

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

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

January 2022



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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. 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. In 2021 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 Major matrimonial legislative and rule reforms recommended by the Committee during 2015, 2016, 2017, 2018, 2019 and 2020, 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 after consultation with the Administrative Board of the Courts. "The cumulative effect of these changes continues to increase excellence in matrimonial cases."²

In 2020 and again in 2021, the challenges posed by the Chief Judge took on new meaning as the court system had to confront the demands of operating in the midst of covid-19, the worst pandemic faced by New York and the country in a century, and quickly found innovative new ways to provide access to justice with operational and decisional excellence during covid-19. Beginning in March 2020, when former Governor Cuomo declared a state of emergency, the Committee concentrated their efforts on assisting the court system under the auspices of Judge Sunshine as Statewide Coordinating Judge for Matrimonial Cases, with the development of a virtual justice system while simultaneously trying to address the needs of those lacking the ability or the funds to access the judicial system virtually. The heroic efforts of the staff of the Division of Technology of the Office of Court Administration were essential in helping to accomplish this. A great step forward in 2020 was the expansion of the NYSCEF system to accommodate new electronic filings of matrimonial cases with exceptions for self-represented litigants and attorneys lacking technology skills. During 2021, as the courts gradually opened up to in person proceedings where possible, NYSCEF was an invaluable tool, allowing safe and efficient method of filing and uploading documents. We are grateful for the invaluable assistance of Jeff Carucci, NYS Courts Director of E-

¹ See Investiture Remarks of Chief Judge Janet DiFiore, February 8, 2016.

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.

Filing in promoting this expansion from 53 counties for which e-filing of matrimonial actions on a consensual basis was first available in May 2020 to what was 60 of the State's 62 counties as of October 21, 2020.³ This expansion continued in 2021. As of September 28, 2021, e-filing of matrimonial actions on a consensual basis was available in 61 of the State's 62 counties.⁴

During 2020, the Committee re-examined its legislative and rule proposals to identify those proposals with special covid related significance and to develop new proposals to deal with future emergencies such as covid. During 2021, the Committee continued to view its proposals in this fashion. While much progress has been made in returning to normal court operations and opening the courts to in-person proceedings with appropriate safeguards, the emergency is not yet over, especially in light of the Delta and Omicron variants, and future emergencies could arise. Thus, while continuing to focus on improvements in matrimonial legislation and rules, we again highlight in this year's report our proposals with special covid related significance.

Our Three Legislative Priorities for 2022

The first of our legislative priorities for 2022 is our proposal for mandatory electronic filing in matrimonial cases with exceptions for attorneys who lack technical abilities and for self-represented litigants. This legislation will ensure access to, as well the smooth operation of the judicial system.

Our omnibus divorce venue proposal, which will have long term benefits for matrimonial practice, by greatly improving both fairness and efficiency in processing matrimonial cases, also remains a major priority again this year. We have ever increasing concerns about the need for this proposal as the burden of CPLR 509 designations of venue in foreign counties unrelated to residence has increased on Judges all over the State, depriving litigants in their home counties of judicial resources, negatively impacting outcomes for the parties and their children, and requiring Judges to appoint counsel and mental health professionals in distant counties with whom they are not familiar. We have concerns about this problem in all parts of the State, not just New York County as discussed in *Castaneda v Castaneda*, 36 Misc 3d 504, at 506 [Sup Ct 2012].. Indeed, we have recently received reports from Administrative Judges and District Executives in the western, northern and middle portions of the State about large numbers of out of county uncontested divorce filings for 2021, many of them from New York County and Kings County. It was reported to us that one Judge in a County on the northern tier of the State had 987 uncontested divorce cases assigned to him in 2021. Of those 987 filings, 476 were filings by attorneys from distant counties, including 280 from one attorney in New York County, two from another attorney in New York County, eight from one attorney in Kings County, and 186 from one attorney in the Village of Pomona in Rockland County.

³ See A/O 247/20 effective October 21, 2020 available at <http://www.courts.state.ny.us/whatsnew/pdf/AO.247.20.pdf>. Appendix A to the Administrative Order lists the counties for each of the trial courts, including Supreme Court, where e-filing is available on either a mandatory or consensual basis. Thanks to Jeff Carucci, Director of E-Filing for supplying these statistics.

⁴ See A/O 282/21 dated September 28, 2021 available at [AO.282.21.pdf \(state.ny.us\)](http://www.courts.state.ny.us/whatsnew/pdf/AO.282.21.pdf) Thanks to Jeff Carucci, Director of E-Filing for supplying these statistics.

Our third legislative priority this year is for an increase in Assigned Counsel Fees. This legislation will ensure access to justice for indigent adults and children by providing them with competent counsel to represent them on some of the most important matters affecting their lives, such as custody and visitation and intimate partner violence. It will also improve efficiency of the court system by ensuring that attorneys are available on Panels to accept such assignments..

All three proposals promote the Chief Judge's Excellence Initiative by ensuring access to justice and the efficient processing of cases through the courts.

II. Statewide Coordinating Judge for Matrimonial Cases

On June 1, 2018, Chief Administrative Judge Lawrence Marks sent a Memorandum to Administrative Judges announcing the appointment of Hon. Jeffrey Sunshine as Statewide Coordinating Judge for Matrimonial Cases.⁵ Since then, Judge Sunshine has undertaken a number of statewide matrimonial initiatives which serve the Excellence Initiative. As Hon. Janet DiFiore, Chief Judge, stated in her 2019 State of the Judiciary Address:

“Our commitment to excellence extends to matrimonial matters, which so often involve the best interests of children. We are focused on achieving better outcomes in these sensitive cases and speeding their disposition in order to minimize the financial and emotional toll on families and children. Last July, in pursuit of these vital goals, we appointed Judge Jeffrey Sunshine as our Statewide Coordinating Judge for Matrimonial Cases. Working with our Administrative Judges and the matrimonial bench and bar, Judge Sunshine is leading our efforts to streamline practice and improve the quality of justice. Among the many reform efforts underway: bringing the efficiency and convenience of e-filing to matrimonial actions; piloting matrimonial mediation in Suffolk, Kings and Monroe Counties; authorizing mandatory referral of parents to education programs in seven counties to provide information about the impact of parental breakup and conflict on children; and simplifying our uncontested divorce packet to make it easier for ordinary people to complete and file. Judge Sunshine’s appointment will ensure that there is an ongoing focus on the management and adjudication of these important cases.”⁶

A. Covid-19 Pandemic Response

1. Input from the Bench and Bar

In 2020 and 2021, as Statewide Coordinating Judge for Matrimonial Cases, Judge Sunshine advised the Chief Administrative Judge, the Deputy Chief Administrative Judges, and the Administrative Judges on the court system’s response to the pandemic for matrimonial cases after consulting with the members of the matrimonial bar, including officers of the New York State Bar Association’s Family Law Section, New York Chapter of the American Academy of Matrimonial Lawyers, and WBASNY’s Matrimonial and Family Law Committee Chairs. He also met with the matrimonial judges and the Administrative Judges in each Judicial District at the beginning of the pandemic and continues to meet with the Judges on a District by District basis. Former Deputy Chief Administrative Judge Silver (now retired) and the ADR Coordinators joined in the NYC meetings. During 2021, Judge Sunshine continued this outreach regarding the court system’s response to the pandemic for matrimonial cases.

⁵ See Letter of Appointment attached as Appendix “A” to this report.

⁶ See “State of our Judiciary” address by Hon. Janet DiFiore, Chief Judge, February 26, 2019 at pp.12-13 available at http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/19_SOJ-Speech.pdf

2. Expansion of NYSCEF System for Matrimonial Cases

When the covid pandemic began, paper filings were prohibited for non-essential actions because of safety concerns, and matrimonial actions were initially not deemed one of the essential case types. In late May 2020, Chief Administrative Judge Marks announced that filings of new non-essential matters including divorce would commence. This took place right after Memorial Day through e-filing in those counties that already have e-filing for other civil matters, and through paper filings and delivery of documents through use of the new Unified Court System's Electronic Document Delivery System (EDDS) in counties where the NYSCEF system is unavailable.⁷ Administrative Order 111-20 dated May 15, 2020 brought counties already on the NYSCEF system for civil matters into use of NYSCEF in matrimonial actions, a significant development.⁸ Since issuance of Administrative Order 111-20, additional counties were added by subsequent Administrative Orders. In all these Administrative Orders, the rights of unrepresented parties to file, serve and be served by paper rather than electronically is maintained.

On June 1, 2020, Administrative Order 116-20 became effective which contained rules for consensual and mandatory electronic filing in various case types in different counties on the NYSCEF system. Appendix B to said Administrative Order 116-20 contained rules for consensual e-filing in matrimonial cases in Supreme Court. Appendix B is extremely important because, among other things, it protects the privacy of documents filed electronically in matrimonial actions as required by DRL 235. It also prohibits forensic reports in custody matters and other matters involving children which often contain sensitive information from being filed electronically (which might present a risk of improper dissemination). Said Administrative Order has been updated in the ensuing months as to case types in different counties which may be searched easily by a link on the NYSCEF website. On May 25, 2021, a revision to Appendix B attached as Appendix B-1 to this report was adopted by A/O 162/21 available at [AO.162.21.pdf \(state.ny.us\)](https://www.state.ny.us/external/ao/162/21.pdf) which expanded the use of NYSCEF for plenary actions and expanded the privacy protections for documents filed in matrimonial actions.

3. Issues Related to Expansion of NYSCEF for Matrimonial Cases

Because e-filing provided access to the courts during the covid pandemic, there was no time to experiment with pilot projects in advance. Issues had to be dealt with as they arose. Working in coordination with Jeff Carucci, NYS Courts Director of E-Filing, Judge Sunshine addressed a number of concerns related to matrimonial cases and NYSCEF during 2021 as they arose as described below:

a) Access to NYSCEF for Attorneys for Children

In March 2021, the NYSCEF system was modified at Judge Sunshine's request so that Attorneys for Children assigned to represent children in matrimonial cases would have access to the system after obtaining a NYSCEF User ID and Password and affirming their consent and representation in the case.

⁷ See Memo of Chief Administrative Judge to all Trial Court Judges and Justices dated May 20, 2020 attached to this report as Appendix "B."

⁸ See A/O /111/20 available at <http://ww2.nycourts.gov/sites/default/files/document/files/2020-05/AO-111-20.pdf>

b) Procedures for Filing Separation Agreements

In May 2021, Judge Sunshine issued a memorandum that clarified procedures regarding filing of separation agreements pursuant to DRL 170(6) in such a way as to protect confidentiality pursuant to DRL 235. Some counties accept such agreements in NYSCEF after purchase of an index number, while others accept them as miscellaneous County filings for a small fee. While confidentiality is protected in NYSCEF filings, there is no protection in miscellaneous filings. Therefore, Judge Sunshine advised that separation agreements accepted by County Clerks pursuant to DRL170(6) as miscellaneous filings either be sealed or filed as a memorandum of the agreement as permitted by DRL 170(6).

c) Expansion of Matrimonial Case Types for NYSCEF Filings

When Appendix B containing the rules for consensual e-filing in matrimonial cases in Supreme Court was revised in May 2021, on Judge Sunshine's advice, the use of the NYSCEF system was expanded to include "plenary actions for child support, custody or visitation, an order of protection or an application pursuant to the new Child Parent Security Act ..."⁹. The revised Appendix B containing rules for consensual e-filing in matrimonial cases in Supreme Court is available at [PDF B.pdf \(nycourts.gov\)](#) and is attached to this report as Appendix "B-1."

d) Confidentiality of Child Parent Security Act Filings

When the Child Parent Security Act went into effect in February 2021, a memorandum was sent out by John McConnell (then OCA Executive Director, now retired) and Nancy Barry (OCA Director of Operations) reminding Judges hearing cases that the confidentiality and sealing provisions of the new law as well as those of DRL 235 must be complied with, and that the court files in such proceedings may only be viewed by the parties or their counsel.¹⁰ The memo informed Judges about a new form Application for Anonymous Caption to allow applicants to seek a court order to request an anonymous caption in all publicly viewable court records regarding proceedings under the Child Parent Security Act in order to comply with the requirements of said Act.

e) Prohibition on Filing Confidential Information in Matters Involving Children

In addition to ensuring confidentiality under the Child Parent Security Act, the rules in Appendix B for consensual e-filing of matrimonial cases on NYSCEF were modified to prohibit certain types of information from being filed on NYSCEF in order to protect the parties and their children in proceedings involving children. The rules for consensual e-filing in matrimonial cases now provide as follows:

⁹ The new Child Parent Security Act was enacted as Chapter 56, L. 2020.

¹⁰ See Memorandum dated March 4, 2021 regarding confidentiality of filings under the Child Parent Security Act attached to this report as Appendix "B-2 ."

“(5) Unless otherwise directed by the court, evaluations or investigations of the parties or a child by a forensic mental health professional (including underlying notes), and reports by a probation service or a child protective service in proceedings involving custody, visitation, neglect or abuse, and other matters concerning children shall not be filed electronically.”¹¹

f) Procedures for Filing Temporary Orders of Protection

In late summer and early fall, Judge Sunshine and his Counsel coordinated with NYC Sheriff Joseph Fucito to set up a pilot program for service of temporary orders of protection and seizure orders by the New York City Sheriff in the five boroughs of New York City. Thanks to Sheriff Fucito for his willingness to have the Sheriff in each borough serve process on such orders on behalf of intimate partner violence victims. Special safeguards were built into the protocol for the pilot program to protect the confidentiality of orders prior to confirmation of service on the party against whom the order was issued, and intimate partner violence victims were notified that they could register to receive prompt notification of service being effectuated.

4. Expansion of Pilot Project on Submission of Evidence for Virtual Hearings During Pandemic to All Contested Matrimonial Cases

Working in conjunction with NYSCEF staff and with input from the Committee, a pilot project was approved in early September 2020 using NYSCEF for the submission of evidence in matrimonial actions. After discussions with the local Administrative Judges, the following Matrimonial Parts were designated to participate in this pilot project: First, Second, Seventh, Ninth, and Thirteenth Judicial Districts. In her weekly remarks on September 28, 2020, Chief Judge Janet DiFiore thanked Judge Sunshine and Jeff Carucci for their leadership in connection with this project, saying:

“Starting tomorrow, we will be taking an important step in our journey as a virtual court system when we will begin hearing a limited number of virtual bench trials and hearings in matrimonial matters in the Supreme Court in Kings, New York, Richmond, Westchester and Ontario Counties.

These virtual trials and hearings will be conducted using the Microsoft Teams platform and our NYSCEF e-filing system, which will allow lawyers and litigants to upload, in advance, witness and evidence lists, and in real time, documents that can be marked for identification and moved into evidence by the judge. During the course of the trials and hearings, documents and evidence will be shared on-screen and remain visible to the attorneys, parties and witnesses participating in the proceedings.

*We will be closely monitoring the progress of this pilot program, in anticipation of expanding virtual trials and hearings to other courts and case types across the state. I want to thank Judge Jeffrey Sunshine, our Statewide Coordinating Judge for Matrimonial Cases, and Jeff Carucci, our NYSCEF Director, for their leadership in developing and piloting a model approach for how we can take virtual trials and proceedings to scale in the New York State courts.”*¹²

¹¹ See Appendix “B-1” to this report.

¹² Transcript of Message of Chief Judge Janet DiFiore September 28, 2020

On April 5, 2021, Nancy Barry, Chief of Operations, issued a memorandum stating that the pilot program designed by the NYSCEF Teams at the Department of Technology working in close coordination with Judge Sunshine and Jeffrey Carucci, had been expanded to all contested matrimonial actions filed through NYSCEF and might also be available in the future for matters not filed electronically. She also announced that it would now include a “Virtual Evidence Courtroom (VEC) module”, by which documents can be submitted to the court and parties for trial use through a NYSCEF-based system in both fully remote and hybrid trial settings.”¹³

5. Updates to Divorce Resources Website to Improve Access to Covid Related Information and to Assist Self-Represented Litigants

During 2020, the form Preliminary Conference Order on the Divorce Resources Website was amended to permit execution in counterparts so that parties could sign the document without having to be present together. Execution in counterparts is a practice where each of the parties to a document executes a separate physical copy of the document before the documents are exchanged so that each party holds a copy of the document signed by the other parties. It can be done where the parties are in different places and signing at different times. As such, it avoids problems if all of the parties have to get together for a signing meeting or wait for a single document to be circulated around each of the parties one-at-a-time for execution..

In addition, other improvements were made to the Court System’s Divorce Resources Website at <http://ww2.nycourts.gov/divorce/index.shtml> which is maintained by Susan Kaufman, Counsel to Judge Sunshine as Statewide Coordinating Judge for Matrimonial Cases. A new category of resources was added to the Divorce Resources website for “Covid-19 Divorce Resources.” Under this category, links were added to the website to make it easier for the public to access important information on the main Coronavirus website of the Unified Court System, including Administrative Orders of the Chief Administrative Judge, local Administrative Orders, information about electronic filing, Court Rules on Consensual E-filing in Matrimonial Cases, and the instructive video and PowerPoint on Participating in a Virtual Appearance created by the Office of Court Administration’s Access to Justice Group chaired by Hon. Edwina Mendelson, Deputy Chief Administrative Judge.

To assist self-represented litigants who are especially vulnerable during the pandemic, additions were made to the section of the website entitled “Resources for Unrepresented Litigants” already on the Divorce Resources website at http://ww2.nycourts.gov/divorce/unrepresented_help.shtml. Links were added to “Ask a Librarian,” “Help Centers,” “Free Legal Assistance,” “Maintenance and Child Support Calculators and Worksheets” and “Uncontested Divorce Forms and Instructions.” The instructive video and PowerPoint on Participating in a Virtual Appearance posted under “Covid-19 Divorce Resources” was also posted in the “Resources for Unrepresented Litigants” section of the website.

During 2021, further revisions were made to the Divorce Resources website by Judge Sunshine’s Counsel to add a new category for “Parentage Proceedings” under the new Child Parent

¹³ See Memorandum from Nancy Barry, Chief of Operations, dated April 5, 2021 re Virtual Evidence Courtrooms in Matrimonial Cases attached as Appendix “ B-3.”

Security Act (Chapter 56, L. 2020). These revisions included a summary of the new law, petition and order forms that could be adapted for use in Supreme Court, and a letter application for an anonymous caption in all publicly viewable case listings to comply with the requirement in the statute that the documents in any case remain under seal.

The revisions also included changes to the “Covid-19 Divorce Resources” section of the Divorce Resources website to provide important links to e-filing through NYSCEF. These links included links to the “NYSCEF Website,” “NYSCEF Authorized Case Types,” “NYSCEF Consent to E-Filing,” and to the “Letter Application for an Anonymous Caption” for filings pursuant to the Child Parent Security Act. In addition, important information about the end of the Governor’s Covid-19 State of Emergency on June 24, 2021 was posted together with a notice that regular notarization rather than virtual notarization would once again be required on such date. Finally, the links to the instructive video and PowerPoint on Participating in a Virtual Appearance were replaced with links to “New and Easy to Follow Instructions for Making Phone and Court Appearances” provided on the Access to Justice Website together with information and links to the Access to Justice’s Court Navigator program designed to help people without an attorney start a case in certain counties.

B. Ongoing Projects

1. Court Simplification Legislative Proposal of Hon. Janet DiFiore, Chief Judge

The Court Simplification Legislative Proposal of Hon. Janet DiFiore, Chief Judge is an ongoing priority of Judge Sunshine for 2022. The proposal would eliminate New York’s complicated structure of eleven trial courts, replacing it with a three level structure.¹⁴

C. New and Ongoing Projects and Responsibilities

1. Efforts and Response to Report of Secretary Johnson on Diversity and Inclusion

Judge Sunshine appointed a Subcommittee on Diversity and Inclusion which met frequently during 2021 on ways to increase diversity in the matrimonial bar by coordinating with Bar Associations and Law Schools.¹⁵ Based on the Subcommittee’s recommendations, the Committee and Judge Sunshine did outreach to local and State Bar Associations on ways to increase diversity and inclusion in the Matrimonial Bar. Judge Sunshine made a proposal to the Family Law Section of the State Bar on behalf of the Committee to hold a Joint Summit on these issues in order to attract a

¹⁴ The proposal would amend Article 6 of the Constitution, in relation to consolidation of the trial courts of the unified court system, and would repeal sections 9, 10, 11, 12, 13, 14, 16, 34, 35, 36, 36-a, 36-c, and 37 and subdivision j of section 22 of article 6 of the constitution relating thereto. Among its provisions, it would merge the Family and Supreme Courts into one Supreme Court and authorize establishment of a Family Division of Supreme Court in which matrimonial matters and cases heretofore handled in Family Court will be heard. The key provisions of the legislative proposal together with the proposal itself are available at <https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/CourtMergerSummaryandProposal.pdf>

¹⁵ The members of the Subcommittee on Diversity and Inclusion are Hon. Jeffrey Goodstein, Hon. Cheryl Joseph, Hon. La Tia Martin, Hon. Emily Ruben, Yesenia Rivera, Esq. and Zenith Taylor, Esq.

more diverse pool of attorneys interested in pursuing careers in matrimonial practice and to encourage matrimonial firms to increase recruiting of attorneys of color. Work will proceed on these efforts during 2022.

2. Resumption of Consensual Uncontested Divorce Pilot Project

During the first months after Judge Sunshine's appointment, he worked with a small working group of the Committee to develop the framework for a Consensual Divorce Program for Uncontested Divorces.¹⁶ Judge Sunshine presented a prototype of this program to Chief Administrative Judge Marks by letter dated October 1, 2018.¹⁷ Further work on the Program proceeded during 2019 by Judge Sunshine and his Counsel Susan Kaufman in coordination with Christine Sisario, Director of Technology, Rochelle Klempner, formerly of the Division of Technology, and Sun Kim of the Division of Technology, and was submitted to then OCA Counsel John McConnell (formerly OCA Executive Director, now retired) on August 20, 2019 for approval as a pilot project by the Administrative Board.

The project will further the Chief Judge's Excellence Initiative by simplifying the uncontested divorce process for a great number of litigants, thereby increasing access to justice and court efficiency simultaneously.¹⁸

The pilot project was approved by the Administrative Board in September 2019. It was to be implemented in Kings, Ontario, Broome and Westchester Counties in early 2020. In February 2020, John W. McConnell, then OCA Executive Director, sent memos to the Administrative Judges of those counties attaching copies of the forms developed by Judge Sunshine's office and authorizing their use immediately. Printed copies of the forms were also sent out to the pilot counties.

¹⁶ The small working group included Hon. Jeffrey Sunshine, Chair of the Committee and Statewide Coordinating Judge for Matrimonial Cases, Susan Kaufman, Counsel to the Committee, and Committee members RoseAnn Branda, Esq., Elena Karabatos, Esq. and Stephen McSweeney, Esq. The Committee wishes to thank the members of the small working group for their extensive work on the project, as well as Chip Mount, Director of Court Research and Technology, now retired, for his helpful advice.

¹⁷ See Letter from Hon. Jeffrey Sunshine to Chief Administrative Judge Marks dated October 1, 2018 introducing the Consensual Divorce Program as a prototype for the first stage of reforming the uncontested divorce process. Said Letter is attached as Appendix "B-1 to our 2020 report available at <https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/Matrimonial-MPARCReport2020.pdf>

¹⁸ It would allow for parties to jointly sign an affidavit which would meet all the statutory, factual, and legal predicates necessary for a divorce action in New York State. The forms provide for one combined Findings of Fact, Conclusions of Law and Judgment, which eliminates duplication. In as much as the only grounds available in this process are an irretrievable breakdown for a period of at least six months (DRL § 170(7)), there is no need for separate Findings of Fact, Conclusions of Law, and Judgment. A combined Summons with Notice and Combined Notice of Appearance serve as a jurisdictional predicate. The Joint Affidavit of Facts and Agreement combines the multitudes of forms and pleadings now required for an uncontested divorce into one form, signed once and notarized in the form of a deed so that it satisfies the requirements of DRL §236(B)(3) for an agreement as well. There are two distinctive sets of forms, one for parties without children and one for parties with children. There is also an Information Booklet (Form JD-1) to assist with filling out the forms. Additional forms which may be required depending on the circumstances are attached to the Information Booklet as Appendices (one for parties without children and one for parties with children).

Unfortunately, despite expectations that the pilot project would proceed swiftly, the pilot project was on pause during the pandemic until parties can be together to sign the documents. Plans for document assembly and fillable versions of the forms were also paused as the court system's technology staff was called upon to make possible a virtual court system in addition to fulfilling other technological requirements during the covid-19 emergency.

In December 2021, with improvement of covid-19 metrics and gradual reopening of the courts, the pilot project resumed and was expanded to Queens. The expansion to Queens had been approved in early September, 2021 by then Deputy Chief Administrative Judge for Courts inside New York City George Silver, as well as by Chief Administrative Judge Marks. In December, 2021, Judge Sunshine sent a memo to the Administrative Judges of the pilot counties of Kings, Queens, Ontario, Broome and Westchester advising them of the resumption of the project, and forwarding revised packages of forms for posting on their websites. Printed copies of the revised form packages were also mailed to the pilot counties. As approved by A/O 321/21 on November 18, 2021, the pilot form packages were revised to update them as to statutorily mandated changes in the Child Support Standards Chart as of March 1, 2021 which affect calculations of maintenance and child support, as well as changes in certain Income Withholding Order ("IWO") forms promulgated by the NYS Office for Temporary and Disability Assistance for use in enforcement of child support and maintenance as of September 1, 2021. In addition, NYSCEF was adapted to accommodate filings of the pilot forms.

3. Harmonization of A/O 270/20 with the Matrimonial Rules

In the spring of 2021, Judge Sunshine and his Counsel Susan Kaufman sent a memorandum to Chief Administrative Judge Marks summarizing the Committee's comments on Harmonization with the Matrimonial Rules of the newly revised Uniform Rules for Civil Courts adopted by A/O 270/20.¹⁹ At the request of the Administrative Board, Judge Sunshine formed a subcommittee to consider a way of reaching an agreement as to our concerns as to the applicability of the Supreme Court civil rules to Matrimonial actions.²⁰ We identified those new rules which had the most significant impact. At the same time, at the Board's request, the Committee that drafted the rules under the leadership of former PJ Scheinkman reconvened. Judge Scheinkman and Judge Sunshine met on a number of occasions and went through the rules and their concerns. Judge Sunshine presented the draft to the special subcommittee, who unanimously approved the draft. The proposed further amendments were approved by the full Committee and submitted to Chief Administrative Judge Marks.²¹ On October 1, 2021, a Request for Public Comment by December 1st on proposed amendments to the general Uniform Rules was posted and is available at <https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/RPC-Proposed-amendments-to-Uniform-Civil-Rules.pdf>. Subsequently, on October 26, 2021, a Request for Public Comment by December 15,

¹⁹ A/O 270/20, which amended the Uniform Rules for the Supreme and County Courts, is available at [AO-270-20.pdf](https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/AO-270-20.pdf) ([multiscreensite.com](https://www.nycourts.gov/LegacyPDFS/rules/comments/pdf/AO-270-20.pdf))

²⁰ Members of the MPARC Special Subcommittee on Harmonization of A/O 270/20 with the Matrimonial Rules who worked on the rule proposal with Judge Sunshine and his Counsel Susan Kaufman were: Hon. E. Laura Drager (Ret.), Hon. Jeffrey Goodstein, Hon. Cheryl A. Joseph, Hon. Mary Slisz, and Elena Karabatos, Esq.

2021 on the proposed further amendments emphasizing harmonization of the Uniform Rules with the Matrimonial Rules that our Committee and Justice Scheinkman's Committee had endorsed was also posted at [Proposed-amendments-to-Matrimonial-and-Uniform-Civil-Rules.pdf \(nycourts.gov\)](https://www.nycourts.gov/Proposed-amendments-to-Matrimonial-and-Uniform-Civil-Rules.pdf). Judge Sunshine subsequently called a meeting of the special subcommittee and obtained approval from the full Committee to send a letter of response thanking the Administrative Board for the putting the two Proposals out for Public Comment and requesting that our proposed amendments that were not included in the proposed revisions to the Uniform Rules be considered. A copy of the letter sent to Eileen D. Millet as Counsel to the Office of Court Administration is attached as Appendix "C" to this report.

4. Mandatory E-Filing in Matrimonial Cases Except for Self-Represented Litigants and Attorneys Lacking Technological Skills

Judge Sunshine has been a strong advocate of Mandatory E-Filing in Matrimonial Cases except for self-represented litigants and attorneys lacking technology skills. He has worked to promote electronic filing in matrimonial cases, in accordance with his mandate from Judge Marks. He has sent letters to bar associations and continues to promote the statutory proposal as a means of increasing court efficiency and simplifying the divorce process for litigants. He believes that electronic filing will greatly alleviate problems for defendants in divorce cases when plaintiffs file divorce actions in distant counties, and will also make it easier for plaintiffs to file and prosecute divorce actions in the county of residence without the need to forum shop because divorce actions will proceed more efficiently, saving time for both judges and litigants. Judge Sunshine has received statements of support for mandatory e-filing in matrimonial action from several bar associations.²² In addition to statements of bar associations, he has received statements of support from legal service providers representing indigent litigants.²³ In 2022, he will continue his efforts to encourage the Legislature to take legislative action this year to authorize mandatory e-filing in matrimonial actions.

