides in New York State. Such designation of venue would be improper under our proposal which requires that venue be the residence of one of the parties or their child(ren). However, the plaintiff could make a motion to have it remain in the county designated under the good cause exception where, for example, the parties and their child(ren) had recently left the state. The good cause exception might also be useful to a low-income

[43] See 22 NYCRR §202.50 (b)(3)

litigant who could only find pro bono or reduced fee representation in a county that was not the residence of the parties or their child(ren).

In addition to the foregoing changes, the revised proposal is much simpler and easier to understand, but we believe that it continues to accomplish its purpose of eliminating excessive venue designations in counties unrelated to residence of the parties or their child(ren), whether pursuant to C.P.L.R. 509 or, because of the recent changes adopted by chapter 366, Laws of 2017, in amendments to C.P.L.R. 503(a). This, in turn, will insure that courts will have available to them in their decision making important information about children and families that would not be available if the venue were not related to residence.

Under our revised proposal, delays in transferring venue *sua sponte* will be avoided. 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 C.P.L.R. rule for matrimonial venue, much the way as there is a separate rule for consumer credit in C.P.L.R.513, the Committee's new proposal avoids the cumbersome drafting problems entailed in amending sections of the C.P.L.R. (such as C.P.L.R. 509 and 510) intended to apply to all types of actions. Our proposed C.P.L.R. 514 should have no impact on non-matrimonial actions.

As discussed later in this report, the Committee continues to recommend a rule proposal for a uniform form venue order requiring expedited transfer of files to the proper county. We are pleased that our divorce venue rule proposal for post judgment enforcement and modification applications has been adopted and is now in effect. However, this rule is not applicable to filings of divorces, but only to applications for post judgment relief. These measures, while helpful, do not address the major problem, namely that designations of venue in counties unrelated to residence deny access to justice to litigants on important questions of custody and visitation and support, and drain the limited judicial resources of the courts by encouraging post judgment relief from default judgments.

Proposal:

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 rule 514 to read as follows:

Rule 514. Venue in matrimonial actions. (a) This rule 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 following a judgment of divorce.

(b) Notwithstanding anything to the contrary in this article, the place of trial in an action subject to subdivision (a) of this rule shall be in a county in which either party resides or, if there are minor children of the marriage, in the county where one of the parties or a child or child(ren) of the marriage resides; except that where the address of either party and any child or children are not a matter of public record, or where any such address is subject to an existing confidentiality order pursuant to section 254 of the domestic relations law or section 154-b of the family court act, the place of trial designated by the plaintiff in any action specified in subdivision (a) of this rule may be as specified in section 509 of this article.

(c) In any action specified in subdivision (a) of this rule, 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 rule. Good cause applications shall be made by motion or order to show cause.

§2. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to matrimonial actions commenced on or after such effective date.

3. Modified Proposal for Amendment of Biennial Adjustment of "Income Cap" in Guidelines Law [F.C.A §412(2)(d), D.R.L. § 236(B)(5-a)(b)(5), and D.R.L § 236(B)(6)(b)(4)]

The maintenance guidelines law, enacted as chapter 269 of the Laws of 2015 provided that the maintenance income cap would be set initially at $175,000 and would increase pursuant to an adjustment formula keyed to increases in the CPI on January 31, 2016 and every two years thereafter. January 31st was the date set for adjustment of the temporary maintenance income cap under the temporary maintenance law, enacted in 2010, in effect prior to enactment of the maintenance guidelines law.[44] It was also the date that the child support combined income cap pursuant to the Childs Support Standards Act would have been adjusted. However, effective January 31, 2016, 90 days after the Governor signed into law chapter 347 of the Laws of 2015, the date of adjustment of the Child Support Combined Income Cap was changed to March 1st rather than January 31st so as to conform with the date of adjustment of the self support reserve pursuant to Social Services Law § 111-i(2)(b). The adjustment date of the maintenance income cap should be changed as well because it will be simpler and more efficient for the public and matrimonial bench and bar to understand if the adjustments in the maintenance and child support income caps all occur at the same time. This will also save unnecessary costs of reprinting the Uncontested Divorce Packets on January 31st and then again on March 1st. Not only must the forms be revised and printed twice in a two-month period, but the child support and maintenance calculators must be revised as well.

We propose to amend the Family Court Act §412(2)(d) and Domestic Relations Law § 236B(5-a)(b)(5) and § 236B(6)(b)(4) to fix the date of the biennial adjustment of the temporary, post-divorce and spousal maintenance "income caps" at March 1st rather than January 31st as currently provided. By making the date March 1st rather than January 31st, the adjustment of the maintenance income cap would coincide with the date of adjustment of the child support combined parental income cap, as well as the date of adjustment of the federal poverty income level and self-support reserve.

Although this measure seems ministerial in nature, enactment of the measure would further the goals of the Excellence Initiative by eliminating wasted time and resources, and increasing access to justice for litigants by reducing litigation delays caused by confusion over which cap applies.

Proposal:

AN ACT to amend the family court act and the domestic relations law, in relation to the date of adjustment of the spousal maintenance cap

[44] L.2010, c. 182.

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

Section 1. Paragraph (d) of subdivision 2 of section 412 of the family court act, as amended by chapter 269 of the laws of 2015, is amended to read as follows:

(d) "Income cap" shall mean up to and including one hundred [seventy-five] eighty-four thousand dollars of the payor's annual income; provided, however, beginning [January thirty-first] March first, two thousand [sixteen] twenty 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 multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

§2. Subparagraph (5) of paragraph (b) of subdivision 5-a of part B of section 236 of the domestic relations law, as amended by chapter 269 of the laws of 2015, is amended to read as follows:

(5) "Income cap" shall mean up to and including one hundred [seventy-five] eighty-four thousand dollars of the payor's annual income; provided, however, beginning [January thirty-first] March first, two thousand [sixteen] twenty 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 multiplied by the then income cap and then

rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

§3. Subparagraph (4) of paragraph (b) of subdivision 6 of part B of section 236 of the domestic relations law, as amended by chapter 269 of the laws of 2015, is amended to read as follows:

(4) "Income cap" shall mean up to and including one hundred [seventy-five] eighty-four thousand dollars of the payor's annual income; provided, however, beginning [January thirty-first] March first, two thousand [sixteen] twenty 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 multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

§4. This act shall take effect immediately.

III. Previously-Endorsed Legislative Proposals

1. Proposal for Limited Appearance by Attorneys for Counsel Fee Applications by the Non-Monied Spouse [D.R.L. § 237(a)] [new]

We continue to recommend our previously-endorsed measure designed to encourage attorneys to make application for counsel fees by non-monied spouses in matrimonial actions by permitting them to make a limited appearance in the action for this purpose without the fear that they will become attorney of record obligated to continue the representation even if the application is denied. This proposal will make it easier for non-monied spouses to obtain counsel fees. It supplements our proposal, which was enacted in 2015 (L. 2015, c. 447), which amended D.R.L.§ 237(a) to clarify and codify on a statewide basis that unrepresented litigants should not be required to file an affidavit detailing fee arrangements when seeking counsel fees. The enacted measure enables unrepresented litigants who cannot afford counsel to make application for counsel fees to pursue their divorce cases on an equal footing with their spouse, even though they are the "non-monied spouse" in the matrimonial action. The proposed measure also attempts to help unrepresented litigants in another way, by encouraging counsel to help unrepresented litigants whose means are moderate in comparison with those of their spouses in divorce litigation, to apply for counsel fees as the non-monied spouse pursuant to § 237(a).

The concept of permitting a limited appearance by attorneys to make application for counsel fees by non-monied spouses in matrimonial actions was first proposed as an administrative rule by the Matrimonial Commission chaired by Hon. Sondra Miller (who serves as Honorary Chair of this Committee), in its 2006 Report, as a way to level the playing field in a divorce action between the monied spouse and the non-monied spouse.[45] However, our Committee decided that a statutory amendment to the Domestic Relations Law **§** 237(a) dealing with applications for counsel fees by the non-monied spouse was the most effective way to proceed. Inasmuch as the rules regarding attorney appearances are contained in C.P.L.R. 321, our proposed amendment provides that it applies notwithstanding the provisions of that section.. Said statute states that once a party has appeared in an action, such party may not act in person in the action except by consent of the court. It also states that an attorney can only withdraw from a case under certain specified conditions.[46]

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[45] Matrimonial Commission, Report to the Chief Judge of the State of New York [Feb 2006], available at www.courts.state. ny.us/ip/matrimonial-commission, at page 65 provides:
"Various individuals provided testimony and submissions suggesting that special appearances or appearance on initial applications by counsel would serve to reduce delay and stress to those parties who appear without counsel and must determine how to navigate the divorce process. The Commission recommends adoption of an administrative rule to allow attorneys to make a special or limited appearance for the purpose of making an application for counsel fees at the time of the commencement of an action. The adoption of such a rule would ease the burden on litigants who would otherwise have to make applications pro se, and would encourage attorneys to make such applications, without the fear that in the event the application is denied, the attorney would then be deemed attorney of record and be compelled to continue the representation of a client without the prospect of being paid."

[46] C.P.L.R. 321 reads as follows:

A 2002 Report on Unbundled Services by a State Bar Commission (the "NYSBA Report"),[47] at Footnote 2, suggests language for amendment of C.P.L.R. 321 to accommodate limited scope representation.[48] In the NYSBA Report, the Commission also expressed the view that limited scope representation in a litigation context was problematic while it is often justified in a transactional context, and should be allowed in court-annexed or non-profit legal services programs that are structured to accommodate an a limited appearance by pro bono attorneys.[49]

In 2009, the Code of Professional Responsibility was replaced by the new Rules of Professional Conduct, incorporating many of the suggestions of the NYSBA Report.[50] Rule 1.16 (c) prescribes when a lawyer may withdraw from representation. Rule 6.5 deals with limited scope representation by pro bono attorneys. Although it deals only with conflicts issues, Rule 6.5 seems to authorize use of a limited appearance by specific court-annexed or non-profit legal services programs that are structured to accommodate an appearance limited in tasks and objectives.[51]

However, Rule 1.2 (c) of the Rules of Professional Conduct leaves open the question whether limited scope representation in a matter where an attorney bills time such as a matrimonial action is reasonable under the circumstances. Rule 1.2(c) provides "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and where necessary notice is provided to the tribunal and/or opposing counsel." Reasonableness in the context of a limited appearance to seek counsel fees might involve an inquiry whether the litigant is prepared to represent him/herself or hire different counsel on the remaining issues in the case if the fees are denied or only partially granted. Also did the litigant understand the limitation in scope and the fee to be charged?

(a) Appearance in person or by attorney. A party, other than one specified in section 1201 of this chapter, may prosecute or defend a civil action in person or by attorney…If a party appears by attorney such party may not act in person in the action except by consent of the court.
(b) Change or withdrawal of attorney. 1. Unless the party is a person specified in section 1201, an attorney of record may be changed by filing with the clerk a consent to the change signed by the retiring attorney and signed and acknowledged by the party. Notice of such change of attorney shall be given to the attorneys for all parties in the action or, if a party appears without an attorney, to the party.
2. An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct."

[47] New York State Bar Association, Commission on Providing Access to Legal Services to Middle Income Consumers, Report and Recommendations on Unbundled Legal Services, December, 2002.

[48] Footnote 2 of the NYSBA Report provides:
"If a limited appearance to accommodate unbundling were considered desirable, an amendment to C.P.L.R. § 321 would be required. § 321 provides that if a party appears by an attorney, the party may not act in person in the case "except with the consent of the court" and that an attorney of record may not withdraw or be changed "without an order of the court in which the action is pending". Such an amendment could be an addition to sub-paragraph (a) substantially as follows: "An attorney may, upon written agreement with a client, enter an appearance limited on tasks and objectives. The attorney who has filed a limited appearance may withdraw when the objectives set forth in the appearance have been fulfilled."

[49] NYSBA Report, supra, at pp.5-6.

[50] NYS Unified Court System, Part 1200, Rules of Professional Conduct, April 1, 2009.

[51] *See* article by Juanita Bing Newton, Barbara Mule, and Susan W. Kaufman, "New Rule Helps Self-Represented Litigants," NYLJ, July 2, 2008. The volunteer programs run by the NYC Civil Court are the types of programs contemplated by the Rule.

We believe these questions are answered if the attorney complies with his/her obligations under the Rules of Professional Conduct and with all applicable rules and laws of this state regarding procedures for attorneys in domestic relations matters, including the obligation to provide the client with a statement of client's rights and responsibilities, and the obligation to sign a retainer agreement with the client making clear that the scope of services is limited to making application for counsel fees only, the amount of any fee to be charged, and that the attorney has no affirmative obligation to represent the client on any other issue in the case until a new retainer is signed (*see* 22 NYCRR § 1400.0 and Rule 1.5 (d) and (e) of the New York Rules of Professional Conduct at 22 NYCRR § 1200). Our proposal contains all these requirements clearly spelled out.[52]

Our proposal is especially relevant this year because limited scope representation has recently been endorsed by the NYSBA House of Delegates as a means of providing sorely needed access to justice to low and moderate-income persons who do not qualify for civil legal assistance in any other way. At their meeting on November 5, 2016, the NYSBA House of Delegates unanimously approved a committee report by the President's Committee on Access to Justice on limited scope representation which recommended that the Association support the "concept and utilization of limited scope representation for low and moderate-income individuals in certain civil cases."[53]

On December 16, 2016, an Administrative Order was signed by Chief Administrative Judge Marks with approval of the Administrative Board that declared that "limited scope legal assistance is in the best interests of both litigants and the courts when it is properly employed in such civil matters as consumer credit disputes, foreclosures, evictions, divorces and veterans' rights cases."[54] The Administrative Order requires, among other things, that the retainer agreement must be written clearly and show that clients gave their informed consent to what fees, if any, a lawyer is entitled. In addition, it requires that the court or tribunal the lawyer is appearing before must deem the limited appearance appropriate.

Our proposal meets the requirements of the Administrative Order because it requires that attorneys comply with the applicable rules and laws of this state regarding procedures for attorneys in domestic relations matters, which would include the mandates of the Administrative Order, since divorce is one of the types of civil actions specifically contemplated by the Order. In addition, our proposal expressly requires compliance with 22 NYCRR § 1400 and 22 NYCRR § 1200 which specify that the retainer agreement must be written clearly and show that clients gave their informed consent to what fees, if any, a lawyer is entitled.[55]

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[52] The retainer requirement would not apply where the attorney makes the application for counsel fees without compensation since 22 NYCRR § 1400.1 provides that Part 1400, which provides procedures for attorneys in domestic relations matters, does not apply to attorneys representing clients without compensation, except as to the requirement for a Statement of Client's Rights and Responsibilities.

[53] New York State Bar Association, State Bar News, "Limited scope, diversity/inclusion CLE among items House considers," November/December 2016, Vol. 58, No. 6, pg.1.

[54] See Joel Stashenko, "NY Courts Endorse 'Limited-Scope' Representation," *NYLJ*, 12/20/16, Pg.1, Col. 5.

[55] 22NYCRR§ 1400 and 22 NYCRR§ 1200 read as follows:

> "*An attorney who undertakes to represent a party and enters into an arrangement for, charges or collects any fee from a client shall execute a written agreement with the client setting forth in plain language the*

Moreover, not only the New York State Bar and the New York courts, but also the New York Legislature have supported the concept of limited scope representation. By enacting Judiciary Law §35(8) in 2006, the Legislature implicitly authorized attorneys to provide unbundled or limited scope legal services to level the playing field for non-monied spouses in matrimonial actions. Although the 2006 bill memo in support of Judiciary Law section 35(8) [56] is silent on the subject of limited scope representation, the legislation requires Supreme Court Justices to appoint counsel to represent an indigent party in a divorce action on issues such as custody over which the Family Court could have exercised jurisdiction, while the remaining issues in the action would have to be handled *pro se* or by a different attorney on a full fee basis. Thus, it is our position that the limitation in scope of representation was justifiable in order to provide representation to the non-monied spouse in a matrimonial action. The 2006 bill memo states:

"There is no justification for providing indigent persons an attorney in family court and not in supreme court. To further exacerbate this problem, it is possible for a monied spouse, faced with a custody case in family court, to commence a divorce action and seek to remove the custody determination to supreme court. If the other spouse qualified for an attorney in family court, such action could deprive the non-monied spouse of representation."[57]

Our proposal seeks to make it easier for non-monied spouses in matrimonial actions to obtain counsel fees in order to level the playing field. Thus, our proposal is analogous to Judiciary Law § 35(8) which the Legislature has already enacted. Limited scope representation for this purpose, together with the protections we have built into the proposed rule to make sure the litigant understands the limited nature of the representation, is a reasonable exception to the standard rules governing attorney conduct in litigation matters.

Proposal:

AN ACT to amend the domestic relations law, in relation to a limited appearance by attorneys for counsel fee applications for the non-monied spouse

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

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terms of compensation and the nature of services to be rendered. The agreement, and any amendment thereto, shall be signed by both client and attorney…" N.Y. Comp. Codes R. & Regs. tit. 22, § 1400.3

"A lawyer shall communicate to a client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible. This information shall be communicated to the client before or within a reasonable time after commencement of the representation and shall be in writing where required by statute or court rule." Rule 1.5(b), N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.0

[56] *See* bill memo 2006 A. 10447 attached as Appendix "F" to this report.
[57] *Supra*, at note 56.

Section 1. Subdivision (a) of section 237 of the domestic relations law, as amended by chapter 447 of the laws of 2015, is amended to read as follows:

(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 application for an award of counsel fees and expenses; 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. Notwithstanding anything to the contrary contained in C.P.L.R. 321, applications pursuant to this section on notice to the court and opposing counsel may be made by an attorney who enters an appearance for the limited purpose of seeking fees and expenses on behalf of a non-monied spouse; provided, however, that nothing herein shall exempt the attorney from complying with the applicable rules of professional conduct and with all applicable rules and laws of this state regarding procedures for attorneys in domestic relations matters, including without limitation, 22 NYCRR § 1400 and rule 1.5 of 22 NYCRR § 1200, which require the attorney to provide the client with a statement of client's rights and responsibilities, and where the attorney's services are to be provided for compensation, to enter into a signed written retainer agreement with the client making clear that the services required to be provided by the attorney are limited to the application for counsel fees and do not require the attorney to represent the client on any other issue in the case; and provided further that until such time as a new retainer is signed, there is no affirmative obligation to represent the client on any other issue in the case.

§2. This act shall take effect immediately.

2. Proposal to Amend the Domestic Relations Law to Require Marriage Licenses in All Cases [D.R.L §§ §12, 25] (new)

New York law requires that parties desiring to marry must first obtain a marriage license (D.R.L. § 13) and the marriage must be solemnized by one of the statutory enumerated individuals, including public officials and members of the clergy (D.R.L. § 11). However, D.R.L. §§ 12 and 25 create loopholes that void the necessity of obtaining a marriage license. D.R.L.§ 25 provides:

> The provisions of this article pertaining to the granting of the licenses before a marriage can be lawfully celebrated apply to all persons who assume the marriage relation in accordance with subdivision four of section eleven of this chapter. *Nothing in this article contained shall be construed to render void because of a failure to procure a marriage license any marriage solemnized between persons of full age* nor to render void any marriage between minors or with a minor under legal age of consent where the consent of parent or guardian has been given and such marriage shall be for such cause voidable only as to minors or a minor upon complaint of such minors or minor or of the parent or guardian thereof. (Emphasis supplied.)

D.R.L. § 12 provides:

> Marriage, how solemnized. No particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman or magistrate, but the parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least one witness beside the clergyman or magistrate must be present at the ceremony.
>
> The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called friends or quakers; nor marriages among the people of any other denominations having as such any particular mode of solemnizing marriages; but such marriages must be solemnized in the manner heretofore used and practiced in their respective societies or denominations, *and marriages so solemnized shall be as valid as if this article had not been enacted.* (Emphasis supplied.)

We recommend: (1) the repeal of D.R.L.§ 25 and (2) the repeal of the second paragraph of D.R.L.§12 to eliminate the loophole that would remain even with the repeal of D.R.L. §25.[58]

[58] The second paragraph of D.R.L.§12 was enacted in 1909 and has never been amended. For over one hundred years, not a single court has cited to the second paragraph of D.R.L.§ 12 for the purposes of validating a Quaker marriage (or any other denomination). There is a single opinion from the Office of the Attorney General from 1971 with respect to the validity of Indian tribal marriages (*1971 N.Y. Op. Attny Gen. No. 27 (N.Y.A.G.), 1971 WL 216931)*. As noted therein, peacemakers were already authorized to perform marriage ceremonies under New York law. Accordingly, the provisions of the second paragraph of D.R.L. § 12 were wholly unnecessary as far as validating an Indian marriage. The opinion additionally notes in relevant part: "[p]roof of marriage in both instances above cited [pre 1957 and post 1957] could be by registration pursuant to the Domestic Relations Law …."

Although unrelated to the issue of requiring a marriage license, we further recommend the revision of the language contained within the first paragraph of D.R.L. § 12 such that the reference to "that they take each other as husband and wife" is changed to "that they take each other as his/her spouse" to conform with both the provisions of New York State and Federal law permitting same sex marriage.

In recent years, a number of cases have required New York courts to determine if a marriage solemnized in New York before a religious leader, but where no marriage license was obtained, is void. These cases arise when one party to the alleged marriage later contends that the marriage was not properly solemnized. The objections to the validity of the marriage arise either because a party claims the person who performed the ceremony did not meet the definition of a clergyman or minister as defined under Religious Corporations Law § 2 (*Ranieri v. Ranieri*, *146 A.D.2d 34 [2d Dep't 1989]; Oswald v. Oswald, 107 A.D.3d 45 [3d Dep't 2013]; Jackson K. v. Parisa G., 51 Misc.3d 1215(A) [Sup. Ct., NY County, 2016])* or where it is claimed that the ceremony was not performed in accordance with the practices of the religious denomination as required under D.R.L.§ 12 (*Jackson K. v. Parisa G., supra.; Devorah H. v. Steven S., 49 Misc.3d 630 [Sup Ct., NY County 2015]; Persad v. Balram, 187 Misc.2d 711 [Sup. Ct., Queens County 2001])*. Determining these issues can create difficulties for a judge since a court is prohibited from resolving "controversies over religious doctrine and practice." (*Presbyterian Church of U.S. v. Mary Elizabeth Blue Hull Mem. Presbyterian Church, 393 U.S. 440, 449 [1969]; First Presbyterian Church of Schenectady v. United Presbyterian Church in U.S., 62 N.Y.2d 110, 116 [1984])*. To require the court to determine, as contemplated by the second paragraph of D.R.L. § 12, whether a marriage was solemnized "in the manner heretofore used and practiced in their respective societies or religions" is in direct conflict with the aforementioned United States Supreme Court precedent. *See also, Weisberg, 2014 N.Y. Misc. LEXIS 1613 [Surr. Court, N.Y. Co. 2014]*.

A mandatory requirement that a marriage license signed by all necessary parties, including the officiant, and returned to the office of the clerk will help avoid future litigation over the validity of a New York marriage. Requiring a license will assure that no impediments exist to the marriage and that each party has knowingly entered into the contractual relationship. *Hasna J. v. David N.*, No. XX/28, 2016 WL 5793500 (N.Y. Sup. Ct. Sept. 28, 2016). Contesting the validity of the marriage will become more difficult with the existence of a marriage license filed with the government.