5. Presumptive Early ADR Statewide Initiative in Matrimonial Cases

A major priority of Judge Sunshine and the Committee in 2019, 2020, and 2021 was to provide support to local Judicial Districts with their plans for the Presumptive Early ADR Statewide Initiative in matrimonial cases that were launched by former Deputy Chief Administrative Judges Vito Caruso and George Silver, with assistance from Daniel M. Weitz, Director, Professional and Court Services and Lisa Courtney, Statewide ADR Coordinator. The Initiative is designed to reduce court delays and increase access to justice for litigants, in appropriate cases. As stated in the Press Release announcing the systemwide initiative: "... except where exceptions are appropriate, parties will be referred to mediation

²² See Appendix "D" to this report containing the Resolution of the Family Law Section of the NYS Bar Association and News Release of the Women's Bar Association of the State of New York ("WBASNY") available at https://www.wbasny.org/post_news/wbasny-supports-mandatory-e-filing-in-matrimonial-matters/

²³ See letter to Justice Sunshine dated September 9, 2020 from Laura Russell, Director of the Family Domestic Violence Unit of The Legal Aid Society attached to this report as Appendix "D-1".

or some other type of alternative dispute resolution, known as “ADR” “as the first step in the case proceeding in court.”²⁴

Together with Committee member Elena Karabatos, Esq, and former Committee member Hon. Andrew Crecca (now Administrative Judge of the Courts of Suffolk County),²⁵ Judge Sunshine sits on the Chief Judge’s Advisory Committee on ADR, led by John S. Kiernan, senior litigation partner at Debevoise & Plimpton LLC and former president of the New York City Bar Association.

Since 2019, successful pilot mediation and alternative dispute resolution pilot projects in matrimonial cases have been underway in Kings and Suffolk Counties, and the 7th Judicial District. In the pilot projects, “presumptive mediation” means that cases are presumed eligible for mediation; and unless a party opts out, parties can be mandated to attend one mediation session without incurring any charge. Mediation could continue through a variety of programs, including but not limited to local community dispute resolution programs and private mediation. If a party opts out, no further inquiry is made by the court or court staff. The Initiative has now expanded throughout the State.

In September, 2020, Judge Sunshine’s Statewide Suggested Matrimonial and Family Mediation Protocol to assist courts in setting up local programs, was approved by Chief Judge Janet DiFiore’s and Chief Administrative Judge Marks’s Statewide Alternate Dispute Resolution Committee chaired by John Kiernan. Judge Sunshine is grateful to his fellow committee members of the ADR Committee, including Judge Crecca and Elena Karabatos, as well as the following ADR Coordinators for their assistance in developing the Protocol: for the Courts Outside New York City, Bridget O’Connell of the Erie County ADR Mediation Program, and Joel Kullas, Court Attorney Referee, Deputy Chief Administrative Judge’s Office for Courts Outside NYC; and for the Courts Inside NYC, Lisa Denig, Special Counsel for NYC Civil Court to Deputy Chief Administrative Judge.

In November, 2020 the Statewide ADR Office, with support from Judge Sunshine, received approval to convene family/ matrimonial/ DV-oriented/ADR stakeholders to develop:

- Uniform intimate partner violence screening tools and/or uniform criteria for what ought to be in screening tools
- Uniform DV/mediation training curriculum guidelines that take into account regional variations and resources, and
- Vision for how to adapt safely -- in the future -- to offer more person-centered options for those who are currently excluded from participating in mediation, but who may want to participate in mediation, and with what support

Currently, new protocols on intimate partner violence screening tools and training of mediators are in preparation.

²⁴ See Press Release announcing the new initiative available at:
http://ww2.nycourts.gov/sites/default/files/document/files/2019-05/PR19_09_0.pdf

²⁵ Judge Crecca, a valued member of our Committee, and formerly Supervising Judge of Suffolk County Matrimonial Parts, had to resign from our Committee because of his new responsibilities as Administrative Judge of Suffolk County.

The Presumptive Early ADR Initiative has proved valuable throughout 2020 and 2021 as a means of resolving disputes when access to courts was limited. A new project in coordination with the Judicial Institute and Lisa Courtney, Statewide ADR Coordinator, is underway to provide 24 hours of mediation training to 56 Judges in matrimonial Parts. Efforts are also underway to increase staffing of ADR Coordinators.

Judge Sunshine and the Committee will continue their efforts to assist Lisa Courtney as well as the Chief Judge's ADR Commission, in furthering the ADR Initiative throughout 2022.

6. Revision of Divorce Forms to Reflect Statutorily Mandated Revisions in Calculations of Maintenance and Child Support Divorce Forms

On March 1, 2020, Judge Sunshine's Counsel Susan Kaufman revised eight of the Uncontested Divorce Forms and Instructions and three of the Contested Divorce Forms to reflect bi-annual adjustment of the maintenance and child support income caps along with changes in the Self Support Reserve and Federal Poverty Income Level for a single person. On alternate years, the income caps do not require adjustment. However, the Self Support Reserve and Federal Poverty Level, which also affect calculations of maintenance and child support, change annually on March 1st. Thus, on March 1, 2021, two of the Uncontested Divorce Forms and two of the Contested Divorce Forms were revised to reflect increases in the Federal Self Support Reserve from \$17,226 to \$17,388 and in the Federal Poverty Income Level for a single person from \$12,760 to \$12,880 as required by DRL240(1-b)(b)(6). Maintenance and Child Support Worksheets and Calculators for both uncontested and contested divorces were also amended to reflect these changes, and may be accessed for use by the general public on the Unified Court System's Divorce Resources website at <http://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml>.²⁶

The Uncontested Divorce Packet forms are also posted on the UCS Divorce Resources website at http://ww2.nycourts.gov/divorce/divorce_withchildrenunder21.shtml. Those forms relating to child support in Supreme Court are also posted at <http://ww2.nycourts.gov/divorce/childsupport/index.shtml>. The "What's New" Section of the Divorce Resources is regularly updated by Judge Sunshine's Counsel to describe the latest divorce form revisions and income cap changes. (See [What's New in Matrimonial Legislation, Court Rules & Forms | NYCOURTS.GOV](#)).

7. Coordination with the New York State Office of Temporary and Disability Assistance on Child Support Issues in Supreme Court

On behalf of his Office, Judge Sunshine's Counsel Susan Kaufman continues to coordinate with the New York State Office of Temporary Disability (OTDA) on matters involving child and spousal support. On September 1, 2021, various Income Withholding Order ("IWO") forms currently used in

²⁶ The calculators were revised in February 2020. The new version, which was posted on the Divorce Resources website in early February 2020, allows litigants to calculate child support when maintenance is zero or an amount agreed to by the parties different from the guideline amount of maintenance pursuant to the Maintenance Guidelines Act. This improvement in the Calculators makes it much more useful, not just for the Joint Divorce Uncontested Program, but for all divorces with children.

child and spousal support cases in Supreme Court were posted on the Divorce Resources Website in place of prior versions thereof.²⁷ These revisions were promulgated by the New York State Office of Temporary and Disability Assistance (OTDA) in response to recent changes in the law imposed by the federal Office of Child Support Enforcement. The OTDA promulgated forms involving child support are required for use in New York State pursuant to CPLR §§ 5241 and 5242 and Social Services Law § 111-b(14) and are federally mandated. On August 10, 2021, Judge Sunshine circulated a memo regarding the revised forms to then Deputy Chief Administrative Judges Silver and Caruso for distribution to Judges, Court Attorney Referees and appropriate staff assigned to matrimonial cases.

In 2022, we hope to continue our discussions with the Director of Technology about a possible means to share child support applications with the Support Collection Unit (the “SCU,”) without which the SCU is unable to provide support services – even though a court has expressly ordered that support be paid through the SCU in a secure manner. This idea was being explored further with the policy and information technology staff of OTDA and the OCA Division of Technology to see what is feasible.

8. Project to Prevent the Most Common Mistakes in Filling out and Filing the Uncontested Divorce Form Documents

In 2021, Judge Sunshine’s Office began a project to reduce the backlog in processing Uncontested Divorces by anticipating and preventing the most common mistakes by litigants in filling out and filing the uncontested divorce form documents. Suggestions were solicited from Court Attorneys and members of the Committee who regularly process these forms, with a view toward publicizing the list for use by litigants. Hopefully, this effort will serve to reduce delays in processing of uncontested divorces by obviating the need for court staff to send back papers because of missing or incorrect items.

D. Outreach to Bench and Bar

Although his travel has been curtailed due to the covid pandemic, Judge Sunshine has and will continue to seek input from the matrimonial bar and matrimonial judges, law clerks, court attorney referees, and court clerks virtually to gain greater insight into what can be done to improve the fair and efficient processing of matrimonial cases.

²⁷ Unless child support services are requested or provided, or unless the court finds an IWO unnecessary, IWO’s are required in all cases where child support is ordered to make sure support is actually paid. In an IWO, the court directs the obligor’s employer to automatically deduct moneys from the obligor’s income for payment of the support and remit the money to the NYS Child Support Processing Center for the benefit of the obligee (or directly to the obligee in the case of a spousal only IWO).

III. Executive Summary

The Committee was established in June 2014 when it held its organizational meeting. Since then, the Committee has met monthly, with occasional breaks during the mid-summer months and holidays. During 2020, the March meeting was cancelled due to covid, and thereafter all monthly meetings were held virtually in the interest of public safety. During 2020, the Committee met monthly starting in April through the summer and fall without its usual summer break. During 2021, the Committee resumed a more normal schedule.

Appendix “E” to this report contains a detailed description of the Committee’s legislative and rule proposals which were approved by the Chief Administrative Judge and adopted by the Legislature or by administrative order with approval of the Administrative Board of the Courts from 2015 through 2020.

Proposals for 2022

For 2022, we again divide our legislative proposals into those with special covid related significance and other proposals, both as to new legislative proposals and previously endorsed legislative proposals. We do this because the Delta and Omicron variants remain concerning as we begin 2022. However, we continue to endorse our other proposals designed to further the Excellence Initiative by improving the fairness and efficiency of matrimonial practice.

Previously Endorsed Legislative Proposals with Special Covid Related Significance

Proposal on Mandatory E-Filing in Matrimonial Actions (Modified)

One of our key priorities in 2019 and 2020 was a new legislative proposal by the Office of Court Administration that would authorize the Chief Administrative Judge to mandate e-filing of court papers in matrimonial actions. We supported this proposal in 2021 as one of our three key priorities but in a modified and expanded form as proposed by the Office of Court Administration. In this report, we again endorse the modified and expanded proposal of the Office of Court Administration as one of our key priorities.

In 2015, the Legislature enacted CPLR 2111(b)(2)(A), which authorized the Chief Administrative Judge in his or her discretion to mandate the electronic filing of court papers in all cases in Supreme Court, after consultation with the bar and county clerks and agreement from the county clerks in counties outside New York City, with only a limited number of exceptions.²⁸ One of

²⁸ The legislation provides:

2. In the rules promulgated pursuant to subdivision (a) of this section, the chief administrator may eliminate the requirement of consent to participation in this program in: (A) one or more classes of cases (excluding matrimonial actions as defined by the civil practice law and rules, ... (i) Notwithstanding the foregoing, the chief administrator shall not eliminate the requirement of consent in any county until after he or she shall have consulted with members of the organized bar including but not limited to city, state, county and women's bar associations; with institutional legal service providers; with not-for-profit legal service providers; with attorneys assigned pursuant to article eighteen-B of the county law; with unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any program of electronic filing in such county that requires consent or who would be affected by a program of electronic filing in such county should the requirement of consent be eliminated; with any other persons in the county as deemed to

those exceptions was in matrimonial actions. Since 2015, experiments with consensual electronic filing in matrimonial cases in counties such as Westchester have proven very successful, and in our 2019 and subsequent reports, our Committee unanimously recommended the further step of eliminating the matrimonial action exception to mandatory electronic filing. Allowing the Chief Administrative Judge to require electronic filing in such actions after consultation with and consent of the county clerks and the bar in certain counties will promote the Chief Judge's Excellence Initiative by eliminating frustration of litigants in filing papers, reducing delays by courts in reviewing submissions, and increasing confidence in the judicial process for the reasons we will outline in detail later in this report.

The expanded version of the legislative proposal would authorize the greatest possible use of e-filing in the courts. This proposal had and continues to have special significance during the covid pandemic because electronic filing through the NYSCEF system has proven invaluable in expanding litigants' ability to file matrimonial actions during this public health emergency. Under this measure, the Chief Administrative Judge would be permitted to institute e-filing - on either a voluntary or mandatory basis - *in any or all* of the State's trial courts and in any class of cases, including courts of civil jurisdiction such as Supreme Court where matrimonial cases would be heard. The modified proposal continues the present exemptions from mandatory e-filing for unrepresented persons and for certain lawyers without technical skills or equipment. The modified proposal also continues the requirement for consultation with various bar associations and attorneys.

The importance of mandatory electronic filing in matrimonial actions cannot be overstated. Many bar associations have expressed support for mandatory e-filing in matrimonial cases. Attached to this report as Appendix "D," are the Resolution of the Family Law Section of the NYS Bar Association and News Release of the Women's Bar Association of the State of New York ("WBASNY") available at https://www.wbasny.org/post_news/wbasny-supports-mandatory-e-filing-in-matrimonial-matters/. The WBASNY News Release points out that "Mandatory e-filing, with exemptions for pro se litigants and lawyers not having the necessary technology, would enable litigants to advance their cases and eliminate potential barriers to access to justice. It would also mitigate the effects of the COVID-19 outbreak on the courts." Mandatory e-filing in matrimonial actions with exceptions for pro se litigants and attorneys lacking technical skills is also endorsed by legal service providers who represent indigent litigants.²⁹ Our Committee again supports the modified and expanded legislative proposal as necessary to the fair and efficient processing of matrimonial cases, not only during the covid pandemic when it has special significance for allowing access to justice during covid, but for the future. The modified and expanded proposal remains one of our three key priorities in 2022. We urge the Legislature to enact this legislation and the Governor to sign it in 2022.

be appropriate by the chief administrator; and with the county clerk of such county (where the affected court is the supreme court of a county outside the city of New York), and (ii) only after affording them the opportunity to submit comments with respect thereto, considering any such comments, including but not limited to comments related to unrepresented litigants and, in the instance of any county outside the city of New York, obtaining the agreement thereto of the county clerk thereof. All such comments shall be posted for public review on the office of court administration's website (N.Y. CPLR 2111 (McKinney).

²⁹ See letter to Justice Sunshine dated September 9, 2020 from Laura Russell, Director of the Family Domestic Violence Unit of The Legal Aid Society attached to this report as Appendix "D-1 ".

Previously Endorsed Legislative Proposals with Special Covid Related Significance

We again propose this year three legislative proposals dealing with emergencies in matrimonial cases which have special covid related significance. We introduced these proposals for the first time in our 2021 report. We also endorse again two proposals from prior reports which have special covid related significance. All five proposals not only have special covid related significance but also promote the Chief Judge's Excellence Initiative.

Three Proposals Dealing with Emergencies Which Result in the Prevention of Filing Actions for Divorce or Important Relief in Matrimonial Actions

Our three legislative proposals dealing with emergencies newly introduced in last year's report are designed to deal with issues that have arisen in matrimonial cases during the covid pandemic or any future emergency. These issues result from the former Governor's having declared an emergency which causes the Chief Judge or Chief Administrative Judge to issue an Administrative Order barring as non-essential the filing of actions for divorce or applications for retroactive modification of child support or maintenance. The proposals will prove useful as long as the covid pandemic continues and will be in place for future emergencies.

The first of the three proposals relates to commencement of matrimonial actions. The exclusion of matrimonial actions from the list of essential applications was necessary since matrimonial actions may take months or years to complete, and the issues involved do not qualify as necessary for immediate relief unless there is need for an order of protection or other type of urgent relief which would qualify as essential on its own.

DRL § 211 currently requires that matrimonial actions be commenced by filing of the summons with notice (or the summons and verified complaint). In order to permit matrimonial actions to commence during covid despite their classification as non-essential, the Office of Court Administration expanded the NYSCEF system in certain counties and accepted filings by mail in other counties, but legislative change is also needed. We propose a legislative amendment which would require commencement of matrimonial actions by service rather than filing of the summons with notice or summons and verified complaint during an emergency declared by the Governor resulting in a prohibition on filing until normal filing is once again permitted. The proposal requires payment of an index number fee or application for poor person relief pursuant to CPLR 1101(d) within 21 days of permission to file by Administrative Order of the Chief Judge or Chief Administrative Judge, and if the poor person's relief is denied, the index fee must be paid within 120 days of the denial as required by CPRL 1101(d).

The second of the three proposals relates to the date of effectiveness of automatic orders during an emergency declared by the former Governor which resulted in a prohibition on filing the summons. The automatic orders statute (DRL § 236 (B)(2)(b)) requires that the automatic orders will become effective upon plaintiff upon filing of the summons. Our proposal modifies the statute to provide that in the event of an emergency declared by the Governor which results in a prohibition on filing the summons, the automatic orders will become effective upon plaintiff upon service of the summons on the defendant. This proposal is combined with our previous proposal to update and clarify the automatic orders statute. The provisions in our previous proposal are all the more necessary in these times of economic distress due to loss of employment and furlough during covid in

order to provide notice of a tax lien, foreclosure, bankruptcy or litigation to the other spouse once a divorce action has been commenced. Also, the prohibition on use of electronic devices to obtain information about the other party without their knowledge and consent during the pendency of the action is even more relevant as technology developments have moved faster through virtual meetings and work at home.

The third proposal is a composite proposal that modifies various provisions of the Domestic Relations Law and Family Court Act which presently either completely prohibit or provide that no modification shall reduce or annul arrears of child support or maintenance accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief prior to the accrual of such arrears.³⁰ Our proposal would clarify that the declaration by the Governor of a state of emergency which resulted in a prohibition on filing such application by the Chief Judge or Chief Administrative Judge during such emergency, shall constitute good cause for failure to make application for such relief and permit the court to grant relief retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion might deem appropriate. This proposal is intended to provide some relief to the payor or payee spouse who can prove entitlement for relief (e.g., change of circumstances) but was prevented from filing because of the emergency; but there is a limitation of six months for the application to be filed after filing is again permitted by the Administrative Order of the Chief Judge or Chief Administrative Judge. The proposal also makes clear throughout that not only the payor, but the payee will be able to apply for relief under the provision which allow the payee to seek upward modifications of support “nunc pro tunc” based on newly discovered evidence.

In the case of our proposed revisions to DRL §236(B)(9)(b) (2)(iii), and FCA §451, the proposal not only clarifies that emergencies declared by the Governor resulting in a prohibition on filing qualify as good cause without any question, but also amends these statutes to remove the absolute prohibitions on the court’s modifying child support awards retroactively even for good cause to conform with case law where courts have aimed at greater flexibility where applications are prevented because of “rare circumstances resulting in grievous injustice”³¹ or “impossibility”³² such as a public health emergency. As Professor Merrill Sobie comments about such cases with regard to

³⁰ Our proposal does not modify the provisions of either DRL §244 or FCA §460 which deal with entry and docketing of judgments where filing issues because of emergencies usually don’t apply. By this point in the proceeding, the parties will have had many opportunities to seek modifications. Our decision not to modify these provisions was made on the recommendation of the Chief Administrative Judge’s Family Court Advisory and Rules Committee (FCARC). We understand that FCARC is supportive of our proposal.

³¹ See *Reynolds v. Oster*, 192 A.D.2d 794, 795, 596 N.Y.S.2d 545 (1993) allowing retroactive modification of child support arrears where the child had become emancipated without petitioner’s knowledge and petitioner asked for relief from the time of emancipation rather than the date of filing the application. The court stated: “In denying petitioner’s request, Family Court relied on Family Court Act § 451 which provides that Family Court may not “reduce or annul child support arrears accrued prior to the making of an application pursuant to this section”. Nevertheless, while it is technically true that granting petitioner the abatement he requests would result in a reduction of the arrears owed, we believe that this is one of the rare circumstances where an overstrict application of this statute would result in “grievous injustice” to a parent and a form of equitable estoppel should operate...”

³² See *Comm’r of Soc. Servs. v. Grant*, 154 Misc. 2d 571, 574, 585 N.Y.S.2d 961 (Fam. Ct. 1992) stating: “I find that, if it was *impossible* for the respondent to pay child support and *impossible* for him to move for relief from the order, the Hearing Examiner may relieve him of responsibility for child support from the date it became impossible for respondent to act. Impossibility of performance should not be confused with “good cause” to excuse spousal support. (Family Ct Act § 451.) Good cause is a considerably lower standard.”

FCA § 451 in the Practice Commentaries:

“The subset of cases at least provides a precedent for limited relief, although even an expanded “rare circumstance” or “impossibility” prerequisite is difficult to meet. In the more usual situations, for example where the temporarily unemployed person reduces support payments without seeking a modified court order, the doctrine is of no avail. Presumably, the “rare circumstances” or “impossible” safety net may also be employed when seeking an upward modification, although every case to date has involved a downward modification petition. (Suppose, for example, the custodial parent and the child were seriously injured in an accident, precluding their petitioning for the needed and legally justified child support increase.) Applying the overly rigid rule may harm either party, and an expanded equitable exception is needed to temper the statute’s impact.”³³

We believe all three proposals will promote the Chief Judge’s Excellence Initiative by increasing access to justice during pandemics and other emergencies.

Two Previously Endorsed Legislative Proposals Designed to Ease Access to Justice During Covid

In addition to the three proposals dealing with emergencies described above, we also reintroduce two other previously endorsed legislative proposals which also have special covid related significance because they are designed to make it easier for litigants to present their cases when social distancing concerns and access to the courts is more difficult, especially for self-represented litigants and less monied spouses.

Rebuttable Presumption on Proof of Expenses in Matrimonial Cases

First, we resubmit our legislative proposal for a rebuttable presumption on proof of expenses in matrimonial cases pursuant to CPLR rule 4533-c. This measure has special covid related significance because it enables parties to introduce expenses without having to produce the person who performed the service, which might be especially difficult during covid. The proposal would impose a cap of \$10,000 on invoices in matrimonial cases, a much more realistic amount than the existing \$2,000 cap on invoices in general civil cases pursuant to rule 4533-a. As Vincent Alexander observes in the Practice Commentaries regarding the general rule for all civil cases, “The amount specified in the rule as originally adopted has steadily increased by amendment over time and is long overdue for an upward adjustment.” (CPLR 4533-a (McKinney)). The rule we propose for matrimonial actions would also allow invoices for any court-ordered expenses, a much broader category than allowed under rule 4533-a, and would allow more than one invoice per provider. These differences are designed to make it easier for matrimonial litigants, especially unrepresented litigants, to admit documents into evidence. We propose the new rule as a separate rule for matrimonial cases because, in family matters, it is especially frequent and necessary for small expenses to be incurred for children’s expenses for several children and other family matters.

³³ N.Y. Fam. Ct. Act § 451 (McKinney).

This rule, like the general civil rule 4533-a, allows a plaintiff to prove the reasonableness and necessity for an itemized bill for services without having to produce the person who provided the invoice, provided that certain formal requirements specified are met.

Unlike CPLR 4533-a which is labelled “prima facie proof,” our rule creates a rebuttable presumption. Vincent Alexander notes, with regard to the general civil rule in CPLR 4533-a, that, even though it is labelled “prima facie proof of damages,” it allows for possible rebuttal of the expenses by requiring notice to the other party that the bill will be offered without foundation evidence at least 10 days before trial so that the other party can subpoena witnesses and gather rebuttal evidence. However, our rule is even clearer so that everyone, even self-represented litigants, will understand that the presumption can be overcome. This will prevent the rule from being abused. Our rule also provides a procedure to follow so that the party offering the proof will get notice in sufficient time that the other party intends to rebut the presumption and can prepare to subpoena witnesses or gather other proof before trial. In addition, our rule is labelled “proof of expenses” rather than “proof of damages” to reflect the fact that in matrimonial actions, the parties usually claim expenses rather than damages which are more commonly sought in tort and personal injury actions. Our new rule also uses gender neutral language by speaking of “the affiant’s employer” rather than “his employer.”

Demonstrating the need for our proposal is a recent article in the *New York Law Journal* where the author, Marilyn Sugarman, states:

“It is long past time to amend not only the dollar limitation set forth in the statute, but to allow a greater number of invoices from the same provider, particularly if there is testimony and/or other documentary evidence offered to substantiate the claims. A combination of bills or invoices; a credit card statement; canceled check; Venmo or Zelle message; or an email or text message-together with testimony of the party who paid the invoice or bill-should present a sufficient indicia of reliability to prove payment of an expense.

Conclusion

If New York state is not prepared to adopt a residual hearsay exception that codifies when any hearsay statement should be admissible-after the adverse party is given reasonable notice of the intent to offer the statement-so long as there is a guarantee of trustworthiness (see [Fed. R. Evid. 807](#)), there should at least be an amendment to [CPLR 4533-a](#) to relax some of the onerous requirements under the Rule. This would benefit practitioners who want to be assured that their evidence will be admitted at trial, rather than trusting that the court will determine that a litigant has provided a sufficient foundation for the admission of bills and invoices into evidence.”

Our proposal corrects several of what Ms. Sugarman calls the “onerous requirements under the Rule,” not only the dollar limitation, but also the allowance of multiple invoices from the same provider.

It is our hope that the proposal will be enacted in 2022. This proposal is needed more than ever during covid when filings and appearances in matrimonial actions are more limited and difficult. It is designed to make it easier for matrimonial litigants to admit documents as to their expenses into evidence.

Limited Appearance by Counsel to Apply for Counsel Fees for the Non-Monied Spouse

Second, we resubmit our proposal to allow a limited appearance by counsel to apply for counsel fees on behalf of the non-monied spouse. This proposal modifies DRL § 237(a) to provide that, notwithstanding anything in CPLR 321 to the contrary,³⁴ an attorney may make a limited appearance to apply for counsel fees for the non-monied spouse in a divorce action. This proposal has special covid related significance. Non-monied spouses are especially disadvantaged during covid if they do not have counsel because it is difficult to file papers and make appearances. This proposal would make it easier for them to exercise their rights pursuant to DRL 237(a) to seek an award of counsel fees in the litigation by encouraging attorneys to make applications on their behalf for counsel fees and not be required to make a formal appearance for the entire case.

This proposal took on new significance when both the NYSBA House of Delegates³⁵ and the New York courts³⁶ endorsed the concept of limited scope representation.

Our proposal is designed to encourage applications pursuant to DRL §237 for counsel fees for the non-monied spouse, thereby realizing the Legislature's goal in enacting DRL §237 of making available funds for non-monied spouses to "equalize the playing field" in matrimonial litigation. If enacted, this legislation will reduce the number of indigent litigants that are forced to either represent themselves or rely on the limited number of pro bono and assigned counsel available to assist them. Thus, our proposal is clearly an access to justice measure furthering the Chief Judge's Excellence Initiative.

³⁴ See our discussion later in this report of the requirements of CPLR 321 which might prohibit withdrawal of the attorney once the application for counsel fees is made.

³⁵ 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).

³⁶ See Joel Stashenko, "NY Courts Endorse 'Limited-Scope' Representation," *NYLJ*, 12/20/16, Pg.1, Col. 5.

Other New and Previously Endorsed Legislative Proposals

Other New Legislative Proposals

1. Proposal to Amend the Child Parent Security Act to Allow an Anonymous Caption in Public Files (FCA 581-205) (New)

The Committee proposes this year an amendment to the Child Parent Security Act enacted in 2020 as chapter 56, Laws of 2020. The amendment would ensure that the sealing provisions of the Act are not compromised by rules requiring parties' names in captions in papers. The Child Parent Security Act provides that Court records relating to parentage proceedings shall be sealed with certain exceptions for child support administration by state authorities, but may be available for inspection and copying only by the parties or the child. However, pursuant to both the CPLR and Court Rule, the County Clerk as the Clerk of the Supreme Court or the Surrogate's Court Clerk where the initial petition is filed is required to display the names of parties unless the statute, a court rule or court order specially prohibits.³⁷ These rules are intended for the typical type of litigation where the parties' interests are adverse to each other and the defendant needs to know the plaintiff's identity in order to defend the case, and where there is no statutory sealing requirement as there is with the Child Parent Security Act.³⁸ Even then, there are exceptions granted depending on the facts of the case.³⁹ By

³⁷See CPLR 2101 (c) which reads as follows:

c) Caption. Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the index number of the action if one has been assigned. In a summons, a complaint or a judgment the title shall include the names of all parties, but in all other papers it shall be sufficient to state the name of the first named party on each side with an appropriate indication of any omissions.

N.Y. C.P.L.R. 2101 (McKinney).

See also 22 NYCRR section 202.5[d][1] which reads as follows:

“ In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator's rule or order of the court:...

(ii) The summons, complaint, petition, or judgment sought to be filed with the County Clerk contains an “et al” or otherwise does not contain a full caption;

³⁸ See *Doe v. Roman Cath. Archdiocese of New York*, 64 Misc. 3d 1220(A), 117 N.Y.S.3d 468 (N.Y. Sup. Ct. 2019) where Justice Ruderman stated:

“ The rationale for the disclosure of a plaintiff's name in a complaint or petition is grounded in the basic due process rights of notice and an opportunity to be heard” (3B Carmody-Wait 2d § 28:6) [Note: online treatise].”

³⁹ See 82 N.Y. Jur. 2d Parties § 5 stating:

“However, a plaintiff may be permitted to proceed anonymously if there are good reasons for doing so and the plaintiff's identification can be made with enough certainty to allow the court to acquire jurisdiction.”

contrast, in most cases under the Child Parent Security Act, the parties petition the court consensually for a judgment of parentage, and rules as to names of parties in captions are inapplicable.

Showing the names of the parties or the child in the caption of any document in the file could threaten the sealing protections of the Child Parent Security Act. However, in Supreme Court actions, at present, the only way for a litigant to ensure that names of the parties or child will not be revealed in the caption of a document in the proceedings is by submitting a required letter application for an anonymous caption in all publicly viewable case listings. A model sample letter application is posted on NYSCEF and is available on Divorce Resources at [letter.application.pdf \(state.ny.us\)](https://www.nysCEF.org/letter.application.pdf), but may also be submitted in hard copy. Once the application is approved by the court, the County Clerk or Surrogate's Court Clerk is authorized not to disclose the name of the child or any party in the caption on any document publicly viewable. However, use of the letter application requires an application in every case and wastes judicial resources as well as litigants' time. It would be far more efficient to amend the statute as we propose. Our proposal would allow the County Clerk (as the clerk of the Supreme Court) or the Surrogate's Court Clerk who receives the files not to display the name of the child or party in any document, index or minutes available to the public.

It should be noted that the issue of anonymous captions is a Supreme and Surrogate's Court issue and not currently an issue in Family Court because in Family Court there is no publicly available record of the names of the parties. Nevertheless, on the recommendation of the Chief Administrative Judge's Family Court Advisory and Rules Committee, we have made the proposal applicable to Family Court Clerks as well as County Clerks and Surrogate's Court Clerks, in case in the future it should happen that Family Court calendars on E-Courts contain full party names.

We strongly urge adoption of our proposal to ensure confidentiality of highly intimate information, while preserving judicial resources and promoting efficiency.

Proposal to Amend the Domestic Relations Law with Respect to Awarding Possession of Companion Animals (Chapter Amendment to DRL 236(B)(5(d)(15)) (New)

A recent amendment to the Domestic Relations Law added chapter 509 of the Laws of 2021 which imposes the requirement that courts consider the best interest of companion animals in awarding possession of such animals pursuant to the New York Equitable Distribution Law.

The Committee believes that a chapter amendment is needed to clarify that the definition of a companion animal does not include service animals since such animals should generally be awarded to the party whom they are trained to assist without consideration of such animals' best interests.

The Committee also believes that the new statute should enumerate specifically what the court is to consider as to the best interest of a companion animal when awarding possession in a divorce or separation proceeding as in other states throughout the nation. The guidelines would recognize that companion animals are a unique property category and are treated differently from mere chattel. In making its determination to keep the pet in his present home, a First Department decision concluded that the intangibles transcended the ordinary indicia of actual ownership or right to possession such as title, purchase, gift, and the like. See *Raymond v. Lachmann*, 695 N.Y.S.2d 308 (App. Div. 1st Dept.

1999)). As to ownership of the parties' dogs, the Tennessee trial court considered their needs (the dogs) and the ability of the parties to care for them. *See Baggett v. Baggett*, 422 S.W.3d 537 (Tenn. Ct. App. 2013). In *Aho v. Aho*, the Michigan trial court found that awarding Finn (the dog) to plaintiff was proper and in the best interest of all involved to keep all of the animals together. *See Aho v. Aho*, No. 304624, 2012 Mich. App. LEXIS 2104 (Ct. App. Oct. 23, 2012). The family court in Alabama properly determined that it was in the dog's best interest to remain in the family home where he had lived for six years and had a yard to run in instead of living in the daughter's hotel room. *See Placey v. Placey*, 51 So. 3d 374 (Ala. Civ. App. 2010). The family court considered the dog's best interest in determining that the mother was his true owner. *Id.*

A bill previously introduced in Rhode Island excludes service animals from the definition of companion animals whose best interests should be considered when awarding possession in a matrimonial proceeding. The bill enacted in New York has no presumption or preference as to awarding possession of a service animal utilized by one of the parties or the children. The Rhode Island bill also sets forth specific factors for the court to consider in determining the best interest of the animal, while the enacted New York law lacks any such guidance for Judges making such determinations. See 2021 Bill Text RI H.B. 5580. We have copied both features of the Rhode Island bill into a proposed chapter amendment to the newly enacted DRL 236(B) (5)(d)(15).

Other Previously Endorsed Legislative Proposals

We also reintroduce this year a number of previously endorsed legislative proposals which, although they do not have special covid related significance, are important to the fair and efficient administration of justice in matrimonial cases.

Modified Statutory Proposal for Divorce Venue

We once again endorse as one of our three greatest priorities this year (along with mandatory e-filing in matrimonial actions and an increase in assigned counsel fees) our statutory proposal on divorce venue. It is extremely important to achieving the goals of the Excellence Initiative of access to justice and efficiency. 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 DRL§ 236(B)(2).

This proposal addresses the problem of divorce filings pursuant to CPLR 509 which allows venue to be designated by the plaintiff in counties without a proper nexus to the parties or their children. Our proposal is supported not just by New York County, but by many Judicial Districts throughout the State similarly burdened. The burden of CPLR 509 venue designations has been great on particular counties upstate and downstate for many years, for example, in the 1st, 2nd, 6th, 7th, and 8th Judicial Districts. While statistics are not yet available for the full year 2021, the burden on these and many other Districts around the State appears to have continued, even though filings were generally reduced due to the pandemic in 2020. See Appendix “G” to this report showing Court Research statistics for every County in the State from 2011 to 2020. We have concerns about this

problem in all parts of the State, not just New York County as discussed in *Castaneda v Castaneda*,⁴⁰ Indeed, we have recently received reports from Administrative Judges and District Executives in the western, northern and middle portions of the State about large numbers of out of county uncontested divorce filings for 2021, many of them from New York County and Kings County. It was reported to us that one Judge in a County on the northern tier of the State had 987 uncontested divorce cases assigned to him in 2021. Of those 987 filings, 476 were filings by attorneys from distant counties, including 280 from one attorney in New York County, two from another attorney in New York County, eight from one attorney in Kings County, and 186 from one attorney in the Village of Pomona in Rockland County.

Designating venue in a divorce action in a distant county from the residence of the parties and children burdens the judicial resources of that county and deprives residents of that county of access to those resources. It means that judges will have to appoint and deal with counsel and mental health and other professionals in distant jurisdictions with whose work and expertise they are unfamiliar. It may also mean that parties and their children may have to travel long distances to have matters heard or meet with professionals in the venue designated. When venue is designated in a distant county, defendant is more likely to default rather than answer, giving up valuable rights in the divorce, and increasing the likelihood of post-judgment applications. In *Castenada*, Justice Cooper suggested that one of the reasons plaintiffs in distant counties may choose to file in a distant county is that they know their spouse will be likely to default if they must travel far. When these defendants begin to understand the consequences of having defaulted, in that critical issues relating to spousal support, custody and support of children, and distribution of marital property will 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.

Electronic filing will greatly alleviate problems for defendants caused by CPLR 509 venue designations and will also make it easier for plaintiffs to file and prosecute divorce actions in the county of residence without the need to forum shop because divorce actions will proceed more efficiently. But our legislative proposal will still be necessary to completely eradicate CPLR 509 designations in distant counties unrelated to residence.

Even if defendants do not default and are able to answer electronically, as long as plaintiffs can utilize CPLR 509 to designate venue in matrimonial actions in distant counties, defendants may still be required to travel long distances. Judges may require appearances to resolve conflicts in the papers or testimony on issues where income needs to be clarified on the record, or where the mandatory records checks reveal a disclosed or undisclosed prior or present Order of Protection or pending or prior neglect proceedings, or that a party is a registered sex offender. See *Otto v. Otto*, 150 A.D.2d 57, 60, 545 N.Y.S.2d 321 (Second Dept. 1989), where the court, in reversing and remanding the case to the trial court, held that there must be an inquest to determine the economic issues of a divorce where there was a default judgment.

⁴⁰ *Castaneda v Castaneda*, 36 Misc 3d 504 [Sup Ct 2012].

We first introduced our divorce venue proposal in our 2017 Annual Report. This proposal was adopted as part of the OCA 2017 Legislative Program (OCA #52) and was introduced in the Legislature as 2017-18 as S. 5736. Later in this report, we will detail modifications we made to provisions of the proposal in 2019 and 2020 to address comments we received from bar groups and others.

We believe that our revised divorce venue proposal, as reflected in Assemblyman Dinowitz's 2019-2020 bill A. 7517, continues to accomplish the goals of the Excellence Initiative by ensuring that divorces will be processed more quickly statewide as the volume of divorces is more evenly distributed among counties. Residents of those counties will not have to share judicial resources in their counties with residents of other counties. This legislation will also ensure better outcomes in divorce cases by ensuring that defendants are less likely to default, that parties and their children do not have to travel long distances for in-person hearings, and that judges can appoint and deal with professional counsel and forensic evaluators in custody matters whose work and expertise they are familiar with. We urge passage of this bill as an access to justice imperative.

Access to Forensics in Custody Cases

We again resubmit our proposal on access to forensics in custody cases. The subject of access to forensic reports has been widely discussed among the legal community in the last few years. It is one aspect of the examination of the use of forensic reports in custody cases covered in our White Paper on Forensic Reports in Custody Cases which was attached as Appendix H to our 2021 report.⁴¹

In January 2013, three different rule proposals on access to forensic reports in custody cases were put out for public comment on this subject. These 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 prior 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.

In our 2017 Annual Report to the Chief Administrative Judge, the 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

⁴¹ Our 2021 Report with Appendices is available at [2021-Matrimonial.pdf \(nycourts.gov\)](https://www.nycourts.gov/2021-Matrimonial.pdf).

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 as 2017-18 S. 6579. Memoranda in opposition to 2017-18 A.1533/S.6300 and in support of 2017-18 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.⁴² Also supporting our proposal was the Children's Law Center of Brooklyn.⁴³

Our proposal was amended in 2018 as S. 6579-A based upon changes we recommended at the suggestion of the Family Court Advisory and Rules Committee and the New York Public Welfare Association, Inc., whose concerns were addressed in the modified proposal.⁴⁴ These changes do not detract 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 to prevent confidential information in the report from being disseminated indiscriminately (as compared to A.1533/S.6300 or the current version thereof introduced as 2019-20 A. 05621 Weinstein/S. 4686 Biaggi). 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 represented 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. For a detailed description of the key provisions of the amended proposal, see Appendix "F-1" to this report.

During 2019, a significant Second Department decision supported the view reflected in our forensics proposal that, in the interest of protecting the confidentiality of the information in forensic reports on custody which contain the most sensitive information about the parties' personal lives, it is not error to deny a pro se litigant a copy of a forensic report provided that the pro se litigant has adequate access to the report (see *Raymond v. Raymond*, 2019 NY Slip Op. 05546, 174 A.D.3d 625, 107 N.Y.S.3d 433 (Second Department 2019)). In a report on 2019-20 A.5621/S.4686 dated May 2019, the Matrimonial Law Committee and the Children and The Law Committee of the New York City Bar Association opposed A.5621/S.4686 and favored our proposal (OCA #27), stating:

⁴² For copies of these Memoranda in Support of our Proposal, see Appendix "H-1" to " to our 2019 Annual Report to the Chief Administrative Judge available at [2019-Matrimonial.pdf \(nycourts.gov\)](https://www.nycourts.gov/2019-Matrimonial.pdf)

⁴³ Children's Law Center, Letters to the Editor, "Parties Deserve to See Forensic Evaluations"(NYLJ March 22, 2017).

⁴⁴ In 2017-18, both our original proposal (S. 6579) as well as the Senate counterpart to A.1533 (S.6300) were before the Senate.

“The Matrimonial Law and Children and the Law Committees of the New York City Bar Association (the “Committees”) write to provide feedback on the proposed legislation which would 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 has proposed a similar but not identical bill (OCA 27-2019)...

The Committees support the approach taken in OCA 27-2019 with a few minor changes and clarifications detailed below. Although A.5621/S.4686 contains several valuable elements, it goes too far in guaranteeing parties access to forensic reports. We believe that OCA 27-2019 strikes a better balance among the competing interests...

The Committees are pleased that OCA 27-2019 follows our recommendation. A.5621/S.4686, 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.

OCA 27-2019 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.”⁴⁵

Although adopted as part of the OCA Legislative Program for 2019-20 and for 2020--21, our proposal has not been introduced in the Legislature since 2017-18 when it was introduced as 2017-18 A.6759. 2017-18. A.1533/S.6300 was reintroduced as 2019-20 A. 05621 Weinstein/S. 4686 Biaggi but was not reintroduced in 2021-21.

In addition to the opposition of the New York City Bar Association Committees quoted above, there was also opposition to 2019-20 A. 05621 Weinstein/S. 4686 Biaggi by the Women’s Bar Association of the State of New York, the Family Law Section of the New York State Bar Association, and the American Academy of Matrimonial Lawyers, New York Chapter.⁴⁶ Aside from the risk of dissemination of private information about children and families, A. 05621 Weinstein S. 4686 Biaggi also created substantial risk for victims of intimate partner violence. As stated by the Women’s Bar Association of the State of New York in their 2019 Position Statement in Opposition, a copy of which is contained in Appendix F-3 to this report:

⁴⁵ See Report on Legislation by The Matrimonial Law Committee and the Children and The Law Committee of the City Bar Association dated, May 2019 attached as Appendix “F-2” to this report.

⁴⁶ See Memoranda of Opposition to 2019-20 A.5621/S.4686 by the Women’s Bar Association of the State of New York, the Family Law Section of the New York State Bar Association, and the American Academy of Matrimonial Lawyers, New York Chapter attached as Appendix “F-3” to this report.

“We are particularly concerned that victims of domestic violence will be targeted and further harmed by this Bill. If parties are given copies of forensic reports, an abuser can easily inflict more abuse on the victim with threats and actual disclosure of the forensic report to employers, relatives and other members of the public.”

During 2021, neither our proposal, nor A.5621/S.4686 moved forward.

Our Committee strongly supports the concept that all litigants should have the ability to read the reports. It is primarily the method of access that appears to be in dispute. It is our hope that our version of the forensics bill or a compromise between our proposal and A. 5621/S.4686 can be enacted in 2022 so that the important issue of access to forensic reports in custody cases can be addressed, thereby serving the dual goals of decisional and operational excellence for the court system, in furtherance of Chief Judge DiFiore’s Excellence Initiative.

Shared Custody Proposal

We resubmit our proposal from our 2021 report which relates to child support in shared custody situations. Although this measure does not have special covid related significance, we believe it is important. We now propose a legislative amendment to the Child Support Standards Act to address the situation in *Rubin v. Salla*, 107 A.D.3d 60, 71, 964 N.Y.S.2d 41 (2013).

In that case, the First Department, reversing the lower court’s denial of the father’s motion for summary judgment dismissing mother’s action for child support, held that the father who had primary physical custody of a child in a shared custody arrangement where the time was not equally divided (over fifty % with the custodial parent father) could not be ordered to pay child support to the mother even though he had far greater income. The majority opinion by Justice Richter stated: “The mandatory nature of the statutory language undeniably shows that the Legislature intended for the noncustodial parent to be the payer of child support and the custodial parent to be the recipient. The CSSA provides for no other option and vests the court with no discretion to order payment in the other direction.” (*Rubin v. Salla*, 107 A.D.3d 60, 67, 964 N.Y.S.2d 41, 47 (2013)). The dissent by Justice Acosta, Presiding Justice of the Appellate Division, First Department, 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.” (*Rubin v. Salla*, 107 A.D.3d 60, 73-74, 964 N.Y.S.2d 41, 52-53 (2013)).

To address this situation which is unfair to the child as pointed out by Justice Acosta, our Committee proposes additional language to the Child Support Standards Act which allows the court

to order the custodial parent to pay recurring payments to the non-custodial parent in special circumstances without changing the basic concept that child support is to be paid by the non-custodial parent to the custodial parent.

In 2021, our proposal was adopted as OCA 2021 #44 and was introduced in the Legislature by Assemblyman Lavine, Chair of the Assembly Judiciary Committee, as A. 7804. We hope it will be enacted in 2022.

Firearms Seizure Proposal

Enacted into law as Chapter 55 of the Laws of 2020, were amendments to the Criminal Procedure Law and the Family Court Act which authorized courts to issue search and seizure orders regarding firearms in connection with orders of protection. Said legislation did not amend the Domestic Relations Law or otherwise address the Supreme Court's statutory authority in a matrimonial action to issue search and seizure orders regarding firearms possessed in violation of an order of protection issued thereunder. Specifically, the Legislature did not add the new search and seizure provisions to sections 240(3)(h) and 252(9) of the Domestic Relations Law, which incorporate by reference the firearms surrender and license suspension and revocation requirements of CPL § 530.14 and Family Court Act §§ 842-a and 846-a. Notwithstanding, in both plenary and consolidated matrimonial proceedings, the Supreme Court retains inherent authority to issue such orders and may do so where necessary and proper to ensure compliance with its order and the safety of protected parties. The Supreme Court has general original jurisdiction in law and equity under the State Constitution even without statutory authorization.⁴⁷ Despite the case law, a statutory change is in order so as to avoid confusion.

We again propose amendments conforming sections 240(3)(h) and 252(9) of the Domestic Relations Law to the CPL and Family Court Act as amended by chapter 55 of the Laws of 2020. The proposal was adopted as 2021 OCA #45. During 2021, A.7957 was introduced by Assemblyman Lavine, Chair of the Assembly Judiciary Committee, based on our proposal. The bill passed the Assembly and was referred to the Senate. We hope this legislation will be enacted in 2022 so that there will be no confusion on this subject. The Courts have meanwhile adopted a form Seizure Order for Supreme Court based on the Supreme Court's inherent authority.⁴⁸

Amendment to Extreme Risk Orders of Protection Act for Orders to be Included in the Statewide Computerized Registry

We continue to recommend a proposal we first introduced in our 2020 report for an amendment to the recently enacted law on Extreme Risk Orders of Protection Act (L. 2019, c. 19). That law was enacted to enable courts to issue orders of protection to prevent people who pose a danger to others or themselves from possessing firearms. The law provides for the surrender or

⁴⁷ See *Kagen v. Kagen*, 21 N.Y.2d 532 (New York Court of Appeals 1968)).

⁴⁸ The form is available on the Divorce Resources website at [SC-3.pdf \(nycourts.gov\)](#)

removal of such person's firearms once the extreme risk order of protection is issued. As explained by the sponsor's memorandum filed with the legislation before it was enacted:

“New York currently lacks a procedure permitting a court to issue an order to temporarily seize firearms from a person who is believed to pose a severe threat of harm to himself, herself, or others unless that person has also been accused of a crime or family offense.”

Once the temporary or permanent extreme risk order of protection is issued, the statute requires the court to notify and provide a copy of the order to various persons and agencies of law enforcement and the criminal justice system. However, nowhere is there a requirement for the court to notify and send a copy of the order to the statewide computerized registry of orders of protection and warrants of arrest that courts are required to check before issuing orders of custody and visitation pursuant to DRL section 240 (1) (a-1) and FCA section 651(e). It is crucial that judges issuing orders of custody and visitation have knowledge of the issuance of such extreme risk orders of protection before they entrust a vulnerable child to the care of such a person.

While CPLR 6347 states that “no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding,” a finding in a proceeding for an extreme risk order of protection would not be binding on a judge determining custody or visitation of a minor child, but merely a relevant and important factor to consider in the best interest of the child. Moreover CPLR 6346 provides that, upon expiration of the extreme risk order of protection, all records shall be sealed; but specifically provides that such records shall be accessible to courts of the Unified Court System, among other necessary parties.⁴⁹ This language makes clear that the Legislature intended this information to be available to judges making custody and visitation decisions.

Thus, we continue to strongly recommend an amendment of the new statute to specifically require the court to provide a copy of the extreme risk order of protection to the statewide computerized registry. This proposal will help protect children from danger, and therefore further the Chief Judge's Excellence Initiative by furthering access to justice.

⁴⁹ § 6346 provides:

Expiration of an extreme risk protection order. 1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order...except that such records shall be made available to:

- (a) the respondent or the respondent's designated agent;
- (b) courts in the unified court system;
- (c) police forces and departments having responsibility for enforcement of the general criminal laws of the state;
- (d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the respondent has made application for such a license; and
- (e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer;...

Proposal to Amend DRL §232 to Allow for Alternative Service of Divorce Summons by Email or Social Media

We continue to endorse again this year our proposal to amend DRL §232 to allow for alternative service of the divorce summons by email or social media. This legislation is necessary because Supreme Court frequently feels compelled to order service by publication in matrimonial actions when personal service on the defendant cannot be made because the defendant cannot be found. Service by publication, however, is generally expensive and often ineffective. In our view, there should be a practical alternative available to the Courts.

This proposal will ensure that service by publication will be used as a last resort only, and will encourage courts to authorize service by email or social media where the court is satisfied there is proof that the social media or email account is active and that the platform to be used is reasonably calculated to reach the defendant. We have defined the term “active” in our proposal to mean that it has been used within the last thirty days in order to prevent litigation.

Amendment to Domestic Relations Law to Require Marriage Licenses in all Cases

We again submit our previously-endorsed legislative 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 reducing litigation and increasing certainty

Amendment to CPLR 3217(a) to Prevent Voluntary Discontinuance Once a Notice of Appearance is Filed

Finally, we submit our previously-endorsed legislative proposal to amend CPLR 3217(a) 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 upon our Committee’s recommendation did much to prevent parties from voluntarily discontinuing matrimonial actions after the expenditure of time and resources.⁵⁰ However, the proposed CPLR amendment would still be desirable as discussed later in this report.

All our previously-endorsed legislative proposals promote the Chief Judge’s Excellence Initiative by promoting judicial efficiency and access to justice.

⁵⁰ The adopted Preliminary Conference Order provides: “If the issue of grounds is **resolved**, the parties agree that Plaintiff/Defendant will proceed on an uncontested basis to obtain a divorce on the grounds of DRL §170(7) and the parties waive the right to serve a Notice to Discontinue pursuant to CPLR 3217(a) unless on consent of the parties.”

Support for Legislation Increasing Assigned Counsel Fees

In addition to Mandatory E-Filing in Matrimonial Cases and our Proposal for Divorce Venue, our other legislative priority this year is an increase in Assigned Counsel Fees for Indigent Adults and Children. In previous reports, we indicated our support for a recommendation of the Commission on Parental Representation to increase assigned counsel fees in Family Court cases and recommended expansion of its application to matrimonial cases and to fees of counsel representing children as well as indigent adults

We now strongly support as one of our three priorities this year legislation which would increase assigned counsel rates to at least \$120 per hour for misdemeanors and to at least \$150 per hour in all other matters, including matrimonial cases on issues where such counsel are assigned, with an annual cost of living increase based on inflation determined by the CPI. This CPI increase is an essential feature of any such legislation, inasmuch as the Legislature has not raised the assigned counsel fee rate in eighteen years. It is also essential that legislation be enacted to remove the existing caps on total compensation received of \$2400 for misdemeanors and \$4400 for all other matters including matrimonial cases. Such legislation will promote the Chief Judge's Excellence Initiative. It will not only increase access to justice for the most vulnerable in our society, but will also ensure efficient processing of cases because attorneys will be available on Panels to accept assignments.⁵¹

The Committee is extremely concerned about the lack of a rate increase since 2004 for attorneys for children and attorneys for adults assigned pursuant to FCA §§ 249 and 262 and pursuant to Judiciary Law § 35 and FCA § 1120. The current rate of \$75 per hour with a statutory maximum of \$4,400 (absent extraordinary circumstances)⁵² was established in 2004 and is woefully inadequate. Compared to fees earned by matrimonial attorneys in the private sector, this rate of compensation discourages many attorneys from joining panels which would require them to accept assignments to represent indigent clients and children on matters involving important issues of custody and visitation and intimate partner violence. We understand it is especially difficult for judges handling matrimonial cases in all parts of the State to make appointments of assigned counsel and attorneys for children because it is difficult to attract new attorneys to serve on panels and there are an increasing number of attorneys leaving the panel or retiring.

Parental representation is an issue in Supreme Court matrimonial actions as well as in Family Court.⁵³ Judiciary Law 35(8) (L. 2006, c. 538) requires Supreme Court Justices to appoint counsel to represent an indigent party in a divorce action on issues over which the Family Court could have exercised jurisdiction such as custody and visitation, family offense proceedings, paternity, and contempt/willful violation proceedings on behalf of a respondent. This important legislation and

⁵¹ We note that there is currently a bill introduced in the Legislature that would accomplish these goals. It is A.6013 Magnarelli/ S. 03527 Bailey, Gaughran, available at [Bill Search and Legislative Information | New York State Assembly \(nyassembly.gov\)](https://www.nyasassembly.gov/bill-search-and-legislative-information). We would support that bill or any other similar bill.

⁵² Section 722-B(3) of Article 18-B of the County Law permits a trial or appellate judge to set compensation in excess of these limits in extraordinary circumstances.

⁵³ See Memorandum of Susan W. Kaufman to Hon. Karen Peters, Chair, Commission on Parental Legal Representation, August 15, 2018.

funding ensured that non-monied spouses would have the same right to paid representation in Supreme Court that they would have had pursuant to FCA § 262 in Family Court with respect to those issues.

Representation is also an issue in Supreme Court regarding representation of children by attorneys for children where independent legal representation is not available. Judiciary Law 35(7) (L. 1989, c. 571) requires Supreme Court and Surrogate Court Justices and Judges to appoint a Law Guardian (now attorney for the child) to represent a child in an action on issues over which the Family Court would have had jurisdiction and as to which the Family Court could have appointed a Law Guardian (now attorney for the child) pursuant to FCA § 249. This right is paramount to protection of the best interests of children in custody and visitation cases (see *Koppenhoefer v. Koppenhoefer*, 159 A.D.2d 113, 558 N.Y.S.2d 596 (1990)).⁵⁴

In her State of the Judiciary Address for 2020, Chief Judge Janet DiFiore stressed in the importance of this issue, stating:

“Across the state we are experiencing a major exodus from our assigned counsel panels. As 18-B and Attorney for the Child compensation rates have stagnated, it has become increasingly difficult to recruit and retain experienced lawyers willing to provide these critical services. This is a crisis that cannot be ignored, not if we want to ensure that indigent criminal defendants are accorded their constitutional right to counsel and not if we want to ensure that the rights of children are protected when their safety and welfare are at stake.

Accordingly, along with our colleagues in the Bar and our partners in the criminal and family justice systems, we will work to support the Legislature and the Executive in achieving an appropriate adjustment in the rates of compensation for 18-B lawyers and Attorneys for Children (The State of our Judiciary 2020, February 26, 2020, at page 12).

The concerns expressed by Chief Judge DiFiore are shared by the New York State Bar Association which approved a resolution on June 18, 2018 calling for legislation increasing assigned counsel rates, including rates pursuant to Judiciary Law § 35.⁵⁵ These concerns are also shared by the Women’s Bar Association of the State of New York, which recently issued a position statement supporting legislation increasing assigned counsel fees (see [2021 – A.6013 / S.3527 | wbasny](#)).

In last year’s report, we recognized that the severe budget cuts imposed by the Covid -19 pandemic necessitated postponing action on this recommendation. This year, the dire budgetary situation that existed last year has eased. We are therefore hopeful that legislation increasing assigned counsel rates will be enacted in 2022. Such legislation will not only increase access to justice for the

⁵⁴ Appellate representation of both parents and children in appeals in matrimonial cases is also an issue pursuant to subdivisions (a) and (b) of section 1120 of the Family Court Act which require representation in lower court cases to continue.