Moreover, the filing of a license will help avoid litigation in a host of other areas by providing a record of the marriage to address crediting of social security benefits, health insurance coverage, inheritance rights and other marriage-related issues.[59] In many of these

[59] As the court stated in *Ponorovskaya v. Stecklow*, 45 Misc. 3d 597, 611–12, 987 N.Y.S.2d 543 (Sup. Ct. 2014); "And then there is the problem of record keeping. If there is no executed marriage license—stating the date and place of the marriage, and signed by the spouses, the witnesses and the officiator—returned to the office of the clerk, the license cannot be recorded pursuant to Domestic Relations Law §§ 19 to 20-b. And without an official governmental record of the marriage, one will have difficulty proving they are married when applying *612 for health insurance as a covered spouse or seeking Social Security benefits as a surviving spouse. Obviously, without marriage licenses there would be no workable way of knowing and proving who is married in this state." See also *In re Farraj*, 23 Misc. 3d 1109(A), 886 N.Y.S.2d 67 (Sur. 2009), aff'd, 72 A.D.3d 1082, 900 N.Y.S.2d 340 (2010)).

cases, such as *Ponorovskaya*,[60] *Farraj,* [61] and *Hasna,*[62] the court is required to examine the facts and circumstances at great length in order to determine the expectations of the parties as to whether they were legally married. Determining the validity of the marriage often requires lengthy litigation, occurring years after the alleged marriage was entered, when witnesses may no longer be available and can cause severe emotional distress to the parties, children, heirs and others, not to mention the time and expense incurred in proceeding with such court or administrative proceedings. Such litigation wastes judicial resources which could have been better spent determining important questions involved in matrimonial cases, such as custody and visitation, which have immediate consequences in the lives of families and children going through divorce. Moreover, uncertainty over whether a marriage exists can work to the detriment or the advantage of either party, and allows manipulation by parties.

Marriage in New York is a civil contract (D.R.L. § 10). We see no impediment to having an absolute requirement that a marriage license be obtained before a marriage can be solemnized in New York. At least twenty-seven states have enacted mandatory marriage license statutes without any claim of infringement on religious freedoms.[63] Moreover, the absolute requirement that a license be obtained will help ensure that the parties recognize the serious commitment they make by entering into a marriage.

On July 20, 2017, chapter 35 of the Laws of 2017, went into effect (2017-18 S.4407A/A. 5524A). Under the new law, the Domestic Relations Law was amended to prohibit civil marriage and issuance of a marriage license to minors under the age of seventeen. Prior to the new law, sixteen and seventeen-year-olds were allowed to marry with consent of their parents or guardians, while children fourteen and fifteen years of age must have judicial consent as well as consent of parents or guardians. The new law prohibits marriage by seventeen-year-old minors even with the consent of their parent or guardian unless the court approves the marriage after, among other things, making findings that the marriage was not forced upon the minor. The Bill Memo to the Assembly Bill justifies the increased steps the court must take to protect the seventeen-year-old under the new law as compared with the minimal steps required before the court could approve a marriage by a fourteen or fifteen-year-old minor under the old law as follows:

"Based on anecdotal evidence, we have learned that the court approval process under current law for the authorization of marriage of persons under sixteen years of age has not provided adequate protections for a child against abuse and fraud on the part of parents or

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[60] *Ponorovskaya v. Stecklow*, 45 Misc. 3d 597, 987 N.Y.S.2d 543 (Sup. Ct. 2014).

[61] *In re Farraj*, 23 Misc. 3d 1109(A), 886 N.Y.S.2d 67 (Sur. 2009), aff'd, 72 A.D.3d 1082, 900 N.Y.S.2d 340 (2010)).

[62] *Hasna J. v. David N.*, No. XX/28, 2016 WL 5793500 (N.Y. Sup. Ct. Sept. 28, 2016).

[63] The following is a list of 27 states which, as of the end of 2016, had enacted mandatory marriage license statutes: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida Hawaii, Idaho, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, Pennsylvania, Tennessee, Utah, Virginia, West Virginia, and Wyoming.

guardians to force a child into marriage. This legislation will strengthen the process as applied to marriage of persons at least seventeen but under eighteen years of age…"

While our Committee fully supports the goals of the new age of consent law, we believe it would be made more effective by the enactment of our proposal requiring that a marriage license be obtained in all cases. Under the new age of consent law, minors under eighteen can still be married in religious marriages, thereby evading the new law's protections until they come of age at which time they can remarry without seeking court approval. Only by closing the loopholes noted in DRL §§12 and 25 can we be sure that the new age of consent law will be effective.

Our proposal applies prospectively only, and provides for a six-month period before it becomes effective to allow for appropriate notice to officiants and the public**.**

Proposal:

AN ACT to amend the domestic relations law, in relation to requiring marriage licenses in all cases

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

§ 1. The second unlettered paragraph of section 12 of the domestic relations law is repealed.

§ 2. The first unlettered paragraph of section 12 of the domestic relations law is amended to read as follows:

No particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman or magistrate, but the parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as [husband and wife] his/her spouse. In every case, at least one witness beside the clergyman or magistrate must be present at the ceremony.

§ 3. Section 25 of the domestic relations law is repealed.

§ 4. This act shall take effect 180 days from the date on which it shall have become a law and shall apply prospectively only.

3. Proposal for Amendment of C.P.L.R. 3217(a) Regarding Voluntary Discontinuances in Matrimonial Actions (new)

In the leading New York case on discontinuances in matrimonial actions, the Court of Appeals reversed a Third Department decision overturning an Albany County 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 C.P.L.R. 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) allowing for no-fault divorce, 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. We were gratified at the adoption of our proposal for a revised Preliminary Conference Order form containing a provision requiring the parties to waive a voluntary discontinue once grounds have been resolved.[64] However, this was a stopgap measure and a statutory amendment to the C.P.L.R. itself applicable only to matrimonial actions would be most effective.

Rather than rely on a statewide court form which contains a provision waiving voluntary discontinuance, which form may or may not be used uniformly throughout the state,[65]we recommend a statutory amendment to the C.P.L.R. applicable only to matrimonial actions which would prohibit a voluntary discontinuance once a notice of appearance is filed or a party has appeared in court, e.g. at the preliminary conference. like the provision in our revised preliminary conference order form adopted in 2016, discussed earlier in this report, this provision will deny parties the option to discontinue an action in order to litigate another day when they believe their chances will be better, even though they have already spent years in discovery, but will accomplish this without requiring parties to file pleadings which might discourage settlements and which might result in extensive motion practice and hearings. There is no doubt that the C.P.L.R. has greater authority than a provision in a preliminary conference

[64] This provision in our preliminary conference order was described in an article in the *New York Post* as "closing a loophole" in the law so that parties can no longer withdraw the divorce case after extensive time and discovery without consent of both parties. See article by Julia Marsh, *New York Post*, August 10, 2016.

[65] Based on comments we have received, we are optimistic that, because of the addendum allowing judicial districts to add their own provisions, the newly revised preliminary conference order court form will be more widely used throughout the state than the prior version of the form which was not widely utilized.

order which may not be uniformly followed. Thus, we propose the statutory amendment for consideration by the Chief Administrative Judge.

Proposal:

AN ACT to amend the civil practice law and rules, in relation to filing unilateral discontinuances in matrimonial actions

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

Section 1. Paragraph 1 of subdivision (a) of rule 3217 of the civil practice law and rules is amended to read as follows:

1. by serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading is served or, if no responsive pleading is required, within twenty days after service of the pleading asserting the claim and filing the notice with proof of service with the clerk of the court; except in an action for divorce, separation or annulment, a notice of discontinuance cannot be filed pursuant to this subdivision if a notice of appearance has been served or a party has appeared in court, notwithstanding the fact that no pleading or responsive pleading has been filed; or

§2. This act shall take effect immediately.

IV. Previously-Endorsed Rule Proposals

1. Rule Proposal Relating to Statewide Orders to Expedite Changes in Venue [22 NYCRR § 202.16-b)] (new)

In addition to our omnibus statutory proposal on matrimonial venue and our post judgment enforcement and modification rule on matrimonial venue, which was adopted in 2017 as 22 NYCRR § 202.50 (b)(3), our third recommendation 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-designated 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. e-filing in matrimonial actions will help to cure many of these problems. But until e-filing in matrimonial actions becomes more widespread, the new rule will be helpful. 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 C.P.L.R. 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.

This proposal will promote the Excellence Initiative by reducing delays in venue transfers, thus allowing parties quicker access to justice.

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 "G" to this report for the proposed form Order to Expedite Changes in Venue]

2. Custody Severance Rule Proposal [22 NYCRR § 202.16(n)] (new)

Justices hearing matrimonial cases often conduct bifurcated trials allowing the issues pertaining to custody to be determined before issues pertaining to financial relief. Early resolution of custody is often in the best interests of the children of the marriage. Moreover, financial and custody issues may not easily lend themselves to being tried together. However, if the custody issues are tried first, a significant passage of time, often more than one or two years, may occur between the date of the court's custody decision and the entry of the judgment of divorce. Without entry of a judgment, the custody decision is not subject to appeal. A party who wishes to appeal the custody decision is left without an immediate remedy, to the possible detriment of the children. By the time the judgment of divorce is entered, the facts heard at the custody trial may be stale due to the passage of time. Appellate justices hearing the appeal may feel constrained to send the matter back to the trial court for a new hearing to update the facts.

To remedy this problem, the Committee recommends adding a new section 202.16(n) to the Uniform Civil Rules for the Supreme Court and the County Court. The rule requires the trial judge in a divorce action where a decision has been reached on custody, but other ancillary issues have not been litigated or resolved, to sever the custody issues resolved from the remaining issues in the case, and to direct entry of judgment thereon, thus allowing immediate appeal, if sought, of the custody issues resolved.[66]

This procedure is authorized under C.P.L.R. 5012 which provides:

> *"The court, having ordered a severance, may direct judgment upon a part of a cause of action or upon one or more causes of action as to one or more parties."*

We believe that the possibility of immediate appeal from a custody decision in a divorce action is in the best interest of the children. Final resolution of custody issues is essential to the ability of children to adapt to the significant and often traumatic changes that divorce frequently requires of them. Families also must adapt to changes. The sooner the decision is final, parties can begin to make the necessary changes in their lives. The rule provides a mechanism, where appropriate, to seek expedient appellate review. In actions based on D.R.L. § 170(7), the no-fault ground, the court is free to enter judgment on the remaining issues while the custody issues are being appealed, since all ancillary issues will have been resolved at the time of entry of the final judgment of divorce.

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[66] Professor Siegel in the Practice Commentaries states that: "A judgment as to part of an action under this rule would be final and appealable; the time to appeal would begin to run from its entry. Difficulty was encountered with rule 54(b) of the Federal Rules of Civil Procedure, 28 U.S.C.A., early in its history because of the conflict between the final judgment limitation on appeal ability and an apparently strained use of the new rule to escape the rigors of that limitation. No such difficulty should be anticipated in this state with its tradition of interlocutory appeals. Accordingly, the Federal limitation requiring "an express determination that there is no just reason for delay" is omitted". (*see* N.Y. C.P.L.R. rule 5012 (McKinney)).

This rule will provide a statewide, uniform procedure to enable the immediate appeal of a custody decision while the rest of the divorce action remains pending.

The proposed rule has been approved by the Chief Administrative Judge's Advisory Committee on Civil Practice.

Proposal:

22 NYCRR§ 202.16 is amended by adding a new subdivision (n) to read as follows:

(n) Severance of Custody After Trial and Entry of Judgment. Where custody is at issue for an annulment or dissolution of a marriage, for a divorce, for a separation, for a declaration of the nullity of a void marriage or nullity of a marriage, simultaneous with the issuance of a Decision after Trial (or Decisions and Order after Trial) finally resolving the issue of custody, the Court shall sever the issues so resolved and direct the entry of judgment thereon pursuant to C.P.L.R. rule 5012.

3. Amendment to 22 NYCRR § 202.16(k)(3) and Adoption of Form of Application for Counsel Fees by Unrepresented Litigant (new)

In 2015, the Legislature passed and the Governor signed into law, as chapter 447 of the laws of 2015, our proposal to amend § 237(a) to clarify and codify on a statewide basis what is implicit in *Prichep v. Prichep,* 52 A.D.3d 61, 858 N.Y.S.2d 667 (2d Dept. 2008)), that, i.e., unrepresented litigants[67] should not be required to file an affidavit detailing fee arrangements when seeking counsel fees. We now propose an amendment to 22 NYCRR **§** 202.16 (k) (3). The new rule amendment both mirrors the statutory amendment exempting unrepresented litigants from the detailed fee affidavit requirement, and also adopts a new statewide form, *i.e.*, "Unrepresented Litigant Application for Counsel Fees." It consists of an order to show cause together with an affidavit in support. The new form is designed to make it easier for pro se litigants to apply for counsel fees. Without funds to hire counsel to make a formal motion for counsel fees, pro se litigants often do not know where to start in making the application. Compounding the problem is the unwillingness of many attorneys to make a motion on their behalf for counsel fees because of fear of becoming attorney of record in the matter.[68] We believe that unrepresented litigants will benefit by having a form available they can fill out themselves to obtain the fees to hire counsel to prosecute their matters. The Committee thought it prudent to leave out of the form instructions on filing because procedures might differ from county to county. The Committee also provided in the order that the fees be paid directly to an attorney retained by the unrepresented litigant to ensure that the fees would be used for the purpose intended.

As amended, the rule would make clear that an unrepresented litigant would not be required to file an affidavit detailing fee arrangements with an attorney, either in making a motion for counsel fees, or in defending a motion for counsel fees, provided he or she has submitted an affidavit that he or she is unable to afford counsel with supporting proof.

The rule amendment also clarifies that, as required by D.R.L. § 237(a), as recently amended by our Committee's 2015 legislative proposal, the represented litigant is required to file an affidavit detailing fee arrangements with an attorney in answering papers, as well as on moving papers, on a motion for counsel fees. This clarification in the rule was suggested by several members of the Committee who reported that monied spouses represented by counsel were frequently ignoring the requirement in D.R.L. § 237(a) for both parties to submit an affidavit detailing fee arrangements with counsel because the current version of the rule imposes requirements on the moving party only. Thus, non-monied spouses represented by counsel in fee applications are being put at a disadvantage in the litigation by having to reveal the details of their fee arrangements with counsel while the other side is revealing nothing. Admittedly, the statutory requirement which requires affidavits by both parties should control over the rule, thus making the change unnecessary. However, the Committee recommends a clarification in the interest of protecting represented non-monied spouses making applications for counsel fees.

[67] The terms "unrepresented litigants," "pro se litigants," and "self-represented litigants" are often used interchangeably to refer to litigants who are not represented by counsel.

[68] *See* our proposal discussed earlier in this report for a statutory provision for a limited appearance by attorneys for application for counsel fees on behalf of the non-monied spouse.

Proposal:

22 NYCRR § 202.16 (k) (3) is amended to read as follows:

(3) No motion for counsel fees and expenses shall be heard unless the moving papers also include the affidavit of the movant's attorney stating the moneys, if any, received on account of such attorney's fee from the movant or any other person on behalf of the movant, the hourly amount charged by the attorney, the amounts paid, or to be paid, to counsel and any experts, and any additional costs, disbursements or expenses, and the moneys such attorney has been promised by, or the agreement made with, the movant or other persons on behalf of the movant, concerning or in payment of the fee. An unrepresented litigant shall not be required to file such an affidavit when making an application for an award of counsel fees and expenses; 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. However, the party opposing such motion, if represented by counsel, must still promptly submit such an affidavit as part of the answering papers as still required pursuant to section 237 of the Domestic Relations Law. An affidavit attached to an Order to Show Cause or motion filed by an unrepresented litigant shall comply with this rule if it is substantially in compliance with an Appendix to 22 NYCRR § 202.16 to be promulgated. Fees and expenses of experts shall include appraisal, accounting, actuarial, investigative and other fees and expenses to enable a spouse to carry on or defend a matrimonial action or proceeding in the Supreme Court. See Form of Proposed Application for Counsel Fee by Unrepresented Litigant attached as Appendix "H" to this report to be promulgated as an Appendix to 22 NYCRR § 202.16.

V. Past, Pending and Future Projects

1. New Subcommittee to Revise and Streamline Uncontested Divorce Packets

The Chair of our Committee Justice Jeffrey S. Sunshine has appointed a new Subcommittee this year to reform and streamline the uncontested divorce packets.[69] The forms in the packets apply to every type of divorce on any of the seven grounds, whether with or without children. This fact alone makes the packets voluminous. In addition, there are various provisions mandated by the Legislature to be included in the packets under the Child Support Standards Act and the Maintenance Guidelines Law, to name just a few statutory mandates. For parties without children or who do not seek maintenance, these provisions do not apply. The challenge is to reform and streamline the packets without creating many different packets applicable to each type of situation, which might be confusing to the public and create a burden on matrimonial clerks. Compounding the complexity of the project is the wide variation in procedures among the sixty-two counties. The Subcommittee will examine uncontested divorce packets and forms from other jurisdictions to find possible ways to streamline our packets which we are assembling with the assistance of the Academy of Matrimonial Lawyers. We plan to proceed in a way that will be technologically advanced to make it easy to fill out the packets and to send forms to the Department of Health and the Office of Temporary and Disability Assistance.

2. Proposed Revisions to Client's Rights and Responsibilities Pursuant to 22 NYCRR §1400.2

The Committee is considering proposing revisions to the Client's Rights and Responsibilities to make clear the extent of the responsibilities of a matrimonial attorney in handling a divorce. This issue came up in connection with foreclosures in matrimonial actions since, in many cases, one of the spouses is awarded the marital residence in the divorce proceeding, but the transfer of the marital residence is not actually made. Most matrimonial attorneys do not effectuate the real estate transfer because they believe that is outside the scope of their duties in the divorce action. Similarly, they do not handle tax matters or Qualified Domestic Relations Orders for the client in connection with the divorce. The Client's Rights and Responsibilities should clarify that the attorney handling the divorce is not responsible for these related matters, so that the client is made aware that that these important matters require attention following the divorce and should consider hiring an attorney skilled in these areas of the law. Judge Sunshine has appointed a Special Subcommittee on Revision of the Statement of Client's Rights and Responsibilities. [70]

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[69] Members of the Special Subcommittee chaired by Hon. Jeffrey Sunshine are Hon. Linda Christopher, Hon. Ellen Gesmer, Hon. Cheryl Joseph, Hon. Emily Ruben, Hon. Jacqueline Silbermann, RoseAnn Branda, Esq., Elena Karabatos, Esq., Stephen McSweeney, Esq., Michael Mosberg, Esq., and Yesenia Rivera, Esq. Susan Kaufman serves as Counsel to the Special Subcommittee and Matthew Schwartz, Assistant Law Clerk to Judge Sunshine, serves as Secretary. See Memorandum of Hon. Jeffrey Sunshine appointing the Special Subcommittee attached as Appendix "I" to this report.

[70] The members of the Special Subcommittee on Revision of Client's Rights and Responsibilities chaired by Hon. Jeffrey Sunshine, Chair of the Committee, are Hon. Sondra Miller (Ret.), Hon. Jeffrey Lebowitz (Ret.), Hon. Hope

3. Matrimonial Mediation Pilot Projects in Erie, Kings, and Suffolk Counties in Coordination with the Statewide Coordinator of the Office of ADR Programs

At the request of the Chief Administrative Judge, the Committee has been working with Dan Weitz, the Statewide Coordinator of the Office of ADR Programs for the courts to develop pilot projects on matrimonial mediation. At the Summer Seminars, the Chair of the Committee conducted a session on Mediation and Settlement in Matrimonial Actions together with Dan Weitz, Esq. and Elena Karabatos, Esq., a member of the Committee. Pilot Projects are currently being planned for Kings, Suffolk, and Erie Counties which give autonomy to each District. The projects will require the parties to opt out of mediation in matrimonial litigation, since mediation will be the default unless there is an opt out. Training for mediators will be provided.

4. Project to Amend Matrimonial Rules Regarding Foreclosure as it Relates to the Transfer of Properties in Matrimonial Actions to Protect Spouses in Subsequent Foreclosure Action, in Cooperation with the Office of Policy and Planning

The Committee was alerted by the Office of Policy and Planning that some defendants in residential mortgage foreclosure cases have been unable to apply for loan modifications because of title issues arising from their divorce where the deed is titled in the name of both spouses but the divorce grants the marital home to one of the spouses. The Committee has been working on a project to amend the matrimonial rules and uncontested divorce packets to alert self-represented and represented litigants to the additional documents required for transfer of the marital residence, especially where there is a pending foreclosure action. The proposal will also allow the Supreme Court, in a post judgment matrimonial action, to enforce the specific requirement of the transfer of the property.

5. Response to Request for Public Comment on Parent Education Rule Amendment Proposal to Mandate Attendance in the New York State Parent Education and Awareness Program [22 NYCRR § 144.3]

The Committee is considering the proposal (the "proposal") circulated for public comment by the Office of Court Administration in a Memorandum from John McConnell, OCA Counsel, dated November 27, 2017 attached to this report as Appendix "M." The proposal would require judges to order parents to attend parent education and awareness programs in annulment, divorce, separation, and custody matters unless the court has specifically found "that the program would be inappropriate due to the existence of domestic violence or other enumerated factors." The proposal was developed by a Committee for Judicial Restoration of Parent Education composed of members of the bench and bar chaired by Hon. Sondra Miller (Retired) and Hon. Jacqueline Silbermann (Retired), both Honorary Chairs of our Matrimonial Practice Advisory and Rules Committee. Our Matrimonial Practice Advisory and Rules Committee considered the proposal at our December 15th meeting and we will consider the

Zimmerman, Susan Bender, Esq. and Kathleen Donelli, Esq., Susan Kaufman, Counsel to the Committee, serves as Counsel to the Subcommittee and Matthew Schwartz, Assistant Law Clerk to Judge Sunshine, serves as Reporter. See Memorandum of Hon. Jeffrey Sunshine, Chair of the Committee, attached to this report as Appendix "K".

proposal again at our January 19, 2018 meeting with a view toward providing comments to the Office of Court Administration by the January 29, 2018 deadline for comments.

6. E-Filing in Matrimonial Actions

In 2017, legislation was enacted eliminating the prohibitions against mandatory E-Filing in the Appellate Divisions in matrimonial actions (see 2017-18 A. 8127/ S. 06408-A, L. 2017, c.99). At the trial court level, e-filing in matrimonial actions must still be on consent, but our Committee believes it should also be expanded to mandatory e-filing. See letter by Hon. Jeffrey Sunshine, Committee Chair, to Marc Bloustein dated April 24, 2017 attached as Appendix "J" to this report describing the Committee's views on the positive benefits of e-filing in matrimonial actions, particularly from attorneys on the Committee who practice in Westchester where there is a pilot project for matrimonial e-filing on consent. In addition to the benefits described in said letter, e-Filing in matrimonial actions will also help to avoid mistakes as to venue transfers held in the wrong Clerk's office for long periods of time.

7. Implementation of New Age of Consent Law

On July 20, 2017, chapter 35 of the Laws of 2017 went into effect (2017-18 S.4407A/A. 5524A).[71] Under the new law, the judge or justice having jurisdiction of the town or city in which the application to marry was made has a number of responsibilities. He/she must appoint an attorney for the child trained in domestic violence, including forced marriage issues. In addition, the judge or justice must give notice to the minor or minors of his/her rights, conduct a review of related court decisions and court proceedings, have an in-camera interview separately with each minor, and make certain affirmative findings in writing relating to the marriage not being forced before approving any such marriage. The statute is very specific as to the nature of the notice, the necessary review of court decisions and court proceedings and the affirmative written findings that must be made.