⁵⁵ See “June 18, 2018: State Bar Association Creates Section on Women in Law, Calls for Mandated Counsel Rate Increases and Exemption of Puerto Rico from Merchant Marine Act Provisions.”

most vulnerable in our society, but will also ensure efficient processing of cases because attorneys will be available on Panels to accept assignments.

Rule Proposals

Previously Endorsed Rule Proposals

Proposal to Adopt 22 NYCRR 202.18-a Regarding Statements of Understanding of Forensic Evaluators in Custody Cases

There is currently much debate about forensic reports. As an Appendix H to our 2021 report, we provided a White Paper on Forensic Reports in Custody Cases to address this important topic.

We also proposed in our 2021 report a new matrimonial rule to increase transparency as to the process of “informed consent” in Statements of Understanding of forensic evaluators in custody cases as required by the guidelines of many mental health professional associations. We reintroduce this rule proposal again in this report. This rule proposal will increase transparency about forensic reports. It was drafted after consultation with the Mental Health Professionals Committee of the Appellate Divisions of the 1st and 2d Departments. It will ensure that statements of understanding do not conflict with the orders of appointment of forensic evaluators. The rule requires that the statements of understanding must be sent upon receipt of the order of appointment by the evaluator to the attorney representing the litigant, or to any self-represented litigant, and that such statements must be reviewed, signed and returned to the Court and the evaluator within ten days. Review by counsel and self-represented litigants prior to signature will help to ensure that the parties understand the terms of the statements of understanding and that the statements of understanding comply with the orders of appointment. The ten-day time limit will make certain that often lengthy custody proceedings are not subject to further delays as a result of the procedure.

Amendment to Automatic Orders Rule

Once our modified proposal for amendment of the automatic orders statute is enacted as described in this report, we recommend a conforming amendment to the court rule (22 NYCRR § 202.16-a) as shown in this report.

Proposal to Amend 22 NYCRR 202.16(h)(3) Regarding Statements of Disposition [22 NYCRR 202.16(h)(3)]

We again include in this report a rule proposal to amend the requirement in the matrimonial rules that the Statement of Proposed Disposition must be filed with the court with the Note of Issue.⁵⁶ Our proposal would allow the Statement of Proposed Disposition to be filed later at a pre-trial conference after the Note of Issue has been filed, or as otherwise directed by the court. This would save litigants expense by not having to submit the Statement of Disposition when the issues have not been clearly defined, thereby increasing access to justice for matrimonial litigants and saving time for judges in reviewing premature submissions.

⁵⁶ We thank Hon. Jeffrey Goodstein, Supervising Judge for Matrimonial Matters in Nassau County, for this suggestion.

Custody Severance Rule Proposal

We also restate our custody severance rule proposal designed to speed custody and visitation decisions. This proposal furthers both decisional and operational excellence by promoting faster and fairer resolutions.

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

We also restate our proposed amendment to 22 NYCRR § 202.16(k)(3) to reform the rules related to matrimonial proceedings regarding motions for counsel fees by the non-monied spouse pursuant to DRL §237, not only as to the 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 is in fact required by 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 could keep confidential.

Past, Pending and Future Committee Projects

New and Ongoing Committee Projects

Committee Outreach to Local and State Bar Associations on Diversity and Inclusion, Including Proposal to Hold a Joint Summit with the Family Law Section of the New York State Bar Association

The Committee continues to examine the subject of Diversity in the Bench and Bar and Implicit and Explicit Bias in Matrimonial Actions. Following the October 1, 2020 release of the report of Secretary Jeh Johnson, appointed by Chief Judge DiFiore as Special Adviser on Equal Justice in the Courts, our Committee reviewed the report available at www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf with a view toward examining what changes may be necessary to increase diversity and inclusion in matrimonial practice.

At the March 19, 2021 Committee meeting, Hon. Edwina Mendelson, Deputy Chief Administrative Judge for Justice Initiatives discussed in detail the Report of Secretary Johnson. She explained in depth how the recommendations of Secretary Johnson are being implemented in the court system pursuant to Chief Judge Janet DiFiore's direction. As the Chief Judge stated in her 2021 State of the Judiciary Address at page 18:

"Secretary Johnson and his team at Paul Weiss issued a comprehensive report with a set of practical recommendations that we have fully embraced, and are now in the process of implementing, in a manner that is designed to be inclusive, open and transparent. As Chief Judge of the Court of Appeals and the State of New York, and on behalf of our entire court system, I have made a solemn, unshakeable commitment to achieve a policy of zero tolerance for racial bias and discrimination. Our approach to bias, discrimination and harassment is, and will be, for as long as I have the privilege of serving as your Chief Judge, zero tolerance."

As discussed earlier in this report, the Subcommittee on Diversity and Inclusion met frequently during 2021 on ways to increase diversity in the matrimonial bar by coordinating with Bar Associations and Law Schools.⁵⁷ The Committee and Judge Sunshine have done outreach to local and State Bar Associations on ways to increase diversity and inclusion in the Matrimonial Bar, including a proposal to the Family Law Section of the State Bar on behalf of the Committee to hold a Joint Summit on these issues. The Subcommittee will play a major role in planning the Summit.

Gender Fairness in the New York Courts

On November 23, 2020, the Gender Fairness Survey conducted by the New York State Judicial Committee on Women in the Courts was released. The Survey is available at www.nycourts.gov/LegacyPDFS/IP/womeninthecourts/Gender-Survey-2020.pdf. The Committee

⁵⁷ The members of the Subcommittee on Diversity and Inclusion are Hon. Jeffrey Goodstein, Hon. Cheryl Joseph, Hon. La Tia Martin, Hon. Emily Ruben, Yesenia Rivera, Esq. and Zenith Taylor, Esq.

continues to review the Survey and its recommendations in connection with ensuring gender fairness in matrimonial practice.

Recommendations on Harmonization of the Uniform Rules with the Matrimonial Rules

As discussed earlier in this report, a new project of the Committee in 2021 was to assist Judge Sunshine with review of the revisions to the Uniform Rules adopted at the end of 2020 by A/O 270/20.⁵⁸

Resumption of Consensual Uncontested Divorce Pilot Project

As the Pilot Project resumes in 2022 after a pause during covid when parties were unable to meet to sign the documents, the Committee will assist Justice Sunshine with its implementation.

Recommendations in Response to Covid-19

During 2021, our Committee's again assisted Judge Sunshine in responding to covid. Judge Sunshine again asked the Committee for their suggestions about court rules, technology and health issues relating to matrimonial practice during covid, as well for their suggestions for dealing with evidence and ways to conduct hearings and court conferences in a safe manner.

Follow-up to White Paper on Forensic Reports in Custody Cases

A number of bills were introduced in the Legislature in recent years regulating or prohibiting the use of forensic evaluations in custody and visitation proceedings.⁵⁹ To address concerns about forensics reports in custody cases as evidenced by some of these bills,⁶⁰ our Committee prepared an informational White Paper which is attached as Appendix " H " to our 2021 report.⁶¹ The White Paper does not discuss specific bills, but rather is intended to inform policymakers, advocates and the public at large about the purpose of forensic evaluations and the role they play in custody cases.

Our White Paper continued to have significance in 2021, especially while the topic was being studied by the Governor's Blue Ribbon Commission on Forensics. The White Paper is available as an Appendix H to our 2021 report available at [2021-Matrimonial.pdf \(nycourts.gov\)](#). We provided a copy to the Governor's Blue Ribbon Commission on Forensics and to and members of the

⁵⁸ See Notes 19 and 20 supra for a copy of A/O/270/20 and for members of the MPARC Special Subcommittee on Harmonization of A/O 270/20 with the Matrimonial Rules

⁵⁹ Some of these bills have been motivated by tragic incidents involving children. Judge Sunshine has been appointed to the NYS Unified Court System's Advisory Council on Child Fatalities chaired by the Hon. Edwina Mendelson, Deputy Chief Administrative Judge.

⁶⁰ Some of the bills we studied included not only A. 05621 Weinstein/ S.4686 Biaggi which we discuss at length in this report in connection with our Committee's proposal on access to forensics in custody cases, but also A. 9888 Dinowitz, A. 10424 Hevesi, and S. 8459 Sanders.

⁶¹ As discussed elsewhere in this report, we have also proposed a matrimonial rule to increase transparency in Statements of Understanding by forensic evaluators in custody cases.

Legislature. We hope our White Paper will continue to be a valuable information resource in 2022 for the public and the Legislature in evaluating the use of forensic reports in custody cases.⁶²

Presumptive Early ADR Statewide Initiative in Matrimonial Cases

In 2021 we continued our efforts to assist Judge Sunshine as Statewide Coordinating Judge for Matrimonial Cases with implementation of the Statewide Presumptive Early ADR Initiative. Along with Judge Sunshine, former Committee member Hon. Andrew Crecca, (now Administrative Judge for Suffolk County), and Committee member Elena Karabatos, Esq, are members of the Chief Judge's Advisory Committee on ADR, led by John S. Kiernan, and are actively promoting the concept of presumptive mediation and alternative dispute resolution in their local Judicial Districts. This project became a priority in 2020 and continued as a priority in 2021, since ADR proved an effective alternative to resolving certain matrimonial issues while the covid pandemic limited access to judicial resources. On September 15, 2020, Suggested Statewide Family and Matrimonial Mediation Protocols were approved by the Chief Judge's ADR Advisory Committee. Committee member Elena Karabatos of our Committee, along with other members of the Chief Judge's ADR Advisory Committee, and the ADR Coordinators,⁶³ were extremely helpful in assisting Judge Sunshine in drafting the Suggested Protocols. The Committee and Judge Sunshine will continue their efforts to assist Lisa Courtney, Statewide ADR Coordinator, as well as the Chief Judge's ADR Commission, in furthering the ADR Initiative throughout 2022.

⁶² The Subcommittee on the White Paper on Forensics in Custody Cases was chaired by Hon. Laura Drager (Ret.). Members of the Subcommittee were Committee members Hon. Ellen Gesmer, Hon. Sondra Miller, (Ret.), Hon Emily Ruben, Hon. Jacqueline Silbermann,(Ret.) RoseAnn Branda, Esq., Stephen Gassman, Esq., Stephen McSweeney, Esq., and Harriet Weinberger, Esq., 2d Dept AFC Director.

The Subcommittee gratefully acknowledges information provided for the White Paper by Hon. Mary Slisz, Supervising Matrimonial Judge Erie County Supreme Court, Alton L Abramowitz, Esq., Sharon Sayers, Esq. and Eric Tepper, Esq. of our Committee; as well as by Hon. Richard Dollinger, Acting Supreme Court Justice, Monroe County; Lisa Courtney, Statewide ADR Coordinator; Natasha Pasternack, Family Counseling Case Analyst, 2d Judicial District; Linda Kostin, AFC Director, 4th Department; Nancy Matles, 2d Department AFC Program; Bridget O'Connell, Erie County Mediation Program; Betsy Ruslander, AFC Director, 3rd Department; Lee Rosenberg, Esq (of the NYSBA Family Law Section), and Cynthia Snodgrass, Court Attorney Referee, Ontario County Supreme Court.

⁶³ ADR Coordinators for the Courts Outside New York City are Bridget O'Connell of the Erie County ADR Mediation Program, and Joel Kullas, Court Attorney Referee, Deputy Chief Administrative Judge's Office for Courts Outside NYC; The ADR Coordinator for the Courts Inside NYC is Lisa Denig, Special Counsel for NYC Civil Court to Deputy Chief Administrative Judge.

Alternative Parenting Arrangements, the Child Parent Security Act and the Committee's White Paper on Surrogacy

During 2021, our Committee continued to study surrogacy 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 we continued to follow the latest developments on alternative parenting arrangements and access rights.

We also continued our study of surrogacy legislation. In 2017 -2019 we studied a number of bills introduced by Assemblywoman Paulin and Senator Hoylman.⁶⁴ Our Committee did an intensive study of these bills as amended through June 2019 as well as of: 1) the 2017 report by the New York State Task Force on Life and the Law titled *Revisiting Surrogate Parenting: Analysis and Recommendations for Public Policy on Gestational Surrogacy* and 2) the Uniform Parentage Act published by the National Conference of Commissioners on Uniform State Laws.

While the Committee could not reach a consensus on whether to support or oppose the Hoylman/Paulin bill, the Committee adopted and prepared a “White Paper” on Surrogacy in New York State to review the issues presented, with a focus on the impact of the bill on the courts, in the hopes that it would serve as a resource as various proposals were debated in the future. The paper was attached as Appendix “H” to our 2020 report available at <https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/Matrimonial-MPARCReport2020.pdf>.⁶⁵

In 2020 just before the Governor declared covid an emergency in March, several new bills were introduced regarding surrogacy legislation which the Subcommittee studied, including S.07717/ Barrett A.09847. Ultimately, a bill entitled Judgment of Parentage of Children Conceived Through for Assisted Reproduction and Surrogacy Legitimization (S.7506B/A.9506B) was enacted as Governor’s Budget Bill as Chapter 56, Laws of 2020 eff. 2/15/21 as Article 5C of the Family Court Act.

The Subcommittee continues to study the enacted law in detail to see what may still require attention, but initially concluded that its provisions are more advantageous than provisions in many of the prior bills, on points examined in the White Paper. The law legitimizes gestational surrogacy in New York and requires the intended parents to pay for medical insurance for the surrogate for twelve months after birth of the child. It also provides for informed consent of the surrogate, a Surrogate’s Bill of Rights, and a six-month residency requirement. Another improvement is that if the agreement is unclear, the court will decide parentage based on the best interests of the child despite the lack of a genetic connection. Additionally, the Department of Health is required to maintain records. Many of these points were discussed in our Committee’s White Paper on Surrogacy referenced above.

⁶⁴ In 2017 and 2018, we studied a bill introduced by Assemblywoman Paulin as 2017-18 A. 6959. In 2019, we studied a new version of the bill introduced by Senator Hoylman as 2019-20 S.2071-A. Assemblywoman Paulin amended her bill and reintroduced it in May 2019 as A. 1071-B. The bill was further amended in June 2019 as S. 2017-B/ A.01071C.

⁶⁵ It was drafted by a sub-committee chaired by Hon. Ellen Gesmer, Associate Justice of the Appellate Division First Department assisted by Hon. Laura Drager,(now Ret.), Hon. Jacqueline Silbermann (Ret.), Susan Bender, Esq. Kathleen Donelli, Esq., Elena Karabatos, Esq., and Michael Mosberg, Esq.

During 2021, the Committee continued to explore the topic of surrogacy and reviewed the proposed Chapter Amendments pending in the Legislature.⁶⁶ The Committee has included in this report a new legislative proposal amending the Child Parent Security Act to allow County Clerks and Court/Clerks to provide an anonymous caption in public files for parentage proceedings despite restrictions in statutory and court rules in order to ensure compliance with the Act's sealing provisions.

Assistance to the Judicial Institute with Training of New and Experienced Matrimonial Judges and Court Attorney Referees

During 2021, the Committee's assistance to the Judicial Institute with training of Judges continued despite the pandemic. Members of the Committee presented sessions at virtual summer/fall seminars on a variety of topics. Sessions are already being planned for New Judges School in January 2022. A Lunch and Learn session planned by the Committee was also presented on December 14, 2021 about the new Adult Dependent Support Bill recently signed as Chapter 437, Laws of 2021. This program provided an overview of the new law, including special issues Judges, Referees, and Support Magistrates should be aware of in determining applications for child support under its provisions.

Mentoring of New or Newly Assigned Matrimonial Judges

Mentoring of New or Newly Assigned Judges is a continuing Committee project despite budgetary issues and covid concerns. At New Judges School in January each year, Judge Sunshine introduces new judges to matrimonial cases and discusses as part of the Chief Judge's Excellence Initiative the resources available for judges hearing matrimonial cases from his office and the Committee as well as practical concerns relating to adjudication of matrimonial cases. Many members of the Committee serve as presenters at the trainings. Judge Sunshine continues to serve as a resource to judges hearing matrimonial cases and to meet with the new judges at the training.

Matrimonial Mandatory Parent Education Pilot Projects in Coordination with the Statewide Office of Professional and Court Services

The Committee continues to support pilot projects in seven counties for mandatory parent education in coordination with the Office of Court and Professional Services. Hon. Sondra Miller (Ret.), and Hon. Jacqueline Silberman (Ret.), both Honorary Chairs of our Committee, have been active in promoting this program. In accordance with recommendations of our Committee in response to a request for comment by the Office of Court Administration on the proposal for the program in January 2018, the OCA Parent Education and Awareness Program approved on November 20, 2019 its first online parent education program pursuant to Part 144 of the Rules of the

⁶⁶ See A.7674 Lavine (OCA 16) Proposed Chapter Amendment to Child Parent Security Act –referred to Judiciary 5/19/21 based on the Family Court Advisory and Rules Proposal- see [Bill Search and Legislative Information | New York State Assembly \(nyassembly.gov\)](#); and A6832 Paulin/ S6386 Hoylman Proposed Chapter Amendment to Child Parent Security Act 4/12/21 referred to Judiciary – see [Bill Search and Legislative Information | New York State Assembly \(nyassembly.gov\)](#)

Chief Administrative Judge (22 NYCRR Part 144). This program made it easier for victims of intimate partner violence who so desire to receive the training in safety as well as for those who do not have access to live programs, an important consideration during covid. A second on-line program by Family Kind was also approved last fall.

A program on Parent Education was presented as part of the Judicial Seminars last year. Hon. Sondra Miller, (Ret.), Honorary Chair of the Committee, Dan Weitz, Director, Division of Court and Professional Services, Harriet Weinberger, Director of the Law Guardian Department for the Appellate Division, Second Department and member of our Committee, and Dolores Gebhardt, a matrimonial practitioner, were the presenters.

B. Ongoing Committee Development Efforts

During 2022, consideration and input from the perspective of the matrimonial bench and bar on the Court Simplification Legislative Proposal of Hon. Janet DiFiore, Chief Judge will remain a priority of the Committee.⁶⁷ We will also address whether the 2017 federal tax law changes necessitate a change in the New York maintenance guidelines law and whether any other provisions in the maintenance guidelines law enacted in 2015 may need revisiting as we follow further changes in federal tax law under the new Administration.

In 2022, the Chair of the Committee, Hon. Jeffrey S. Sunshine, will continue the extensive outreach (either virtually or in person, depending as health concerns during the pandemic permit) to members of the matrimonial bench and bar. With the encouragement of Chief Administrative Judge Marks, Judge Sunshine will continue to conduct and participate in CLE programs and panels, and to gather input and insights from the bench and bar on matrimonial issues.

⁶⁷ The proposal would eliminate New York's complicated structure of eleven trial courts, replacing it with a three level structure. See Footnote 14 *supra* for a description of the details of the proposal.

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 invite submission of comments, suggestions and inquiries to:

Matrimonial Practice Advisory and Rules Committee:

CHAIR:

Honorable Jeffrey S. Sunshine, JSC, Kings County
Statewide Coordinating Judge for Matrimonial Cases
360 Adams Street
Brooklyn, New York 11201

COUNSEL:

Susan Kaufman, Esq.
Counsel to Statewide Coordinating Judge for Matrimonial Cases
360 Adams Street
Brooklyn, New York 11201

IV. Previously Endorsed Legislative Proposals with Special Covid Related Significance

1. Proposal Regarding Mandatory Electronic Filing in Matrimonial Actions

(Judiciary Law 212(2) §§§§ (u) (i) (A), (iv), (v), and (vi)(amended); CPLR 2111(a)(amended); CPLR 2111(b) (1) and (2) (repealed and new); CPLR 2(a) (repealed); CPLR 2111(b)(3) (amended); CPLR 2112 (amended); Court of Claims Act §11-b (1) (amended); New York City Criminal Court Act §42 (new); Uniform District Court Act §2103-a (new); Uniform City Court Act §2103-a (new); Uniform Justice Court Act §2103-a (new); Criminal Procedure Law §§§§§10.40 (2)(a) amended; (b)(repealed and (c) new; old (c) and (d) (relettered (e) and (f) and amended); FCA §214(b) (repealed and new).

One of our key priorities in 2019 and 2020 was a new legislative proposal by the Office of Court Administration that would authorize the Chief Administrative Judge to mandate e-filing of court papers in matrimonial actions with exemptions from mandatory e-filing for unrepresented persons and for certain lawyers without technical skills or equipment. We supported this proposal in 2021 as one of our two key priorities but in a modified and expanded form as proposed by the Office of Court Administration. In this report, we again endorse the modified and expanded proposal of the Office of Court Administration as one of our three key priorities.

In 2015, the Legislature enacted CPLR 2111(b)(2)(A), which authorized the Chief Administrative Judge in his or her discretion to mandate the electronic filing of court papers in all cases in Supreme Court with only a limited number of exceptions⁶⁸ One of those exceptions was in matrimonial actions. Since 2015, electronic filing experiments with consensual electronic filing in matrimonial cases in counties such as Westchester have proven very successful, and our Committee has recommended removing those exceptions for matrimonial cases for several years. The prior proposal by the Office of Court Administration, which we supported, not only eliminated the exception from mandatory e-filing for matrimonial actions, but also made further changes in the e-filing statutes to eliminate the present exclusion as to residential foreclosure and consumer debt actions from mandatory e-filing programs in Supreme Court and reset the current sunset for use of e-filing in criminal and Family Court. Unfortunately, this proposal was not enacted, but the sunset provision was extended last year.

In this report, we now support a modified and expanded version of the legislative proposal of the Office of Court Administration which would authorize the greatest possible use of e-filing in the courts. At present, the Chief Administrative Judge's statutory authority to institute e-filing in the trial courts – while much broader than it once was –is still limited in some important respects. He may not require e-filing in some major classes of civil cases in Supreme Court (*e.g.*, matrimonial and Article 78 cases), nor may he require it in more than six counties each in criminal court and Family Court. Further, no form of e-filing – whether voluntary or mandatory – may be instituted in the civil courts of lesser jurisdiction or in the local criminal courts.

Under this measure, the Chief Administrative Judge would be permitted to institute e- filing

⁶⁸ See supra note 28 for the text of the legislation requiring that the Chief Administrator consult with local bar associations and county clerks before eliminating the requirement of consent to electronic filing in any county.

– on either a voluntary or mandatory basis – *in any or all* of the State’s trial courts and in any class of cases. For purposes of matrimonial cases in Supreme Court, the relevant sections of the modified and expanded proposal are as follows:

- *Bill section 2.* Amends CPLR 2111(a) to extend the authority to institute e-filing in all of the State’s trial court of civil jurisdiction. Advance approval of the local county clerk is still required as to e-filing in Supreme Court and County Court.
- *Bill section 3.* Repeals paragraphs 1, 2, and 2-a of CPLR 2111(b) [provisions that now mandate that e-filing in courts of civil jurisdiction, where instituted, be voluntary unless the Chief Administrative Judge imposes mandatory e-filing – which he can only do in Supreme Court subject to prohibition upon its use in some major classes of cases, and in the New York City Civil Court in but one class of cases (*i.e.*, cases brought by health care providers against certain insurers)] – and replaces them with new paragraphs 1 and 2, permitting the Chief Administrative Judge to institute voluntary/mandatory e-filing in his discretion, without limitation as to court or class of cases. New paragraphs 1 and 2 continue the present exemptions from mandatory e-filing for unrepresented persons and for certain lawyers without technical skills or equipment. They also continue the requirement for consultation with various bar associations and attorneys.

The importance of mandatory electronic filing in matrimonial actions cannot be overstated. In October, 2018, as a further step in promoting electronic filing in matrimonial cases, Judge Sunshine sent a letter to the matrimonial bench and bar asking for their support in moving forward the instant legislative proposal.⁶⁹ The 2018 letter and subsequent letters pointed out the advantages of electronic filing in matrimonial cases, including a streamlined and economical filing process, access to case files, expeditious review of filed papers, enhanced security, easy notifications to parties and easy resubmission of papers, free and fast service of subsequent papers, and for the general community diminished reliance on paper, a greener environment, and public savings through more economical and efficient court operations.

As noted in Judge Sunshine’s 2018 letter, concerns about the need for users of the system to have the technical ability to engage in electronic filing and concerns about loss of privacy of the parties in a matrimonial action, are satisfied as follows: “(i) unrepresented parties in matrimonial cases would be automatically exempt from having to file electronically (although they could choose to do so if they wished), and (ii) attorneys in such cases who lack the knowledge or equipment needed to file electronically could opt out of doing so by the filing of a simple form. Finally, consistent with section 235 of the Domestic Relations Law, papers in a matrimonial action that is electronically filed shall not be accessible on-line to persons other than the parties and counsel therein.”⁷⁰

⁶⁹ See letter dated October 4, 2018 from Hon. Jeffrey Sunshine, Statewide Coordinating Judge for Matrimonial Cases, to Bar Associations attached as Appendix “F-2 to our 2019 Annual Report to the Chief Administrative Judge available at <https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/2019-Matrimonial.pdf>

⁷⁰ See page 2 of letter dated October 4, 2018 from Hon. Jeffrey Sunshine, Statewide Coordinating Judge for Matrimonial Cases, to Bar Groups, *supra* note 69

In 2020, many bar associations expressed support for the mandatory e-filing in matrimonial cases. See Resolution of the Family Law Section of the NYS Bar Association and the Women’s Bar Association of the State of New York (“WBASNY”) attached to this report as Appendix “D.” The WBASNY Resolution points out that “Mandatory e-filing, with exemptions for *pro se* litigants and lawyers not having the necessary technology, would enable litigants to advance their cases and eliminate potential barriers to access to justice. It would also mitigate the effects of the COVID-19 outbreak on the courts.” In addition to statements of bar associations, Judge Sunshine has received statements of support from legal service providers representing indigent litigants.⁷¹

Like the prior version, modified and expanded version of the proposal in this year’s report is abundantly clear on the matter of eliminating the prohibition against mandatory e-filing in matrimonial actions. Bill section three repeals in its entirety CPLR 2111(b)(2), which is the present section of law governing mandatory e-filing (and setting forth the prohibition upon its use in matrimonial actions and certain other proceedings), and substitutes in its place a new CPLR 2111(b)(1), which expressly authorizes the Chief Administrative Judge to establish either voluntary or mandatory e-filing programs with no prohibition on the latter programs for any class of cases. The legislation preserves, as now constituted, the exceptions for *pro se* litigants and lawyers not having the needed technology. Proposed CPLR 2111(b)(1) sets forth the exception for the former; CPLR 2111(b)(3), already in the law and unchanged by this proposal, sets forth the exception for the latter and, as well, restates the *pro se* litigants’ exception.

Our Committee strongly supports the modified and expanded legislative proposal put forth in this report as necessary to the fair and efficient processing of matrimonial cases, not only during the covid pandemic, but for the future. This proposal has special significance during the covid pandemic because electronic filing through the NYSCEF system has proven invaluable in expanding litigants’ ability to file matrimonial actions during this public health emergency. We hope that this legislation will be enacted by the Legislature and signed by the Governor in 2022.

⁷¹ See letter to Justice Sunshine dated September 9, 2020 from Laura Russell, Director of the Family Domestic Violence Unit of The Legal Aid Society attached to this report as Appendix “D-1 “.

Proposal:

AN ACT to amend the judiciary law, the civil practice law and rules, the court of claims act, the New York city criminal court act, the uniform district court act, the uniform city court act, the uniform justice court act, the criminal procedure law, and the family court act, in relation to filing by electronic means

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

Section 1. Clause (A) of subparagraph (i) of paragraph (u) of subdivision 2 of section 212 of the judiciary law and subparagraphs (iv), (v), and (vi) of such paragraph are amended to read as follows:

(A) Not later than February first in each calendar year, the chief administrator of the courts shall submit to the legislature, the governor and the chief judge of the state a report evaluating the state's experience with programs in the use of electronic means for the commencement of actions and proceedings and the service of papers therein as authorized by law and containing such recommendations for further legislation as he or she shall deem appropriate. In the preparation of such report, the chief administrator shall consult with each county clerk in whose county a program has been implemented in [civil cases in] the supreme [court] and/or county court, each district attorney in whose county a program has been implemented in criminal cases in the courts of such county, the advisory committees established pursuant to subparagraphs (ii) through (vi) of this paragraph, the organized bar including but not limited to city, state, county and women's bar associations; the office of indigent legal services; institutional legal service providers; not-for-profit legal service providers; public defenders; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any programs that have been

implemented or who may be affected by the proposed recommendations for further legislation; representatives of victims' rights organizations; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator, and afford them an opportunity to submit comments with respect to such implementation for inclusion in the report and address any such comments.

Public comments shall also be sought via a prominent posting on the website of the office of court administration. All comments received from any source shall be posted for public review on the same website.