To assist judges in complying with the new law, Committee Chair Justice Jeffrey Sunshine and Committee Counsel Susan Kaufman drafted a new form notice to be sent by judges to minors applying for approval of marriage in coordination with the Family Court Advisory and Rules Committee and the NYS Office for the Prevention of Domestic Violence. On July 20, 2017, a memorandum from Ronald Younkins, Executive Director of the Office of Court Administration, was sent out, advising the court community about the new law and circulating the draft notice. A Lunch and Learn training arranged by Counsel to the Committee to inform matrimonial and Family Court Judges about the new law was broadcast from the Judicial Institute on October 5, 2017. The training was presented by Dorchen A. Leidholdt, Director of the Center for Battered Women's Legal Services at Sanctuary for Families in New York City

[71] See our comments earlier in this report about our proposal to amend the Domestic Relations Law to require marriage licenses in all cases. If enacted this proposal would ensure that the new age of consent law could not be evaded by allowing minors to enter into religious marriages, followed by civil marriages after they turn eighteen.

8. Monitoring of Matrimonial Maintenance and Child Support Calculators and Development of New Matrimonial Child Support Only Calculator in Coordination with the Department of Technology

At the beginning of April, 2016, after considerable testing conducted by the Committee in coordination with the Department of Technology using different scenarios, the post-divorce maintenance and child support calculators were posted on the Divorce Resources website on a new page entitled "Maintenance and Child Support Tools" at http://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml. This new page is a comprehensive maintenance and child support resource, which includes the temporary maintenance calculators and worksheets, the post-divorce maintenance calculators and worksheets for both contested and uncontested divorces, and instructions on how to use the calculators. The instructions for the post-divorce maintenance and child support calculators explain that the new calculators can only be used for computing maintenance and child support combined where the maintenance award is the guideline amount, or for computing guideline maintenance only. They were not designed for computing only child support where neither party seeks maintenance or where there is an award of maintenance different from the guideline amount of maintenance. [72]

The post-divorce maintenance calculator was a successful undertaking that both the Department of Technology and the Committee provided substantial resources to undertake. Since the effort was so time intensive, we decided to put off development of a calculator for child support alone. Susan Kaufman, Counsel to the Committee, who monitors and responds to questions about the calculators and worksheets that come in from the public, has received a number of inquiries requesting such a child support only calculator for use in matrimonial actions, and we plan to work with the Department of Technology to develop such a calculator in the future.

9. Alternative Parenting Arrangements, Access Rights, and the Revised Parent Child Security Act (2017-18 A.6595A /S.0017A)

In 2011, New York State enacted the Marriage Equality Act (L. 2011, c. 95) which adopted section 10(a) of the Domestic Relations Law providing that a marriage is valid regardless whether the parties are of the same or different sex. In *Obergefell v Hodges,*[73] the Supreme Court, in 2015, held that the right to marry is a fundamental right and upheld the rights of same-sex couples to marry. In 2016, the New York Court of Appeals held that "where a partner shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological non-adoptive partner has standing to seek visitation and custody under Domestic Relations Law 70." (see *Matter of Brooke S.B v. Elizabeth A.C.C.* (2016 NY Slip Op 05903 at 2).

[72] It should also be noted that the Calculators do not compute Post-Judgment modification applications, or guideline maintenance on income above the $178,000 cap. Income above the cap must be decided by the court based on the 15 Factors for Post-Divorce Maintenance. See DRL 236(B)(6)(d).

[73] *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed.2d 609 (Supreme Court 2015).

In light of these changes in the law, our Committee has been considering what legislative changes should be made to protect the rights of same sex couples in alternative parenting arrangements. We discussed a simple proposal to amend section 73 of the Domestic Relations Law to establish the co-motherhood rights of the non-biological mother in lesbian couples. However, we decided to table this proposal pending further study because it may not go far enough in protecting children born to married men by artificial insemination using their sperm. The Committee is reluctant to recommend a proposal establishing rights of same sex female couples without protecting rights of same sex male couples. However, we are mindful that any proposal which protects rights of married men regarding children born by artificial insemination raises issues of surrogate parenting. Thus, the Committee decided further study is needed. Based on the recommendation of our Ad Hoc Committee on Alternative Parenting Arrangements,[74] we decided to accept the gracious offer of Professor Suzanne Goldberg of Columbia Law School, who is Executive Vice President for University Life and the Director of the Center for Gender and Sexuality Law, to provide our Committee with a team of four clinic students to work on this as a project under supervision by members of our Committee[75] in order to assist our Committee in formulating a recommendation to the Chief Administrative Judge.

At our April 15, 2016 Committee meeting, the students submitted a report entitled "Law & Policy Implications of a Change in New York State's Ban on Surrogacy Contracts", dated April 15, 2016 (the Columbia Students Report"). This report described the key definitions of full and partial surrogacy, and revealed that surrogacy is an industry worth about six billion dollars per year. Their report indicates the following: costs for surrogacy contracts in the United States vary from a few thousand dollars to $200,000.[76] Four states, including New York, ban surrogacy, while 14 states regulate it, including Florida and California. Thirty-two states have no legislation, but many of these states have case law about surrogacy. In Rhode Island, the Chief Judge presides over every surrogacy case. Internationally, 45 countries prohibit surrogacy, including most of Europe. Eight countries permit some form of surrogacy, including Israel which has special rules related, inter alia, to religious observances.

The Columbia Students Report also examined the Parent Child Security Act proposed in 2015-16 A. 4319 /S. 2765, in light of the students' research. This bill requires insurance for the surrogate, and provides for a judgment of parentage and counsel for the parties. The bill incorporates some, but not all, of the best practices in surrogacy regulation. During 2017, a revised version of the Parent Child Security Act (2017-18 A.6959/S. 00017) was introduced, which the Committee has undertaken to review.

The Second Department decision in *Matter of Giavonna F. P.-G. (Frank G.--Renee P.-F.*) (2016 NY Slip Op 05948) and two related cases have reinforced the rule that surrogacy contracts are illegal in New York. However, since the Governor's Task Force on Life and the Law issued its report at the end of 2017 regarding surrogacy contracts in New York (available at

[74] Members of the Ad Hoc Committee on Alternative Parenting Arrangements were Hon. Jacqueline Silbermann, Hon. Laura Drager, Hon. Ellen Gesmer, Susan Bender, Esq., and Michael Mosberg, Esq.
[75] Hon. Ellen Gesmer and Susan Bender, Esq. supervised the students' work during the project which ran from January through April, 2016.
[76] This includes medical costs, legal costs, agency fees and surrogate fees.

https://www.health.ny.gov/regulations/task_force/reports_publications/docs/surrogacy_report.pdf), the Committee is now considering the report and the proposed revised Parent Child Security Act.

During 2017, the Committee continued to study these issues. In this connection, Counsel to the Committee arranged a Lunch and Learn presentation at the NYS Judicial Institute on April 6, 2017 on *Access Rights of Same Sex Couples and Non-Biological Parents in New York, after Brooke S.B. and Estrellita A.* decided on August 30, 2016. The presenters were Susan Bender, Esq., a member of the Committee, and Hon. Theresa Whelan, Supervising Family Court Judge in Suffolk County.[77]

The Committee has also been following development of the case law since *Brooke* S.*B. and Estrellita A.* to assist its review of surrogacy and the proposed Parent Child Act. In *Frank G. v. Renee P.-F.,* [78] one of the related cases to the case cited above, although the court found the surrogacy agreement unenforceable, the court nevertheless found that the surrogacy agreement was evidence of the parties' unequivocal intention that the two male partners had become the parents of the children, and found standing for petitioner to seek custody and visitation. In *Dawn M. v. Michael M.,* 55 Misc. 3d 865, 47 N.Y.S.3d 898 (N.Y. Sup. Ct. March 2017), the court granted shared legal tri-custody to a wife in a divorce proceeding with her husband who was the biological father as well as with the biological mother. *In K v. C,* 55 Misc. 3d 723, 51 N.Y.S.3d 838 (N.Y. Sup. Ct. April 2017), the court dismissed the petition for custody on the basis that petitioner failed to prove that the parties had a plan to adopt and raise the child together that was continuous without interruption. In *A.F. v. K.H.,* 57 N.Y.S.3d 352 (Fam. Ct. 2017), the court granted an order of filiation/parentage to a non-biological non-adoptive parent of children conceived by the biological parent after the parents had registered as domestic partners prior to the date that same sex marriage became legal in New York. More recently, a Family Court Judge in Nassau County found that a former non-married female partner in a same sex relationship had standing to seek custody even though there was no preconception agreement, based on equitable estoppel. As pointed out by Andrew Denney in an article in the New York Law Journal on September 27, 2017, this ruling was an expansion of the ruling in *Brooke* S.*B. and Estrellita A.*

10. Joint Custody Under Child Support Standards Act in New York

One commentator describes New York's position as more extreme than other jurisdictions in not permitting payments by the custodial parent to the non-custodial parent in shared custody cases, even when the custodial parent has far greater assets than the non-custodial parent who needs the support to be able to provide for the child during parenting time.[79] In a 2013 First Department decision, the Appellate Division, stated: "*In finding that the father could be considered the noncustodial parent, the motion court improperly focused on the parties'*

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[77] Judge Whelan wrote the trial court decision in *Estrellita A. v Jennifer D.*, 2013 NY Slip Op 23132 [40 Misc 3d 219].

[78] *Frank G. v. Renee P.-F.,* 142 A.D.3d 928, 37 N.Y.S.3d 155 (N.Y. App. Div.), *leave to appeal dismissed*, 28 N.Y.3d 1050, 65 N.E.3d 1282 (2016).

[79] *See* Emma J. Cone-Roddy, *Payments to Not Parent? Noncustodial Parents As the Recipients of Child Support,* 81 U. Chi. L. Rev. 1749, 1750 (2014) (contrasting the New York approach in *Rubin v. Salla* with the California approach in *In re Marriage of Cryer*, 131 Cal Rptr 3d 424, 428 (Cal App 2011), and stating "These particular results represent extremes. More jurisdictions would allow Mara (Rubin) to recover than Sarah (Cryer).").

financial circumstances rather than their custodial status."[80] Accordingly, the Appellate Division reversed the trial court as to the child support award to the mother. The court cited the Court of Appeals decision in *Bast v. Rossoff,* 91 N.Y.2d 723, 675 N.Y.S.2d 19, 697 N.E.2d 1009 [1998] for the proposition that the clear language of the statute required no exceptions to the Child Support Standards Act formula requiring payment by the non-custodial parent to the custodial parent in shared custody situations, notwithstanding the circumstances of the case.

The dissent by Acosta, J. raised issues as to the correctness of this approach as follows: "*I respectfully dissent from the dismissal of the mother's cause of action for child support because the majority's rigid application of the statute sacrifices the child's well being at the altar of an arithmetic formula. It forces the child to bear the economic burden of his parents' decisions, even where, as here, the child, whose father is a millionaire, is in danger of living in poverty, solely to preserve uniformity and predictability in child support awards. I do not believe this result is what the legislature intended in drafting the Child Support Standards Act (CSSA), especially since the CSSA clearly did not envision every possible custodial situation."*[81]

We are aware that other states have many different approaches to this issue.[82] We continue to study some of these alternative approaches before making a recommendation as to how to correct what may be too rigid an application of the statute.

11. Mentoring of New or Newly-Assigned Matrimonial Judges

An important issue our Committee continues to study is mentoring of new or newly-assigned matrimonial Judges. The need for mentoring was noted in the Matrimonial Commission Report as follows:

"An important aspect of this integration to the new assignment is to pair each new judge with a more senior judge. The senior judge should be available to assist the new judge during the

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[80] *See Rubin v. Salla,* 107 A.D.3d 60, 71, 964 N.Y.S.2d 41 (2013)).

[81] *Rubin v. Salla*, 107 A.D.3d 60, 73-74, 964 N.Y.S.2d 41, 52-53 (2013).

[82] For example, regarding the approach in Illinois, see *In re Marriage of Turk,* 2014 IL 116730, ¶ 16, 12 N.E.3d 40, 44–45 stating:

"Steven interprets section 505 to mean that the obligation to pay child support may be imposed only on noncustodial **45 *45 parents and that a custodial parent may never be ordered to pay child support to a noncustodial parent. The terms of the [Illinois] statute do not support such a view. In contrast to the child support laws of some states which single out noncustodial parents for payment of child support (see, *e.g., Rubin v. Salla,* 107 A.D.3d 60, 964 N.Y.S.2d 41, 47 (2013) (applying New York law); *Daigrepont v. Daigrepont,* 458 So.2d 637, 638–39 (La.Ct.App.1984) (applying the law of Louisiana)), section 505 expressly confers on courts the option to "order *either or both parents* owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for the support of the child, without regard to marital misconduct." (Emphasis added.) 750 ILCS 5/505(a) (West 2012). The statute further provides that in addition to support, the court may, in its discretion, "order *either or both parents* owing a duty of support to a child of the marriage to contribute to [various] expenses, if determined by the court to be reasonable," including health needs not covered by insurance. (Emphasis added.) 750 ILCS 5/505(a)(2.5) (West 2012).

entire training period and for a period of at least one year following the assignment."[83]

This recommendation of the Matrimonial Commission was made prior to the severe budget cuts that the courts experienced in recent years. Limited resources do not always make it possible today for a senior judge to be available to mentor new or newly-assigned matrimonial judges. Moreover, senior judges often assume heavy caseloads, leaving little time for mentoring their peers. The new judges trainings at the Judicial Institute, planned by our Committee's Education Subcommittee chaired by Hon. Andrew Crecca, who is curriculum advisor to the Judicial Institute for family and matrimonial law, in coordination with Judge Sunshine as Chair of the Committee, and Susan Kaufman, Counsel to the Committee, include an introduction to matrimonial law for new and newly assigned matrimonial judges, which helps introduce new judges to the new subject matter. Judge Sunshine continues to serve as a resource to judges hearing matrimonial cases.

12. Assistance to the Judicial Institute with Education and Training of Matrimonial Judges

In addition to new judges school trainings, members of the Committee regularly participate as presenters at judicial trainings for matrimonial judges conducted by the Judicial Institute under the leadership of Dean Juanita Bing Newton. At the judicial seminars in June and July of 2017,[84] Hon Bruce Wagner, a member of our Committee presented a legal update session. a two-part panel discussion with experienced matrimonial Judges led by Judge Sunshine as moderator was presented on "Getting a Case to Trial" and "Handling a Matrimonial Bench Trial, Including One with Pro Se Litigants." Judge Stephen Cass from Chautauqua County and Hon. Laura Drager of New York County, a member of the Committee, were on the panel. There was also a session presented by Hon. Linda Christopher, a member of our Committee, on witness credibility in custody cases, with a Family Court Judge,[85]and a professor of communications from the University of Buffalo.[86] Additionally, there was a session on attorney's fees and withdrawal on the eve of trial presented by Judge Zimmerman and the late esteemed John Grimes, both members of our Committee. Hon. Cheryl Joseph, Stephen Gassman, Esq[87] and Michael Mosberg, Esq., all members of our Committee, presented a session on imputation of income through tax returns and net worth statements. There was also a session on best practices for mediation and settlement in matrimonial actions presented by Judge Sunshine, Dan Weitz,

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[83] Matrimonial Commission, Report to the Chief Judge of the State of New York [Feb 2006], available at www.courts.state. ny.us/ip/matrimonial-commission, at page 16.

[84] These trainings were planned for the Judicial Institute by the Chair of the Committee's Education Subcommittee, (formerly Hon. Sharon Townsend, now retired, who was Vice Dean of the Judicial Institute for Family and Matrimonial Law) in coordination with the Hon. Jeffrey Sunshine, Chair of the Committee and Susan Kaufman, Esq., Counsel to the Committee, with assistance from a committee of advisors, including Hon. Laura Drager, Hon. Cheryl Joseph, Hon. Llinet Rosado, Hon. Martha Walsh Hood, Hon. Dennis Ward, and Hon. Hope Zimmerman..

[85] Hon Carol Goldstein was the Family Court Judge who presented at the June session, and Hon. Jane Pearl was the Family Court Judge who presented at the July session.

[86] Professor Mark Frank, Chair of the Communication Department, at the University of Buffalo presented at the June session, and a doctoral candidate under Dr. Mark's advisement, Mr., Zachary Carr, presented at the July session.

[87] Rosalia Baiamonte, Esq. also co-presented one of these sessions.

Director of ADR for the Unified Court System, and Committee member Elena Karabatos, Esq.[88] Most of these same Committee members repeated these sessions at a matrimonial update for court attorneys planned by Susan Kaufman, Counsel to the Committee in October 2017.[89]

In addition, members of the Committee presented Lunch and Learn broadcasts for Judges, law clerks, and referees during the year on various matrimonial law topics coordinated and planned by Susan Kaufman, Counsel to the Committee. Susan Bender, Esq., a member of the Committee co- presented with Hon. Theresa Whelan, a session on access rights of same sex couples and non-biological parents in New York, after *Brooke S. B. and Estrellita A.* Hon. Hope Zimmerman and Elena Karabatos, Esq. also members of our Committee, presented two CLE sessions in the spring of 2017. One was on the preliminary conference statement as a roadmap to a contested matrimonial action. The other was on the net worth statement**,** basic tax returns and profit and loss statements for matrimonial judges.[90] Hon. Linda Christopher, a member of our Committee, presented a session on handling uncontested divorces.[91]

13. Monitoring of New Federal Child Support Guidelines

On December 20, 2016, the flexibility, efficiency and modernization in child support enforcement programs final rule was adopted, which was the first major revision of child support statutes since their adoption. States must comply in order to continue to receive funding under Title IV-D of the Social Security Act and must adopt a state plan implementing the requirements. The final rule is intended to increase timely payments to families, reduce the non-payment rate, increase the number of non-custodial parents working and supporting their children, increase responsibilities of child support agencies regarding contempt, improve collection rates, reduce child support arrears, improve technological advances in collection, and improve the rights of non-custodial parents in connection with child support orders. The final rule makes major changes regarding imputation of income and rules regarding incarceration of non-custodial parents, requiring that incarceration may not be treated as voluntary unemployment. Our Committee has been monitoring implementation of these changes and studying their effect on existing New York law. At the summer judicial seminars, a presentation on this subject was made by Michael Mosberg, Esq., a member of the Committee.

[88] Although she is not a member of our Committee, we wish to thank Joan Adams, Esq. of Buffalo who presented at both the June and July sessions a program on QDROS and the New Federal Legislation Regarding Military Pensions.

[89] Hon. Hope Zimmerman presented on the Panel for "Getting a Case to Trial" at the October session instead of Hon. Laura Drager who was unavailable on October 10th. Judge Drager presented a session on October 3rd on Equitable Distribution.

[90] Louis Cercone, CPA, co-presented this session

[91] Phyllis Goldberg, Esq., Principal Court Attorney to Hon. Linda Christopher, co-presented this session

14. Exploration of Ramifications of Changes in Federal Tax Code on New York Maintenance and Child Support Law

The recent passage by both the House of Representatives and the U.S. Senate of the Federal Tax Cuts and Jobs Act of 2017 has caused considerable discussion among the matrimonial bench and bar because of the provision denying deductibility of maintenance payments to the payor spouse and inclusion of maintenance payments in the income of the payee spouse. A memo of opposition by the New York State Bar Family Law Section attached to this report as Appendix "L" reads as follows:

> *"The elimination of the alimony deduction could significantly decrease combined net after-tax income for divorced family households (particularly in the middle class tax bracket), and could increase the cost of obtaining a divorce through the prolongation of litigation."*

The Committee will monitor the ramifications, both statutorily and procedurally, of changes in the Federal Tax Code on New York law as to maintenance and child support, including the Maintenance Guidelines Law (L. 2015, ch. 269) and the law requiring that maintenance be deducted from income of the payor and included in income of the payee before calculating child support (L. 2015, ch. 387).

VI. Committee Outreach

Committee Chair Hon. Jeffrey Sunshine continues outreach to the Matrimonial bench and bar throughout the year. In addition to speaking with and serving as a resource to individual judges hearing matrimonial cases, he has participated as a speaker on panels at CLE programs and attended meeting of local and statewide bar associations. He has also been in contact with Administrative Judges around the state and serves as a resource to the court system upon request.

VII. Subcommittees

BEST PRACTICES
Alton Abramowitz
Hon. Laura Drager, Reporter
Hon. Betty Weinberg Ellerin
Hon. Ellen Gesmer
Christopher S. Mattingly
Stephen P. McSweeney
Hon. Sondra Miller
Hemalee J. Patel
Florence Richardson
Yesenia Rivera-Sepes
Hon. Jacqueline Silbermann
Zenith T. Taylor
Hon. Hope Zimmerman

EDUCATION
Hon. Andrew Crecca, Chair
Rose Ann C. Branda
Hon. Andrew Crecca
Kathleen Donelli
Hon. Betty Weinberg Ellerin
Donna England
Stephen J. Gassman
Elena Karabatos
Florence Richardson
Sharon Kelly Sayers
Bruce J. Wagner
Harriet Weinberger
Hon. Hope Zimmerman

FORMS
Hon. Linda Christopher
Kathleen Donelli
Hon. Cheryl A. Joseph
Elena Karabatos
Susan Kaufman, Reporter
Stephen P. McSweeney
Sharon Kelly Sayers
Zenith T. Taylor
Hon. Hope Zimmerman

LEGISLATION
Susan L. Bender, Reporter
Hon. Andrew Crecca
Hon. Laura Drager
Stephen J. Gassman
Hon. Ellen Gesmer
Hon. Jeffrey D. Lebowitz
Hon. Sondra Miller
Michael A. Mosberg
Emily Ruben
Eric A. Tepper
Harriet Weinberger

RULES
Rose Ann C. Branda
Susan L. Bender
Christopher S. Mattingly
Elena Karabatos
Hemalee J. Patel, Reporter
Sharon Kelly Sayers
Hon. Jacqueline Silbermann
Eric A. Tepper
Bruce J. Wagner
Hon. Hope Zimmerman

VIII. 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 by striving for "operational and decisional excellence" in accordance with the Chief Judge's Excellence Initiative.

January 2018

Respectfully submitted,

Honorable Jeffrey S. Sunshine, Chair
Alton Abramowitz, Esq.
Susan L. Bender, Esq.
Rose Ann C. Branda, Esq.
Honorable Linda Christopher
Thomas Cassano, Esq. (Retired as of 12/1/17)
Honorable Andrew Crecca
Kathleen Donelli, Esq.
Honorable Laura A. Drager
Honorable Betty Weinberg Ellerin [Ret.], Hon. Chair
Donna England, Esq.
Steven J. Eisman, Esq. (deceased)
Stephen J. Gassman, Esq.
Honorable Ellen Gesmer
John J. Grimes, Esq.(deceased)
Honorable Cheryl A. Joseph
Elena Karabatos, Esq.
Honorable Jeffrey D. Lebowitz [Ret.]
Christopher S. Mattingly, Esq.
Stephen P. McSweeney, Esq.
Honorable Sondra Miller [Ret.], Hon. Chair
Michael A. Mosberg, Esq.
Hemalee J. Patel, Esq.
Florence Richardson, Esq.
Yesenia Rivera, Esq
Emily Ruben, Esq.
Sharon Kelly Sayers, Esq.
Honorable Jacqueline Silbermann [Ret.], Hon. Chair
Zenith T. Taylor, Esq.
Eric A. Tepper, Esq.
Hon. Sharon Townsend (Retired on 12/31/17 see Section IX)
Bruce J. Wagner, Esq.
Harriet Weinberger, Esq.
Honorable Hope Zimmerman

Susan W. Kaufman, Esq. Counsel

IX. Thank you and Best Wishes to Judge Townsend on Her Retirement

The Committee wishes to extend special thanks and best wishes to the Hon. Sharon Townsend who is retiring on December 31, 2017 for her many years of service to this Committee and the court system. Not only did Judge Townsend serve as Chair and Co-Chair of the predecessor to this Committee from November 2009 through the first part of 2014, but she has also served as Chair of the Education Subcommittee since the current Committee was formed in June 2014. Throughout her tenure as Chair and Co-Chair of our predecessor Committee, she provided leadership and guidance to our Committee, and her role in furthering the transition of our Committee to a standing Committee under the Chairmanship of Judge Sunshine was invaluable.