(iv) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of civil actions and proceedings and the service and filing of papers therein in the civil court of the city of New York, the district courts, the city courts outside New York city, and the town and village justice courts. This committee shall consist of such number of members as the chief administrator shall designate, among which there shall be the chief clerk of the civil court of the city of New York; one or more chief clerks of the district courts, the city courts outside New York city, and the town and village justice courts; the president of the state magistrates' association or his or her designee; representatives of the organized bar including but not limited to city, state, county and women's bar associations; [attorneys who regularly appear in actions specified in subparagraph (C) of paragraph two of subdivision (b) of section twenty-one hundred eleven of the civil practice law and rules;] and unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of electronic means for the commencement of actions and proceedings and the service

and filing of papers therein in [the civil court of the city of New York] any of the courts specified in this subparagraph; and any other persons as deemed appropriate by the chief administrator.

Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by any recommendations for further legislation concerning the use of the electronic filing program in any of the [civil court of the city of New York] courts specified in this subparagraph; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by the chief administrator.

(v) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the commencement of criminal actions and the filing and service of papers in pending criminal actions and proceedings[, as first authorized by paragraph one of subdivision (c) of section six of chapter four hundred sixteen of the laws of two thousand nine, as amended by chapter one hundred eighty-four of the laws of two thousand twelve, is continued]. The committee shall consist of such number of members as will enable the chief administrator to obtain input from those who are or would be affected by such electronic filing program, and such members shall include county clerks; chief clerks of supreme, county and other courts; district attorneys; representatives of the office of indigent legal services; not-for-profit legal service providers; public defenders; statewide and local specialty bar associations whose membership devotes a

significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program and other interested members of the criminal justice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts and to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, district attorneys, not-for-profit legal service providers, public defenders, statewide and local specialty bar associations whose membership devotes a significant portion of their practice to assigned criminal cases pursuant to subparagraph (i) of paragraph (a) of subdivision three of section seven hundred twenty-two of the county law; institutional providers of criminal defense services and other members of the criminal defense bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program and other interested members of the criminal justice community.

vi) The chief administrator shall maintain an advisory committee to consult with him or her in the implementation of laws affecting the program in the use of electronic means for the origination of [juvenile delinquency] proceedings [under article three of the family court act and abuse or neglect proceedings pursuant to article ten of the family court act] in family court and the filing and service of papers in such pending proceedings[, as first authorized by paragraph one of subdivision (d) of section six of chapter four hundred sixteen of the laws of two thousand nine, as amended by chapter one hundred eighty-four of the laws of two thousand twelve, is continued]. The committee shall consist of such number of members as will enable the chief

administrator to obtain input from those who are or would be affected by such electronic filing program, and such members shall include chief clerks of family courts; representatives of authorized presentment and child protective agencies; other appropriate county and city government officials; institutional providers of legal services for children and/or parents; not-for-profit legal service providers; public defenders; representatives of the office of indigent legal services; attorneys assigned pursuant to article eighteen-B of the county law; and other members of the family court bar; representatives of victims' rights organizations; unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program; and other interested members of the family practice community. Such committee shall help the chief administrator to evaluate the impact of such electronic filing program on litigants including unrepresented parties, practitioners and the courts to obtain input from those who are or would be affected by such electronic filing program, including unrepresented parties, representatives of authorized presentment and child protective agencies, other appropriate county and city government officials, institutional providers of legal services for children and/or parents, not-for-profit legal service providers, public defenders, attorneys assigned pursuant to article eighteen-B of the county law and other members of the family court bar, representatives of victims' rights organizations, unaffiliated attorneys who regularly appear in proceedings that are or would be affected by such electronic filing program, and other interested members of the criminal justice community.

§2. Subdivision (a) of section 2111 of the civil practice law and rules, as added by chapter 237 of the laws of 2015, is amended to read as follows:

(a) Notwithstanding any other provision of law, the chief administrator of the courts, with the

approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of facsimile transmission only in the court of claims and electronic means in the [supreme court, the civil court of the city of New York, surrogate's courts and the court of claims] courts of New York having civil jurisdiction for: (i) the commencement of civil actions and proceedings, and (ii) the filing and service of papers in pending actions and proceedings. Provided, however, the chief administrator shall consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized hereunder in the supreme court or the county court of such county, afford him or her the opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.

§3. Paragraphs 1, 2, and 2-a of subdivision (b) of section 2111 of the civil practice law and rules are REPEALED and new paragraphs 1 and 2 are added to such subdivision to read as follows:

1. Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall be strictly voluntary as to any party to an action or proceeding who is not represented by counsel.

2. (A) Where participation in this program is to be voluntary:

(i) commencement of an action or proceeding by facsimile transmission or electronic means shall not require the consent of any other party; nor shall a party's failure to consent to participation in an action or proceeding bar any other party to that action or proceeding from filing and serving papers by facsimile transmission or electronic means upon the court or any other party to such action or proceeding who has consented to participation; and

(ii) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means; and

(iii) no party to an action or proceeding shall be compelled, directly or indirectly, to participate; and

(iv) where a party is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program.

(B) Where participation in this program is to be required:

(i) such requirement shall not be effective in a court in a county unless, in addition to consulting with the county clerk of such county and obtaining his or her agreement thereto if the court is a supreme court or county court, the chief administrator shall:

(1) first consult with members of the organized bar including but not limited to city, state, county, and women's bar associations and, where they practice in such court in such county, with (a) institutional service providers, (b) not-for-profit legal service providers, (c) attorneys assigned pursuant to article eighteen-B of the county law, (d) unaffiliated attorneys who regularly appear in proceedings that are or have been affected by a program of electronic filing in such county, and (e) any other persons as deemed to be appropriate by the chief administrator; and

(2) afford all those with whom he or she consults pursuant to clause (i)(1) of this subparagraph the opportunity to submit comments with respect to the program, which comments,

including but not limited to comments related to unrepresented litigants, he or she shall consider and shall post for public review on the office of court administration's website; and

(ii) as provided in paragraph (3) of this subdivision, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

§4. The opening unlettered paragraph of paragraph (3) of subdivision (b) of section 2111 of the civil practice law and rules, as added by chapter 237 of the laws of 2015, is amended to read as follows:

Where the chief administrator [eliminates the requirement of consent] requires participation in electronic filing as provided in paragraph [two] one of this subdivision, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the clerk of the court where the action is pending. [Said] Such form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

§5. Section 2112 of the civil practice law and rule, as amended by chapter 99 of the laws of 2017, is amended to read as follows:

§2112. Filing of papers in the appellate division by electronic means. Notwithstanding any other provision of law, and except as otherwise provided in subdivision (c) of section twenty-one hundred eleven of this article, the appellate division in each judicial department may promulgate rules authorizing a program in the use of electronic means for: (i) appeals to such court from the judgment or order of a court of original instance or from that of another appellate court, (ii) making a motion for permission to appeal to such court, (iii) commencement of any other proceeding that may be brought in such court, and (iv) the filing and service of papers in

pending actions and proceedings. Provided however, such rules shall not require an unrepresented party or any attorney who furnishes a certificate specified in subparagraph (A) or (B) of paragraph three of subdivision (b) of section twenty-one hundred eleven of this article to take or perfect an appeal by electronic means. Provided further, however, before promulgating any such rules, the appellate division in each judicial department shall consult with the chief administrator of the courts and shall provide an opportunity for review and comment by all those who are or would be affected including city, state, county and women's bar associations; institutional legal service providers; not-for-profit legal service providers; attorneys assigned pursuant to article eighteen-B of the county law; unaffiliated attorneys who regularly appear in proceedings that are or have been affected by the programs that have been implemented or who may be affected by promulgation of rules concerning the use of the electronic filing program in the appellate division of any judicial department; and any other persons in whose county a program has been implemented in any of the courts therein as deemed to be appropriate by any appellate division. To the extent practicable, rules promulgated by the appellate division in each judicial department pursuant to this section shall be uniform and may apply to any appellate term established by an appellate division.

§6. Subdivision 1 of section 11-b of the court of claims act, as added by chapter 237 of the laws of 2015, is amended to read as follows:

1. Notwithstanding any other provision of law, the chief administrator of the courts[, with the approval of the administrative board of the courts,] may authorize a program in the [voluntary] use of facsimile transmission and electronic means in the court as provided in article twenty-one-A of the civil practice law and rules.

§7. The New York city criminal court act is amended by adding a new section 42 to read as follows:

§42. Use of electronic filing authorized. 1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in cases in the criminal court of the city of New York as provided in section 10.40 of the criminal procedure law.

2. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§8. The uniform district court act is amended by adding a new section 2103-a to read as follows:

§2103-a. Use of electronic filing authorized. 1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in civil cases in a district court as provided in article twenty-one-A of the civil practice law and rules, and in criminal cases as provided in section 10.40 of the criminal procedure law.

2. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§9. The uniform city court act is amended by adding a new section 2103-a to read as follows:

§2103-a. Use of electronic filing authorized. 1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in civil cases in a city court as provided in article twenty-one-A of the civil practice law and rules, and in criminal cases as provided in section 10.40 of the criminal procedure law.

2. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§10. The uniform justice court act is amended by adding a new section 2103-a to read as follows:

§2103-a. Use of electronic filing authorized. 1. Notwithstanding any other provision of law, the chief administrator of the courts may authorize a program in the use of electronic means in civil cases in a justice court as provided in article twenty-one-A of the civil practice law and rules, and in criminal cases as provided in section 10.40 of the criminal procedure law.

2. For purposes of this section, "electronic means" shall be as defined in subdivision (f) of rule twenty-one hundred three of the civil practice law and rules.

§11. Paragraph (a) of subdivision 2 of section 10.40 of the criminal procedure law, as amended by chapter 237 of the laws of 2015, is amended to read as follows:

(a) Notwithstanding any other provision of law, the chief administrator, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of electronic means ("e-filing") in the [supreme court and in the county court] courts of New York having criminal jurisdiction for: (i) the filing with a court of an accusatory instrument for the purpose of commencement of a criminal action or proceeding [in a superior court, as provided by articles one hundred ninety-five and two hundred of this chapter], and (ii) the filing and service of papers in pending [criminal] actions and proceedings. Provided, however, the chief administrator shall consult with the county clerk of a county outside the city of New York before the use of electronic means is to be authorized hereunder in the supreme court or county court of such county, afford him or her the opportunity to submit comments with respect thereto, consider any such comments and obtain the agreement thereto of such county clerk.

§12. Paragraph (b) of subdivision 2 of section 10.40 the criminal procedure law is REPEALED and a new paragraph (b) is added to such subdivision to read as follows:

(b) Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall be strictly voluntary as to any party to an action or proceeding who is not represented by counsel unless such party, upon his or her request, chooses to participate.

§13. Paragraphs (c) and (d) of subdivision 2 of section 10.40 of the criminal procedure law are relettered to be paragraphs (d) and (e) and a new paragraph (c) is added to read as follows:

(c) (1) Where participation in this program is to be voluntary: (i) filing an accusatory instrument by electronic means with the court for the purpose of commencement of an action or proceeding shall not require the consent of any other party; nor shall a party's failure to consent to participation in an action or proceeding bar any other party to that action or proceeding from filing and serving papers by facsimile transmission or electronic means upon the court or any other party to such action or proceeding who has consented to participation;

(ii) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means;

(iii) no party to an action or proceeding shall be compelled, directly or indirectly, to participate;

(iv) where a party is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the

case file, after said party has been presented with sufficient information in plain language concerning the program.

(2) Where participation in this program is to be required:

(i) such requirement shall not be effective in a court in a county unless, in addition to consulting with the county clerk of such county and obtaining his or her agreement thereto if the court is a supreme court or county court, the chief administrator shall:

(1) first consult with and obtain the agreement of the district attorney and the criminal defense bar of such county, provide all persons and organizations, or their representative or representatives, who regularly appear in criminal actions or proceedings in the criminal courts of such county with reasonable notice and opportunity to submit comments with respect thereto and give due consideration to all such comments, and consult with the members of the advisory committee specified in subparagraph (v) of paragraph (u) of subdivision two of section two hundred twelve of the judiciary law; and

(2) afford all those with whom he or she consults pursuant to clause (i)(1) of this subparagraph the opportunity to submit comments with respect to the program, which comments, including but not limited to comments related to unrepresented litigants, he or she shall consider and shall post for public review on the office of court administration's website; and

(ii) as provided in paragraph (c) of this subdivision, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

§14. The opening unlettered paragraph of paragraph (d) of subdivision 2 of section 10.40 of the criminal procedure law, such paragraph as relettered by section 13 of this act, is amended to read as follows:

Where the chief administrator [eliminates the requirement of consent] requires participation in electronic filing as provided in [subparagraph (ii) of] paragraph (b) of subdivision 2 of this subdivision, he or she shall afford counsel the opportunity to opt out of the program, via presentation of a prescribed form to be filed with the court where the criminal action is pending. Such form shall permit an attorney to opt out of participation in the program under any of the following circumstances, in which event, he or she will not be compelled to participate:

§15. Subparagraph (ii) of paragraph (e) of subdivision 2 of section 10.40 of the criminal procedure law, such paragraph as relettered by section 13 of this act, is amended to read as follows:

(ii) Notwithstanding any other provision of this section, no paper or document that is filed by electronic means in a criminal proceeding [in supreme court or county court] shall be available for public inspection on-line. Subject to the provisions of existing laws governing the sealing and confidentiality of court records, nothing herein shall prevent the unified court system from sharing statistical information that does not include any papers or documents filed with the action; and, provided further, that this paragraph shall not prohibit the chief administrator, in the exercise of his or her discretion, from posting papers or documents that have not been sealed pursuant to law on a public website maintained by the unified court system where: (A) the website is not the website established by the rules promulgated pursuant to paragraph (a) of this subdivision, and (B) to do so would be in the public interest. For purposes of this subparagraph, the chief administrator, in determining whether posting papers or documents on a public website is in the public interest, shall, at a minimum, take into account for each posting the following factors: (A) the type of case involved; (B) whether such posting would cause harm to any

person, including especially a minor or crime victim; (C) whether such posting would include lewd or scandalous matters; and (D) the possibility that such papers or documents may ultimately be sealed.

§16. Subdivision (b) of section 214 of the family court act is REPEALED and new subdivision (b) is added to such section to read as follows:

(b)(i) Notwithstanding any other provision of law, the chief administrator, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of electronic means ("e-filing") in the family court for: (1) the origination of proceedings in such court, and (2) the filing and service of papers in pending proceedings.

(ii) Participation in this program may be required or may be voluntary as provided by the chief administrator, except that it shall be strictly voluntary as to any party to an action or proceeding who is not represented by counsel unless such party, upon his or her request, chooses to participate.

§17. Subdivisions (c) through (g) of section 214 of the family court act are relettered to be subdivisions (d) through (h) and a new subdivision (c) is added to read as follows:

(c) (1) Where participation in this program is to be voluntary: (i) filing a petition by electronic means with the court for the purpose of originating a proceeding shall not require the consent of any other party; nor shall the failure of a party or other person who is entitled to notice of the proceedings to consent to participation bar any other party from filing and serving papers by electronic means upon the court or any other party or person entitled to receive notice of such proceeding who has consented to participation;

(ii) all parties shall be notified clearly, in plain language, about their options to participate in filing by electronic means;

(iii) no party to an action or proceeding shall be compelled, directly or indirectly, to participate;

(iv) where a party is not represented by counsel, the court shall explain such party's options for electronic filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the program only upon his or her request, which shall be documented in the case file, after said party has been presented with sufficient information in plain language concerning the program;

(v) upon the filing of a petition with the court by electronic means, a party to the proceeding and any attorney for such person shall be permitted to immediately review and obtain copies of such documents and papers if such person or attorney would have been authorized by law to review or obtain copies of such documents and papers if they had been filed with the court in paper form.

(2) Where participation in this program is to be required:

(i) such requirement shall not be effective in a court in a county unless the chief administrator shall:

(A) first consult with and obtain the agreement of each authorized presentment agency, child protective agency, the family court bar providing representation to parents, and the family court bar providing representation to children (as represented by the head of each legal services organization representing parents and/or children, the head of each public defender organization, and president of the local bar association as applicable) of such county, provide all persons or organizations, or their representative or representatives, who regularly appear in proceedings in the family court of such county, in which proceedings the requirement of consent is to be

eliminated with reasonable notice and an opportunity to submit comments with respect thereto and give due consideration to all such comments, and consult with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph (t) of subdivision two of section two hundred twelve of the judiciary law; and

(B) afford all those with whom he or she consults pursuant to clause (i)(1) of this paragraph with a reasonable opportunity to submit comments with respect to the program, which comments he or she shall consider and shall post for public review on the office of court administration's website; and

(C) consult with the members of the advisory committee continued pursuant to subparagraph (vi) of paragraph (t) of subdivision two of section two hundred twelve of the judiciary law; and

(ii) as provided in paragraph (c) of this subdivision, no party who is not represented by counsel nor any counsel in an affected case who opts out of participation in the program shall be required to participate therein.

§18. Section 11 of chapter 237 of the laws of 2015 amending the judiciary law, the civil practice law and rules and other laws relating to use of electronic means for the commencement and filing of papers in certain actions and proceedings, as amended by chapter 58 of the laws of 2020, is amended to read as follows:

§11. This act shall take effect immediately[; provided that sections four, five, six and seven of this act shall each expire and be deemed repealed September 1, 2021; and provided that paragraph 2-a of subdivision (b) of section 2111 of the civil practice law and rules, as added by section two of this act, shall expire and be deemed repealed September 1, 2021].

§19. This act shall take effect immediately.

2. Proposal to Amend DRL § 211 Regarding Commencement of Matrimonial Actions

This proposal relates to commencement of matrimonial actions during an emergency declared by the then Governor which caused the Chief Judge or Chief Administrative Judge to bar as non-essential the filing of actions for divorce. The exclusion of matrimonial actions from the list of essential applications was necessary since matrimonial actions may take months or years to complete, and the issues involved do not qualify as necessary for immediate relief unless there is need for an order of protection or other type of urgent relief which would qualify as essential on its own.

DRL§ 211 currently requires that matrimonial actions be commenced by filing of the summons with notice (or the summons and verified complaint). In order to permit matrimonial actions to be commenced during covid despite their classification as non-essential, the Office of Court Administration expanded the NYSCEF system in certain counties and accepted filings by mail in other counties, but legislative change is also needed. We propose a legislative amendment which would require commencement of matrimonial actions by service rather than filing of the summons with notice or summons and verified complaint during an emergency declared by the Governor resulting in a prohibition on filing until normal filing is once again permitted . The proposal requires payment of an index number fee or application for poor person relief pursuant to CPLR 1101(d) within 21 days of permission to file by Administrative Order of the Chief Judge or Chief Administrative Judge, and if the poor person's relief is denied, the index fee must be paid within 120 days of the denial as required by CPRL 1101(d).

Proposal

AN ACT to amend the domestic relations law, in relation to modifying the provisions regarding commencement of a matrimonial action during an emergency declared by the governor

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

Section 1: Section 211 of the domestic relations law, as amended by chapter 216 of the laws of 1992, is amended to read as follows:

§211. Pleadings, proof and motions.

A matrimonial action shall be commenced by the filing of a summons with the notice designated in section two hundred thirty-two of this chapter, or a summons and verified complaint as provided in section three hundred four of the civil practice law and rules. In the event that the governor declares an emergency which results in issuance by the judiciary of an administrative order which prohibits the filing of the summons or the summons and verified complaint during the

emergency, a party may commence a matrimonial action by serving the defendant with the summons with notice or a summons and verified complaint as specified above. However, an action may not be commenced in this manner unless (1) the plaintiff purchases an index number for the action within twenty-one days of the date of service on the defendant of the summons with notice or summons and verified complaint or (2) the plaintiff applies for poor person status pursuant to CPLR 1101(d) within twenty-one days of the date of service on the defendant of the summons with notice or summons and verified complaint, and, in the event that the application for poor person status is denied, the plaintiff pays an index number fee within 120 days after the date of the court order denying such application. A final judgment shall be entered by default for want of appearance or pleading, or by consent, only upon competent oral proof or upon written proof that may be considered on a motion for summary judgment. Where a complaint or counterclaim in an action for divorce or separation charges adultery, the answer or reply thereto may be made without verifying it, except that an answer containing a counterclaim must be verified as to that counterclaim. All other pleadings in a matrimonial action shall be verified.

§2. This act shall take effect immediately.

3. Modified Proposal to Amend DRL § 236(B)(2)(b) Regarding Automatic Orders

The automatic orders statute was adopted by the Legislature as chapter 72 of the Laws of 2009 on the recommendation of MPARC's predecessor Committee. Adoption of this legislation was a significant step forward in matrimonial practice. It prevents one spouse in a divorce action from dissipating the marital estate in order to deprive the other spouse of their property. It also saves judicial resources and legal fees because courts no longer must issue orders in individual cases to prevent the types of conduct prohibited. In 2009, a court rule (see 22 NYCRR 202.16-a) was adopted implementing the legislation. The court rule was amended in 2012 to make clear that violations of the automatic orders could be deemed a contempt of court.

We now propose to amend the effective date of automatic orders during an emergency declared by the Governor which results in a prohibition on filing. Currently the automatic orders statute makes the orders effective upon the plaintiff upon filing the summons. This proposal provides that the automatic orders shall be effective upon plaintiff upon service of the summons upon the defendant during the emergency. This proposal is combined with our previous proposal in last year's annual report to update and clarify the automatic orders statute which has been in effect now for more than ten years. We continue to advocate these revisions in this year's report.

One of the revisions we proposed in our prior report was due to the rise in residential foreclosures that had occurred since enactment of the original automatic orders statute in 2012. The Unified Court System's Office of Policy and Planning then chaired by Hon. Sherri Klein Heitler (now retired) has developed procedures to make the foreclosure process fairer. In 2019, that Office proposed a notice of tax lien foreclosure to be sent by the court to homeowners, similar to the advance notices given to homeowners in residential foreclosures. See Request for Public Comment available at <https://www.nycourts.gov/LegacyPDFS/RULES/comments/PDF/RPC-Tax-lien-foreclosure-Feb25.pdf>

Our Committee believes that the dangers of failing to receive advance notice of residential and tax lien foreclosures and other types of legal proceedings are particularly acute in matrimonial cases and are aggravated even more during emergency situations when people lose their jobs. If one spouse receives notice but fails to notify the other of a notice of such a legal proceeding while the divorce action proceeds, it could result in the other spouse's losing their home or other property. We therefore resubmit our proposal to require a spouse, within ten (10) days after having received notice thereof, to notify the other spouse of a tax lien, foreclosure, bankruptcy, or litigation, or the filing of same, which could adversely affect the marital estate. This addition to the Automatic Orders is needed because frequently after spouses separate, they do not inform each other that important legal proceedings are taking place which may have a major effect on the marital estate. Sometimes property is titled in only one spouse's name. If the notice is sent to the other spouse alone, the spouse who does not receive the notice will have no opportunity to appear in the legal proceeding to protect their interest.

In addition to adding this provision to the automatic orders statute, our Committee also continues to propose a clarification of the language as to the duration of the Automatic Orders. The current language states that the Orders shall remain in effect "during the pendency of the action." The Committee believes that this language may leave room for a litigant, pro se or otherwise, to fail to provide notice of a tax lien, foreclosure, bankruptcy or litigation which could adversely affect the marital estate, during such period of time between the conclusion of a trial and the rendering of a court's decision, which, at times could span several months. This lack of clarity

might severely prejudice a party who fails to receive such notice. We therefore propose that the first paragraph of the statute be amended to make clear that “[t]he automatic orders shall remain in full force and effect until entry of the judgment of divorce, unless terminated, modified or amended...”

The Committee also continues to recommend that the automatic orders statute be amended to add a prohibition on use of electronic devices to obtain information about the other party without their knowledge and consent. This type of behavior occurs more and more frequently as technology broadens in scope far beyond what existed in 2009 when the Automatic Orders legislation was first adopted. Covid has made the need for this reform even more even more relevant during the covid pandemic as technology developments have moved faster through virtual meetings and work at home.

The need for this amendment of the automatic orders statute was recently demonstrated in *Strauss v. Strauss*, 171 A.D.3d 596, 99 N.Y.S.3d 7 (N.Y. App. Div. 2019). In that case, the First Department upheld an order of Supreme Court granting plaintiff’s motion for an order of sanctions against the defendant and defendant’s counsel. The Appellate Division stated:

“Defendant does not dispute any of the facts relied upon by the motion court in determining that he and his counsel engaged in sanctionable conduct in the context of this divorce action. The record shows that defendant obtained access to plaintiff’s iPad and private text messages, falsely told her that he did not have the iPad and that it was lost, and provided the text messages to his counsel, who admittedly failed to disclose to opposing counsel or the court the fact that defendant was in possession of the iPad and text messages, until two years later when they disclosed that they intended to use the text messages at trial. Nor does defendant explain how or why he was legally permitted to retain plaintiff’s iPad without her knowledge, and to access and take possession of plaintiff’s personal data located on her iPad...” (See *Strauss v. Strauss*, supra at 597.

The Committee believes that the foregoing revisions to the automatic orders statute including this year’s additional modification to deal with emergencies declared by the Governor which affect filing, will improve access to justice for matrimonial litigants, one of the goals of the Chief Judge’s Excellence Initiative. It will also reduce potential litigation by discouraging use of electronic devices to obtain information about the other spouse before such acts occur, thereby furthering court efficiency, another goal of the Excellence Initiative. Once enacted, the Committee recommends a conforming amendment to the automatic orders court rule 22 NYCRR 202.16-a.

The provisions in our previous proposal are all the more necessary in these times of economic distress due to loss of employment and furlough during covid in order to provide notice of a tax lien, foreclosure, bankruptcy or litigation to the other spouse once a divorce action has been commenced. Also, the prohibition on use of electronic devices to obtain information about the other party without their knowledge and consent during the pendency of the action is even more relevant as technology developments have moved faster through virtual meetings and work at home.

Proposal

AN ACT to amend the domestic relations law, in relation to automatic orders in matrimonial actions

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

Section 1. Paragraph b of subdivision 2 of part B of section 236 of the domestic relations law, as added by chapter 281 of the laws of 1980 and as amended by chapter 72 of the laws of 2009, is amended to read as follows:

b. With respect to matrimonial actions which commence on or after the effective date of this paragraph, the plaintiff shall cause to be served upon the defendant, simultaneous with the service of the summons, a copy of the automatic orders set forth in this paragraph. The automatic orders shall be binding upon the plaintiff in a matrimonial action immediately upon the filing of the summons, or summons and complaint, and upon the defendant immediately upon the service of the automatic orders with the summons. In the event that the governor declares an emergency which results in issuance by the judiciary of an administrative order which prohibits the filing of the summons or the summons and verified complaint during the emergency, then the automatic orders shall be binding upon the plaintiff and the defendant immediately upon service of the summons upon defendant, but shall have no force and effect unless: 1) the plaintiff purchases an index number for the action within 21 days of the date of service upon the defendant of the summons with notice or the summons and verified complaint; or 2) plaintiff applies for poor person status pursuant to CPLR 1101(d) within twenty-one days of the date of service on the defendant of the summons with notice or the summons and verified complaint, and, in the event that the application for poor person status is denied, the plaintiff pays an index number fee within

120 days after the date of a court order denying the plaintiff's application for waiver of the fee pursuant to CPLR 1101(d). [The]Except as provided above, the automatic orders shall remain in full force and effect [during the pendency of the action,] until entry of the judgment of divorce unless terminated, modified or amended by further order of the court upon motion of either of the parties or upon written agreement between the parties duly executed and acknowledged. The automatic orders are as follows:

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

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

(3) Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbering any assets, or unreasonably using credit cards or cash advances against credit cards, except in the

usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

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

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

(6) Each party, having received notice of same, shall within ten (10 days) thereafter, send written notice to the other party of a tax lien, foreclosure, bankruptcy, or litigation, or the filing of same, which could adversely affect the marital estate.

(7) Neither party shall make use of an electronic device in the ownership, use, possession, or custody and control of the other party, including without limitation a tablet, computer, laptop, personal digital assistant, or smartphone, to obtain information about the other party without their knowledge and consent.

§ 2. This act shall take effect on the first of the calendar month next succeeding the sixtieth day after it shall have become a law.

4- Proposal to Amend DRL §§§§ 236(B)(9)(b)(1), 236(B)(9) (b)(2)(iii), 240(1)(j), and 244, and FCA §§§ 451, 455, and 460 Regarding Modification of Child Support or Maintenance Arrears During an Emergency

This proposal is a composite proposal that modifies various provisions of the Domestic Relations Law and Family Court Act which presently either completely prohibit or provide that no modification shall reduce or annul arrears of child support or maintenance accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief prior to the accrual of such arrears.⁷² Our proposal would clarify that the declaration by the Governor of a state of emergency which resulted in a prohibition on filing such application by the Chief Judge or Chief Administrative Judge during such emergency, shall constitute good cause for failure to make application for such relief and permit the court to grant relief retroactively to the date of declaration of the emergency or to such other subsequent date as the court might deem appropriate. This proposal is intended to provide some relief to the payor or payee who can prove entitlement to relief (*e.g.*, change of circumstances) but was prevented from filing because of the emergency; but there is a limitation of six months for the application to be filed after filing is again permitted by the Administrative Order of the Chief Judge or Chief Administrative Judge. The proposal also makes clear throughout that not only the payor, but the payee will be able to apply for relief under the provision which allows the payee to seek upward modifications of support “*nunc pro tunc*” based on newly discovered evidence.

The proposal not only clarifies that emergencies declared by the Governor resulting in a prohibition on filing qualify as good cause without any question, but also modifies DRL §236(B)(9)(b) (2)(iii), and FCA §451 to remove the absolute prohibitions on the court’s modifying child support awards retroactively even for good cause. This removal of the absolute prohibitions conforms with recent case law where courts have aimed at greater flexibility where applications are prevented because of “rare circumstances resulting in grievous injustice”⁷³ or “impossibility”⁷⁴ such as a public health emergency. As Professor Merrill Sobie comments about such cases with regard to FCA § 451 in the Practice Commentaries:

“The subset of cases at least provides a precedent for limited relief, although even an expanded “rare circumstance” or “impossibility” prerequisite is difficult to meet. In the more usual situations, for example where the temporarily unemployed person reduces support payments without seeking a modified court order, the doctrine is of no avail. Presumably, the “rare circumstances” or “impossible” safety net may also be employed when seeking an upward modification, although every case to date has involved a downward modification petition. (Suppose, for example, the custodial parent and the child

⁷² Our proposal does not modify the provisions of either DRL §244 or FCA §460 which deal with entry and docketing of judgments where filing issues because of emergencies usually don’t apply. By this point in the proceeding, the parties will have had many opportunities to seek modifications. Our decision not to modify these provisions was made on the recommendation of the Chief Administrative Judge’s Family Court Advisory and Rules Committee (FCARC). We understand that FCARC is supportive of our proposal.

⁷³ See *Reynolds v. Oster*, *supra*, note 25

⁷⁴ See *Comm’r of Soc. Servs. v. Grant*, *supra*, note 26.

were seriously injured in an accident, precluding their petitioning for the needed and legally justified child support increase.) Applying the overly rigid rule may harm either party, and an expanded equitable exception is needed to temper the statute's impact."⁷⁵

Proposal

AN ACT to amend the domestic relations law and the family court act, in relation to authorizing the court to modify child support and maintenance arrears retroactively for good cause and to declare that an emergency declared by the governor constitutes good cause

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

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

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

⁷⁵ N.Y. Fam. Ct. Act § 451 (McKinney)

section two hundred forty-four of this article. No other arrears of maintenance which have accrued prior to the making of such application shall be subject to modification or annulment unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears and the facts and circumstances constituting good cause are set forth in a written memorandum of decision. Such modification may increase maintenance nunc pro tunc as of the date of application based on newly discovered evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party and without a written memorandum of decision, constitute good cause for failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of maintenance due shall, except as provided for herein, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. The provisions of this subdivision shall not apply to a separation agreement made prior to the effective date of this part.

§ 2. Sub-subparagraph (iii) of subparagraph (2) of paragraph b of subdivision 9 of part B of section 236 of the domestic relations law, as amended by chapter 182 of the laws of 2010, is amended to read as follows:

(iii) No modification or annulment shall reduce or annul any arrears of child support which have accrued prior to the date of application to annul or modify any prior order or judgment as to child support unless the defaulting party shows good cause for failure to make application for relief

from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase child support nunc pro tunc as of the date of application based on newly discovered evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party constitute good cause for failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of child support due shall, except as provided for in this subparagraph, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. Any retroactive amount of child support due shall be support arrears/past due support. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an immediate execution for support enforcement as provided for by this chapter, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support.

§ 3. Paragraph (j) of subdivision (1) of section 240 of the domestic relations law is amended to read as follows:

(j) The order shall be effective as of the date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall, except as provided for herein, be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the courts shall not direct the schedule of repayment of retroactive support. Where such direction is for child support and paternity has been established by a voluntary acknowledgement of paternity as defined in section forty-one hundred thirty-five-b of the public health law, the court shall inquire of the parties whether the acknowledgement has been duly filed, and unless satisfied that it has been so filed shall require the clerk of the court to file such acknowledgement with the appropriate registrar within five business days. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to the custodial parent under this section with any amount payable to such parent under

section two hundred thirty-six of this article. Upon the application of either parent, or of any other person or party having the care, custody and control of such child pursuant to such judgment or order, after such notice to the other party, parties or persons having such care, custody and control and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage rendered on or after September first, nineteen hundred forty, or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of this article, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such child support nunc pro tunc as of the date of application based on newly discovered evidence.

Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party constitute good cause for failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper.

Any retroactive amount of child support due shall be support arrears/past due support and shall be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support

enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules.

§4. Subdivision 1 of Section 451 of the family court act is amended to read as follows:

1. Except as provided in article five-B of this act, the court has continuing jurisdiction over any support proceeding brought under this article until its judgment is completely satisfied and may modify, set aside or vacate any order issued in the course of the proceeding, provided, however, that the modification, set aside or vacatur shall not reduce or annul child support or other arrears accrued prior to the making of an application pursuant to this section[. The court shall not reduce or annul any other arrears] unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing payment prior to the accrual of the arrears, in which case the facts and circumstances constituting such good cause shall be set forth in a written memorandum of decision. A modification may increase support payments nunc pro tunc as of the date of the initial application for support based on newly discovered evidence.

Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without a written memorandum of decision, constitute good cause for either party's failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of support due shall be paid and be enforceable as provided in section four hundred forty of this article. Upon an application to set aside or vacate an order of support, no hearing shall be required unless such application shall be

supported by affidavit and other evidentiary material sufficient to establish a prima facie case for the relief requested.

§5. Subdivisions 2 and 5 of Section 455 of the family court act are amended to read as follows:

2. Except as provided in article five-B of this act, any respondent against whom an order of commitment has been issued, if financially unable to comply with any lawful order issued under this article, upon such notice to such parties as the court may direct, may make application to the court for an order relieving him or her of payments directed in such order and the commitment order. The court, upon the hearing on such application, if satisfied by competent proof that the respondent is financially unable to comply with such order may, upon a showing of good cause until further order of the court, modify such order and relieve the respondent from the commitment order. No such modification shall reduce or annul unpaid sums or installments accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the order directing payment prior to the accrual of such arrears. Such modification may increase the amount to be paid pursuant to a lawful order issued under this article nunc pro tunc based on newly discovered evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party constitute good cause for failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper.

5. Any respondent may assert his or her financial inability to comply with the directions contained in an order issued under this article or an order or judgment entered in a matrimonial action or in an action for the enforcement in this state of a judgment in a matrimonial action rendered in another state, as a defense in a proceeding instituted against him or her under subdivision one of section four hundred fifty-four of this article or under the judiciary law to punish him or her for failure to comply with such directions. If the court, upon the hearing of such contempt proceeding, is satisfied by competent proof that the respondent is financially unable to comply with such order or judgment, it may, in its discretion, until further order of the court, make an order modifying such order or judgment and denying the application to punish the respondent for contempt; provided, however, that if an order or judgement for child support issued by another state is before the court solely for enforcement, the court may only modify the order in accordance with article five-B of this act. No such modification shall reduce or annul arrears accrued prior to the making of such application for modification unless the defaulting party shows good cause for failure to make application for relief from the order or judgment directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc as of the date of the application based on newly discovered evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party constitute good cause for failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of support due shall be

paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid.

§ 6. This act shall take effect immediately.

5. Proposal Regarding Rebuttable Presumption of Expenses in Matrimonial Actions [CPLR Rule 4533-c]

We reintroduce our legislative proposal from our 2019 and 2020 reports for a rebuttable presumption on proof of expenses in matrimonial cases pursuant to CPLR rule 4533-c. This measure has special covid related significance because it enables parties to introduce expenses without having the person who performed the service appear, which might be especially difficult during covid.⁷⁶ The proposal would impose a cap of \$10,000 on invoices in matrimonial cases, a much more realistic amount than the existing \$2,000 cap on invoices in general civil cases pursuant to rule 4533-a. As Vincent Alexander observes in the Practice Commentaries regarding the general rule for all civil cases, “The amount specified in the rule as originally adopted has steadily increased by amendment over time and is long overdue for an upward adjustment.” (CPLR 4533-a). The rule we propose for matrimonial actions would also allow invoices for any court ordered expenses, a much broader category than allowed under rule 4533-a and would allow more than one invoice per provider. These differences are designed to make it easier for matrimonial litigants, especially unrepresented litigants, to admit documents into evidence. We propose the new rule as a separate rule for matrimonial cases because in family matters, it is especially frequent and necessary for small expenses to be incurred for children’s expenses for several children and other family matters.

This rule, like rule 4533-a, allows a plaintiff to prove the reasonableness and necessity for an itemized bill for services without having to produce the person who provided the invoice, provided that certain formal requirements specified are met.⁷⁷

Unlike CPLR 4533-a which is labelled “prima facie proof,” our rule creates a rebuttable presumption to make clear that it does not preclude rebuttal. Vincent Alexander notes, with regard to rule CPLR 4533-a, that, even though it is labelled “prima facie proof of damages,” it allows for possible rebuttal of the expenses by requiring notice to the other party that the bill will be offered without foundation evidence at least 10 days before trial so that the other party can subpoena witnesses and gather rebuttal evidence. However, our rule is even clearer so that everyone, even self-represented litigants, will understand that the presumption can be overcome. This will prevent the rule from being abused. Our rule also provides a procedure to follow so that the party offering the proof will get notice in sufficient time that the other party intends to rebut the presumption and can prepare to subpoena witnesses or gather other proof for the trial. In addition, our rule is labelled “proof of expenses” rather than “proof of damages” to reflect the fact that, in matrimonial actions, the parties usually claim expenses rather than damages which are more commonly sought in tort and personal injury actions. Our new rule also uses gender neutral language by speaking of “the affiant’s

⁷⁶ We thank Special Referee, Marilyn Sugarman, Esq. for bringing this issue to our attention.

⁷⁷ These formal requirements are summarized by Vincent Alexander in the Practice Commentaries regarding the general civil Rule 4533-a as follows: “The formal requirements of CPLR 4533-a are as follows: (1) the bill or invoice must be itemized; (2) the bill must be “marked paid” or a receipt, such as a cancelled check, must be introduced; (3) the person who rendered the services or made the repairs, or an authorized agent of such person, must have certified the bill and made a verified statement that (a) no part of the payment will be refunded, and (b) the charges for the services or repairs were at the provider’s usual rate.” (See N.Y. CPLR 4533-a (McKinney)).

employer” rather than “his employer.” Demonstrating the need for our proposal is a recent article in the *New York Law Journal* where the author, Marilyn Sugarman, states:

“It is long past time to amend not only the dollar limitation set forth in the statute, but to allow a greater number of invoices from the same provider, particularly if there is testimony and/or other documentary evidence offered to substantiate the claims. A combination of bills or invoices; a credit card statement; canceled check; Venmo or Zelle message; or an email or text message-together with testimony of the party who paid the invoice or bill-should present a sufficient indicia of reliability to prove payment of an expense.

Conclusion

If New York state is not prepared to adopt a residual hearsay exception that codifies when any hearsay statement should be admissible-after the adverse party is given reasonable notice of the intent to offer the statement-so long as there is a guarantee of trustworthiness (see [Fed. R. Evid. 807](#)), there should at least be an amendment to [CPLR 4533-a](#) to relax some of the onerous requirements under the Rule. This would benefit practitioners who want to be assured that their evidence will be admitted at trial, rather than trusting that the court will determine that a litigant has provided a sufficient foundation for the admission of bills and invoices into evidence.”

Our proposal corrects several of what Ms. Sugarman calls the “onerous requirements under the Rule,” not only the dollar limitation, but also the allowance of multiple invoices from the same provider.

Our proposal was not enacted in the previous Legislative sessions. It is our hope that it will be enacted in 2022. This proposal is needed more than ever during covid when filings and appearances in matrimonial actions are more limited and difficult. It is designed to make it easier for matrimonial litigants to admit documents as to their expenses into evidence without having to produce the person who prepared the document, which might be especially difficult during the pandemic.

Proposal:

AN ACT to amend the civil practice law and rules, in relation to expenses 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 4533-c to read as follows:

Rule 4533-c. Rebuttable presumption of expenses 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 rule 4533-a, there shall be a rebuttable presumption that an itemized bill or invoice, receipted or marked paid, for court-ordered obligations, child related expenses, household expenses, goods, services or repairs of an amount not in excess of ten thousand dollars shall be admissible in evidence and represents the reasonable value and necessity of such expenses, goods, services or repairs itemized therein in any action or proceeding set forth in subdivision (a), provided that it is accompanied by a sworn statement by the person, firm or corporation, or an authorized agent or employee thereof, providing such goods or services or making such repairs and charging for the same, stating that (1) it provided the goods or services or made the repairs for which the expenses were incurred in the amount indicated, (2) no part of the payment received therefor will be refunded to the debtor, and (3) the amounts itemized therein are the usual and customary rates charged for such expenses, goods, services or repairs by the affiant or the affiant's employer; and provided further that a true copy of such itemized bill or invoice together with a notice of intention to introduce such bill or invoice into evidence pursuant to this rule (indicating on its face that any objections must be in writing and set forth the basis for such objection(s)) is served upon the adverse party at least thirty days before the trial. Such presumption may be rebutted at trial only if the adverse party has served on the party submitting the expense and filed with the court a written notice of intention to rebut such bill or invoice setting forth the basis for such objection(s) at least fifteen days prior to trial.

§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.

6. Proposal for Limited Appearance by Attorneys for Counsel Fee Applications by the Non-Monied Spouse [DRL § 237(a)]

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 DRL § 237(a) to clarify and codify on a statewide basis that unrepresented litigants should not be required to file an affidavit detailing fee arrangement 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 DRL § 237(a).

This proposal modifies DRL § 237(a). to provide that notwithstanding anything in CPLR 321 to the contrary, an attorney may make a limited appearance to apply for counsel fees for the non-monied spouse in a divorce action. This proposal has special covid related significance. Non-monied spouses are especially disadvantaged during covid if they do not have counsel because it is difficult to file papers and make appearances. This bill would make it easier for them to exercise their rights pursuant to DRL 237(a) to seek an award of counsel fees in the litigation by encouraging attorneys to make applications on their behalf for counsel fees and not be required to make a formal appearance for the entire case.

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.⁷⁸ However, our Committee decided that a statutory amendment to 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 CPLR 321, our proposed amendment provides that it applies notwithstanding the provisions of that section. Said statute states that once a party has

⁷⁸ Matrimonial Commission, Report to the Chief Judge of the State of New York [Feb 2006], available at [Matrimonial Commission - N.Y. State Courts \(nycourts.gov\)](https://www.nycourts.gov/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.”

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.⁷⁹

A 2002 Report on Unbundled Services by a State Bar Commission (the “NYSBA Report”),⁸⁰ at footnote 2, suggests language for amendment of CPLR 321 to accommodate limited scope representation.⁸¹ 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 limited appearances by pro bono attorneys.⁸²

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.⁸³ 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.⁸⁴

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

⁷⁹ CPLR 321 reads as follows:

§ 321. Attorneys.

(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.”

⁸⁰ 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.

⁸¹ Footnote 2 of the NYSBA Report provides:

“If a limited appearance to accommodate unbundling were considered desirable, an amendment to CPLR § 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.”

⁸² NYSBA Report, at pp.5-6.

⁸³ NYS Unified Court System, Part 1200, Rules of Professional Conduct, April 1, 2009.

⁸⁴ 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.

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?

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.⁸⁵

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.”⁸⁶

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.”⁸⁷ 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 is consistent with 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

⁸⁵ 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.

⁸⁶ 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.

⁸⁷ See Joel Stashenko, “NY Courts Endorse ‘Limited-Scope’ Representation,” *NYLJ*, 12/20/16, Pg.1, Col. 5.

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.⁸⁸

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 the enactment of Judiciary Law section 35(8) 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.”*⁸⁹

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.

If enacted, this legislation will reduce the number of indigent litigants that are forced to either represent themselves or rely on the limited number of pro bono and assigned counsel available to assist them.⁹⁰ Thus, our proposal is clearly an access to justice measure furthering the Chief Judge’s Excellence Initiative.

⁸⁸ 22 NYCRR§ 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 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

⁸⁹ See bill memo 2006 A. 10447 available at [Bill Search and Legislative Information | New York State Assembly \(nyassembly.gov\)](http://www.nyasassembly.gov/BillSearchandLegislativeInformation)

⁹⁰ See Committee Response to Request for Public Comment on Proposed Guidelines for Limited Scope Representation in Civil Matters dated September 24, 2018 attached as Appendix “E” to our 2019 Annual Report to the Chief Administrative Judge available at [2019-Matrimonial.pdf \(nycourts.gov\)](http://www.nycourts.gov/2019-Matrimonial.pdf)

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:

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 CPLR 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.

V. Other New and Previously Endorsed Legislative Proposals

A. Other New Legislative Proposals

1. Proposal to Amend the Child Parent Security Act to Allow an Anonymous Caption in Public Files (FCA 581-205) (New)

The Committee proposes this year an amendment to the Child Parent Security Act enacted in 2020 as chapter 56, Laws of 2020. The amendment would ensure that the sealing provisions of the Act are not compromised by rules requiring parties' names in captions in papers. The Child Parent Security Act provides that Court records relating to parentage proceedings shall be sealed with certain exceptions for child support administration by state authorities, but may be available for inspection and copying only by the parties or the child. However, pursuant to both the CPLR and Court Rule, the County Clerk as the Clerk of the Supreme Court or the Surrogate's Court Clerk where the initial petition is filed is required to display the names of parties unless the statute, a court rule or court order specially prohibits.⁹¹ These rules are intended for the typical type of litigation where the parties' interests are adverse to each other and the defendant needs to know the plaintiff's identity in order to defend the case, and where there is no statutory sealing requirement as there is with the Child Parent Security Act.⁹² Even then, there are exceptions granted depending on the facts of the case.⁹³ By contrast, in most cases under the Child Parent Security Act, the

⁹¹See CPLR 2101 (c) which reads as follows:

c) Caption. Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the index number of the action if one has been assigned. In a summons, a complaint or a judgment the title shall include the names of all parties, but in all other papers it shall be sufficient to state the name of the first named party on each side with an appropriate indication of any omissions.

N.Y. C.P.L.R. 2101 (McKinney).

See also 22 NYCRR section 202.5[d][1] which reads as follows:

“ In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator's rule or order of the court:...

(ii) The summons, complaint, petition, or judgment sought to be filed with the County Clerk contains an “et al” or otherwise does not contain a full caption;

⁹² See *Doe v. Roman Cath. Archdiocese of New York*, 64 Misc. 3d 1220(A), 117 N.Y.S.3d 468 (N.Y. Sup. Ct. 2019) where Justice Ruderman stated:

“ The rationale for the disclosure of a plaintiff's name in a complaint or petition is grounded in the basic due process rights of notice and an opportunity to be heard” (3B Carmody-Wait 2d § 28:6) [Note: online treatise].”

⁹³ See 82 N.Y. Jur. 2d Parties § 5 stating:

“However, a plaintiff may be permitted to proceed anonymously if there are good reasons for doing so and the plaintiff's identification can be made with enough certainty to allow the court to acquire jurisdiction.”

parties petition the court consensually for a judgment of parentage, and rules as to names of parties in captions are inapplicable.

Showing the names of the parties or the child in the caption of any document in the file could threaten the sealing protections of the Child Parent Security Act. However, in Supreme Court actions, at present, the only way for a litigant to ensure that names of the parties or child will not be revealed in the caption of a document in the proceedings is by submitting a required letter application for an anonymous caption in all publicly viewable case listings. A model sample letter application is posted on NYSCEF and is available on Divorce Resources at [letter.application.pdf \(state.ny.us\)](https://www.nysCEF.org/letter.application.pdf), but may also be submitted in hard copy. Once the application is approved by the court, the County Clerk or Surrogate's Court Clerk is authorized not to disclose the name of the child or any party in the caption on any document publicly viewable. However, use of the letter application requires an application in every case and wastes judicial resources as well as litigants' time. It would be far more efficient to amend the statute as we propose. Our proposal would allow the County Clerk (as the clerk of the Supreme Court) or the Surrogate's Court Clerk who receives the files not to display the name of the child or party in any document, index or minutes available to the public.

It should be noted that the issue of anonymous captions is a Supreme and Surrogate's Court issue and not currently an issue in Family Court because in Family Court there is no publicly available record of the names of the parties. Nevertheless, on the recommendation of the Chief Administrative Judge's Family Court Advisory and Rules Committee, we have made the proposal applicable to Family Court Clerks as well as County Clerks and Surrogate's Court Clerks, in case in the future it should happen that Family Court calendars on E-Courts contain full party names.

We strongly urge adoption of our proposal to ensure confidentiality of highly intimate information, while preserving judicial resources and promoting efficiency.

Proposal:

AN ACT to amend the family court act, in relation to ensuring the sealing provisions of the child parent security act

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

Section 1. FCA Section 581-205 is amended to read as follows:

§581-205. Inspection of records.

Court records relating to proceedings under this article shall be sealed, provided, however, that the office of temporary and disability assistance, a child support unit of a social services district or a child support agency of another state providing child support services pursuant to title IV-d of the federal social security act, when a party to a related support proceeding and to the extent necessary to provide child support services or for the administration of the program pursuant to title IV-d of the federal social security act, may obtain a copy of a judgment of parentage. The parties to the proceeding and the child shall have the right to inspect and make copies of the entire court record, including, but not limited to, the name of the person acting as surrogate and any known donors. The county clerk or the clerks of the surrogate's or family courts shall not display the name of the child or party in any document, index or minutes available to the public.

§2. This act shall take effect immediately.

2. Proposal to Amend the Domestic Relations Law with Respect to Awarding Possession of Companion Animals (Chapter Amendment to DRL 236(B)(5)(d)(15)) (New)

A recent amendment to the Domestic Relations Law added chapter 509 of the Laws of 2021 which imposes the requirement that courts consider the best interest of companion animals in awarding possession of such animals pursuant to the New York Equitable Distribution Law.

The Committee believes that a chapter amendment is needed to clarify that the definition of a companion animal does not include service animals since such animals should generally be awarded to the party whom they are trained to assist without consideration of such animals' best interests.

The Committee also believes that the new statute should enumerate specifically what the court is to consider as to the best interest of a companion animal when awarding possession in a divorce or separation proceeding as in other states throughout the nation. The guidelines would recognize that companion animals are a unique property category and are treated differently from mere chattel. In making its determination to keep the pet in his present home, a First Department decision concluded that the intangibles transcended the ordinary indicia of actual ownership or right to possession such as title, purchase, gift, and the like. *See Raymond v. Lachmann*, 695 N.Y.S.2d 308 (App. Div. 1st Dept. 1999)). As to ownership of the parties' dogs, the Tennessee trial court considered their needs (the dogs) and the ability of the parties to care for them. *See Baggett v. Baggett*, 422 S.W.3d 537 (Tenn. Ct. App. 2013). In *Aho v. Aho*, the Michigan trial court found that awarding Finn (the dog) to plaintiff was proper and in the best interest of all involved to keep all of the animals together. *See Aho v. Aho*, No. 304624, 2012 Mich. App. LEXIS 2104 (Ct. App. Oct. 23, 2012). The family court in Alabama properly determined that it was in the dog's best interest to remain in the family home where he had lived for six years and had a yard to run in instead of living in the daughter's hotel room. *See Placey v. Placey*, 51 So. 3d 374 (Ala. Civ. App. 2010). The family court considered the dog's best interest in determining that the mother was his true owner. *Id.*

A bill previously introduced in Rhode Island excludes service animals from the definition of companion animals whose best interests should be considered when awarding possession in a matrimonial proceeding. The bill enacted in New York has no presumption or preference as to awarding possession of a service animal utilized by one of the parties or the children. The Rhode Island bill also sets forth specific factors for the court to consider in determining the best interest of the animal, while the enacted New York law lacks any such guidance for Judges making such determinations. See 2021 Bill Text RI H.B. 5580. We have copied both features of the Rhode Island bill into a proposed chapter amendment to the newly enacted DRL 236(B) (5)(d)(15).

Proposal:

AN ACT to amend the domestic relations law, in relation to awarding possession of a companion animal

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

Section 1. Subparagraph 15 of paragraph d of subdivision 5 of part B of section 236 of the domestic relations law, as amended by section 1 of part PP of chapter 55 of the laws of 2020, and as further amended by chapter 509 of the laws of 2021, is amended to read as follows:

(15) in awarding the possession of a companion animal, the court shall consider the best interest of such animal. "Companion animal", as used in this subparagraph, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law; but the term "companion animal" shall not include assistance animals (also called service animals), which are defined as any animal that is individually trained to do work or perform tasks for the benefit of an individual with a disability including a physical, sensory, psychiatric, intellectual, or other mental disability.

(a) In determining the best interest of such an animal, the court shall consider, but not be limited to, the following:

(i) Which party owned the animal first or whether they purchased or acquired the animal together following marriage;

(ii) Which party assumed most of the responsibility for tending to the animal's needs including, but not limited to, feeding, walking, grooming, and veterinarian visits;

(iii) Which party spent more time on a regular basis with the animal;

(iv) What living arrangement is in the best interest of the animal in question;

(v) Who presently wants sole possession and ownership and the proximity of the parties to one another to enable shared custody; and

(vi) Whether there are children involved in caring for the animal and the nature of their attachment to the animal, including consideration of which parent has custody of the children and whether it is in the children's best interests to keep the animal in their domicile for care and affection.

(b) In awarding joint possession of a companion animal, the court shall consider, but shall not be limited to the following:

(i) How long the animal will stay with each party to the animal possession determination;

(ii) How veterinary visits and costs will be handled;

(iii) Who shall be responsible for basic needs of the animal, including to: food, toys, pet sitting, and daycare expenses while the animal is in each party's home;

(iv) Any additional criteria the court deems relevant to the care and possession of the animal;

(c) Either party to a divorce or separation proceeding may petition the court in a form prescribed by the court for the temporary allocation of sole or joint possession of and responsibility for the companion animal jointly owned by the parties, and at any time prior to the court's decision, the parties may also enter into an agreement allocating the sole or joint ownership or responsibility for the companion animal.

(d) If the court finds that a companion animal of the parties is a marital asset, it shall allocate the sole or joint ownership of and responsibility for a companion animal of the parties. In issuing an order under this subsection, the court shall take into consideration the well-being of the companion animal under the standards set forth in this section.

§2. This act shall take effect immediately.

B. Other Previously Endorsed Legislative Proposals

1. Modified Statutory Proposal for Divorce Venue in Matrimonial Cases [CPLR 509, 514]

Although this measure does not have special covid related significance, we once again endorse our proposal on divorce venue this year as one of our three most important legislative priorities (along with the proposal on mandatory electronic filing in matrimonial cases and an increase in assigned counsel fees). We believe this measure furthers the Chief Judge's Excellence Initiative by improving the efficient operation of the courts' disposition of divorce cases while at the same time furthering access to justice. Thus, it promotes both "operational" and "decisional" excellence.

Plaintiffs have for many years been regularly utilizing the mechanism allowed by CPLR 509 to designate venue in the county of their choice even though none of the parties are residents of that county. The reason why CPLR 509 designations of venue have been 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. 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].

Designating venue in a divorce action in a distant county from the residence of the parties and children burdens the judicial resources of that county and deprives residents of that county of access to those resources. It means that Judges will have to appoint and deal with counsel and mental health and other professionals in distant jurisdictions with whose work and expertise they are unfamiliar. It may also mean that parties and their children may have to travel long distances to have matters heard or meet with professionals in the venue designated. When venue is designated in a distant county, defendant is more likely to default rather than answer, giving up valuable rights in the divorce, and increasing the likelihood of post-judgment applications. In *Castenada*, Justice Cooper suggested that one of the reasons plaintiffs in distant counties may choose to file in a distant county is that they know their spouse will be likely to default if they must travel far. When these defendants begin to understand the consequences of having defaulted in that critical 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.

Even if defendants do not default and are able to answer electronically, as long as plaintiffs can utilize CPLR 509 to designate venue in matrimonial actions in distant counties, defendants may still be required to travel long distances. Judges may require appearances to resolve conflicts in the papers or testimony on issues where income needs to be clarified on the record, or where the mandatory records checks reveal a disclosed or undisclosed prior or present Order of Protection or pending or prior neglect proceedings, or that a party is a registered sex offender. See *Otto v. Otto*, 150 A.D.2d 57, 60, 545 N.Y.S.2d 321 (Second Dept. 1989), where the court, in reversing and remanding the case to the trial court, held that there must be an inquest to determine the economic issues of a divorce where there was a default judgment.