Throughout her service as Chair and then Co-Chair of our predecessor Committees, and as Chair of the Education Subcommittee of our current Committee, Judge Townsend has also served as Vice Dean of the Judicial Institute for Family and Matrimonial Law, drawing upon her considerable skill and experience as both a Family Court and Matrimonial Judge to provide the highest quality judicial education to judges assigned to handle matrimonial cases.

It has been our pleasure to work with Judge Townsend throughout this period. We will miss her both as a friend and a leader. We wish her all the best in her retirement.

X. Appendices to Report of Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge, January 2018

A- Comment by Sanctuary for Families on Proposed Divorce Venue Post Judgment Rule

B- Memorandum of Ronald Younkins re Divorce Venue Post Judgment Rule dated July 20, 2017

C –New York Public Welfare Association Comment on Application of Forensic Bills Applications to Court-Ordered Child Protective Examinations

D – Bar Association Positions on Forensics Bills (in Support of A.6579 and in Opposition to to A.1533/S.6300)

E - OCA Court Statistics on Divorce Filings Full Year 2011, 2012, 2013, 2014, 2015 and 2016

F - 2006 A. 10447 Bill Memo

G - Form of Proposed Statewide Order to Expedite Changes in Venue

H - Form of Proposed Application for Counsel Fees by Unrepresented Litigant

I- Memorandum of Hon. Jeffrey Sunshine, Chair of Matrimonial Practice Advisory and Rules Committee, appointing the Special Subcommittee on Revision of the Uncontested Divorce Forms

J- Memorandum by Hon. Jeffrey Sunshine, Chair of Matrimonial Practice Advisory and Rules Committee, to Marc Bloustein, OCA Legislative Counsel, regarding E-Filing in Matrimonial Actions

K- Memorandum of Hon. Jeffrey Sunshine, Chair of Matrimonial Practice Advisory and Rules Committee, appointing the Special Subcommittee on Revision of Client's Rights and Responsibilities

L- NYSBA Family Law Section Memorandum in Opposition to Federal Tax Cuts and Jobs Act of 2017 as passed by the House of Representatives on November 16, 2017

M- Memorandum of John W. McConnell dated November 29, 2017 Requesting Public Comment on Proposed Amendment to 22 NYCRR section 144.3 to Mandate Attendance in New York State Parent Education and Awareness Program

Appendix A

Sanctuary for Families

P.O. Box 1406
Wall Street Station
New York, NY 10268-1406
Tel: 212.349.6009
Fax: 212.349.6810
sanctuaryforfamilies.org

March 7, 2017

John W. McConnell, Esq.
Counsel
Office of Court Administration
25 Beaver Street
11th Floor
New York, New York 10004

Re: Proposed Amendment of the Form of Judgment in Matrimonial Actions (22 NYCRR §202.50[b])

Dear Mr. McConnell:

I am writing on behalf of Sanctuary for Families to provide comments with respect to the proposed Amendment of the Form of Judgment in Matrimonial Actions (22 NYCRR §202.50[b]). Sanctuary for Families thanks the Office of Court Administration ("OCA") for this opportunity to provide feedback.

Sanctuary for Families, the largest non-profit organization in New York State dedicated exclusively to the needs of domestic violence victims and their children, serves over 17,000 individuals each year by providing shelter, counseling, legal assistance, and resources for economic and housing stability. Each year, Sanctuary's Center for Battered Women's Legal Services represents hundreds of domestic violence survivors in matrimonial and family law matters.

With respect to the three proposed paragraphs to be added to judgments of divorce, our input is as follows:

A declaration that prior settlement agreement are incorporated by reference in the judgment, and shall survive and not be merged.

This is a standard provision that most matrimonial attorneys are already including in their proposed judgments of divorce. As such, we do not have any objection to this proposed provision.

Retention of jurisdiction of the matter concurrently with the Family Court

With respect to this provision, we suggest a clarification in the proposed language that says courts have jurisdiction "for the purpose . . . of making such further judgment with respect to maintenance, support, custody or visitation as it finds appropriate under the circumstances existing at the time." It is our hope and belief that this provision is not intended to change Domestic Relations Law ("DRL") § 236B(9) or other existing law governing applications for modification of the terms of an agreement incorporated into a judgment. However, the language "as it finds appropriate under the circumstances" may appear to suggest a broader jurisdiction to alter the terms of an agreement or judgment than is permissible under current law.

We believe this potential ambiguity can be resolved by changing the provision to read as follows: "for the purpose . . . of modifying such judgment with respect to maintenance, support, custody or visitation to the extent permitted by law."

Requirement that enforcement or modification proceedings relating to any settlement agreement shall be brought in a county where a party or minor child resides, absent good cause shown

Sanctuary for Families shares OCA's concerns regarding efficiency in the court system, especially with regard to family law cases, which involve important issues in the lives of litigants and their children. We also understand the court system's desire to ensure that the burden of handling post-judgment matters does not fall disproportionately upon particular counties nor strategically disadvantage defendants/respondents who reside far away from the place of trial. We have, however, some drafting concerns with respect to the proposed requirement.

We are particularly concerned about determination of venue in post-judgment matters in which one or more parties has a confidential or unknown address. Current law, DRL § 254, allows victims of domestic violence and other parties who may be at risk to appear in court while keeping their addresses confidential. Indeed, many of our clients make applications to keep their home addresses confidential in their matrimonial and family court actions. If the judgment of divorce contained the language proposed, a victim of abuse who needed post-judgment relief would face the difficult decision between proceeding in their abuser's county of residence and proceeding in the victim's own county of residence. Repeatedly traveling to the abuser's county for litigation could be difficult and expensive. Filing in the victim's own home county would risk exposing the confidential address and jeopardizing their safety.

Even more serious problems could arise if neither party's address were public knowledge. There are many cases in which one party resides at a confidential address and the other party's residential address is unknown, leaving a litigant with uncertainty as to where a post-judgment action may properly be filed. We have seen some cases in which both parties' addresses are kept confidential. In such situations, under the proposed form of judgment, neither party would know of any county in which they could file without revealing their home county.

Furthermore, determining venue based on current residence will waste resources in some contested divorce matters, in which there is an extensive litigation history before a particular judge. In many of those matters, the parties may change their county of residence during the matter or after its conclusion. When such matters return to the court for post-judgment enforcement or modification proceedings, the cause of efficiency and the fair administration of justice is better served by keeping the matter before the same judge if he/she is still available to preside than by requiring a new judge in a different county to learn the substantive and procedural history of a complex matter in order to properly rule upon a post-judgment modification application. Without any guidance regarding what constitutes "good cause," there can be no assurance that this continuity of judicial oversight of complex matters could be considered.

Finally, obtaining representation can be extremely difficult for lower-income litigants and those who reside in counties where legal services resources are few. Sometimes the venue chosen is a result of the location of accessible pro bono legal services in a neighboring county and a restriction based upon residency alone poses an unnecessary burden upon the parties.

If this proposal is adopted, Sanctuary for Families asks OCA to consider how it applies to cases in which a party has obtained an Order to Maintain Address Confidential. Judgments of divorce might simply allow such parties to file post-judgment motions in the county where the judgment of divorce was

issued, in addition to excluding their home address from the judgment. OCA might also, in the rule itself or in the letter explaining it, give more details about what will constitute "good cause" for a different venue and how good cause will be determined.

We do not wish to rely on the "good cause" exception in the proposal to address the above concerns. The rule itself does not set forth the procedure for determining whether the venue selected is appropriate nor procedures and standards for determining "good cause" to override this venue restriction. "Good cause" is a discretionary standard without any prior case law to which litigants may cite in their applications to permit them to proceed in a given venue. The requirement of showing good cause may prove unduly burdensome, particularly for unrepresented litigants.

We urge OCA to craft a rule that will address the issue of post-judgment venue in a way that takes into consideration these concerns. While we applaud efforts to curb frivolous behavior in litigation that is aimed to create difficulty for a defendant/respondent, we hope that it can be accomplished in a manner that increases access to justice without erecting additional unnecessary barriers to litigants seeking their day in a court.

Sanctuary for Families would be happy to work with you on drafting modified language that would include the above changes. You may contact Amanda Norejko at anorejko@sffny.org or (212) 349-6009 ext. 257 for further discussion of these comments. Thank you for your consideration.

Sincerely,

Hon. Judy Harris Kluger
Executive Director

Appendix B

NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

RONALD P. YOUNKINS, ESQ.
EXECUTIVE DIRECTOR

MEMORANDUM

July 20, 2017

TO: Hon. Michael V. Coccoma
Hon. George J. Silver

FROM: Ronald Younkins RY

RE: New Rule on Divorce Venue or Post Judgment Enforcement and Modification Applications [22 NYCRR § 202.50(b) (3)] effective August 1, 2017

Attached please find a copy of AO/100/17 dated May 22, 2017 effective August 1, 2017, that adopts a new rule concerning post judgment applications for modification or enforcement of judgments of divorce in Supreme Court. The rule proposal would add a new paragraph (3) to 22 NYCRR § 202.50(b)[1] which governs the form of judgments in matrimonial actions, both contested and uncontested. The text of the new rule is contained in the AO/100/17.

Please also see attached a copy of AO/138/17 adopting a revised form of Judgment of Divorce (UD-11) in the Unified Court System's Uncontested Divorce Packet, which implements the new rule, effective August 1, 2017. A copy of the new form is attached to the AO as Exhibit A and a complete list of the Uncontested Divorce Packet in effect as of August 1, 2017 is attached to the AO as Exhibit B.

This new rule was recommended by the Matrimonial Practice Advisory and Rules Committee chaired by Hon. Jeffrey Sunshine. By requiring that post judgment applications for enforcement or modification be brought in a county related to residence, the new rule will change the current practice that most post judgment applications seeking enforcement or modification of

---

[1] 22 NYCRR § 202.50(b) already delineates language requirements for proposed judgments in matrimonial actions. The rule broadens the language required by the prior rule as to retention of jurisdiction by the Supreme Court, concurrent with Family Court, by expanding the retention of jurisdiction from enforcement of settlement agreements only, to enforcement and modification of judgments of divorce. However, the rule makes clear that retention of jurisdiction for purposes of modification of maintenance, child support, custody and visitation is only to the extent permitted by law. The second part of the rule requires that the judgment contain an order requiring venue related to residence for post judgment enforcement or modification applications in Supreme Court with certain exceptions.

25 BEAVER STREET, NEW YORK, NEW YORK 10004 • PHONE: 212-428-2120 • FAX: 212-428-2188 • RYOUNKIN@NYCOURTS.GOV

Judgments of Divorce are brought in the same county that the original divorce proceeding occurred. While the designation of that county may have been proper at the time of commencement, often by the time that post judgment litigation ensues neither the parties nor the children have a nexus to that county. Similarly, the initial filing at commencement may have been made pursuant to CPLR § 509, notwithstanding the fact that neither party had any nexus to the jurisdiction at the time, other than it was a more convenient forum for the attorneys or, because of backlogs in one county or another county, became the venue of choice. This prior practice resulted in certain counties being forced to process a disproportionate volume of uncontested and contested divorces in comparison to other counties, which resulted eventually in post judgment litigation subsequently being heard in that same county. The new court rule will lessen the burden on those counties and on litigants' access to justice in those counties, thus furthering both the operational and decisional excellence goals of the Excellence Initiative of Chief Judge Janet DiFiore.

The rule applies to all divorce actions, contested or uncontested, with or without minor children. To address the special concerns when there are minor children of the marriage, the rule requires that post judgment applications should be brought in the county where one of the parties, or a child or the children reside, except for good cause, leaving it up to Judge's discretion whether there is good cause to make an exception. The rule specifies that good cause applications shall be made by motion or order to show cause. The rule addresses special concerns where the address of either party and any child or children is unknown and not a matter of public record, or is subject to an existing confidentiality order pursuant to DRL § 254 or FCA § 154-b, by permitting such applications to be brought in the County where the Judgment was entered.

Please distribute this memorandum to judges and court attorney referees assigned to matrimonial matters and appropriate staff so that they aware of the new rule. Questions about the new rule may be directed to Susan Kaufman, Counsel to the Matrimonial Practice Advisory and Rules Committee at 914-824-5541; skaufma1@nycourts.gov.

cc: Hon. Edwina Mendelson
Administrative Judges
Hon. Jeffrey Sunshine
Barry Clarke, Esq.
Maria Logus, Esq.
Scott Murphy
District Executives
NYC Chief Clerks
County Clerks
Susan Kaufman, Esq.

EXHIBIT A

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and upon consultation with and approval by the Administrative Board of the Courts, effective August 1, 2017, I hereby amend section 202.50(b) of the uniform civil rules for the supreme court and the county court (22 NYCRR § 202.50[b]) by inserting a new section 202.50(b)(3) as follows:

202.50. Proposed Judgments in Matrimonial Actions; Forms

* * *

(b) Approved Forms.

* * *

(3) Additional Requirement with Respect to Uncontested and Contested Judgments of Divorce. In addition to satisfying the requirements of paragraphs (1) and (2) of this subdivision, every judgment of divorce, whether uncontested or contested, shall include language substantially in accordance with the following decretal paragraphs which shall supersede any inconsistent decretal paragraphs currently required for such forms:

ORDERED AND ADJUDGED that the Settlement Agreement entered into between the parties on the ___ day of _____, □ an original OR □ a transcript of which is on file with this Court and incorporated herein by reference, shall survive and shall not be merged into this judgment,* and the parties are hereby directed to comply with all legally enforceable terms and conditions of said agreement as if such terms and conditions were set forth in their entirety herein; and it is further

* In contested actions, this paragraph may read either [shall survive and shall not be merged into this judgment] or [shall not survive and shall be merged into this judgment].

ORDERED AND ADJUDGED, that the Supreme Court shall retain jurisdiction to hear any applications to enforce the provisions of said Settlement Agreement or to enforce 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 modifying such judgment with respect to maintenance, support, custody or visitation to the extent permitted by law, or both; and it is further

ORDERED AND ADJUDGED, that any applications brought in Supreme Court to enforce the provisions of said Settlement Agreement or to enforce or modify the provisions of this judgment shall be brought in a County

wherein one of the parties resides; 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, in the discretion of the judge, for good cause. Good cause applications shall be made by motion or order to show cause. Where the address of either party and any child or children is unknown and not a matter of public record, or is subject to an existing confidentiality order pursuant to DRL § 254 or FCA §154-b, such applications may be brought in the county where the judgment was entered;

and it is further

Chief Administrative Judge of the Courts

Dated: May 22, 2017

AO/100/17

EXHIBIT B

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE

Pursuant to the authority vested in me, I hereby prescribe, the following revised form (attached as Exh. A) for inclusion in the Unified Court System Uncontested Divorce Packet for use in undefended matrimonial actions pursuant to 22 NYCRR §§ 202.21(i) and 202.50, and repeal the former version of that form, effective August 1, 2017:

- Judgment of Divorce (Form UD-8(11)) eff. 8/1/17

Attached as Exh. B is a list of the forms comprising the Unified Court System's Uncontested Divorce Packet in effect as of August 1, 2017.

Chief Administrative Judge of the Courts

Dated: July 18, 2017

AO/138/17

AO/138/17

EXHIBIT A

At the *Matrimonial/IAS* Part _____ of New York State Supreme Court at the Courthouse, _____ County, on _____.

Present:
Hon. *Justice/Referee*

----------X

Plaintiff,

-against-

Defendant.

----------X

Index No.:
Calendar No.:
Social Security No.:

JUDGMENT OF DIVORCE

EACH PARTY HAS A RIGHT TO SEEK A MODIFICATION OF THE CHILD SUPPORT ORDER UPON A SHOWING OF: (I) A SUBSTANTIAL CHANGE IN CIRCUMSTANCES; OR (II) THAT THREE YEARS HAVE PASSED SINCE THE ORDER WAS ENTERED, LAST MODIFIED OR ADJUSTED; OR (III) THERE HAS BEEN A CHANGE IN EITHER PARTY'S GROSS INCOME BY FIFTEEN PERCENT OR MORE SINCE THE ORDER WAS ENTERED, LAST MODIFIED, OR ADJUSTED; HOWEVER, IF THE PARTIES HAVE SPECIFICALLY OPTED OUT OF SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH IN A VALIDLY EXECUTED AGREEMENT OR STIPULATION, THEN THAT BASIS TO SEEK MODIFICATION DOES NOT APPLY.

THE FOLLOWING NOTICE IS ☐ *APPLICABLE* OR ☐ *NOT APPLICABLE*

NOTICE REQUIRED WHERE PAYMENTS THROUGH SUPPORT COLLECTION UNIT

NOTE:

(1) THIS ORDER OF CHILD SUPPORT SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER THIS ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. UPON APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT, AN ADJUSTED ORDER SHALL BE SENT TO THE PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THIRTY-FIVE (35) DAYS FROM THE DATE OF MAILING TO SUBMIT A WRITTEN OBJECTION TO THE COURT INDICATED ON SUCH ADJUSTED ORDER. UPON RECEIPT OF SUCH WRITTEN OBJECTION, THE

COURT SHALL SCHEDULE A HEARING AT WHICH THE PARTIES MAY BE PRESENT TO OFFER EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH THE CHILD SUPPORT STANDARDS ACT.

(2) A RECIPIENT OF FAMILY ASSISTANCE SHALL HAVE THE CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION TWO HUNDRED FORTY-B OF THE DOMESTIC RELATIONS LAW, TO WHICH AN ADJUSTED ORDER CAN BE SENT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

9 This action was submitted to ❑ *the referee* **OR** ❑ *this court* for ❑ *consideration* this ____ day of _____ **OR** for ❑ *inquest* on this ____ day of _____.

10 The Defendant was served ❑ *personally* **OR** ❑ pursuant *to court order dated* _____ ❑ *within* **OR** ❑ *outside* the State of New York.

11 Plaintiff presented a ❑ *Verified Complaint and Affidavit of Plaintiff constituting the facts of the matter* **OR** ❑ *Summons With Notice and Affidavit of Plaintiff constituting the facts of the matter.*

12 The Defendant has ❑ *not appeared and is in default* **OR** ❑ *appeared and waived his or her right to answer* **OR** ❑ *filed an answer or amended answer withdrawing any prior pleadings and neither admitting nor denying the allegations in the complaint and consenting to the entry of judgment* **OR** ❑ *the parties settled the ancillary issues by* ❑ *written stipulation* **OR** ❑ *oral stipulation on the record dated* _____.

13 The Court accepted ❑ *written* **OR** ❑ *oral* proof of non-military status.

14 The Plaintiff's address is _____, and social security number is _____. The Defendant's address is _____, and social security number is _____.

15 Now on motion of _____, the ❑ *attorney for Plaintiff* **OR** ❑ *Plaintiff*, it is:

16 **ORDERED AND ADJUDGED** that the Referee's Report, if any, is hereby confirmed; and it further

17 **ORDERED, ADJUDGED AND DECREED** that the application of plaintiff is hereby granted to dissolve the marriage between_____, plaintiff, and _____, defendant, by reason of:

❑ (a) the cruel and inhuman treatment of ❑ *Plaintiff by Defendant* **OR** ❑ *Defendant by Plaintiff* pursuant to D.R.L. §170(1); and/or

❑ (b) the abandonment of ❑ *Plaintiff* **OR** ❑ *Defendant* by ❑ *Plaintiff* **OR** ❑ *Defendant,* for a period of one or more years, pursuant to D.R.L. §170(2); and/or

❑ (c) the confinement of ❑ *Plaintiff* **OR** ❑ *Defendant* in prison for a period of three or more consecutive years after the marriage of Plaintiff and Defendant, pursuant to D.R.L. §170(3); and/or

❑ (d) the commission of an act of adultery by ❑ *Plaintiff* **OR** ❑ *Defendant,* pursuant to D.R.L. §170(4); and/or

❑ (e) the parties having lived separate and apart pursuant to a decree or judgment of separation dated _____ for a period of one or more years after the granting of such decree or judgment, pursuant to D.R.L. §170(5); and/or

❑ (f) the parties having lived separate and apart pursuant to a Separation Agreement dated _____ in compliance with the provisions of D.R.L. §170(6); and/or

❑ (g) the relationship between Plaintiff and Defendant has broken down irretrievably for a period of at least six months pursuant to D.R.L. §170(7); and

18 **The requirements of D.R.L. §240 1(a-1) have been met and the Court having considered the results of said inquiries, it is**

ORDERED AND ADJUDGED that ❑ *Plaintiff* **OR** ❑ *Defendant* **OR** ❑ *third party, namely:* _____shall have custody of the minor child(ren) of the marriage, i.e.:

19

Name	Date of Birth	Social Security No.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

OR ❑ *There are no minor children of the marriage*; and

20 **The requirements of D.R.L. §240 1 (a-1) have been met and the Court having considered the results of said inquires, it is**

ORDERED AND ADJUDGED that ❑ *Plaintiff* **OR** ❑ *Defendant* shall have visitation with the minor child(ren) of the marriage ❑ *in accordance with the parties' settlement agreement* **OR** ❑ *according to the following schedule:* _____

_____

_____

OR ❑ *Visitation is not applicable*; and it is further

21 **ORDERED AND ADJUDGED** that the existing _____ County, _____ Court order(s) under ❑ *Index No..*_____ **OR** ❑ *Docket No.*_____ as to ❑ *custody* **OR** ❑ *visitation* shall continue; **OR** ❑ *There are no court orders with regard to custody or visitation to be continued*; and it is further

22 **ORDERED AND ADJUDGED** that ❑ *Plaintiff* **OR** ❑ *Defendant* shall pay to ❑ *Plaintiff* **OR** ❑ *Defendant* **OR** ❑ *third party, namely:*_____, as and for the support of the parties' unemancipated children of the marriage, the sum of $_____ ___ per_____, pursuant to an existing order issued by the _____ County, _____ Court, under ❑ *Index* **OR** ❑ *Docket* Number _____, the terms of which are hereby continued.

OR ❑ *There are no orders from other courts to be continued*; and it is further

23 **ORDERED AND ADJUDGED** that:

A) ❑ Pursuant to the ❑ *agreement of the parties* ❑ *Court's decision*

the ❑ *Plaintiff* ❑ *Defendant* shall pay to ❑ *Plaintiff* ❑ *Defendant*

the sum of $_____ as ❑ *per week* ❑ *bi-weekly* ❑ *semi-monthly* ❑ monthly and for maintenance:

❑ *payments to be made as set forth in the agreement;*

❑ *commencing on the ____ day of _____ (month), ____ (year), and continuing until the ____ day of _____ (month), ____ (year);*

Payment shall be ❑ *a direct payment,* ❑ *by an Income Deduction Order issued simultaneously herewith;*

OR

B) ❑ *that there is no award of maintenance per the court's decision;*
❑ *that there is no request for maintenance;*
❑ *that the guideline award of maintenance under the Maintenance Guidelines Law (L.2015 c. 269), if applicable, was zero.*
and it is further;

OR

C) Pursuant to the court's decision for cases commenced before 1/25/16
the ❑ *Plaintiff* ❑ *Defendant* shall pay to ❑ *Plaintiff* ❑ *Defendant*

the sum of ❑ *$_____per week;* ❑ *$_____bi-weekly;* ❑ *$_____semi-monthly* ❑ *$_____per month*

as and for maintenance

commencing on the ____ day of _____, ____, and continuing until the ____ day of _____, ____; month year

Payment shall be ❑ *a direct payment,* ❑ *by an Income Deduction Order issued simultaneously herewith;*

OR

D) Pursuant to the court's decision for cases commenced on or after 1/25/16
the ❑ *Plaintiff* ❑ *Defendant* shall pay to
❑ *Plaintiff* ❑ *Defendant*
the sum of ❑ *$_____per week;* ❑ *$_____bi-weekly;* ❑ *$_____semi-monthly* ❑ *$_____per month*

as and for maintenance (the "Award") *commencing on the ____ day of _____, ____, and continuing until the ____ day of _____, ____; month year*

Payment shall be ❑ a direct payment,
❑ by an Income Deduction Order issued simultaneously herewith;

The guideline award of maintenance under the Maintenance Guidelines Law is $_____

For the reasons stated in the Findings of Fact and Conclusions of Law, which are incorporated here in by
reference: (Check the applicable boxes:)

❑ *The Award includes an award on income of maintenance payor up to $178,000 per year. In computing said award, the Court applied the Maintenance Guidelines Law (L.2015, c.269)* ; **OR**
❑ *the court adjusted the guideline award of maintenance due under the Maintenance Guidelines Law because it is unjust and inappropriate.*

❑ *The Award includes maintenance on income of maintenance payor in excess of $178,000 per year* **OR** ❑ *The Award does not include maintenance on income of maintenance payor in excess of $178,000 per year.*

24 **ORDERED AND ADJUDGED** that ❑ *Plaintiff* **OR** ❑ *Defendant* shall pay to ❑ *Plaintiff* **OR** ❑ *Defendant* **OR** ❑ *third party, namely:* _____, **OR** ❑ *because a party is already receiving child support services or an application has been made for such services, through the NYS Child Support Processing Center, PO Box 15363, Albany, NY 12212-5363;* as and for the support of the parties' unemancipated child(Ren) of the marriage, namely:

Name	Date of Birth
_____	_____
_____	_____
_____	_____
_____	_____

the sum of $_____ ❑ *per week* **OR** ❑ *bi-weekly* **OR** ❑ *semi-monthly* ❑ *per month,* commencing on _____, and to be paid ❑ *directly to* ❑ *Plaintiff* **OR** ❑ *Defendant* **OR** ❑ *third party, namely:*_____, **OR** ❑ *through the NYS Child Support Processing Center, PO Box 15363, Albany, NY 12212-5363,* together with such dollar amounts or percentages for ❑ *child care* **OR** ❑ *education* **OR** ❑ *health care* as set forth below in accordance with ❑ *the Court's decision* **OR** ❑ *the parties' Settlement Agreement.*
OR ❑ *This section is not applicable because there are no unemancipated children of the marriage;*

Such Settlement Agreement, if applicable, is in compliance with D.R.L. §240(1-b)(h) because:

The parties have been advised of the provisions of D.R.L. Sec. 240(1-b); the unrepresented party, if any, has received a copy of the Child Support Standards Chart promulgated by the Commissioner of Social Services pursuant to Social Services Law Sec. 111-l;

the basic child support obligation, as defined in D.R.L. Sec. 240(1-b), presumptively results in the correct amount of child support to be awarded, and the agreed upon amount substantially conforms to the basic support obligation attributable to the non-custodial parent;

the amount awarded is neither unjust nor inappropriate, and the Court has approved such award through the Findings of Fact and Conclusions of Law;

OR

The basic support obligation, as defined in DRL Sec. 240 (1-b), presumptively results in the correct amount of child support to be awarded, and the amount attributable to the non-custodial parent is $_____ per _____;

the amount of child support agreed to in this action deviates from the amount attributable to the non-custodial parent, and the Court has approved of such agreed-upon amount based upon the reasons set forth in the Findings of Fact and Conclusions of Law, which are incorporated herein by reference;

OR ❑ *This provision is not applicable*; and it is further

ORDERED AND ADJUDGED that,
if maintenance is to be paid pursuant to this Judgment of Divorce, then, subject to the terms of DRL 240(1-b), upon termination of the maintenance award, the amount of child support payable shall be adjusted, without prejudice to either party's right to seek a modification pursuant to DRL 236 (B)(9)(2); and it is further

25 **ORDERED AND ADJUDGED** that ❑ *Plaintiff* **OR** ❑ *Defendant* shall pay to ❑ *Plaintiff* **OR** ❑ *Defendant* **OR** ❑ *third party, namely:*_____and for reasonable child care expenses pursuant to ❑ *written agreement of the parties* ***OR*** ❑ *the court's decision*, the amount of $_____ per year or _____ ❑ *per week* ❑ *bi-weekly* ❑*semi-monthly* ❑ *per month.*

OR ❑ *Not applicable*; and it is further

26 **ORDERED AND ADJUDGED**

1- that ❑ *Plaintiff* **OR** ❑ *Defendant* shall pay to ❑ *Plaintiff* **OR** ❑ *Defendant* **OR** ❑ *third party, namely:* _____,**OR** ❑ *through the Support Collection Unit (because a party is currently receiving child support services or an application has been made for such services)* as and for non-custodial parent's pro rata share of future health care expenses not

covered by insurance,_____% of such expenses pursuant to ❑ written agreement of the parties **OR** ❑ the court's decision

OR ❑ *Not applicable*;

2- Check which box or boxes apply:

a) ❑ ***if the custodial parent provides the health insurance for the children:***

❑ *Plaintiff* **OR** ❑ *Defendant* shall pay to ❑ *Plaintiff* **OR** *Defendant* **OR** ❑*third party, namely:* _____,**OR** ❑ *through the Support Collection Unit (because a party is currently receiving child support services or an application has been made for such services)*as and for ❑ *The non-custodial parent's pro rata share of health insurance premiums for the children , $_____ per year* or _____ ❑ *per week* ❑ *bi-weekly* ❑*semi-monthly* ❑ *per month* ***OR***

b) ❑ ***if the non-custodial parent provides the health insurance for the children:*** *The custodial parent's pro rata share of health insurance premiums for the children, $_____ per year* or _____ ❑ *per week* ❑ *bi-weekly* ❑*semi-monthly* ❑ *per month will be deducted from the child support obligation.*

3- ❑ *Plaintiff* **OR** ❑ *Defendant* shall apply to the state sponsored health insurance plan for coverage for the unemancipated children of the marriage. The costs shall be allocated pursuant to ❑ written agreement of the parties **OR** ❑ the court's decision **OR** ❑ *Not applicable*; and it is further

27 **ORDERED AND ADJUDGED** that ❑ *Plaintiff* **OR** ❑ *Defendant* shall pay to ❑*Plaintiff* **OR** ❑ *Defendant* **OR** ❑ *third party, namely:* _____**OR** ❑ *through the Support Collection Unit (because a party is currently receiving child support services or an application has been made for such services)* ❑For education or extraordinary expenses of the children *$_____ per year* or _____ ❑ *per week* ❑ *bi-weekly* ❑*semi-monthly* ❑ *per month or* _____*% of such expenses* pursuant to ❑ written agreement of the parties **OR** ❑ the court's decision ***OR*** ❑ *Not applicable*; and it is further

28 **ORDERED AND ADJUDGED** that ❑ *Plaintiff* **OR** ❑ *Defendant* is hereby awarded exclusive occupancy of the marital residence located at_____

_____, together with its contents until further order of the court, **OR** ❑ as follows: _____

_____

_____; **OR** ❑ *Not applicable*; and it is further

29 **ORDERED AND ADJUDGED** that the Settlement Agreement entered into between the parties on the day of , ❑ *an original* **OR** ❑ *a transcript* of which is on file with this Court and incorporated herein by reference, shall survive and shall not be merged into this judgment, and the parties are hereby directed to comply with all legally enforceable terms and conditions of said agreement as if such terms and conditions were set forth in their entirety herein; and it is further

ORDERED AND ADJUDGED, that the Supreme Court shall retain jurisdiction to hear any applications to enforce the provisions of said Settlement Agreement or to enforce 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 modifying such judgment with respect to maintenance, support, custody or visitation to the extent permitted by law , or both; and it is further

ORDERED AND ADJUDGED, that any applications brought in Supreme Court to enforce the provisions of said Settlement Agreement or to enforce or modify 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, in the discretion of the judge, for good cause. Good cause applications shall be made by motion or order to show cause. Where the address of either party and any child or children is unknown and not a matter of public record, or is subject to an existing confidentiality order pursuant to DRL § 254 or FCA § 154-b, such applications may be brought in the County where the Judgment was entered; and it is further

30 **ORDERED AND ADJUDGED** that a separate Qualified Medical Child Support Order shall be issued simultaneously herewith **OR** ❑ Not applicable; and it is further

31 **ORDERED AND ADJUDGED** that, pursuant to the ❑ *parties' Settlement Agreement* **OR** ❑ *the court's decision*, a separate Qualified Domestic Relations Order shall be issued simultaneously herewith or as soon as practicable **OR** ❑ *Not applicable*; and it is further

32 **ORDERED AND ADJUDGED** that, ❑ *pursuant to the Court's decision* **OR** ❑ *pursuant to the parties' agreement,* the Court Court or the Support Collection Unit (where a party is currently receiving child support services or an application has been made for such services) shall issue an income deduction order simultaneously herewith **OR** ❑ Not applicable because the Court has made a finding in the Findings of Fact and Conclusions of Law that alternative arrangements have been made between the parties, or that good cause exists not to require such an order; and it is further

33 **ORDERED AND ADJUDGED** that both parties are authorized to resume the use of any prior surname, and it is further

34 **ORDERED AND ADJUDGED** that ❑ *Plaintiff* **OR** ❑ *Defendant* is authorized to resume use of the prior surname _____; and it is further

35 **ORDERED AND ADJUDGED** that ❑ *Plaintiff* **OR** ❑ *Defendant* is hereby awarded counsel and/or expert's fees as follows:

_____

_____ **OR** ❑ *Not applicable*; and it is further

36 **ORDERED AND ADJUDGED** that ❑ *Plaintiff* **OR** ❑ *Defendant* shall be served with a copy of this judgment, with notice of entry, by the ❑ *Plaintiff* **OR** ❑ *Defendant*, within _____ days of such entry.

37 Dated:

ENTER:

_____

J.S.C./Ref

AO/138/17

EXHIBIT B

Exhibit B
Unified Court System Uncontested Divorce Packet Forms
(in effect as of August 1, 2017)

- Instructions (rev. 3/1/16)
- Notice of Automatic Orders (rev. 1/13)
- Notice Concerning Continuation of Health Care Coverage
- Notice of Guideline Maintenance rev. 1/31/16
- Summons With Notice (Form UD-1 rev. 1/25/16)
- Summons (to be served with Verified Complaint) (Form UD-1a rev. 5/99)
- Verified Complaint (Form UD-2 rev. 1/25/16)
- Affidavit of Service (Form UD-3 rev. 1/25/16)
- Sworn Statement of Removal of Barriers to Remarriage (Form UD-4 rev. 5/99)
- Affidavit of Service (Form UD-4a rev. 5/99)
- Affirmation (Affidavit) of Regularity (Form UD-5 rev. 1/25/16)
- Affidavit of Plaintiff (Form UD-6 rev.1/25/16)
- Affidavit of Defendant (Form UD-7 rev. 3/1/16)
- Annual Income Worksheet (Form UD-8(1) rev. 1/31/16
- Maintenance Guidelines Worksheet (Form UD-8(2) eff. 3/1//17
- Child Support Worksheet (Form UD-8(3) eff. 3/1/17
- Support Collection Unit Information Sheet (Form UD-8a) rev. 1/25/16
- Qualified Medical Child Support Order ("QMCSO") (Form UD-8b rev. 5/99)
- Note of Issue (Form UD-9 rev. 9/11)
- Findings of Fact/Conclusions of Law (Form UD-10 rev. 3/1/16)
- Judgment of Divorce (Form UD-11 rev. 8/1/17)
- Part 130 Certification (Form UD-12 rev. 5/99)
- Request for Judicial Intervention ("RJI") (Form UD-13 rev. 5/2011)
- Addendum (Form 840M rev. 3/11)
- Notice of Entry (Form UD-14 rev. 5/99)
- Affidavit of Service by Mail of Judgment of Divorce (Form UD-15 eff. 1/25/16)
- Certificate of Dissolution of Marriage (Form DOH 2168 rev. 7/2011)
- Self-Addressed and Stamped Postcard (rev. 5/99)
- UCS-111 (UCS Divorce and Child Support Summary Form rev. 1/25/16)
- DRL 255 Addendum
- Notice of Settlement (rev. 5/99)
- Poor Person Order (rev.10/10)
- Affidavit in Support of Application to Proceed as a Poor Person (rev. 10/10)
- Affidavit of Service of Proposed Poor Person's Order (eff. 1/25/16)
- NYS Case Registry Filing Form (rev. 8/12)
- LDSS-5037 (5/15) (Non IV-D IWO, for Child Support and Combined Child and Spousal Support)
- LDSS-5038 (5/15) (Spousal Support Only IWO)

Appendix C

New York
Public Welfare Association, Inc.

Founded in 1869

130 Washington Avenue, Albany, NY 12210
Sheila Harrigan, *Executive Director*

(518) 465-9305
info@nypwa.org
www.nypwa.org

June 9, 2017

Memo in Opposition
S.6579 (Avella)

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

The New York Public Welfare Association (NYPWA) **OPPOSES** legislation (S.6579) currently before lawmakers which provides for court ordered forensic evaluations in child custody and visitation cases. The NYPWA is the statewide organization of local social services departments with responsibility for services for children and families in counties. This bill mirrors legislation (A.1533/S.6300) the NYPWA has previously opposed—and unfortunately, this new bill contains the same troublesome issues.

Both measures essentially affect forensic reports in private custody cases. As such, NYPWA has no opinion on this important issue since local social services departments (LDSS) are not parties in private custody cases in a direct way. To the extent that LDSS is involved when a child is in foster care and someone petitions for custody, we would take no position on outside forensic reports and access to them. However, our concern is that court-ordered child protective investigations are included in the bill's definitions and would result in multiple problems with current confidentiality laws—some of which are federally required.

There are two ways that courts can request (or order) "investigations" by CPS when a private custody case is before the court. First, there is a statute which requires a full CPS investigation and a "report" to the court, which is found under Family Court Act 1034(1). There is no clarity in the law that this statutorily-mandated report is to be given to anyone but the Judge. Many districts take the position that there is no ability for the court to give information, which is confidential under Social Services Law 422, to anyone else. This issue has even caused some appellate reversals in cases where the court did share CPS information without a specific statutory authority to do so under SSL 422. Although there may be an argument that the parties are entitled to a FCA 1034(1) report based on SSL 422 (4)(A)(d), there has never been clarity that an attorney for a child is entitled to the report as SSL 422 only covers the child and not counsel. The issue is even more complicated if the FCA 1034(1) report results in an "unfounded" CPS report—as it most often does in these cases. Then the law is more problematic as SSL 422 (4) exceptions to confidentiality of CPS records only relates to pending and indicated cases and not unfounded ones. Under SSL 422 (5) A(a), unfounded reports are available to a subject of a report and not to the child. Further, there is the complication of SSL 422 (4)(B) and (7) both of which gives DSS the authority to prohibit the release of data that identifies persons who cooperated—in essence potential witnesses to the custody case. All of these provisions directly contradict this bill, which presumes that

this confidential CPS information will simply be turned over and that the report—and the notes that form the basis of the report—will be available to all.

Next is a problem of admissibility. Again, here the proposal seems to ignore Family Court Act 651-a—as well as SSL 422 (5)(b)—which prohibits the introduction of records of an unfounded CPS investigation in a private custody case except by the subject who is also alleging false reporting. We do not believe the parent can allege "false reporting" against a Judge who issued the investigation order under FCA 1034(2). This is interpreted by LDSS to also mean that caseworker notes and caseworker testimony on issues in the unfounded investigation are not admissible. There is no reference to how this contradiction would be resolved.

A second way that the court can order a forensic report would be under Family Court Rules 205.56. Contradictory issues appear here as well. First, this is not via court "order" but by "request of the court". It also says a written report is provided to the court—it does not say it is provided to the parties, and again LDSS have interpreted this to mean that the parties may not receive copies of the report as it in fact may also contain information from agency records which are confidential under other statutes.

If the bill is to include reports from LDSS, then all of the many statutes involving the confidentiality of child protective records must be looked at in detail. In addition, since federal funding requires that states follow federal rules on consequentiality of CPS records, all of those requirements would need to be reviewed as well. For these reasons we urge lawmakers to **OPPOSE** this bill as written.

For information contact:
Sheila Harrigan, Executive Director
Rick Terwilliger, Director of Policy & Communications
(518) 465-9305
info@nypwa.org

Appendix D

Memos in Opposition to A.1533/S.6300 and In Support of S.6579

1. NYSBA Family Law Section Opposition to A.1533/S.6300 dated May 15, 2017
2. NYSBA Family Law Section Support for S.6579 dated June 13, 2017
3. Position Statement of Women's Bar Association of the State of New York in Opposition to A.1533/S6300
4. Position Statement of Women's Bar Association of the State of New York in Support of S.6579
5. NYC Bar Report on Legislation By the Matrimonial Law Committee and The Children And The Law Committee. June 2017

New York State Bar Association
One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

Memorandum in Opposition
FAMILY LAW SECTION

FLS # 1 — May 15, 2017

A. 1533 — By: M. of A. Weinstein
S. 6300 — By: Senator Avella
Assembly Committee: Codes
Senate Committee: Children and Families
Effective Date: 90th day after it shall have become a law

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

LAW AND SECTION REFERRED TO: DRL §70 and §240; FCA §251 and §651.

THE FAMILY LAW SECTION OPPOSES THIS BILL

The Family Law Section supported the previous version of the Bill (A08342) introduced in the 2013-2014 legislative session. However, at that time, the Family Law Section had concerns about inappropriate use of forensic reports by litigants in custody proceedings, and believed that there were other ways in which the Bill could be improved. Unfortunately, those concerns have not been addressed in the current version of the Bill.

While the Bill seeks to provide uniformity in the law with respect to access to court-ordered forensic reports in custody cases, and protect a litigant's due process rights to adequately challenge such reports, the Bill gives litigants (including pro se litigants) unfettered access to the reports with insufficient safeguards. Furthermore, while the Bill seeks to address longstanding due process concerns about prohibiting litigants from obtaining copies of forensic reports, the procedural provisions are unclear and lack specificity.

Our issues with the Bill are summarized below:

First, there remain legitimate concerns about a litigant in a child custody case – especially a *pro se* litigant –showing the report to the subject children or others, and the negative effects of such exposure could be irreparably harmful. While the Bill allows a motion for a protective order to be made in order to preserve the confidentiality of the forensic examiner's report and raw data, the Bill fails to address the specific logistical process and timing for doing so. Once the report is disseminated, it may be too late for a protective order to serve its intended purpose. Moreover, it is questionable whether the

prospect of a possible contempt finding will be a sufficient deterrent to prevent a *pro se* litigant from improperly disseminating the forensic report.

Second, the Bill requires an application to the court in order for a party or attorney to provide a retained expert a copy of the report and the raw date file of the examiner. Since each party will likely retain the services of an expert to review the examiner's report and raw data, there is no logical rationale to require the parties to apply to the court for permission to give the report and data to a retained expert. This will only result in costly motion practice and delay. The Bill should allow for the right of retained experts to review the report and data of the examiner subject to signing a confidentiality agreement.

Third, to enhance the Bill's effectiveness and ensure a better–informed court, any revised Bill should include a provision authorizing the court to obtain a copy of the forensic report from a prior custody proceeding involving the same parties and child(ren). Such a provision will assist the court in understanding how the initial custody determination was made.

Finally, the Family Law Section recommends that any revised Bill include a directive prohibiting a court from reading/reviewing the forensic report until it is received in evidence at trial, unless otherwise agreed-to by the parties and their counsel in a written stipulation submitted to the Court.

Based upon the foregoing, the Family Law Section **OPPOSES** this legislation.

New York State Bar Association
One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

Memorandum in Support

FAMILY LAW SECTION

FLS # 2 June 13, 2017

S. 6579

By: Senator Avella
Senate Committee: Rules
Effective Date: 90th day after it shall have become a law

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

LAW AND SECTION REFERRED TO: DRL §70 and §240; FCA §251 and §651.

THE FAMILY LAW SECTION SUPPORTS THIS BILL

The Family Law Section (Section) supports this Bill (S. 6579). We have opposed other bills on this issue because they did not provide certain safeguards. *See* attached Memorandum. We believe this Bill provides the safeguards that previous bills did not. Most importantly, this Bill addresses our concerns about a litigant in a child custody case -- especially a *pro se* litigant -- showing the report to the subject children or others. Additionally, other aspects of the Bill maximize efficiency. For example, attorneys and experts retained by attorneys are permitted to have a copy of the forensic report without having to issue a demand pursuant to the CPLR.

In a prior Memorandum (*see* attached), we recommended the inclusion of a directive prohibiting the courts from reading/reviewing the forensic report prior to its receipt, if any, in evidence in a custody case unless the parties and their counsel agree otherwise in a written stipulation submitted to the court. This Bill would authorize the court to read the forensic report at the commencement of a trial or hearing -- subject to further objection made prior to or at such trial or hearing -- prior to accepting an agreement between the parties in connection with its determination concerning child custody matters. The Section continues to hold the view that the court should not be permitted to read/review the forensic report before being admitted in evidence in a custody case, unless the parties and their counsel agree otherwise in writing.

The Section suggests that this limited issue could be left to a further determination by the Chief Administrative Judge as to whether or not it would nonetheless be appropriate for judges to read/review forensic reports in particular types of cases (*e.g.*, abuse, neglect) at the commencement of a trial or hearing.

Therefore we recommend that the Chief Administrative Judge should receive input from practitioners and judges in the domestic relations bar for the purpose of determining the scope of such excepted cases.

The Family Law Section reaffirms its prior objections to A. 1533; S. 6300 as set forth in the our May 15, 2017 Memorandum—FLS#1, attached.

Based on the foregoing, the Family Law Section **SUPPORTS** this Bill (S. 6579).

WBASNY
WOMEN'S BAR ASSOCIATION of the STATE OF NEW YORK

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2017 – A.6049 / S.4569

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2017 – A.1533 / S.6300

Position Statement -2017

Access to Forensic Mental Health Evaluations

A.1533 / S.6300

Oppose

WBASNY strongly opposes those portions of A.1533/S-6300 that provide for release of forensic reports, notes and raw data to the parties, including pro se litigants. We are particularly concerned about the great potential for the intentional or unintentional release of the contents of forensic reports, notes and raw data to the parties' children and the public. Contempt is not enough of a deterrent, and a contempt proceeding will only add to the cost and delay of custody litigation.

We are particularly concerned that victims of domestic violence will be harmed by this Bill. If parties are given copies of forensic reports, an abuser can easily inflict more abuse on the victim by making the contents of the report public.

Providing forensic evaluation reports to parents directly will have a chilling effect on the use of forensic evaluations, which are an important tool in custody matters, because courts will be reluctant to order forensic reports knowing how they may be misused. The bill will burden overburdened courts with the need to issue protective orders and delay cases, which will harm children and families.

It is not a violation of due process to have pro se litigants and parties read the report in court or an attorney's office. This is still significant access to the report. There has been a history of extreme caution in protecting the report. Since a pro se litigant has a right to defend or put forth the report, then he/she has a right to view it – but that should be done properly, with safeguards recognizing that both parties and pro se litigants can sometimes lose sight of their children's interests in favor of their own and use the report in wholly unintended and inappropriate ways, including posting on the Internet.