Compounding the need for the omnibus matrimonial venue statute we propose, was a new law enacted in 2017 amending CPLR 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 (L. 2017, c. 366) was not designed with matrimonial actions in mind. By adding another venue option unrelated to residence without changing plaintiff's ability to designate a venue unrelated to residence pursuant to CPLR 509, which remains intact, it only underscores the immediate need for our omnibus matrimonial divorce venue legislation. Not only will our proposal override CPLR 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 will also override the provisions of the new law.

Electronic filing will greatly alleviate problems for defendants caused by CPLR 509 venue designations, and will also make it easier for plaintiffs to file and prosecute divorce actions in the county of residence without the need to forum shop because divorce actions will proceed more efficiently, saving time for both Judges and litigants. However, our legislative proposal is still necessary to eliminate the abuses caused by CPLR 509 designations of venue in distant counties.

We have ever increasing concerns about the need for this proposal as the burden of CPLR 509 designations of venue in foreign counties unrelated to residence has increased on Judges all over the State, depriving litigants in their home counties of judicial resources, negatively impacting outcomes for the parties and their children, and requiring Judges to appoint counsel and mental health professionals in distant counties with whom they are not familiar. We have concerns about this problem in all parts of the State, not just New York County as discussed in *Castaneda*. Indeed, we have recently received reports from Administrative Judges and District Executives in the western, northern and middle portions of the State about large numbers of out of county uncontested divorce filings for 2021, many of them from New York County and Kings County. It was reported to us that one Judge in a County on the northern tier of the State had 987 uncontested divorce cases assigned to him in 2021. Of those 987 filings, 476 were filings by attorneys from distant counties, including 280 from one attorney in New York County, two from another attorney in New York County, eight from one attorney in Kings County, and 186 from one attorney in the Village of Pomona in Rockland County.

The burden of CPLR 509 venue designations has been great on Judges in particular counties upstate and downstate for many years, for example, in the 1st, 2nd, 6th, 7th, and 8th Judicial Districts. While statistics are not yet available for the full year 2021, the burden on these and many other Districts around the State appears to have continued, even though filings were generally reduced due to the pandemic in 2020. See Appendix "G" to the report showing Court Research statistics for every County in the State from 2011 to 2020.

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.⁹⁴ He learned that a major concern of matrimonial judges in these areas is the large number of uncontested divorce actions filed in their

⁹⁴ These meetings were arranged by Hon. Sharon Townsend in Buffalo and by Hon. Richard Dollinger and Sharon Sayers, Esq. in Rochester. Justice Townsend and Ms. Sayers, both now retired, were then members 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.

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. See Appendix G-1 to this report showing Court Statistics on Uncontested Divorce Filings in these Counties yearly since 2014. The boroughs of New York City, aside from Richmond, each have an even greater number. See Appendix G-2 to this report showing Court Statistics on Uncontested Divorce Filings in the five boroughs of New York City yearly since 2014.

A number of thoughtful proposals have been made in the last few years concerning ways to change the CPLR rules 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 CPLR 509. Under existing CPLR 509, only the plaintiff has this ability, and under existing CPLR 510(1), only the defendant may demand a change in the designation.⁹⁵ 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.⁹⁶ 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 in divorces involving minor children venue should be related to residence so that the courts can make appropriate decisions as to custody and parenting time and support as to the child, having, where appropriate, the involvement of an attorney for the child familiar with the services available where the child resides. However, our Committee believes that all divorce actions should have venue related to residence. Another such proposal by the New York State Bar Standing CPLR Committee, which our Committee was asked to review, would have applied to all matrimonial actions, but that proposal requires venue to be the county of residence of one of the parties, not taking into account at all the residence of the children.

In our prior annual reports, the Matrimonial Practice Advisory and Rules Committee put forth its own proposal to adopt a new CPLR 514, which is an omnibus matrimonial venue proposal which applies to all divorce actions, not just uncontested divorces, as well as actions in Supreme Court for custody and visitation, all applications to modify a Supreme Court order of custody or visitation, all post judgment proceedings, and all matrimonial actions described in DRL § 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 2017-18 S. 5736.

In 2018 we modified 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

⁹⁵ 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. CPLR 510 (McKinney).

⁹⁶ "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.)).

situations where addresses are unknown or subject to a confidentiality order. In this modified proposal, we provided 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 the modified 2018 proposal, we also addressed concerns expressed by Sanctuary for Families regarding our divorce venue post judgment application rule proposal about when the address of either party or their child(ren) is not a matter of public record or is subject to an existing confidentiality order.⁹⁷ 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 CPLR 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.⁹⁸

Another change in the modified 2018 proposal was 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 2018 proposal retained 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 was retained by our modified 2018 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 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 2018 proposal was 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),

⁹⁷ See Appendix “G-2” to our 2019 Annual Report to the Chief Administrative Judge available at <https://www.nycourts.gov/LegacyPDFS/IP/judiciary/legislative/pdfs/2019-Matrimonial.pdf>

This Appendix contains the comments of Sanctuary for Families regarding our divorce venue post judgment application rule which was adopted in 2017. We are pleased that our divorce venue rule proposal for post judgment enforcement and modification applications has been adopted by the Administrative Board 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.

⁹⁸ See 22 NYCRR §202.50 (b)(3)

whether pursuant to CPLR 509 or, because of the recent changes adopted by chapter 366 of the Laws of 2017, in amendments to CPLR 503(a). This, in turn, will ensure 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 2018 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 CPLR rule for matrimonial venue, much the way as there is a separate rule for consumer credit in CPLR 513, the Committee's proposal avoids the cumbersome drafting problems entailed in amending sections of the CPLR (such as CPLR 509 and 510) intended to apply to all types of actions. Our proposed CPLR 514 should have no impact on non-matrimonial actions.

In 2019 we proposed one further modification to our 2018 proposal which addresses concerns raised by Assembly Counsel that our proposed CPLR 514 should expressly contradict CPLR 509 because the latter provides that it applies "notwithstanding any provision of this article." Even though our prior proposal for CPLR 514(b) provided that it applies "notwithstanding anything to the contrary contained in this article," we made a further change in our 2019 proposal to address Assembly staff concerns. We appreciate the input from Assembly staff because we share their desire to make certain that, if enacted, our new proposal will clearly override CPLR 509 in the event of a conflict.

Our legislative proposal in its current form was introduced by Assemblyman Dinowitz as 2019-20 A.7517.⁹⁹ This bill did not find a Senate sponsor in 2019; and the need for the Legislature to focus on the budget and other pandemic related matters delayed its consideration in 2020. This legislation would avoid problems of venue designations in distant counties by requiring that venue be related to residence of the parties notwithstanding CPLR 509. It is one of our Committee's main legislative priorities this year in addition to mandatory e-filing. It requires that venue in a divorce action be related to the residence of the parties with exception only for instances where the address of a party is not a matter of public record or is subject to a confidentiality order as suggested by Sanctuary for Families.

This legislation will ensure that divorces will be processed more quickly statewide as the volume of divorces is more evenly distributed among counties. Residents of those counties will not have to share judicial resources in their counties with residents of other counties. This legislation will also ensure better outcomes in divorce cases by ensuring that defendants are less likely to default, that parties and their children do not have to travel long distances for in-person hearings, and that Judges can appoint and deal with professional counsel and forensic evaluators in custody matters whose work and expertise they are familiar with. We urge passage of this bill as an access to justice imperative.

⁹⁹ This bill is available at

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A07517&term=2019&Summary=Y&Memo=Y&Text=Y

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. Section 509 of the civil practice law and rules, as amended by chapter 773 of the laws of 1965, is amended to read as follows:

§509. Venue in county designated. Notwithstanding any provision of this article except for rule 514, the place of trial of an action shall be in the county designated by the plaintiff, unless the place of trial is changed to another county by order upon motion, or by consent as provided in subdivision (b) of rule 511.

§2. 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, the place of trial may also be in the county where one of such children resides; except that where any of the addresses of these residences is not a matter of public

record, or where any of these addresses 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.

§3. 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.

2. Proposal on Access to Forensics in Custody Cases [DRL §§ 70, 240; FCA §§ 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, the former Matrimonial Practice Advisory Committee, and the New York State Bar Association Committee on Children and the Law 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 proposed rules 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 prior 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.

In our 2017 Annual Report to the Chief Administrative Judge, 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. At the request of the Office of Court Administration, our proposal was introduced as 2017-18 S. 6579. At the same time, Memoranda in opposition to 2017-18 A.1533/S.6300 and in support of 2017-18 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.¹⁰⁰

Also supporting our proposal was the Children’s Law Center of Brooklyn. 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,¹⁰¹ but necessary to avoid placing vulnerable children at greater risk than they already are as the subjects of a custody or visitation proceeding.”¹⁰²

Our proposal was amended in 2018 as S. 6579-A based upon changes we recommended at the suggestion of the Family Court Advisory and Rules Committee and the New York Public Welfare Association, Inc., whose concerns were addressed in the modified proposal.¹⁰³ These changes included revising the definition of “court-ordered evaluators.” We also deleted a provision governing the times when the court may read or review the forensic report. We instead adopted a suggestion of the Family Court Advisory and Rules Committee to authorize the Chief Administrative Judge to promulgate rules and regulations authorizing a court, in 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. These changes do not detract 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 to prevent confidential information in the report from being disseminated indiscriminately (as compared to A.1533/S.6300 or the current version thereof introduced as 2019-20 A. 05621 Weinstein/S. 4686 Biaggi).

For a detailed description of the key provisions of the amended proposal, see Appendix “F-1” to this report.

During 2019, a significant Second Department Decision supported the view reflected in our forensics proposal that, in the interest of protecting the confidentiality of the information in

¹⁰⁰ For copies of these Memoranda in Support of our Proposal, see Appendix “H-1” to ” to our 2019 Annual Report to the Chief Administrative Judge available at

<https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/2019-Matrimonial.pdf>

¹⁰¹ 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.

¹⁰² Children’s Law Center, Letters to the Editor, “Parties Deserve to See Forensic Evaluations”(NYLJ March 22, 2017).

¹⁰³ In 2017-18, both our original proposal (S. 6579) as well as the Senate counterpart to A.1533 (S.6300) were before the Senate.

forensic reports on custody which contain the most sensitive information about the parties' personal lives, it is not error to deny a pro se litigant a copy of a forensic report provided that the pro se litigant has adequate access to the report (see *Raymond v. Raymond*, 2019 NY Slip Op. 05546, 174 A.D.3d 625, 107 N.Y.S.3d 433 (Second Department 2019)). In that case, the Second Department affirmed the lower court's decision granting sole custody to the mother and denied the pro se father's petition for increased access to the child despite the fact that the pro se litigant was not given a copy of the forensic report. The Second Department noted that the pro se litigant had access to the report in that case over an extended period of time during which he could review the report and take notes on it, and that the forensic evaluator testified and was cross-examined at the hearing, and that the report was based on first hand interviews by the evaluator rather than on hearsay. The recent decision in *Raymond* is at odds with dicta in *Sonbuchner v. Sonbuchner*, 2012 NY Slip op 0493, 96 A.D.3d 566, 947 N.Y.S.2d 80 (First Department 2012).¹⁰⁴ In *Sonbuchner*, despite holding that the failure to provide the pro se litigant with a copy of the forensic report prior to direct testimony of the evaluator was harmless error, the court stated in dicta : "We nonetheless reiterate, as we have previously, that counsel and pro se litigants should be given access to the forensic report under the same conditions (see *Matter of Isidro A.-M. v Mirta A.*, 74 AD3d 673 [2010]). Because defendant's attorney had a copy of the report, the court should have given the report to pro se plaintiff, even if the court set some limits on both parties' use, such as requiring that the report not be copied or requiring that the parties take notes from it while in the courthouse."¹⁰⁵ Our proposal differs from this dicta because it would not give an actual copy of the report to the pro se litigant where the represented party's attorney is given a copy, but it follows suggestions in *Sonbuchner* to set some limits on the parties' use of the report such as requiring that the report not be copied. In a report on 2019-20 A.5621/S.4686 dated May 2019, the Matrimonial Law Committee and the Children and The Law Committee of the New York City Bar Association opposed A.5621/S.4686 and favored our proposal (OCA #27), stating:

"The Matrimonial Law and Children and the Law Committees of the New York City Bar Association (the "Committees") write to provide feedback on the proposed legislation which would 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 has proposed a similar but not identical bill (OCA 27-2019) ...

The Committees support the approach taken in OCA 27-2019 with a few minor changes and clarifications detailed below. Although A.5621/S.4686 contains several valuable elements, it goes too far in guaranteeing parties access to forensic reports. We believe that OCA 27-2019 strikes a better balance among the competing interests...

¹⁰⁴ The court held that the failure to give the pro se litigant a copy of the report prior to direct testimony of the evaluator was harmless error since the pro se litigant was given access to the forensic report prior to cross examination of the evaluator during which the litigant questioned the evaluator at length, and the appellate court stated that the lower court's decision on custody and relocation was well supported by the record.

¹⁰⁵ *Sonbuchner v. Sonbuchner*, 96 A.D.3d 566, 568, 947 N.Y.S.2d 80, 83 (2012).

The Committees are pleased that OCA 27-2019 follows our recommendation. A.5621/S.4686, 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.

OCA 27-2019 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.”¹⁰⁶

Although adopted as part of the OCA Legislative Program for 2019-20 as OCA #27, our proposal was not introduced in the Legislature in 2019 or 2020. Instead, the current version of 2017-18. A.1533/S.6300 was introduced as 2019-20 A. 05621 Weinstein/S. 4686 Biaggi. In addition to the opposition of the New York City Bar Association Committees quoted above, there was also opposition to this bill by the Women’s Bar Association of the State of New York, the Family Law Section of the New York State Bar Association, and the American Academy of Matrimonial Lawyers, New York Chapter.¹⁰⁷

Aside from the risk of dissemination of private information about children and families, A. 05621 Weinstein S. 4686 Biaggi also creates substantial risk for victims of intimate partner violence. As stated by the Women’s Bar Association of the State of New York in their 2019 Position Statement in Opposition, a copy of which is contained in Appendix F-3 to this report:

“We are particularly concerned that victims of domestic violence will be targeted and further harmed by this Bill. If parties are given copies of forensic reports, an abuser can easily inflict more abuse on the victim with threats and actual disclosure of the forensic report to employers, relatives and other members of the public.”

During 2020, neither our bill nor A. 4521/S.4686 moved forward.

The Committee strongly supports the concept that all litigants have the ability to read the reports. It is primarily the method of access that appears to be in dispute. It is our hope that our version of the forensics bill or a compromise between our bill and A. 5621/S.4686 can be enacted in 2021 so that the important issue of forensic reports in custody cases can be addressed, thereby serving the dual goals of decisional and operational excellence for the court system, in furtherance of Chief Judge DiFiore’s Excellence Initiative.

¹⁰⁶ See Report on Legislation by The Matrimonial Law Committee and the Children and The Law Committee of the City Bar Association dated, May 2019 attached to this report as Appendix “F -2” to this report.

¹⁰⁷ See Memoranda of Opposition to 2019-20 A.5621/S.4686 by the Women’s Bar Association of the State of New York, the Family Law Section of the New York State Bar Association, and the American Academy of Matrimonial Lawyers, New York Chapter attached to this report as Appendix “F-3.”

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 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 to be 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.

3. Shared Custody Proposal [DRL§240 (1-b) FCA § 413 (1)]

Our Committee has been studying the issue of child support in shared custody situations. Although it does not have special significance related to covid, we now propose an amendment to the Child Support Standards Act to address the situation in *Rubin v. Salla*, 107 A.D.3d 60, 71, 964 N.Y.S.2d 41 (2013). In that case, the First Department, reversing the lower court's denial of the father's motion for summary judgment dismissing mother's action for child support, held that the father who had primary physical custody of a child in a shared custody arrangement where the time was not equally divided (over 50 % with the custodial parent father) could not be ordered to pay child support to the mother even though he had far greater income. The majority opinion by Justice Richter stated: "The mandatory nature of the statutory language undeniably shows that the Legislature intended for the noncustodial parent to be the payer of child support and the custodial parent to be the recipient. The CSSA provides for no other option and vests the court with no discretion to order payment in the other direction." (*Rubin v. Salla*, 107 A.D.3d 60, 67, 964 N.Y.S.2d 41, 47 (2013)). The dissent by Justice Acosta, Presiding Justice of the Appellate Division, First Department, 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." (*Rubin v. Salla*, 107 A.D.3d 60, 73-74, 964 N.Y.S.2d 41, 52-53 (2013)).

To address this situation, which is unfair to the child as pointed out by Justice Acosta, our Committee proposes additional language to the Child Support Standards Act which allows the court to order the custodial parent to make recurring payments to the non-custodial parent in special circumstances without changing the basic concept that child support is to be paid by the non-custodial parent to the custodial parent.

In 2021, our proposal was adopted as OCA 2021 #44 and was introduced in the Legislature by Assemblyman Lavine, Chair of the Assembly Judiciary Committee, as A. 7804. We hope it will be enacted in 2022.

Proposal

AN ACT to amend the family court act and domestic relations law in relation to recurring payments to the non-custodial parent in special circumstances in child support proceedings involving joint or shared custody of children

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

Section 1. Paragraphs (h) through (l) of subdivision 1 of section 413 of the family court act, as amended by chapter 567 of the laws of 1989, are renumbered to be paragraphs (i) through (m) and a new paragraph (h) is added in place of former paragraph (h) to read:

(h) Notwithstanding the above, provided that the child is not receiving temporary assistance for needy families, the court may direct the custodial parent to pay a recurring sum of money to the non-custodial parent where the court determines that: (1) the non-custodial parent has been awarded extended visitation; (2) the non-custodial parent is required to pay only the statutory minimum amount of child support to the custodial parent pursuant to paragraph (d) of this subdivision; (3) there is a vast disparity in the parties' income in favor of the custodial parent, and the non-custodial parent does not have the ability to earn sufficient income to provide for the child's basic needs when in his or her care; (4) such payment is necessary to enable the non-custodial parent to provide for the child's basic needs when in the care of the non-custodial parent; (5) directing the custodial parent to make such payment would not result in insufficient funds in the household of the custodial parent to meet the basic needs of the child; or (6) to do otherwise would not be in the child's best interests and would cause the child to unfairly bear the economic burden of the parental separation. Such payment shall be deemed child support for the purposes of enforcement and shall be deemed income to the

non-custodial parent.

§2. Paragraphs (h) through (l) of subdivision (1-b) of section 240 of the domestic relations law are renumbered to be paragraphs (i) through (m) and a new paragraph (h) is added in place of former paragraph (h) to read:

(h) Notwithstanding the above, provided that the child is not receiving temporary assistance for needy families, the court may direct the custodial parent to pay a recurring sum of money to the non-custodial parent where the court determines that: (1) the non-custodial parent has been awarded extended visitation; (2) the non-custodial parent is required to pay only the statutory minimum amount of child support to the custodial parent pursuant to paragraph (d) of this subdivision; (3) there is a vast disparity in the parties' income in favor of the custodial parent, and the non-custodial parent does not have the ability to earn sufficient income to provide for the child's basic needs when in his or her care; (4) such payment is necessary to enable the non-custodial parent to provide for the child's basic needs when in the care of the non-custodial parent; (5) directing the custodial parent to make such payment would not result in insufficient funds in the household of the custodial parent to meet the basic needs of the child; or (6) to do otherwise would not be in the child's best interests and would cause the child to unfairly bear the economic burden of the parental separation. Such payment shall be deemed child support for the purposes of enforcement and shall be deemed income to the non-custodial parent.

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

4. Firearms Seizure Proposal [DRL 240§§ (3)(h) and 252(9)]

Recently enacted into law as chapter 55 of the Laws of 2020 were amendments to the Criminal Procedure Law and the Family Court Act which authorized courts to issue search and seizure orders regarding firearms in connection with orders of protection. Said legislation did not amend the Domestic Relations Law or otherwise address the Supreme Court's statutory authority in a matrimonial action to issue search and seizure orders regarding firearms possessed in violation of an order of protection issued thereunder. Specifically, the Legislature did not add the new search and seizure provisions to sections 240(3)(h) and 252(9) of the Domestic Relations Law, which incorporate by reference the firearms surrender and license suspension and revocation requirements of CPL § 530.14 and Family Court Act §§ 842-a and 846-a. Notwithstanding, in both plenary and consolidated matrimonial proceedings, the Supreme Court retains inherent authority to issue such orders and may do so where necessary and proper to ensure compliance with its order and the safety of protected parties. The Supreme Court has general original jurisdiction in law and equity under the State Constitution even without statutory authorization¹⁰⁸ Despite the case law, a statutory change is in order so as to avoid confusion.

We again propose amendments conforming sections 240(3)(h) and 252(9) of the Domestic Relations Law to the CPL and Family Court Act as amended by chapter 55 of the Laws of 2020. The proposal was adopted as 2021 OCA #45. During 2021, A.7957 was introduced by Assemblyman Lavine based on our proposal. The bill passed the Assembly and was referred to the Senate. We hope this legislation will be enacted in 2022 so that there will be no confusion on this subject. The Courts have meanwhile adopted a form Seizure Order for Supreme Court based on the Supreme Court's inherent authority.¹⁰⁹

Proposal:

AN ACT to amend the domestic relations law, in relation to authorizing the court to determine the search and seizure orders of firearms in connection with orders of protection

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

Section 1. Paragraph (h) of subdivision (3) of section 240 of the Domestic Relations Law is amended to read as follows:

¹⁰⁸ See *Kagen v. Kagen*, 21 N.Y.2d 532 (New York Court of Appeals 1968).

¹⁰⁹ The form is available on the Divorce Resources website at [SC-3.pdf \(nycourts.gov\)](#)

h. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of a [firearms] firearm, rifle or shotgun in accordance with sections eight hundred forty-two-a and eight hundred forty-six-a of the family court act, as applicable. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final judgment or settlement of the action. The court may where the party against whom the order of protection or temporary order of protection was issued willfully refuses to surrender such firearm, rifle or shotgun pursuant to subdivisions (a) and (b) of section eight hundred forty-two-a of the family court act, or for other good cause shown, order the immediate seizure of such firearm, rifle or shotgun, and search therefor, pursuant to an order issued in accordance with article six hundred ninety of the criminal procedure law, consistent with such rights as said party may derive from this article or the constitution of this state or the United States.

§ 2. Subdivision 9 of section 252 of the domestic relations law is amended to read as follows:

9. Upon issuance of an order of protection or temporary order of protection or upon a violation of such order, the court shall make a determination regarding the suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms, ineligibility for such a license and the surrender of a [firearms] firearm, rifle or shotgun in accordance with

sections eight hundred forty-two-a and eight hundred forty-six-a of the family court act, as applicable. Upon issuance of an order of protection pursuant to this section or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed ten thousand dollars in accordance with subdivision (e) of section eight hundred forty-one of such act; provided, however, that in no case shall an order of restitution be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final judgment or settlement of the action. The court may where the party against whom the order of protection or temporary order of protection was issued willfully refuses to surrender such firearm, rifle or shotgun pursuant to subdivisions (a) and (b) of section eight hundred forty-two-a of the family court act, or for other good cause shown, order the immediate seizure of such firearm, rifle or shotgun, and search therefor, pursuant to an order issued in accordance with article six hundred ninety of the criminal procedure law, consistent with such rights as said party may derive from this article or the constitution of this state or the United States.

§3. This act shall take effect immediately.

5. Proposal to Amend the Extreme Risk Orders of Protection Act to Require that Extreme Risk Orders of Protection be Included in the Statewide Computerized Registry of Orders of Protection [CPLR 6342(7) and CPLR 6343(4)] and §221-a of the Executive Law

We continue to recommend our proposal from our 2020 report to amend the recently enacted law on Extreme Risk Orders of Protection. The Extreme Risk Orders of Protection Act (L. 2019, c. 19) was enacted to enable courts to issue orders of protection to prevent people who pose a danger to others or themselves from possessing firearms. The Act provides for the surrender or removal of such person's firearms once the extreme risk order of protection is issued. As explained by the sponsor's memorandum filed with the legislation before it was enacted:

“New York currently lacks a procedure permitting a court to issue an order to temporarily seize firearms from a person who is believed to pose a severe threat of harm to himself, herself, or others unless that person has also been accused of a crime or family offense.”

Once the temporary or permanent extreme risk order of protection is issued, the statute requires the court to notify and provide a copy of the order to various persons and agencies of law enforcement and the criminal justice system. However, nowhere is there a requirement for the court to notify and send a copy of the order to the statewide computerized registry of orders of protection and warrants of arrest that courts are required to check before issuing orders of custody and visitation pursuant to DRL section 240 (1) (a-1) or FCA section 651(e). It is crucial that judges issuing orders of custody and visitation have knowledge of the issuance of such extreme risk orders of protection before they entrust a vulnerable child to the care of such a person.

While CPLR 6347 states that “no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding,” a finding in a proceeding for an extreme risk order of protection would not be binding on a judge determining custody or visitation of a minor child, but merely a relevant and important factor to consider in the best interest of the child. Moreover CPLR 6346 provides that, upon expiration of the extreme risk order of protection, all records shall be sealed; but specifically provides that such records shall be accessible to courts of the Unified Court System, among other necessary parties.¹¹⁰ This language makes clear that the Legislature intended this information to be available to judges making custody and visitation decisions.

¹¹⁰ § 6346 provides:

Expiration of an extreme risk protection order. 1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order...except that such records shall be made available to:

- (a) the respondent or the respondent's designated agent;
- (b) courts in the unified court system;
- (c) police forces and departments having responsibility for enforcement of the general criminal laws of the state;
- (d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the respondent has made application for such a license; and
- (e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer;...

Thus, we strongly recommend an amendment of the new statute to specifically require the court to provide a copy of the extreme risk order of protection to the statewide computerized registry. This proposal will help protect children from danger, and therefore further the Chief Judge's Excellence Initiative by furthering access to justice.

Proposal

AN ACT to amend the civil practice law and rules and the executive law, in relation to extreme risk orders of protection

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

Section 1. Paragraph (a) of subdivision 7 of section 6342 of the civil practice law and rules, as added by chapter 19 of the Laws of 2019, is amended to read as follows:

(a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, the statewide computerized registry of orders of protection and warrants of arrest referred to in clause (ii) of subparagraph (3) of paragraph (a-1) of subdivision one of section 240 of the domestic relations law and in subdivision (e) of section 651 of the family court act, and the division of criminal justice services of the issuance of a temporary extreme risk protection order and provide a copy of such order no later than the next business day after issuing the order to such persons or agencies or registry. The court also shall promptly notify such persons and agencies and registry and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. The court also shall report such demographic data as required by

the state division of criminal justice services at the time such order is transmitted thereto. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

§2. Paragraph (a) of subdivision 4 of section 6343 of the civil practice law and rules, as added by chapter 19 of the Laws of 2019, is amended to read as follows:

(a) The court shall notify the division of state police, any other law enforcement agency with jurisdiction, all applicable licensing officers, the statewide computerized registry of orders of protection and warrants of arrest referred to in clause (ii) of subparagraph (3) of paragraph (a-1) of subdivision one of section 240 of the domestic relations law and in subdivision (e) of section 651 of the family court act, and the division of criminal justice services of the issuance of a final extreme risk protection order and provide a copy of such order to such persons and agencies and registry no later than the next business day after issuing the order. The court also shall promptly notify such persons and agencies and registry and provide a copy of any order amending or revoking such protection order or restoring the respondent's ability to own or possess firearms, rifles or shotguns no later than the next business day after issuing the order to restore such right to the respondent. The court also shall report such demographic data as required by the state division of criminal justice services at the time such order is transmitted thereto. Any notice or report submitted pursuant to this subdivision shall be in an electronic format, in a manner prescribed by the division of criminal justice services.

§3. Subdivision 1 of section 221-a of the executive law is amended to read as follows:

1. The superintendent, in consultation with the division of criminal justice services, office of court administration, and the office for the prevention of domestic violence, shall develop a comprehensive plan for the establishment and maintenance of a statewide computerized registry of all orders of protection issued pursuant to articles four, five, six, eight and ten of the family court act, section 530.12 of the criminal procedure law and, insofar as they involve victims of domestic violence as defined by section four hundred fifty-nine-a of the social services law, section 530.13 of the criminal procedure law and sections two hundred forty and two hundred fifty-two of the domestic relations law, extreme risk orders of protection issued pursuant to Article 63-A of the civil practice law and rules, and orders of protection issued by courts of competent jurisdiction in another state, territorial or tribal jurisdiction, special orders of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of section 330.20 of the criminal procedure law insofar as they involve a victim or victims of domestic violence as defined by subdivision one of section four hundred fifty-nine-a of the social services law or a designated witness or witnesses to such domestic violence, and all warrants issued pursuant to sections one hundred fifty-three and eight hundred twenty-seven of the family court act, and arrest and bench warrants as defined in subdivisions twenty-eight, twenty-nine and thirty of section 1.20 of the criminal procedure law, insofar as such warrants pertain to orders of protection or temporary orders of protection; provided, however, that warrants issued pursuant to section one hundred fifty-three of the family court act pertaining to articles three and seven of such act and section 530.13 of the criminal procedure law shall not be included in the registry. The superintendent shall establish and maintain such registry for the purposes of ascertaining the existence of orders of protection, temporary orders of protection, warrants and special orders of conditions, and for enforcing the provisions of paragraph (b) of subdivision four of section 140.10 of the criminal procedure law.