We firmly believe that the Bill should require counsel and retained experts who receive forensic reports and files to execute confidentiality agreements acceptable to the Court.

We oppose the Bill's provision that admissibility of forensic reports and files shall be subject to objection pursuant to the rules of evidence and subject to cross-examination. Such a provision will result in trial delays and additional expense.

We do, however, support that portion of the Bill that allows for the release of a forensic examiner's entire file to counsel only, and to pro se litigants to review in Court prior to litigation. We do not believe that a CPLR 3120 demand is necessary; the forensic examiner's notes and raw data should be as available to counsel as the report itself. Decisions from Nassau and Westchester counties have directed the release of the entire file to counsel with strong pronouncements in favor of such release: "Custody determinations should not be made based upon a black box. All of the underlying information, which is unquestionably relevant and material, must be provided to counsel, who must be fully equipped to cross-examine the forensic evaluator and establish for the Court, as trier of fact, the credibility and reliability of the opinions and conclusions expressed by the neutral forensic evaluator." K.C. v. J.C., 50 Misc.3d 892, 25 N.Y.S.3d 798 (Supreme Court, Westchester Co. 2015). We are in favor of a codification of the holding in K.C. v. J.C., and J.F.D. v. J.D., 45 Misc.3d 1212(A) (Supreme Court, Nassau Co. 2014).

We strongly support the proposal contained in the January 2017 Report of the Matrimonial Practice Advisory and Rules Committee ("MPARC"), chaired by the Hon. Jeffrey S. Sunshine. MPARC's proposal permits attorneys and

experts retained to assist attorneys and self-represented parties to have a copy of the forensic report and the forensic examiner's entire file, without having to make a demand pursuant to CPLR 3120. Represented parties can read and take notes about the report in their attorney's office; self-represented litigants may read and take notes about the report in the courthouse.

MPARC's proposal provides that willful failure to comply with a court order conditioning or limiting access to the forensic report shall be contempt of court. However, because the wrongful dissemination of the report may occur well after the case is concluded, the proposal provides that the court shall retain jurisdiction for purposes of an application for contempt. While we agree with MPARC that contempt is not a sufficient remedy for dissemination of the report, we also agree that these additional safeguards are necessary and appropriate.

MPARC's proposal provides that the written forensic report may substitute for direct testimony at trial, pursuant to 22 NYCRR § 202.16(g) (2).

WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK

P.O. Box 936, Planetarium Station
New York, New York 10024-0546
(212) 362-4445
(212) 721-1620 (fax)
info@wbasny.org

Position Statement -2017

Access to Forensic Mental Health Evaluations

S.6579

Support

The Women's Bar Association of the State of New York ("WBASNY") and our 19 chapters across the state strongly supports S.6579 (Avella) introduced at the request of the Office of Court Administration. This bill is identical to the proposed bill contained in the January 2017 Report of the Matrimonial Practice Advisory and Rules Committee ("MPARC"). WBASNY's memo in opposition to A.1533 (Weinstein) /S.6300 (Avella) referenced support for MPARC's proposal. Below is a restatement of this support.

We strongly support the proposal contained in the January 2017 Report of the Matrimonial Practice Advisory and Rules Committee ("MPARC"), chaired by the Hon. Jeffrey S. Sunshine. MPARC's proposal permits attorneys and experts retained to assist attorneys and self-represented parties to have a copy of the forensic report and the forensic examiner's entire file, without having to make a demand pursuant to CPLR 3120. Represented parties can read and take notes about the report in their attorney's office; self-represented litigants may read and take notes about the report in the courthouse.

MPARC's proposal provides that willful failure to comply with a court order conditioning or limiting access to the forensic report shall be contempt of court. However, because the wrongful dissemination of the report may occur well after the case is concluded, the proposal provides that the court shall retain jurisdiction for purposes of an application for contempt. While we agree with MPARC that contempt is not a sufficient remedy for dissemination of the report, we also agree that these additional safeguards are necessary and appropriate.

MPARC's proposal provides that the written forensic report may substitute for direct testimony at trial, pursuant to 22 NYCRR § 202.16(g) (2).

For the foregoing reasons, WBASNY supports this legislation.

CONTACT
POLICY DEPARTMENT
MARIA CILENTI
212.382.6655 | mcilenti@nycbar.org
ELIZABETH KOCIENDA
212.382.4788 | ekocienda@nycbar.org

REPORT ON LEGISLATION BY THE MATRIMONIAL LAW COMMITTEE AND THE CHILDREN AND THE LAW COMMITTEE

S.6579 **Sen. Avella**

AND

A.1533 **M. of A. Weinstein**
S.6300 **Sen. Avella**

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

S.6579 IS APPROVED WITH RECOMMENDATIONS

The Matrimonial Law and Children and the Law Committees of the New York City Bar Association (the "Committees") write to provide feedback on proposed legislation, S.6579, to amend the Family Court Act and the Domestic Relations Law regarding the use of reports from court-appointed forensic evaluators ("forensics") in child custody disputes. The Matrimonial Practice Advisory and Rules Committee of the Office of Court Administration proposed this legislation in its 2017 report. A similar but not identical bill is also pending in the Legislature as A.1533 (Weinstein) / S.6300 (Avella).[1]

The Committees support S.6579 with a few minor changes and clarifications detailed below. Although A.1533/S.6300 contains several valuable elements, it goes too far in guaranteeing parties access to forensic reports. We believe that S.6579 strikes a better balance among the competing interests.

When custody of, or access to, minor children is disputed, the report of the neutral forensic becomes a critical piece of evidence. As Prof. Timothy M. Tippens has argued for years,[2] due process requires that counsel have access not only to the forensics' reports but also to their notes in order to cross-examine the forensic thoroughly and explore any omissions or possible bias. Courts, however, have recognized that right only inconsistently. Both legislative proposals would establish a right for attorneys to access forensics' "entire file related to the proceeding," unless a protective order under CPLR §3103 provides otherwise. The Committees

[1] As of the issuance of this report, A.1533/S.6300 had passed the Assembly and is pending in the Senate Rules Committee. S.6579 was introduced on June 5, 2017 into the Senate Rules Committee.

[2] See, e.g., "Custody Forensics: Reform on the Horizon?", N.Y. Law Jl., March 7, 2013.

welcome that change, with the understanding that all files will be redacted to prevent dissemination of confidential information that could compromise the safety of a domestic violence victim.

REASONS FOR SUPPORTING S.6579

A difficult issue in drafting these legislative proposals is the pro se litigants' access to forensic reports. On that issue, in March 2013, after much discussion and internal debate, the City Bar concluded that:

> "[G]iven the harm that can be done by providing parents with a copy of the report (harm that would not be undone by any sanction nor prevented by any affirmation/affidavit), the court rule should not allow parents to receive a copy of the forensic report. Instead, the court rule should allow represented litigants to review the report in their attorneys' offices, and should allow unrepresented parties to review the report in the courthouse and to have access to the report in the courtroom during trial."[3]

As the Children's Law Center in Brooklyn recently noted, parents who gain possession of forensic reports have shared them inappropriately and used them to attack children and each other.[4]

The Committees are pleased that S.6579 follows our recommendation. A.1533/S.6300, however, presumptively gives represented parties the right to copies of the forensic report. In the age of smartphones and social media, that will make it all too easy for distraught parents to publicize the very personal and embarrassing information that must often be included in forensics' reports.

S.6579 also provides more extensive mechanisms for ensuring the confidentiality of forensic reports. In particular, attorneys and others who receive access to forensic reports would be required to sign affidavits promising to not disseminate the reports without permission. Such procedures should be included in any legislation enacted on this issue.

Another difference between S.6579 and A.1533/S.6300 is that S.6579 limits judges' ability to read a forensic report before the parties have presented an agreement on child custody for judicial approval or before a trial or hearing has commenced. A.1533/S.6300 includes no such restrictions. The Committees believe that restrictions on when judges can read forensic reports are unnecessary and potentially harmful. Judges appropriately seek to avoid contested trials or hearings on custody disputes. In order to bring the parties to a compromise on such matters, judges need to read the forensic report. And if there is to be a trial or hearing, the judge should be able to prepare for it by reviewing the forensic report in advance.

---

[3] Comment on Office of Court Administration's Proposal Regarding Access to Forensic Evaluation Reports in Child Custody and Visitation Cases, at 1, http://www2.nycbar.org/pdf/report/uploads/20072434-ForensicReportsinChildCustodyMatters.pdf.

[4] Karen P. Simmons et al., "Parties Deserve to See Forensic Evaluations" (letter to the editor), N.Y. Law Jl., Mar. 22, 2017.

SUGGESTED CHANGES TO S.6579

The Committees recommend some small changes to S.6579. First, the bill should clarify that an attorney for the child has the sole discretion to decide whether or not to show the forensic report to the minor child, without giving the child a copy. Both S.6579 and A.1533/S.6300 appropriately guarantee the attorney for the child access to the report and notes. Such access is necessary for those attorneys to perform their role effectively. Access also forces attorneys for the children to decide how much they will show or tell their clients -- the minor children. Exposing parents' secrets and their unvarnished opinions to children in that way could be very damaging, depending on what exactly is in the report and the child's level of maturity. If, however, a child wants to see a report about him/herself and his/her parents, and the attorney for the child has access to that report, it is difficult for the attorney for the child to refuse to share the report with his or her client. Refusing to share information with the child, although it is in the child's long-term interest, could damage the attorney / client relationship of trust. The statute should allow the attorney for the child to weigh those competing interests and make a final decision. Such a provision would treat attorneys for the children the same as attorneys for adult parties, who can disclose the contents of the report to their clients but cannot provide copies to them.

We also recommend minor changes to the language regarding retained experts.[5] S.6579 appropriately allows experts who have been retained to assist counsel to review independent forensics' reports and notes. However, the bill provides that such access will be "[u]pon application" to the court. The problem is that applications to the court must generally be on notice to all parties. If one side wishes to use an expert to review the forensics' report and advise counsel about it, the application will disclose that expert's name. The contemplated procedure will therefore impinge on the traditional right of counsel to consult with non-testifying experts in total confidence. Currently, most judges will allow another expert to access a forensic report after the retaining attorney presents that expert informally in the judges' chambers. Any legislation on forensic reports should clarify that such an ex parte procedure suffices as an "application" with regard to a non-testifying expert.[6]

The Committees also recommend the language in S.6579 be clarified to allow self-represented litigants to review forensic reports at a courthouse "or other location." We recognize that in rural counties of the State, courthouses may be inconveniently located. We are not sure, however, where else any measures could be effectively taken to prevent a self-represented litigant from copying the report.

We appreciate the effort that the Matrimonial Practice Advisory and Rules Committee put into keeping material in forensic reports from being disseminated as part of other documents, which must be shared with the parties. In particular, S.6579 prohibits litigants from quoting forensics' reports in any "motions, pleadings or other documents." We doubt, however, that the effort will succeed. Counsel will still be allowed to quote forensic reports in hearings or trials. It

[5] This language also appears in A.1533/S.6300.

[6] S.6579 refers to such experts retained by counsel or parties as "independent licensed forensic evaluators." That term could be misleading, because there is no particular "license" such experts might have. We recommend that "person retained to assist counsel," as in A.1533 / S.6300, or another general term be used instead.

will be difficult to make arguments, and impossible to cross-examine forensics, without such quotes. Once that happens, anyone present in the courtroom (which cannot be closed during testimony) will be able to hear the contents of the report. The quotes will also appear in the court reporter's transcript. Furthermore, information in the forensic evaluation can sometimes play a crucial role in motion practice that implicates the safety of a party or child. We therefore recommend omitting that provision of the bill.

Finally, S.6579 requires that reports be returned to the court upon conclusion of the litigation. We suggest that this provision be modified so that the attorneys be permitted to maintain the document in their files, confidentially, for use in any appeals or subsequent, related litigation.

CONCLUSION

In sum, the Committees recommend that the Legislature give further consideration to the enactment of S.6579, with the minor changes discussed above, rather than A.1533/S.6300. The Committees remain happy to work with OCA and the Legislature on the topic further.

Children and the Law Committee
Sara Hiltzik, Chair

Matrimonial Law Committee
Jenifer Foley, Chair
Matthew A. Feigin, Member (mfeigin@katskykorins.com)

June 2017

Appendix E

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%

SUPREME COURT CIVIL - MATRIMONIALS FILED & DISPOSED
COMPARISON REPORT: 2013 vs 2014

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	Full Year 2013 (12/31/2012 - 01/05/2014)		Full Year 2014 (01/06/2014 - 01/04/2015)		2013 vs 2014		Full Year 2013 (12/31/2012 - 01/05/2014)		Full Year 2014 (01/06/2014 - 01/04/2015)		2013 vs 2014	
	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed
TOTAL STATE	**47,500**	**49,023**	**46,974**	**46,540**	**-1%**	**-5%**	**13,208**	**15,525**	**12,919**	**14,069**	-2%	-9%
NYC	26,051	25,745	25,990	25,124	0%	-2%	3,434	3,437	3,454	3,118	1%	-9%
NEW YORK	14,479	15,139	13,662	13,099	-6%	-13%	851	1,068	875	976	3%	-9%
BRONX	3,926	3,490	3,914	4,313	0%	24%	783	534	817	396	4%	-26%
KINGS	3,497	3,498	4,331	3,572	24%	2%	722	759	656	650	-9%	-14%
QUEENS	3,621	3,036	3,556	3,742	-2%	23%	737	716	763	767	4%	7%
RICHMOND	528	582	527	398	0%	-32%	341	360	343	329	1%	-9%
Outside NYC	21,449	23,278	20,984	21,416	-2%	-8%	9,774	12,088	9,465	10,951	-3%	-9%
ALBANY	610	697	627	639	3%	-8%	186	303	153	286	-18%	-6%
ALLEGANY	92	93	105	117	14%	26%	39	50	36	35	-8%	-30%
BROOME	446	470	395	358	-11%	-24%	137	255	151	192	10%	-25%
CATTARAUGUS	170	155	223	160	31%	3%	66	80	64	62	-3%	-23%
CAYUGA	150	155	145	183	-3%	18%	73	98	65	118	-11%	20%
CHAUTAUQUA	351	360	325	288	-7%	-20%	133	135	99	110	-26%	-19%
CHEMUNG	223	223	232	245	4%	10%	50	68	58	49	16%	-28%
CHENANGO	139	121	125	144	-10%	19%	34	64	49	65	44%	2%
CLINTON	294	285	249	255	-15%	-11%	75	77	58	83	-23%	8%
COLUMBIA	129	129	127	90	-2%	-30%	66	61	71	56	8%	-8%
CORTLAND	150	134	133	138	-11%	3%	49	41	20	34	-59%	-17%
DELAWARE	74	89	91	94	23%	6%	33	49	33	50	0%	2%
DUTCHESS	668	673	612	606	-8%	-10%	308	371	267	282	-13%	-24%
ERIE	1,972	2,251	2,130	2,333	8%	4%	997	1,103	899	911	-10%	-17%
ESSEX	108	100	80	87	-26%	-13%	18	29	22	19	22%	-34%
FRANKLIN	118	115	124	118	5%	3%	35	55	25	45	-29%	-18%
FULTON	166	169	131	124	-21%	-27%	47	68	46	46	-2%	-32%
GENESEE	140	142	90	108	-36%	-24%	58	74	46	65	-21%	-12%
GREENE	122	124	104	100	-15%	-19%	35	33	47	29	34%	-12%
HAMILTON	0	0	0	0	0%	0%	0	0	0	0	0%	0%
HERKIMER	81	101	56	85	-31%	-16%	54	61	66	64	22%	5%
JEFFERSON	515	584	524	465	2%	-20%	144	127	143	190	-1%	50%
LEWIS	71	88	70	66	-1%	-25%	21	38	25	21	19%	-45%
LIVINGSTON	117	141	94	111	-20%	-21%	44	71	46	52	5%	-27%
MADISON	115	142	124	95	8%	-33%	53	79	75	55	42%	-30%
MONROE	1,455	1,444	1,281	1,260	-12%	-13%	656	741	631	732	-4%	-1%
MONTGOMERY	88	103	106	104	20%	1%	33	59	34	48	3%	-19%
NASSAU	1,680	1,739	1,633	1,502	-3%	-14%	1,053	1,387	1,091	1,222	4%	-12%
NIAGARA	261	251	199	217	-24%	-14%	237	277	239	248	1%	-10%
ONEIDA	459	368	366	254	-20%	-31%	256	221	270	286	5%	29%
ONONDAGA	962	1,277	911	1,505	-5%	18%	593	621	520	642	-12%	3%
ONTARIO	244	307	209	236	-14%	-23%	115	157	129	136	12%	-13%
ORANGE	367	672	596	714	62%	6%	378	381	306	358	-19%	-6%
ORLEANS	59	130	80	165	36%	27%	31	39	24	45	-23%	15%
OSWEGO	249	230	229	187	-8%	-19%	144	135	118	119	-18%	-12%
OTSEGO	129	112	91	91	-29%	-19%	40	41	34	44	-15%	7%
PUTNAM	123	133	126	139	2%	5%	109	103	125	111	15%	8%
RENSSELAER	299	298	296	316	-1%	6%	115	159	110	134	-4%	-16%
ROCKLAND	393	415	331	462	-16%	11%	196	290	179	284	-9%	-2%
ST LAWRENCE	286	268	294	282	3%	5%	60	87	65	63	8%	-28%
SARATOGA	583	564	550	514	-6%	-9%	227	258	205	211	-10%	-18%
SCHENECTADY	396	444	353	358	-11%	-19%	126	176	106	123	-16%	-30%
SCHOHARIE	59	70	78	54	32%	-23%	26	39	18	11	-31%	-72%
SCHUYLER	51	54	36	34	-29%	-37%	14	21	12	14	-14%	-33%
SENECA	45	71	62	86	38%	21%	22	35	30	37	36%	6%
STEUBEN	201	263	238	325	18%	24%	66	89	61	87	-8%	-2%
SUFFOLK	2,514	2,762	2,424	2,062	-4%	-25%	1,328	2,022	1,346	1,718	1%	-15%
SULLIVAN	159	242	149	158	-6%	-35%	48	94	44	70	-8%	-26%
TIOGA	130	208	135	119	4%	-43%	36	44	35	49	-3%	11%
TOMPKINS	223	266	218	212	-2%	-20%	62	79	63	64	2%	-19%
ULSTER	438	368	430	425	-2%	15%	126	154	158	153	25%	-1%
WARREN	231	237	203	194	-12%	-18%	77	82	65	74	-16%	-10%
WASHINGTON	192	192	180	166	-6%	-14%	47	54	41	53	-13%	-2%
WAYNE	212	204	154	153	-27%	-25%	73	71	85	83	16%	17%
WESTCHESTER	1,796	1,903	1,978	1,958	10%	3%	675	718	709	758	5%	6%
WYOMING	99	94	101	119	2%	27%	32	37	34	32	6%	-14%
YATES	45	48	31	36	-31%	-25%	18	27	14	23	-22%	-15%

NEW YORK STATE UNIFIED COURT SYSTEM

SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED - TWO YEAR COMPARISON

	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	2014		2015		2014 vs 2015		2014		2015		2014 vs 2015	
Location	Filed	Disposed	Filed	Disposed	% Chg Filed	% Chg Disp	Filed	Disposed	Filed	Disposed	% Chg Filed	% Chg Disp
TOTAL STATE	**46,973**	**46,540**	**47,358**	**45,988**	**1%**	**-1%**	**12,919**	**14,069**	**12,569**	**13,660**	**-3%**	**-3%**
NYC	**25,990**	**25,124**	**26,295**	**24,283**	**1%**	**-3%**	**3,454**	**3,118**	**3,474**	**3,173**	**1%**	**2%**
NEW YORK	13,662	13,099	12,799	10,391	-6%	-21%	875	976	815	944	-7%	-3%
BRONX	3,914	4,313	3,845	4,985	-2%	16%	817	396	814	341	0%	-14%
KINGS	4,331	3,572	4,389	3,601	1%	1%	656	650	761	673	16%	4%
QUEENS	3,556	3,742	4,719	4,798	33%	28%	763	767	749	853	-2%	11%
RICHMOND	527	398	543	508	3%	28%	343	329	335	362	-2%	10%
Outside NYC	**20,983**	**21,416**	**21,063**	**21,705**	**0%**	**1%**	**9,465**	**10,951**	**9,095**	**10,487**	**-4%**	**-4%**
ALBANY	627	639	556	547	-11%	-14%	153	286	187	265	22%	-7%
ALLEGANY	105	117	94	124	-10%	6%	36	35	32	45	-11%	29%
BROOME	395	358	471	434	19%	21%	151	192	119	137	-21%	-29%
CATTARAUGUS	223	160	205	161	-8%	1%	64	62	43	52	-33%	-16%
CAYUGA	145	183	121	151	-17%	-17%	65	118	55	99	-15%	-16%
CHAUTAUQUA	325	288	339	315	4%	9%	99	110	99	118	0%	7%
CHEMUNG	232	245	270	277	16%	13%	58	49	66	75	14%	53%
CHENANGO	125	144	110	101	-12%	-30%	49	65	43	51	-12%	-22%
CLINTON	249	255	243	242	-2%	-5%	58	83	60	72	3%	-13%
COLUMBIA	127	90	134	112	6%	24%	71	56	35	38	-51%	-32%
CORTLAND	133	138	235	214	77%	55%	20	34	26	37	30%	9%
DELAWARE	91	94	85	81	-7%	-14%	33	50	28	49	-15%	-2%
DUTCHESS	612	606	678	698	11%	15%	267	282	257	316	-4%	12%
ERIE	2,130	2,333	1,909	2,358	-10%	1%	899	911	856	894	-5%	-2%
ESSEX	80	87	77	61	-4%	-30%	22	19	13	26	-41%	37%
FRANKLIN	124	118	130	114	5%	-3%	25	45	44	71	76%	58%
FULTON	131	124	136	136	4%	10%	46	46	48	45	4%	-2%
GENESEE	90	108	133	143	48%	32%	46	65	46	64	0%	-2%
GREENE	104	100	99	87	-5%	-13%	47	29	35	51	-26%	76%
HERKIMER	56	85	70	67	25%	-21%	66	64	64	68	-3%	6%
JEFFERSON	524	465	406	520	-23%	12%	143	190	145	169	1%	-11%
LEWIS	70	66	51	61	-27%	-8%	25	21	29	29	16%	38%
LIVINGSTON	94	111	134	153	43%	38%	46	52	50	48	9%	-8%
MADISON	124	95	102	118	-18%	24%	75	55	56	65	-25%	18%
MONROE	1,281	1,260	1,367	1,458	7%	16%	631	732	712	732	13%	0%
MONTGOMERY	106	104	79	80	-25%	-23%	34	48	28	42	-18%	-13%
NASSAU	1,633	1,502	2,014	1,688	23%	12%	1,091	1,222	1,054	1,094	-3%	-10%
NIAGARA	199	217	199	180	0%	-17%	239	248	237	218	-1%	-12%
ONEIDA	366	254	349	197	-5%	-22%	270	286	249	285	-8%	0%
ONONDAGA	911	1,505	852	1,289	-6%	-14%	520	642	518	514	0%	-20%
ONTARIO	209	236	289	327	38%	39%	129	136	117	155	-9%	14%
ORANGE	596	714	546	609	-8%	-15%	306	358	302	360	-1%	1%
ORLEANS	80	165	87	159	9%	-4%	24	45	28	32	17%	-29%
OSWEGO	229	187	239	191	4%	2%	118	119	121	133	3%	12%
OTSEGO	91	91	116	105	27%	15%	34	44	32	24	-6%	-45%
PUTNAM	126	139	106	108	-16%	-22%	125	111	94	113	-25%	2%
RENSSELAER	296	316	327	355	10%	12%	110	134	107	140	-3%	4%
ROCKLAND	331	462	324	497	-2%	8%	179	284	180	261	1%	-8%
SARATOGA	550	514	520	541	-5%	5%	205	211	187	208	-9%	-1%
SCHENECTADY	353	358	374	383	6%	7%	106	123	119	127	12%	3%
SCHOHARIE	78	54	58	31	-26%	-43%	18	11	27	15	50%	36%
SCHUYLER	36	34	57	34	58%	0%	12	14	11	15	-8%	7%
SENECA	62	86	44	60	-29%	-30%	30	37	23	26	-23%	-30%
ST LAWRENCE	294	282	194	189	-34%	-33%	65	63	46	35	-29%	-44%
STEUBEN	238	325	211	276	-11%	-15%	61	87	61	99	0%	14%
SUFFOLK	2,423	2,062	2,366	2,065	-2%	0%	1,346	1,718	1,254	1,632	-7%	-5%
SULLIVAN	149	158	128	139	-14%	-12%	44	70	50	70	14%	0%
TIOGA	135	119	115	130	-15%	9%	35	49	39	55	11%	12%
TOMPKINS	218	212	200	203	-8%	-4%	63	64	40	59	-37%	-8%
ULSTER	430	425	356	403	-17%	-5%	158	153	141	170	-11%	11%
WARREN	203	194	191	172	-6%	-11%	65	74	50	73	-23%	-1%
WASHINGTON	180	166	190	178	6%	7%	41	53	55	56	34%	6%
WAYNE	154	153	137	143	-11%	-7%	85	83	72	99	-15%	19%
WESTCHESTER	1,978	1,958	2,097	2,102	6%	7%	709	758	643	688	-9%	-9%
WYOMING	101	119	108	97	7%	-18%	34	32	47	46	38%	44%
YATES	31	36	35	41	13%	14%	14	23	15	27	7%	17%

NEW YORK STATE UNIFIED COURT SYSTEM

SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED - TWO YEAR COMPARISON

	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	2015		2016		2015 vs 2016		2015		2016		2015 vs 2016	
Location	Filed	Disposed	Filed	Disposed	% Chg Filed	% Chg Disp	Filed	Disposed	Filed	Disposed	% Chg Filed	% Chg Disp
TOTAL STATE	47,358	45,988	45,150	48,282	-5%	5%	12,569	13,660	12,090	14,480	-4%	6%
NYC	26,295	24,283	24,327	25,910	-7%	7%	3,474	3,173	3,295	3,507	-5%	11%
NEW YORK	12,799	10,391	11,340	12,995	-11%	25%	815	944	823	902	1%	-4%
BRONX	3,845	4,985	4,382	3,918	14%	-21%	814	341	724	526	-11%	54%
KINGS	4,389	3,601	3,983	4,074	-9%	13%	761	673	687	899	-10%	34%
QUEENS	4,719	4,798	4,013	4,209	-15%	-12%	749	853	774	834	3%	-2%
RICHMOND	543	508	609	714	12%	41%	335	362	287	346	-14%	-4%
Outside NYC	21,063	21,705	20,823	22,372	-1%	3%	9,095	10,487	8,795	10,973	-3%	5%
ALBANY	556	547	579	590	4%	8%	187	265	166	285	-11%	8%
ALLEGANY	94	124	83	89	-12%	-28%	32	45	34	42	6%	-7%
BROOME	471	434	549	372	17%	-14%	119	137	167	159	40%	16%
CATTARAUGUS	205	161	166	140	-19%	-13%	43	52	52	40	21%	-23%
CAYUGA	121	151	127	170	5%	13%	55	99	45	108	-18%	9%
CHAUTAUQUA	339	315	274	295	-19%	-6%	99	118	82	88	-17%	-25%
CHEMUNG	270	277	251	248	-7%	-10%	66	75	50	57	-24%	-24%
CHENANGO	110	101	121	126	10%	25%	43	51	48	45	12%	-12%
CLINTON	243	242	207	237	-15%	-2%	60	72	67	78	12%	8%
COLUMBIA	134	112	142	131	6%	17%	35	38	39	32	11%	-16%
CORTLAND	235	214	320	303	36%	42%	26	37	30	26	15%	-30%
DELAWARE	85	81	94	108	11%	33%	28	49	30	55	7%	12%
DUTCHESS	678	698	601	608	-11%	-13%	257	316	272	256	6%	-19%
ERIE	1,909	2,358	1,762	2,173	-8%	-8%	856	894	830	830	-3%	-7%
ESSEX	77	61	82	105	6%	72%	13	26	19	21	46%	-19%
FRANKLIN	130	114	85	77	-35%	-32%	44	71	45	57	2%	-20%
FULTON	136	136	138	138	1%	1%	48	45	52	76	8%	69%
GENESEE	133	143	111	128	-17%	-10%	46	64	40	53	-13%	-17%
GREENE	99	87	101	113	2%	30%	35	51	21	39	-40%	-24%
HERKIMER	70	67	63	66	-10%	-1%	64	68	61	47	-5%	-31%
JEFFERSON	406	520	413	411	2%	-21%	145	169	126	141	-13%	-17%
LEWIS	51	61	46	54	-10%	-11%	29	29	9	37	-69%	28%
LIVINGSTON	134	153	136	134	1%	-12%	50	48	49	66	-2%	38%
MADISON	102	118	132	157	29%	33%	56	65	67	70	20%	8%
MONROE	1,367	1,458	1,339	1,335	-2%	-8%	712	732	614	801	-14%	9%
MONTGOMERY	79	80	107	124	35%	55%	28	42	27	46	-4%	10%
NASSAU	2,014	1,688	1,818	1,719	-10%	2%	1,054	1,094	1,063	1,124	1%	3%
NIAGARA	199	180	318	275	60%	53%	237	218	208	274	-12%	26%
ONEIDA	349	197	384	295	10%	50%	249	285	232	286	-7%	0%
ONONDAGA	852	1,289	773	1,126	-9%	-13%	518	514	495	450	-4%	-12%
ONTARIO	289	327	458	478	58%	46%	117	155	78	147	-33%	-5%
ORANGE	546	609	549	672	1%	10%	302	360	293	396	-3%	10%
ORLEANS	87	159	61	79	-30%	-50%	28	32	19	20	-32%	-38%
OSWEGO	239	191	205	192	-14%	1%	121	133	122	122	1%	-8%
OTSEGO	116	105	119	122	3%	16%	32	24	26	39	-19%	63%
PUTNAM	106	108	128	120	21%	11%	94	113	90	138	-4%	22%
RENSSELAER	327	355	307	344	-6%	-3%	107	140	91	139	-15%	-1%
ROCKLAND	324	497	374	472	15%	-5%	180	261	164	269	-9%	3%
SARATOGA	520	541	524	545	1%	1%	187	208	225	348	20%	67%
SCHENECTADY	374	383	357	432	-5%	13%	119	127	103	196	-13%	54%
SCHOHARIE	58	31	51	39	-12%	26%	27	15	22	21	-19%	40%
SCHUYLER	57	34	49	69	-14%	103%	11	15	8	16	-27%	7%
SENECA	44	60	50	71	14%	18%	23	26	24	43	4%	65%
ST LAWRENCE	194	189	219	238	13%	26%	46	35	78	92	70%	163%
STEUBEN	211	276	215	266	2%	-4%	61	99	57	79	-7%	-20%
SUFFOLK	2,366	2,065	2,396	2,883	1%	40%	1,254	1,632	1,237	1,868	-1%	14%
SULLIVAN	128	139	135	174	5%	25%	50	70	46	70	-8%	0%
TIOGA	115	130	103	117	-10%	-10%	39	55	34	45	-13%	-18%
TOMPKINS	200	203	205	178	3%	-12%	40	59	50	58	25%	-2%
ULSTER	356	403	363	374	2%	-7%	141	170	139	162	-1%	-5%
WARREN	191	172	192	191	1%	11%	50	73	54	58	8%	-21%
WASHINGTON	190	178	174	253	-8%	42%	55	56	42	95	-24%	70%
WAYNE	137	143	136	132	-1%	-8%	72	99	72	76	0%	-23%
WESTCHESTER	2,097	2,102	2,004	1,958	-4%	-7%	643	688	637	721	-1%	5%
WYOMING	108	97	99	83	-8%	-14%	47	46	31	46	-34%	0%
YATES	35	41	28	43	-20%	5%	15	27	13	20	-13%	-26%

6/ 20/ 2017

Appendix F

A10447 Summary:

BILL NO A10447

SAME AS SAME AS

SPONSOR Weinstein (MS)

COSPNSR Bradley

MLTSPNSR Arroyo, Bing, Brennan, Cahill, Carrozza, Cohen A, Colton, Coc
Espaillat, Fields, Galef, Gordon, Gottfried, Grannis, Gunther
Hikind, John, Lafayette, Lavelle, Lavine, Maisel, Markey, McE
Millman, Nolan, O'Donnell, Paulin, Perry, Pheffer, Reilly, Rc
Sweeney, Weisenberg, Wright, Zebrowski

Amd S35, Judy L

Requires a supreme court to assign counsel to an indigent person pursuan
the family court act when the proceeding is one over which the family cc
could have exercised jurisdiction.

A10447 Actions:

BILL NO A10447

03/24/2006 referred to judiciary
05/23/2006 reported referred to ways and means
06/13/2006 reported referred to rules
06/15/2006 reported
06/15/2006 rules report cal.822
06/15/2006 ordered to third reading rules cal.822
06/19/2006 substituted by s8096
S08096 AMEND= SKELOS
06/06/2006 REFERRED TO RULES
06/14/2006 ORDERED TO THIRD READING CAL.1764
06/15/2006 PASSED SENATE
06/15/2006 DELIVERED TO ASSEMBLY
06/15/2006 referred to ways and means
06/19/2006 substituted for a10447
06/19/2006 ordered to third reading rules cal.822
06/19/2006 passed assembly
06/19/2006 returned to senate
08/04/2006 DELIVERED TO GOVERNOR
08/16/2006 SIGNED CHAP.538

A10447 Votes:

There are no votes for this bill in this legislative session.

A10447 Memo:

BILL NUMBER: A10447

TITLE OF BILL : An act to amend the judiciary law, in relation to assignment of counsel to the indigent by supreme court in proceedings over which family court has jurisdiction

PURPOSE OF BILL : This bill provides that supreme court shall appoint counsel for indigent litigants in the same manner as family court is required to appoint such counsel.

SUMMARY OF PROVISIONS OF BILL : The bill amends section 35 of the judiciary law to provide that whenever supreme court shall exercise jurisdiction over a matter which the family court could have exercised jurisdiction had such action been commenced in family court, supreme court shall appoint counsel for indigent persons in the same manner as required by section 262 of the family court act.

JUSTIFICATION : Presently, an indigent person involved in a custody dispute in family court is entitled to a court appointed attorney. See, FCA section 262. If the same dispute is heard in supreme court, the right to an attorney is not available. This inconsistency results in a denial of representation simply based on the venue of the case. Clearly, a custody dispute in supreme court should be handled in the same manner as a custody dispute in family court. There is no justification for providing indigent persons an attorney in family court and not in supreme court. To further exacerbate this problem, it is possible for a monied spouse, faced with a custody case in family court, to commence a divorce action and seek to remove the custody determination to supreme court. If the other spouse qualified for an attorney in family court, such action could deprive the non-monied spouse of representation. Similarly, a monied spouse can commence a divorce action in supreme court to insure his or her indigent spouse cannot benefit from FCA section 262 with respect to the custody determination. Although it is true that a non-monied spouse can apply for attorney's fees in a divorce action, such determination is discretionary, and fundamentally different than the mandatory assignment of counsel contained in FCA section 262. Consequently, an indigent litigant in supreme court is not entitled to counsel, while an indigent litigant in family court is eligible for an assigned attorney, notwithstanding that both indigent litigants are addressing the same legal issue. See, McGee v. McGee, 180 Misc. 2d 575 (Suffolk County, 1999)

LEGISLATIVE HISTORY : New Bill, 2006.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS : To be determined.

EFFECTIVE DATE : Immediately.

A10447 Text:

S T A T E O F N E W Y O R K

10447

I N A S S E M B L Y

March 24, 2006

Introduced by M. of A. WEINSTEIN, BRADLEY -- Multi-Sponsored by - A. ARROYO, A. COHEN, COOK, FIELDS, GALEF, GOTTFRIED, GRANNIS, JOHN, LAFAYETTE, LAVELLE, LAVINE, MAISEL, MARKEY, McENENY, M O'DONNELL, PAULIN, PERRY, PHEFFER, SWEENEY, WEISENBERG, ZEBRC read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to assignment of to the indigent by supreme court in proceedings over which court has jurisdiction

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND BLY, DO ENACT AS FOLLOWS:

Section 1. Section 35 of the judiciary law is amended by addin subdivision 8 to read as follows:

8. WHENEVER SUPREME COURT SHALL EXERCISE JURISDICTION OVER A WHICH THE FAMILY COURT MIGHT HAVE EXERCISED JURISDICTION HAD SUCH OR PROCEEDING BEEN COMMENCED IN FAMILY COURT OR REFERRED THERETO ANT TO LAW, AND UNDER CIRCUMSTANCES WHEREBY, IF SUCH PROCEEDING PENDING IN FAMILY COURT, SUCH COURT WOULD BE REQUIRED BY SECT HUNDRED SIXTY-TWO OF THE FAMILY COURT ACT TO APPOINT COUNSEL, COURT SHALL ALSO APPOINT COUNSEL AND SUCH COUNSEL SHALL BE COMP IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

S 2. This act shall take effect immediately.

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

LBD155

Appendix G

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 H

(This section will be filled in by the Court)
At 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 _____,20___.

PRESENT: HON. _____
Justice of the Supreme Court

----------X

_____
[*Fill in Name*] Plaintiff,

-against-

_____
[*Fill in Name*] Defendant.

----------X

UNREPRESENTED LITIGANT
ORDER TO SHOW CAUSE
FOR COUNSEL FEES
IN MATRIMONIAL ACTION
PURSUANT TO DRL§ 237

Index No. _____

Upon reading and filing the affidavit of _____ ,
[*Insert your name here*]

sworn to on _____ , 20__,
[*Insert Date the Affidavit Was Sworn to Before a Notary Public*]

and upon the following exhibits attached to the affidavit**:**
[Applicant <u>Must</u> attach financial documentation including Statement of Net Worth, W-2's and Tax Returns for herself/himself and spouse (if available) in Support of Application for Counsel Fees],

_____

_____

_____.

Let the ☐ **plaintiff** OR ☐ **defendant** or his/her attorney show cause at
(Check one for spouse)

(Leave the next two lines blank. The Court will fill in this information)

Part _____, of the Supreme Court, at the Courthouse, located at_____, New York, on the _____day of _____, 20__, at _____ a.m./ p.m.or as soon as there after as the parties may be heard, why an order should not be made directing the payment of counsel fees by the ☐ **plaintiff** OR ☐ **defendant** for the benefit of the movant
(Check one for spouse)

directly to an attorney retained by the movant, in the amount of

$ _____ , pursuant to DRL §237.
(Insert the amount of money you are requesting)

(*Leave the next paragraph blank, the court will fill in the information)*

Sufficient cause appearing therefore, let service of a copy of this order, together with the papers upon which it was granted, upon ☐ **plaintiff** OR ☐ **defendant** and/or his/her attorney _____ by _____ on or before the _____day of _____, 20____ be deemed good and sufficient.

ENTER

_____
HON.
Supreme Court Justice

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

_____
[*Fill in Name*] Plaintiff,

AFFIDAVIT IN SUPPORT OF UNREPRESENTED LITIGANT **ORDER TO SHOW CAUSE FOR COUNSEL FEES**

vs.

Index No._____

_____
[*Fill in Name*] Defendant.

----------X

STATE OF NEW YORK
COUNTY OF _____ **ss:** **[***County where Notarized*]

_____, being duly sworn, deposes and says:
[*Insert your name here*]

1. I am the ☐ **plaintiff** OR ☐ **defendant** in this action. I make this affidavit in support
(Check one for yourself)

of my order to show cause directing my spouse pay for counsel fees on my behalf in connection with this matrimonial action. I am requesting that my spouse pay $ _____.
(Insert amount you are requesting)

2. I married the the ☐ **plaintiff** OR ☐ **defendant** on _____
(Check one for spouse) *(Date of Marriage)*

in _____. We have _____ children of the marriage:
(*Place of Marriage: City or Town & State*) (*Number of children*)

_____
(Please list names and ages of children)

3. The Court should grant my motion because: I require the assistance of an attorney to represent me in this case and I am financially unable to afford to pay for the services of an attorney to represent me in this matrimonial action. I believe that my spouse has sufficient money and means to pay the amount I am requesting for counsel fees.

4. I believe my spouse earns a gross yearly income (before taxes) of $_____.
(Spouses yearly income)

My current yearly gross income before taxes is $_____. I have attached copies of
(Your yearly income)
my prior year's w-2's, tax returns, Net Worth Statement and other financial proof I have for myself and my spouse (if available) to substantiate this claim.

5. I have not yet retained an attorney to represent me in connection with this action.

6. If the Court awards me counsel fees I plan to hire an attorney or law firm to represent me in connection with this matter.

7. (*If applicable*) I have consulted with one or more attorneys and I was quoted a fee of $ _____ by the Attorney for the initial retainer fee.
(Insert amount of fee)

Check One:

❑ I have attached a copy of the proposed retainer agreement.

❑ I have not attached the retainer agreement because the lawyer only told me the amount and did not give me a written retainer agreement.

8. Applications for Prior Relief:

Check One:

❑ No prior application has been made for the relief sought herein.

❑ A prior application(s) has been made for the relief sought herein. [List all prior requests for the same relief made in this court or any other court and the results of those applications.]

_____

_____

_____

WHEREFORE, I respectfully ask for an order directing the ☐ **plaintiff** OR ☐ **defendant**
(Check one for spouse)
to show cause why counsel fees in the amount of $_____ should not be awarded on my behalf to be paid directly to an attorney I retain in connection with the above matrimonial action.

X_____
[*Sign Your Name Herein the Presence of a Notary Public*]

_____
[Print Your Name Here]

Subscribed and sworn to before me
this _____ day of _____20____.

_____
[NOTARY PUBLIC]

Appendix I

Matrimonial Practice Advisory and Rules Committee

Special Sub-committee on Revision of Uncontested Divorce Forms

Honorable Jeffrey S. Sunshine
Justice of the Supreme Court, Kings County
Supervision Judge of Matrimonial Matters, Kings County
Supreme Court, Kings County
360 Adams Street
Brooklyn, NY 11201
347-296-1527
718-743-7655
jsunshin@nycourts.gov

Honorable Jacqueline Silbermann [Ret.]
Blank Rome, Of Counsel
The Chrysler Building
405 Lexington Avenue
New York, New York 10174-0208
(212) 885-5220
Jsilbermann@BlankRome.com

Honorable Ellen Gesmer
Associate Justice, Appellate Division for the First Department
27 Madison Avenue
New York, New York 10010
(212) 340-0516
egesmer@nycourts.gov

Honorable Linda Christopher
Associate Justice, Appellate Division for the Second Department
45 Monroe Place
Brooklyn, NY 11201
(914) 358-8008
lchristo@nycourts.gov

Honorable Cheryl A. Joseph
Acting Supreme Court Justice
Supreme Court, Suffolk County
400 Carleton Avenue
Central Islip, NY 11722
(631) 853-5471
cjoseph@nycourts.gov

Honorable Emily Ruben
Family Court Judge, Queens County
151-20 Jamaica Ave.
Jamaica, NY 11432
718-298-0197
eruben@nycourts.gov

RoseAnn Branda, Esq.
Partner
7302 13th Ave
Brooklyn, NY 11228
Telephone (718) 680-5778
Fax (718) 680-9671
Email: rbranda@abramslaw.com

Elena Karabatos, Esq.
Schlissel Ostrow Karabtos LLP
200 Garden City Plaza, Suite 301
Garden City, New York 11530
(516) 877-1800
ekarabatos@soklaw.com

Stephen P. McSweeney, Esq.
Blank Rome
405 Lexington Avenue
New York, New York 10174-0002
(212) 885-5216
smcsweeney@blankrome.com

Michael A. Mosberg, Esq.
Aronson, Mayefsky & Sloan, LLP
12 East 49th Street,
New York, New York 10017
(212) 521-3500
mosberg@amsllp.com

Yesenia Rivera, Esq.
351 E. 84th Street, Apt. 5B
New York, New York 10028
(917) 721-9414
yrivera@riverasipeslaw.com

Counsel:
Susan Kaufman, Esq.
140 Grand Street, Suite 701
White Plains, New York 10601-4836
(914) 824-5541
skaufma1@nycourts.gov

Secretary:

Matthew Schwartz, Esq.
Assistant Law Clerk
Honorable Jeffrey S. Sunshine
Supreme Court, Kings County
360 Adams Street, 11th Floor
Brooklyn, New York 11201
Tel. 347-296-1527
mschwart@nycourts.gov

Appendix J

Supreme Court
of the
State of New York

JUSTICES' CHAMBERS
360 ADAMS STREET
BROOKLYN, NY 11201

JEFFREY S. SUNSHINE
Justice

MEMORANDUM

TO: Marc Bloustein, OCA Legislative Counsel

FROM: Justice Jeffrey Sunshine, J.S.C., Chair of the Chief Administrative Judge's Matrimonial Practice Advisory and Rules Committee

RE: E-filing in Matrimonial Actions

DATE: April 24, 2017

I had an opportunity Friday morning to raise the issue of e-filing in matrimonial actions with members of the Chief Administrative Judge's Matrimonial Practice Advisory and Rules Committee. Participating in the discussion were both judges and lawyers from across the State and of particular note there was overwhelming support from the attorneys in Westchester County (and the Supervising Matrimonial Judge in Westchester County) which is already participating in the e-filling project for matrimonial cases.

I would like to highlight a few of the various reasons why the bench and bar appear encouraged by the possibility of statewide e-filing in matrimonial actions:

1) Immediate remote access by a newly retained attorney to a file, and the attorney will no longer need to wait to obtain the file from predecessor counsel or review the file for the first time at the court house;

2) The ability to have the entire court file accessible at remote locations when drafting motions and orders to show cause and preparing agreements;

3) Once notified that an order to show cause has been filed, the Judge and chambers staff can see and read the OSC and assess its urgency prior to it being processed through the clerk's office. Often allowing earlier access to the document and the Court's ability to be prepared to sign the OSC and consider ex parte relief once actually received;

4) From a judicial perspective: The ability to prevent tampering and the removal of physical documents is of great benefits, when documents are e-filed and there are far less missing documents;

5) Self -represented litigants will not have to miss time from employment or arrange child care to file or have access to court documents especially for those filing uncontested divorces;

6) Attorneys and litigants will have full access to court files and files and documents that are in Courtrooms waiting appearance dates or adjourned dates can easily be accessed from remote locations. Similarly files and documents that are in chambers while motions are being decided, or awaiting transport, will be accessible to litigants and counsel;

7) Filings are not limited a 5 PM end of day restriction and parties can read fillings earlier, not having to wait for mailings. Additionally, the cost of mailings will be reduced for self-represented litigants and counsel;

8) Throughout the State in each County there are multiple court locations that files travel in between before they get to the Judge and then back to the attorney. Access to documents will no longer be restricted due to the file being transported and there will be less time lapse between filing, calendaring and delivering files and motion papers.

9) Judges will be able to cut and paste when quoting from filed documents and even compare judgments and counter judgments in a more efficient manner that will certainly expedite these processes and save judicial time and resources.

As always, if you have any questions regarding the possibility of expanding e-filing to matrimonial actions please do not hesitate to contact me.

Appendix K

Matrimonial Practice Advisory and Rules Committee

Special Sub-committee on Revision of Statement of Client's Rights and Responsibilities

Honorable Jeffrey S. Sunshine
Justice of the Supreme Court, Kings County
Supervision Judge of Matrimonial Matters, Kings County
Supreme Court, Kings County
360 Adams Street
Brooklyn, NY 11201
347-296-1527
718-743-7655
jsunshin@nycourts.gov

Honorable Sondra Miller [Ret.]
McCarthy Fingar, LLP, Chief Counsel
11 Martine Avenue
White Plains, New York 1606-1934
(914) 946-3700
smiller@mccarthyfingar.com

Honorable Jeffrey D. Lebowitz [Ret.]
Jaspan Schlesinger LLP
300 Garden City Plaza, 5th Floor
Garden City, New York 11530
(516) 393-8272
jlebowitz@jaspanllp.com

Honorable Hope Zimmerman
Justice of the Supreme Court, Nassau County
Supreme Court, Nassau County
400 County Seat Drive
Mineola, New York 11501-4814
(516) 571-0021
hzimmerm@nycourts.gov

Susan L. Bender, Esq.
Bender & Rosenthal LLP
451 Park Avenue South, 8th Floor
New York, New York 10016-7390
(212) 725-7111
sbender@brmatlaw.com

Kathleen Donelli, Esq.
McCarthy Fingar, LLP
11 Martine Avenue
White Plains, New York 10606-1934
(914) 946-3700
kdonelli@mccarthyfingar.com

Counsel:
Susan Kaufman, Esq.
140 Grand Street, Suite 701
White Plains, New York 10601-4836
(914) 824-5541
skaufma1@nycourts.gov

Reporter:

Matthew Schwartz, Esq.
Assistant Law Clerk
Honorable Jeffrey S. Sunshine
Supreme Court, Kings County
360 Adams Street, 11th Floor
Brooklyn, New York 11201
Tel. 347-296-1527
mschwart@nycourts.gov

Appendix L

MEMORANDUM IN OPPOSITION
FAMILY LAW SECTION

November 20, 2017

Legislation: H.R. 1 Tax Cuts and Jobs Act

Law & Section Referred To: *Sec. 1309. Repeal of deduction for alimony payments.*

THE FAMILY LAW SECTION OPPOSES THIS BILL

The Tax Cuts and Jobs Act of 2017, passed by the United States House of Representatives on November 16, 2017, includes language that would eliminate the deductibility of alimony payments. It is the position of the Family Law Section that such elimination would cause significant harm for middle class divorcing families who depend on the alimony deduction as a means to exit the divorce process in the most economically sustainable fashion. It would also cause unnecessary and significant disruption to the day-to-day practice of matrimonial attorneys and their clients.

The history of the extant law regarding deductibility of alimony and the availability of that deduction to divorced spouses has a history that extends back to 1942, with the current iteration having been enacted in 1986. The elimination of the alimony deduction could significantly decrease combined net after-tax income for divorced family households (particularly in the middle class tax bracket), and could increase the cost of obtaining a divorce through the prolongation of litigation.

The availability of the deduction for spousal support as it presently exists is a significant tool for matrimonial litigators when it comes to resolving litigation. The elimination of that option will make the obtaining of settlements in a great number of contested matrimonial actions more difficult to reach, which will in turn mean that: 1) the cost of obtaining a divorce will increase for the parties through the prolongation of litigation, and 2) the already over-crowded court calendars in many of the matrimonial parts of the Supreme Court of the State of New York will have a new impediment added to the existing challenges faced by attorneys and litigants when attempting to resolve a matter. Indeed, the proposed amendment may have an amplifying effect given that the loss of the alimony deduction may apply not only to divorces subsequent to December 31, 2017, but also to the subsequent modification of spousal support provisions contained in agreements executed and judgments entered prior to December 31, 2017.

The proposed elimination of the alimony deduction would presumably force a complete re-examination of the temporary maintenance guidelines as well. Significant time and effort was dedicated to establishing such guidelines as a means to provide a greater degree of certainty and fairness when determining interim maintenance awards (particularly with respect to lower income households). The temporary maintenance guidelines are predicated on the assumption that the presumptive award of maintenance is taxable (to the payee, and deductible by the payor). The proposed elimination would undo such assumption and effectively render the guidelines unfit for use (in their current form) by matrimonial attorneys and Justices in New York.

However, of more long-term significance to litigants, and especially the children that are often most effected by divorce, the proposed amendment will increase the already difficult economic circumstances for divorced families. Proponents of this amendment have argued that existing law provides a benefit to divorced families -- a benefit that is not available to intact families. That argument has no basis in fact. The intention of the proposed elimination, as set forth in the Report of the Committee on Ways and Means (Report 115-409), is as follows:

> *The Committee believes that the repeal of the deduction for alimony payments from the payor spouse and repeal of the corresponding inclusion in gross income by the recipient spouse simplifies the tax code and prevents divorced couples from reducing income tax through a specific form of payments unavailable to married couples.*

That argument in favor of the amendment ignores the fact that, while the deduction does allow for alimony to be taxed at the rates applicable to the lower earner, the tax brackets applicable to divorced individuals are already significantly higher than those applicable to married couples filing jointly. Income tax rates increase at a vastly slower rate for those filing as Married Filing Jointly, or as a Qualifying Widow(er) with Dependent Child, than for those filing Single, or as Head of Household. The amendments to the tax brackets contained within H.R. 1 Tax Cuts and Jobs Act, while changing the number of brackets and the income levels at which they will apply, retains the vastly disparate application of those brackets to those filing as single or head of household when compared to the application of those same brackets as applied to those married filing jointly. (*See* Sec. 1001. Reduction and simplification of individual income tax rates of H.R. 1 Tax Cuts and Jobs Act.)

Currently, the deductibility of alimony lessens the negative impact of the higher tax brackets generally applicable to divorced households, resulting in tax savings that allow divorced families to obtain a measure of economic parity with that of the intact family. This adjustment is both just and necessary given that the divorced family has higher costs than an intact family because of the need for duplication of essential resources, such as shelter.

It has been noted, by some family law practitioners, that the proposed elimination of the alimony deduction would, in fact, create a "divorce penalty", a view born out by the indisputable fact that the proposed amendment would reduce, potentially by many thousands of dollars depending upon each family's circumstances, the net after-tax income available to divorced households, and thereby placing those families at a significant financial disadvantage when compared with the net after-tax resources of an intact family earning similar income. This added financial strain can only serve to further deteriorate the conditions under which children of divorce often find themselves in, conditions that the New York State Court System has long sought to treat as a priority of the state for amelioration. (*See* Report of the Chief Judge of the State of New York: Matrimonial Commission, Hon. Sondra Miller, Chairperson, February, 2006.)

Based upon the foregoing, the Family Law Section **OPPOSES** the elimination of the alimony deduction.

Memorandum prepared by: Erik Kristensen, Esq.
Alan Feigenbaum, Esq.
Dylan Mitchell, Esq.

Chair of the Section: Mitchell Y. Cohen, Esq.

Appendix M

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

November 29, 2017

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Amendment to 22 NYCRR § 144.3 to Mandate Attendance in the New York State Parent Education and Awareness Program

==========

The Administrative Board of the Courts is seeking public comment on a proposal to amend 22 NYCRR § 144.3 (2)(b) to require judges to order parents to attend parent education and awareness programs in annulment, divorce, separation, and custody matters unless the court has specifically found "that the program would be inappropriate due to the existence of domestic violence or other enumerated factors" (Exh. A, pp. 1-2). Attendance at parent education and awareness programs, designed to inform parents of the "impact of parental breakup or conflict on children, how children experience family change, and ways in which parents can help children manage the family reorganization," may be ordered by the court as a matter of discretion under current rule (22 NYCRR §144.1). The proponent of the proposed amendment, Judicial Restoration of Parent Education (JROPE), believes that mandating the programs will save time and judicial resources and improve participation; notes that that mandatory parent education programs exist in 46 states; and suggests that accommodations be provided for those who cannot afford to pay the fees associated with attending the programs, and for those with language barriers and disabilities (Exh. A, p. 2).[1]

==========

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than January 29, 2018.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

[1] Although the supporting memorandum proffered by JROPE makes several additional proposals relating to Part 144, the Administrative Board is seeking public comment only on the mandate proposal at this time.

EXHIBIT A

McCarthy Fingar LLP
Counselors at Law

11 Martine Avenue, 12th Floor
White Plains, NY 10606-1934
Phone : 914-946-3700 Fax : 914-946-0134
E-mail : info@mccarthyfingar.com
Web : www.mccarthyfingar.com

Direct Line: 914-385-1015
E-Mail: smiller@mccarthyfingar.com

October 12, 2017

VIA OVERNIGHT MAIL

Honorable Lawrence K. Marks
Chief Administrative Judge
NYS Unified Court System
Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004

Dear Judge Marks:

Thank you and Judge DiFiore for your interest and support for Judicial Restoration of Parent Education (JROPE),[1] which seeks to restore and improve the parent education program presently provided for in Section 144 of the Rules of the Chief Administrator, which was launched in 2005 and continues in certain counties of the State but does not exist in others.[2] JROPE requests one modification of those rules, which must be effectuated by the Administrative Board. That rule (Section 144.3.2(b) provides:

> "In any action or proceeding to which the program may apply, the Court in its discretion may order both parties to attend a parent education and awareness program."

After considerable discussion and research, JROPE unanimously voted to request a modification of that section to provide that:

> "The Court shall mandate parents to attend the program unless the court exercises its discretion and determines that the program

[1] JROPE was formed on February 14, 2017. Seven meetings were held at the offices of Judge Jaqueline Silbermann. Judge Silbermann and I are Co-Chairs of JROPE. The committee members are listed in the power point presentation, a copy of which is enclosed and will be provided to the Administrative Board.

[2] No parent education programs exist in the following counties: Broome, Delaware, Franklin, Fulton, Herkimer, Montgomery, Rensselaer, St. Lawrence, Sullivan, Ulster and Westchester.

> would be inappropriate, due to the existence of domestic violence or other enumerated factors; and that the Court must require proof of attendance before granting judgment in matters requiring parent education."

We noted that mandatory parent education programs exist in 46 states.[3] It is our belief that judges will find it easier and more expeditious, saving time and argument, if attendance at the program is mandatory. We concluded that the rule mandating parent education will result in more parents attending sessions, and that the Court may always exercise its discretion in cases where attendance would be inadvisable or inappropriate. A provision providing proof of attendance prior to the Court granting judgment will guarantee the benefits of the program to all appropriate parties.

In order for JROPE to achieve its goals, we respectfully request the cooperation and assistance of the Office of Court Administration by:

1. Establishing parent education programs in counties where none exists.

2. Approving and certifying new providers, including online programs.

3. Establishing administrative support for parent education within OCA (as previously existed; 22 NYCRR 144.2(c)(f)).

4. Coordinating with judicial and non-judicial personnel.

5. Maintaining statistical information on the programs.

JROPE believes that parties should be directed to attend parent education as early as possible after the commencement of an action and before the first Court appearance.

We recognize that fees may be required for attendance pursuant to Rule 144.5 that are reasonably related to the cost of providing the services, not to exceed the maximum amount set forth in the Guidelines (currently not more than $100 per person). JROPE urges accommodation not only for those with financial hardship (Rule 144.5), but also for those with language barriers and disabilities pursuant to the ADA.

We recognize that there are implementation issues that we intentionally did not address out of deference to the Courts and to those in the best position to consider and resolve them.

We further urge the creation of a statewide Advisory Board to be created by a combined committee of JROPE and OCA. That Board should consist of attorneys, judges, mental health professionals and educators. The Board shall work closely with

[3] 2016 Mich.St.L.Rev.1147 at 1163.

OCA and the Matrimonial Practice Advisory and Rules Committee. The Board shall support and administer curriculum programs, their implementation, and evaluations. The Board shall work with the Maurice A. Deane School of Law at Hofstra University, which has generously agreed to host Advisory Board meetings and provide occasional research and support.

JROPE shall continue to meet no less than every three months to assess the programs and review reports from providers, judges, and attorneys regarding the success of the program.

Again, we thank you for your interest and assistance.

Respectfully yours,

Sondra M. Miller

Sondra M. Miller

Enclosure

cc: The JROPE Committee:
Hon. Jacqueline Silbermann, Ret.
Hon. Gail Prudenti, Ret.
Hon. Rachel Adams
Hon. Saralee Evans, Ret.
Harriet Weinberger, Esq.
Daniel Weitz, Esq.
Andrew Schepard, Esq.
Lesley Ann Friedland, Esq.
Shari Bornstein, Esq.
Dolores Gebhardt, Esq.
Ellen Taner, MA
Nancy Nybergh, MA, LP
Abby Rosmarin, Esq.
Cara Ruda, Esq.
Catherine McKinney, Esq.
Robert Keidel
Robert Pope, Jr.
Shelby Grynberg

ACHIEVING EXCELLENCE IN PARENT EDUCATION IN NEW YORK

PRESENTATION TO CHIEF JUDGE JANET DIFIORE JULY 2017

MAURICE A. DEANE SCHOOL OF LAW
HOFSTRA LAW

JROPE* COMMITTEE MEMBERS

Hon. Sondra Miller, Retired
Hon. Jacqueline Silbermann, Retired
Hon. Gail Prudenti, Retired
Hon. Rachel Adams
Hon. Sara Lee Evans, Retired
Harriet Weinberger, Esq.
Daniel Weitz, Esq.
Andrew Schepard, Esq.
Lesley Ann Friedland, Esq.
Shari Bornstein, Esq.
Dolores Gebhardt, Esq.
Ellen Taner, MA
Nancy Nybergh, MA, LP
Abby Rosmarin, Esq.

*Judicial Restoration of Parent Education in New York State

WHAT IS PARENT EDUCATION?

The New York State Parent Education and Awareness Program ("Program") provides information to parents about the impact of parental breakup or conflict on children, how children experience family change, and ways in which parents can help their children manage the family reorganization. The curriculum is child-centered and directed primarily toward promoting children's healthy adjustment and development by educating parents about ways they can minimize the stress of family change and protect their children from the negative effects of ongoing parental conflict. The administration and curriculum of the parent education program is sensitive to domestic violence concerns and must be in compliance with the Guidelines and Procedures for Certification of Parent Education and Awareness Programs.

22 NYCRR §144.1

PARENT EDUCATION GOAL: FOCUS ON THE CHILDREN'S BEST INTEREST DURING TRANSITION

- Inform parents about the emotional, educational and economic impact on children created by divorce and separation;
- Encourage parents to manage their transition and conflicts responsibly utilizing skills taught in NYS approved programs;
- Educate parents about parenting plans that are developmentally appropriate and in their children's best interests.

*https://www.health.ny.gov/statistics/vital_statistics/2014/table52.htm

NEW YORK STATE PARENT EDUCATION AND AWARENESS PROGRAM

22 NYCRR §144.2

- Program providers certified by the Office of Court Administration (OCA) pursuant to 22 NYCRR §144.4
- Justices, judges, judicial hearing officers, matrimonial referees, court attorney-referees, and support magistrates refer parents to a certified program
- Administered by a Program Administrator and overseen by a Program Coordinator
- Governed by Guidelines and Procedures for Certification of Parent Education Awareness Programs, which contains minimum standards required for program providers to be approved and certified

APPLICATION OF PROGRAM

22 NYCRR §144.3

- Any action for divorce, annulment, separation, custody, support or modification of custody
  - Supreme Court or the Family Court
  - Involving a child under age 18
- Determination of whether parents are to attend a program is at the discretion of the Court
- Domestic violence victims may opt out
- Participant information kept confidential pursuant to 22 NYCRR §144.6

CURRENT PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE (22 NYCRR § 144.3)

- All providers are required to screen for domestic violence
- Victims may be screened out or opt out
- Couples never attend the same in-person session regardless of Domestic Violence status
- Providers are required to have security measures in place
- The parent education curriculum includes an introductory component about domestic violence including the definition of domestic violence, encouraging access to legal support, making a value-free distinction of parallel and cooperative parenting, parenting plans that emphasize the safety of the parents and children and available resources in the community.

STATUS OF PARENT EDUCATION IN NEW YORK (AS OF APRIL 11, 2017)

- 4 certified programs operating within New York City
- As many as 40 counties outside New York City have one or more certified programs
- A number of counties have yet to establish OR no longer provide parent education programs
- OCA no longer tracks and maintains current statistics

Court Website Provider list:
http://www.nycourts.gov/ip/parented/pdf/PublicCertifiedPEP01.pdf

ROADMAP TO REVITALIZING PARENT EDUCATION IN NEW YORK

- Revise Court Rule 144 to make parent education non-discretionary, with exceptions for victims of domestic violence
- Establish a university supported interdisciplinary advisory committee
- OCA to approve and certify new providers, including online programs
- Establish administrative support for parent education within the OCA

APPROVED ONLINE CLASSES THAT CONFORM WITH THE CURRICULUM OF THE NYS PROGRAM

- Increases compliance by providing flexibility for scheduling
- Cost effective
- Possible alternative for victims of domestic violence

THE ROLE OF OCA

- Certify program providers including online providers
- Coordinate with Judicial and non-judicial personnel
- Provide for a program coordinator in accordance with 22 NYCRR §144.2 (c) & (f) – (e.g. attorney, social worker)
- Maintain statistical information on the program

MANDATORY ATTENDANCE
(Amending 22 NYCRR §144)

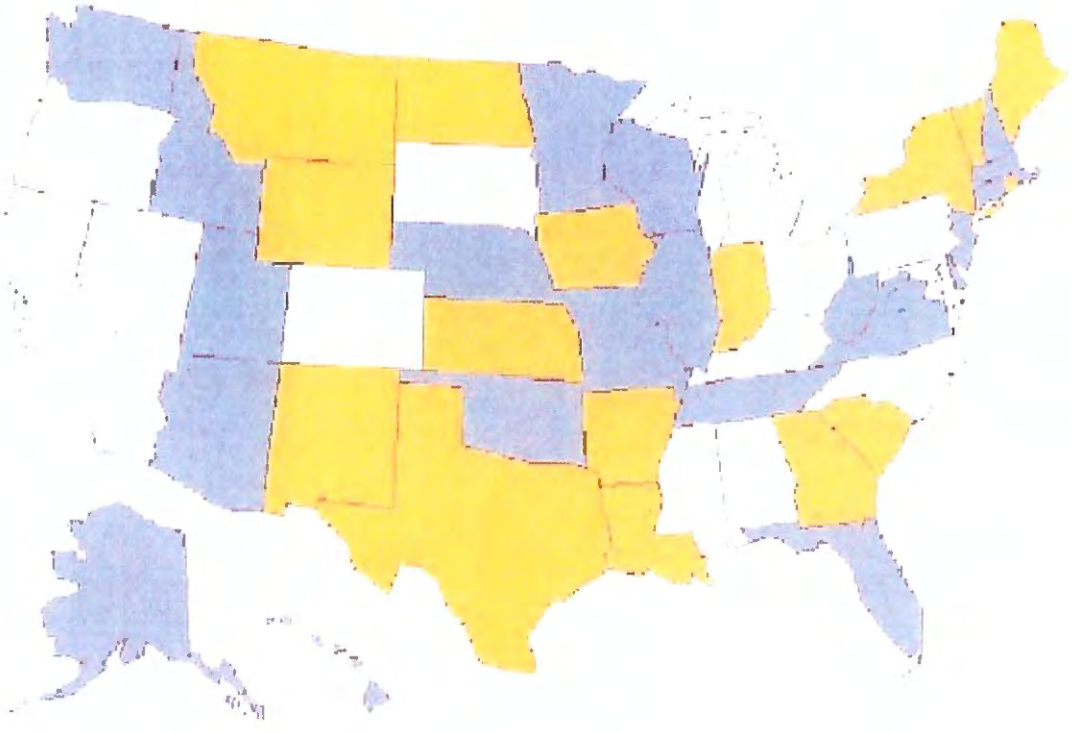
- Extends potential benefits of parent education (e.g. reducing trauma, cost and delay) to children and families who might not otherwise attend
- Provides uniformity and consistency of referrals
- Allows sanctions for non-compliance as judge deems appropriate

A STATEWIDE ADVISORY BOARD

- Interdisciplinary membership – (e.g. law, education, psychology, community)
- Work closely with OCA and Matrimonial and Family Court Advisory Committees
- Support and advise on overall curriculum development and program implementation and evaluation

NATIONAL OVERVIEW

- States in blue mandate all divorcing couples with children to attend parent education
- States in gold allow for judicial discretion



STATE COMPARISON

ILLINOIS

- Mandatory program
- Parents must attend with 60 days of first appearance
- Course must be 4 hours
- Divorce will not be granted without program participation
- Similar to New York in size and divorce rate

FLORIDA

- Mandatory program
- Course must be 4 hours
- Course must be reasonable in cost
- Courses offered online and in person
- Similar to New York in size and divorce rate

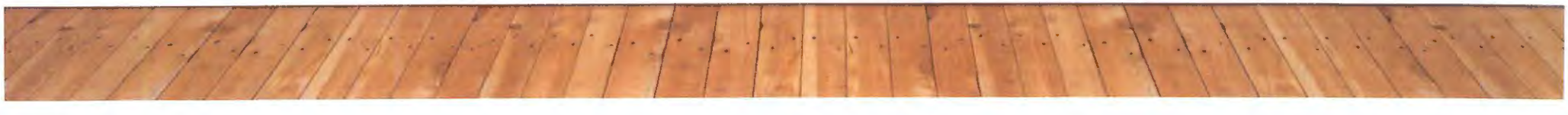
CONNECTICUT

- Mandatory program
- Course must be 6 hours
- Course costs $125 or fee waived by court
- Courses must be taken within 60 days after a family case is filed in court
- Similar to New York in that it requires attendance of parents with children under the age of 18

CONNECTICUT- PARENT EDUCATION PROGRAMS 2016 STATISTICAL SURVEY*

- 93%: the program was valuable to separating parents
- 92%: the presenters had a very good understanding of the needs and problems of divorcing families
- 96%: the program helped parents understand the needs and reactions of children of various ages
- 95%: the program helped parents understand the benefits to children of parents working together
- 92%: the program helped parents resolve conflicts between parents about the children
- 91%: the program was helpful in learning how to arrange meaningful parenting time
- 93%: the program was helpful for reducing stress in children

**Judicial Branch Court Support Services Division Family Services 2016 Parent Education Program Statistics*



PARENT EDUCATION PROGRAM: POSITIVE OUTCOMES

"There is broad evidence across evaluations that there is a high level of parent satisfaction with parent education programs. The information they provide is seen as very helpful both by parents who voluntarily attend and those who are mandated to attend. ***This outcome is important in that it likely increases their respect for the legal system.***" Peter Salem et al., *Taking Stock of Parent Education in the Family Courts: Envisioning A Public Health Approach*, Family Court Review, Vol. 51 No. 1 January 2013 at 136.

ACKNOWLEDGMENTS

Robert C. Keidel
Robert E. Pope, Jr.
Shelby Grynberg
Cara Ruda, Esq.
Catherine McKinney, Esq.

MAURICE A. DEANE SCHOOL OF LAW
HOFSTRA LAW

THANK YOU

On behalf of the Judicial Restoration Of Parent Education in New York State Committee, and Hofstra University faculty and students who provided valuable input, we appreciate your attention and consideration of the proposed changes to Rule 22 NYCRR §144.2 contained within this document.