§4. All extreme risk orders of protection issued prior to the effective date of this act shall be included in the computerized registry of orders of protection and warrants of arrest referred to in clause (ii) of subparagraph (3) of paragraph (a-1) of subdivision one of section 240 of the domestic relations law and in subdivision (e) of section 651 of the family court act, on the effective date of this act.

§ 5. This act shall take effect 120 days from the date on which it shall have become a law.

6. Proposal to Amend DRL §232 to Allow for Alternative Service of Divorce Summons by Email or Social Media

We resubmit our previously endorsed legislative proposal to amend DRL §232 to allow for alternative service of the divorce summons by email or social media. This legislation is necessary because Supreme Court frequently feels compelled to order service by publication in matrimonial actions when personal service on the defendant cannot be made because the defendant cannot be found. Service by publication, however, is generally expensive and often ineffective. In our view, there should be a practical alternative available to the Courts.

While personal service upon a defendant is required in a divorce action pursuant to CPLR 308(1), CPLR 308 allows several other methods if delivery to the defendant is not possible pursuant to subdivision one. These include service on a person of suitable age and discretion with simultaneous mailing pursuant to subdivision two. Subdivision four of CPLR 308 allows for ‘nail and mail’ service where service pursuant to subdivisions one and two cannot be made with due diligence. Both subdivisions two and four provide an exception in matrimonial actions where service may be made pursuant to a court order in accordance with DRL § 232(a). Subdivision five of CPLR 308 provides for service “in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.” DRL § 232 requires that if the complaint is not personally served with the summons, no default judgment may be granted unless the summons has notice of the nature of the divorce action on its face and has either been personally delivered to the defendant or served on defendant in accordance with either CPLR 308 or CPLR 315. CPLR 315 permits service by publication by court order on motion without notice as a last resort “if service cannot be made by another prescribed method with due diligence” in certain types of actions, one of which is a matrimonial action.

These provisions have caused problems in divorce actions where the plaintiff cannot locate the defendant, because the defendant has left no forwarding address or contact information. Supreme Courts frequently feel compelled to order publication as a method of last resort even though it can be extremely expensive. As stated by the Court of Appeals in upholding an order of the Third Department ordering service by publication to be paid by the county for an indigent litigant: “We are not unmindful, however, of the cost of publication in a matrimonial action and the burden it may impose on local government. Our affirmance is, therefore, without prejudice to the parties, if so advised, to apply for a determination whether, in a matrimonial action, judicially devised service (CPLR 308, subd. 5) is available as an alternative to service by publication.” *Deason v. Deason*, 32 N.Y.2d 93, 95, 296 N.E.2d 229, 230 (1973). Thus, the Court of Appeals encouraged courts to devise means of alternative service pursuant to CPLR 308(5) whenever possible.

Back in 1973 when *Deason* was decided, there was no email or social media available to use as a method of alternative service. Today, the situation is totally different as use of email and social media are becoming the most frequently used means of communication among many segments of society, both young and old. Nevertheless, although there have been cases where courts have fashioned alternative service in matrimonial cases pursuant to CPLR 308(5), use of email and social media is rarely used in Supreme Court matrimonial actions. In a 1992 case, the court refused to grant service by publication and instead ordered service by a combination of mailing to defendant’s mother, and posting in several places, stating:

“the court recognizes that where constructive means of service are sought under CPLR 308 (5), publication is traditionally requested and routinely granted either solely or in conjunction with some other delivery means. This habit may spring from other statutes that specify publication as a means of service. But a literal reading of CPLR 308 (5) and the cases construing it and its predecessors lead this court to conclude that publication under subdivision (5) is not an essential or necessary element nor even a desirable element of judicially devised service.” (see Debra M. v. Guy M., 155 Misc. 2d 912, 914, 591 N.Y.S.2d 302 (Sup. Ct. 1992).

A 2015 trial court decision in New York County was one of the few cases where alternative service by social media has been ordered by the court in a matrimonial action (see Baidoo v. Blood-Dzraku, 48 Misc. 3d 309, 5 N.Y.S.3d 709 (N.Y. Sup. Ct. 2015)). In that case, the plaintiff wife never resided with the defendant spouse during their marriage of six years, the defendant’s last address known to the plaintiff was an apartment that he vacated four years prior, plaintiff had occasional telephone conversations with her spouse in which he informed her that he had no fixed address and no place of employment, defendant refused to make himself available to be served with divorce papers, plaintiff hired private investigators who were unable to locate the defendant, his pre-paid cellular telephone had no billing address, he had not left any forwarding address with the post office, and the Department of Motor Vehicles had no record of him. Justice Matthew Cooper granted the plaintiff’s ex parte motion for alternative service by use of Facebook, without requiring service by publication as a back-up method, pointing out that service by social media was not only much cheaper than publication (sometimes \$1,000 per week in New York County), but also much more likely to reach the defendant (see Baidoo v. Blood-Dzraku, 48 Misc. 3d 309, 315, 5 N.Y.S.3d 709, 715 (N.Y. Sup. Ct. 2015)).

In the interest of increasing the chances that defendants will receive notice of divorce actions and of reducing litigation expenses of plaintiffs, thereby furthering the Chief Judge’s Excellence Initiative, our Committee proposes to amend DRL § 232(a) to give official legislative recognition to use of social media or email as a legitimate method of court ordered alternative service pursuant to CPLR 308(5) in matrimonial actions.

This proposal will ensure that service by publication in matrimonial cases, which is both expensive and often ineffective, will be used as a last resort only, and will encourage courts to authorize service by email or social media where the court is satisfied there is proof that the social media or email account is active and that the platform to be used is reasonably calculated to reach the defendant. We have defined the term “active” in our proposal to mean that it has been used within the last thirty days in order to prevent litigation.

An example of a case which would not satisfy the requirements of our proposal is the 2016 decision of Hon. Jeffrey Sunshine, in Qaza v. Alshalabi. There the court rejected an application for service by social media, stating:

“Before the Court could consider allowing service by Facebook pursuant to CPLR 308(5) the record must contain evidence that the Facebook profile was one that defendant actually uses for receipt of messages. The Court notes that anyone can create a Facebook profile using accurate, false or incomplete information and there is no way, under the application

currently pending, for the Court to confirm whether the profile proffered by plaintiff is in fact the defendant's profile and that he accesses it (see *Fortunato v. Chase Bank USA, N.A.*, No. 11 Civ 6608(JFK), 2012 WL 2086950 [S.D.N.Y., June 7, 2012]). Granting this application for service by Facebook under the facts presented by plaintiff would be akin to the Court permitting service by nail and mail to a building that no longer exists. For all of the foregoing reasons, plaintiff's application for permission to serve the summons upon defendant by Facebook is denied without prejudice." (See *Qaza v. Alshalabi*, 54 Misc. 3d 691, 696, 43 N.Y.S.3d 713, 717 (N.Y. Sup. Ct. 2016).

We believe that our proposal satisfies the demands of due process, which requires that defendant be given notice of the divorce action by a method reasonably calculated to reach him/her, but does not require that the defendant receive actual notice of the divorce action where the defendant cannot be located. As stated in Carmody-Wait:

"When the court formulates a method of service, to be used in lieu of other methods, the method of service must be fair, adequate, and reasonably calculated under all the circumstances to apprise the defendant of the action brought against him or her.⁴ On the other hand, constitutional due process does not require that the method of service guarantee actual notice to the defendant.⁵ Indeed, in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits.⁶ Courts will generally attempt to fashion alternatives most likely to give the defendant notice under the particular circumstances,⁷ although it is recognized that court-directed methods will occasionally result in failure to bring actual notice to the defendant.⁸ Court-ordered alternatives are constitutional if reasonable and necessary under the circumstances and if judicially approved in advance, even though they may involve a highly unlikely means of affording notice.⁹"(see 3B Carmody-Wait 2d § 24:122).

Proposal

AN ACT to amend the domestic relations law, in relation to modifying the provisions regarding notice of a matrimonial action where the complaint is not personally served with the summons, by authorizing service pursuant to CPLR 308(5) through proof of an active email or social media account

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

Section 1: Section 232 of the domestic relations law, as amended by chapter 765 of the laws of 1974, subdivisions a (as amended by chapter 528 of the laws of 1978), and b, is amended to read as follows:

§ 232. Notice of nature of matrimonial action; proof of service.

a. In an action to annul a marriage or for divorce or for separation, if the complaint is not personally served with the summons, the summons shall have legibly written or printed upon the face thereof: “Action to annul a marriage”, “Action to declare the nullity of a void marriage”, “Action for a divorce”, or “Action for a separation”, as the case may be, and shall specify the nature of any ancillary relief demanded. A judgment shall not be rendered in favor of the plaintiff upon the defendant's default in appearing or pleading, unless either (1) the summons and a copy of the complaint were personally delivered to the defendant; or (2) the copy of the summons (a) personally delivered to the defendant, or (b) served on the defendant pursuant to an order directing the method of service of the summons in accordance with the provisions of section three hundred eight or three hundred fifteen of the civil practice law and rules, or served on the defendant pursuant to an order directing alternative service of the summons pursuant to CPLR 308(5) through proof of an active email or social media account of the defendant which is shown to be reasonably calculated to give notice to the defendant, shall contain such notice. As used in this subdivision, an

active email or social media account of the defendant shall be an account that has been used by the defendant in the last thirty (30) days.

b. An affidavit or certificate proving service shall state affirmatively in the body thereof that the required notice was written or printed on the face of the copy of the summons delivered to the defendant and what knowledge the affiant or officer who executed the certificate had that he or she was the defendant named and how he or she acquired such knowledge. The court may require the affiant or officer who executed the affidavit or certificate to appear in court and be examined in respect thereto.

§ 2. This act shall take effect immediately.

7. Proposal to Amend the Domestic Relations Law to Require Marriage Licenses in All Cases [DRL §§ 12, 25]

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

DRL § 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 DRL § 25 and (2) the repeal of the second paragraph of DRL § 12 to eliminate the loophole that would remain even with the repeal of DRL § 25.¹¹¹ Although unrelated to the issue of requiring a marriage license, we further recommend the revision

¹¹¹ The second paragraph of DRL § 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 DRL § 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 DRL § 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”

of the language contained within the first paragraph of DRL § 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 Dept. 1989]; *Oswald v. Oswald*, 107 A.D.3d 45 [3d Dept. 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 DRL § 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 DRL § 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.¹¹² In many of these cases, such as

¹¹² 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)).

Ponorovskaya,¹¹³ *Farraj*,¹¹⁴ and *Hasna*,¹¹⁵ 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 consumes 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 (DRL § 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.¹¹⁶ 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.

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. Section 12 of the domestic relations law is amended to read as follows:

§12. Marriage; how solemnized.

¹¹³ *Ponorovskaya v. Stecklow*, 45 Misc. 3d 597, 987 N.Y.S.2d 543 (Sup. Ct. 2014).

¹¹⁴ *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)).

¹¹⁵ *Hasna J. v. David N.*, No. XX/28, 2016 WL 5793500 (N.Y. Sup. Ct. Sept. 28, 2016).

¹¹⁶ 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.

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] spouses. 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.]

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

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

8. Proposal for Amendment of CPLR 3217(a) Regarding Voluntary Discontinuances in Matrimonial Actions [CPLR 3217]

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 CPLR 3217(a). However, this rule can work unfairly in matrimonial actions where parties may use the rule to discontinue to litigate another day when they believe their chances will be better, even though they have already spent years in discovery, wasting judicial resources, time and money.

The Committee believes that a special rule on discontinuances for matrimonial actions is needed because pleadings are often not served or waived in divorce actions. Parties often do not file pleadings in such cases while they negotiate and may not even be aware of all the ancillary issues until later in the case. With the advent of DRL § 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.¹¹⁷ However, this was a stopgap measure and a statutory amendment to the CPLR 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,¹¹⁸ we recommend a statutory amendment to the CPLR 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.

¹¹⁷ 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.

¹¹⁸ 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.

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.

VI. Support for Legislation Increasing Assigned Counsel Fees

In addition to Mandatory E-Filing in Matrimonial Cases and our Proposal for Divorce Venue, our other legislative priority this year is an increase in Assigned Counsel Fees for Indigent Adults and Children. In previous reports, we indicated our support for a recommendation of the Commission on Parental Representation to increase assigned counsel fees in Family Court cases and recommended expansion of its application to matrimonial cases and to fees of counsel representing children as well as indigent adults

We now strongly support as one of our three priorities this year legislation which would increase assigned counsel rates to at least \$120 per hour for misdemeanors and to at least \$150 per hour in all other matters, including matrimonial cases on issues where such counsel are assigned, with an annual cost of living increase based on inflation determined by the CPI. This CPI increase is an essential feature of any such legislation, inasmuch as the Legislature has not raised the assigned counsel fee rate in eighteen years. It is also essential that legislation be enacted to remove the existing caps on total compensation received of \$2400 for misdemeanors and \$4400 for all other matters including matrimonial cases. Such legislation will promote the Chief Judge's Excellence Initiative. It will not only increase access to justice for the most vulnerable in our society, but will also ensure efficient processing of cases because attorneys will be available on Panels to accept assignments.¹¹⁹

The Committee is extremely concerned about the lack of a rate increase since 2004 for attorneys for children and attorneys for adults assigned pursuant to FCA §§ 249 and 262 and pursuant to Judiciary Law § 35 and FCA § 1120. The current rate of \$75 per hour with a statutory maximum of \$4,400 (absent extraordinary circumstances)¹²⁰ was established in 2004 and is woefully inadequate. Compared to fees earned by matrimonial attorneys in the private sector, this rate of compensation discourages many attorneys from joining panels which would require them to accept assignments to represent indigent clients and children on matters involving important issues of custody and visitation and intimate partner violence. We understand it is especially difficult for judges handling matrimonial cases in all parts of the State to make appointments of assigned counsel and attorneys for children because it is difficult to attract new attorneys to serve on panels and there are an increasing number of attorneys leaving the panel or retiring.

Parental representation is an issue in Supreme Court matrimonial actions as well as in Family Court.¹²¹ Judiciary Law 35(8) (L. 2006, c. 538) requires Supreme Court Justices to appoint counsel to represent an indigent party in a divorce action on issues over which the Family Court could have exercised jurisdiction such as custody and visitation, family offense proceedings,

¹¹⁹ We note that there is currently a bill introduced in the Legislature that would accomplish these goals. It is A.6013 Magnarelli/ S. 03527 Bailey, Gaughran, available at [Bill Search and Legislative Information | New York State Assembly \(nyassembly.gov\)](http://www.nyasassembly.gov/BillSearchandLegislativeInformation). We would support that bill or any other similar bill.

¹²⁰ Section 722-B(3) of Article 18-B of the County Law permits a trial or appellate judge to set compensation in excess of these limits in extraordinary circumstances.

¹²¹ See Memorandum of Susan W. Kaufman to Hon. Karen Peters, Chair, Commission on Parental Legal Representation, August 15, 2018.

paternity, and contempt/willful violation proceedings on behalf of a respondent. This important legislation and funding ensured that non-monied spouses would have the same right to paid representation in Supreme Court that they would have had pursuant to FCA § 262 in Family Court with respect to those issues.

Representation is also an issue in Supreme Court regarding representation of children by attorneys for children where independent legal representation is not available. Judiciary Law 35(7) (L. 1989, c. 571) requires Supreme Court and Surrogate Court Justices and Judges to appoint a Law Guardian (now attorney for the child) to represent a child in an action on issues over which the Family Court would have had jurisdiction and as to which the Family Court could have appointed a Law Guardian (now attorney for the child) pursuant to FCA § 249. This right is paramount to protection of the best interests of children in custody and visitation cases (see *Koppenhoefer v. Koppenhoefer*, 159 A.D.2d 113, 558 N.Y.S.2d 596 (1990)).¹²²

In her State of the Judiciary Address for 2020, Chief Judge Janet DiFiore stressed the importance of this issue, stating:

“Across the state we are experiencing a major exodus from our assigned counsel panels. As 18-B and Attorney for the Child compensation rates have stagnated, it has become increasingly difficult to recruit and retain experienced lawyers willing to provide these critical services. This is a crisis that cannot be ignored, not if we want to ensure that indigent criminal defendants are accorded their constitutional right to counsel and not if we want to ensure that the rights of children are protected when their safety and welfare are at stake.

Accordingly, along with our colleagues in the Bar and our partners in the criminal and family justice systems, we will work to support the Legislature and the Executive in achieving an appropriate adjustment in the rates of compensation for 18-B lawyers and Attorneys for Children (The State of our Judiciary 2020, February 26, 2020, at page 12).

The concerns expressed by Chief Judge DiFiore are shared by the New York State Bar Association which approved a resolution on June 18, 2018 calling for legislation increasing assigned counsel rates, including rates pursuant to Judiciary Law § 35.¹²³ These concerns are also shared by the Women’s Bar Association of the State of New York, which recently issued a position statement supporting legislation increasing assigned counsel fees (see [2021 – A.6013 / S.3527 | wbasny](#)).

In last year’s report, we recognized that the severe budget cuts imposed by the Covid -19 pandemic necessitated postponing action on this recommendation. This year, the dire budgetary situation that existed last year has eased. We are therefore hopeful that legislation increasing

¹²² Appellate representation of both parents and children in appeals in matrimonial cases is also an issue pursuant to subdivisions (a) and (b) of section 1120 of the Family Court Act which require representation in lower court cases to continue.

¹²³ See “June 18, 2018: State Bar Association Creates Section on Women in Law, Calls for Mandated Counsel Rate Increases and Exemption of Puerto Rico from Merchant Marine Act Provisions.

assigned counsel rates will be enacted in 2022. Such legislation will not only increase access to justice for the most vulnerable in our society, but will also ensure efficient processing of cases because attorneys will be available on Panels to accept assignments.

VII. Previously-Endorsed Rule Proposals

1. Proposal to Adopt 22 NYCRR 202.18-a Regarding Statements of Understanding of Forensic Evaluators in Custody Cases

There is currently much debate about forensic reports. As an Appendix H to our 2021 report, we provided a White Paper on Forensic Reports in Custody Cases to address this important topic. The White Paper is available at [2021-Matrimonial.pdf \(nycourts.gov\)](#). We have provided a copy to the Governor’s Counsel and members of the Legislature.

We resubmit in this report our previously endorsed matrimonial rule to increase transparency as to the process of “informed consent” in Statements of Understanding of forensic evaluators in custody cases as required by the guidelines of many mental health professional associations.

The new rule will increase transparency about forensic reports. It was drafted after consultation with the Mental Health Professionals Committee of the Appellate Divisions of the 1st and 2d Departments. It will ensure that statements of understanding do not conflict with the orders of appointment of forensic evaluators. The rule requires that the statements of understanding must be sent upon receipt of the order of appointment by the evaluator to the attorney representing the litigant, or to any self-represented litigant, and that such statements must be reviewed, signed and returned to the Court and the evaluator within ten days. Review by counsel and self-represented litigants prior to signature will help to ensure that the parties understand the terms of the statements of understanding and that the statements of understanding comply with the orders of appointment. The ten-day time limit will make certain that often lengthy custody proceedings are not subject to further delays as a result of the procedure.

Proposal:

§202.18-a Matrimonial Actions; Statements of Understanding Issued by Court Appointed Mental Health Experts to Clients with respect to Forensic Evaluations Regarding Custody or Visitation

a) Applicability. This section shall be applicable to all forensic evaluations regarding custody or visitation in matrimonial actions and proceedings in the Supreme Court to which section 237 of the Domestic Relations Law applies.

b) Any statement of understanding issued to a client for a forensic evaluation by a psychiatrist, psychologist, or social worker appointed by the court to give testimony or produce a written evaluation report with respect to custody or visitation in a matrimonial action shall comply with the following requirements:

- 1) The statement of understanding shall provide information concerning the evaluator's policies, procedures, and any attendant fees in addition to the hourly rate and cap as set forth in the order of appointment.
- 2) The statement of understanding shall not contain any material terms that conflict with the provisions of the order of appointment.
- 3) Upon receipt of the order of appointment, the evaluator shall send the statement of understanding to counsel for the parties and to any self-represented litigants for their review and acknowledgement. The statement of understanding shall be reviewed, signed and returned to the evaluator and the court within 10 business days.

2. Modified Proposal to Amend Automatic Orders Rule 22 NYCRR § 202.16-a

Once our proposal for amendment of the automatic orders statute is enacted as described above in this report, we again recommend a conforming amendment to the court rule 22 NYCRR §202.16-a.

Proposal

Subdivisions (b) and (c) of 22 NYCRR Section 202.16-a Matrimonial Actions; Automatic Orders are amended to read as follows:

(b) Service. The plaintiff in a matrimonial action shall cause to be served upon the defendant, simultaneous with the service of the summons, a copy of the automatic orders set forth in this section in a notice that substantially conforms to the notice contained in Appendix F. The notice shall state legibly on its face that automatic orders have been entered against the parties named in the summons or in the summons and complaint pursuant to this rule, and that failure to comply with these orders may be deemed a contempt of court. The automatic orders shall be binding upon the plaintiff immediately upon filing of the summons, or summons and complaint, and upon the defendant immediately upon service of the automatic orders with the summons. In the event that the Governor declares an emergency which results in issuance by the judiciary of an administrative order which prohibits the filing of the summons or the summons and verified complaint during the emergency, then the automatic orders shall be binding upon the plaintiff and the defendant immediately upon service of the summons upon defendant, but shall have no force and effect unless: 1) the plaintiff purchases an index number for the action within 21 days of the date of service upon the defendant of the summons with notice or the summons and verified complaint; or 2) plaintiff applies for poor person status pursuant to CPLR 1101(d) within twenty-one days of the date of service on the defendant of the summons with notice or the summons and verified complaint, and, in the event that the application for poor person status is denied, the plaintiff pays an index number fee within 120 days after the date of a court order denying the plaintiff's application for waiver of the fee pursuant to CPLR 1101(d). [These] Except as provided

above, these orders shall remain in full force and effect [during the pendency of the action,] until entry of the judgment of divorce unless terminated, modified or amended by further order of the court or upon written agreement between the parties.

(c) Automatic Orders. Upon service of the summons in every matrimonial action, it is hereby ordered that:

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

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

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

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

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

(6) Each party, having received notice of same, shall within ten (10) days thereafter send written notice to the other party of a tax lien, foreclosure, bankruptcy, or litigation, or the filing of same, which could adversely affect the marital estate.

(7) Neither party shall make use of an electronic device in the ownership, use, possession, or custody and control of the other party, including without limitation a tablet, computer, laptop, personal digital assistant, or smartphone, to obtain information about the other party without their knowledge and consent.

(8) These automatic orders shall remain in full force and effect [during the pendency of the action] until entry of the judgment of divorce unless terminated, modified or amended by further order of the court or upon written agreement between the parties.

(9) The failure to obey these automatic orders may be deemed a contempt of court.

3. Rule Proposal to Amend 22 NYCRR 202.16(h)(3) Regarding Statements of Disposition [22 NYCRR 202.16(h)(3)]

The Committee again recommends a proposal we introduced in our 2019 report to amend the requirement in the matrimonial rules that the Statement of Proposed Disposition must be filed with the court with the Note of Issue. It is too early in the litigation to require the Statement of Proposed Disposition when the Note of Issue is filed as is required by 22 NYCRR 202.16(h) at present. We recommend that the rule be amended to require that the Statement of Proposed Disposition be filed later at a pre-trial conference after the Note of Issue has been filed, or as otherwise directed by the court. This would save litigants expense by not having to submit the Statement of Disposition when the issues have not been clearly defined. It would also save judicial resources in reviewing submissions.

Proposal

22 NYCRR 202.16(h)(3) is hereby amended to read as follows:

(3) The statement referred to in paragraph (1) of this subdivision, with proof of service upon the other party, shall [, with the note of issue,] be filed with the court at a pre-trial conference after the note of issue has been filed, or as otherwise directed by the court. The other party, if he or she has not already done so, shall file with the court a statement complying with paragraph (1) of this subdivision within 20 days of such service.

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

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.¹²⁴ 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 again 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.¹²⁵

This procedure is authorized under CPLR 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 DRL § 170(7), the no-fault ground, the court is free to enter judgment on the remaining issues while the custody issues are

¹²⁴ See Memorandum dated March 7, 2008 from Hon. A. Gail Prudenti, then Presiding Justice of the Appellate Division of the Second Judicial Department, advising of the requirements in the CPLR for custody and visitation decisions (rather than orders) which can then be followed by judgments which are appealable. Said Memorandum is attached as Appendix H to this report.

¹²⁵ 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. CPLR rule 5012 (McKinney)).

being appealed, since all ancillary issues will have been resolved at the time of entry of the final judgment of divorce.

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 CPLR rule 5012.

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

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), i.e., unrepresented litigants¹²⁶ 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) to mirror the statutory amendment exempting unrepresented litigants from the detailed fee affidavit requirement, and to adopt 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.¹²⁷ 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 DRL § 237(a), as 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 DRL § 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.

¹²⁶ 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.

¹²⁷ 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.¹²⁸ 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.

¹²⁸ This is written in anticipation of future promulgation of an Appendix to 22 NYCRR § 202.16 containing the form Application for Counsel Fees by an Unrepresented Litigant attached as Appendix "I" to this report.

VIII. Past, Pending and Future Committee Projects

A. New and Ongoing Committee Projects

1. Committee Outreach to Local and State Bar Associations on Diversity and Inclusion, Including Proposal to Hold a Joint Summit with the Family Law Section of the New York State Bar Association

The Committee continues to examine the subject of Diversity in the Bench and Bar and Implicit and Explicit Bias in Matrimonial Actions. Following the October 1, 2020 release of the report of Secretary Jeh Johnson, appointed by Chief Judge DiFiore as Special Adviser on Equal Justice in the Courts, our Committee reviewed the report available at www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf with a view toward examining what changes may be necessary to increase diversity and inclusion in matrimonial practice.

At the March 19, 2021 Committee meeting, Hon. Edwina Mendelson, Deputy Chief Administrative Judge for Justice Initiatives discussed in detail the Report of Secretary Johnson. She explained in depth how the recommendations of Secretary Johnson are being implemented in the court system pursuant to Chief Judge Janet DiFiore's direction. As the Chief Judge stated in her 2021 State of the Judiciary Address at page 18:

"Secretary Johnson and his team at Paul Weiss issued a comprehensive report with a set of practical recommendations that we have fully embraced, and are now in the process of implementing, in a manner that is designed to be inclusive, open and transparent. As Chief Judge of the Court of Appeals and the State of New York, and on behalf of our entire court system, I have made a solemn, unshakeable commitment to achieve a policy of zero tolerance for racial bias and discrimination. Our approach to bias, discrimination and harassment is, and will be, for as long as I have the privilege of serving as your Chief Judge, zero tolerance."

As discussed earlier in this report, the Subcommittee on Diversity and Inclusion met frequently during 2021 on ways to increase diversity in the matrimonial bar by coordinating with Bar Associations and Law Schools.¹²⁹ The Committee and Judge Sunshine have done outreach to local and State Bar Associations on ways to increase diversity and inclusion in the Matrimonial Bar, including a proposal to the Family Law Section of the State Bar on behalf of the Committee to hold a Joint Summit on these issues. The Subcommittee will play a major role in planning the Summit.

2. Recommendation in Response to Gender Fairness Survey of New York State Judicial Committee on Women in the Courts

On November 23, 2020, the Gender Fairness Survey conducted by the New York State Judicial Committee on Women in the Courts was released. The Survey is available at www.nycourts.gov/LegacyPDFS/IP/womeninthecourts/Gender-Survey-2020.pdf. The Committee

¹²⁹ The members of the Subcommittee on Diversity and Inclusion are Hon. Jeffrey Goodstein, Hon. Cheryl Joseph, Hon. La Tia Martin, Hon. Emily Ruben, Yesenia Rivera, Esq. and Zenith Taylor, Esq.

continues to review the Survey and its recommendations in connection with ensuring gender fairness in matrimonial practice.

3. Recommendations on Harmonization of A/O 270/20 with the Matrimonial Rules

As discussed earlier in this report, a new project of the Committee in 2021 was to assist Judge Sunshine with review of the revisions to the Uniform Rules adopted at the end of 2020 by A/O 270/20.¹³⁰

4. Assistance with Implementation of Resumption of Pilot Project on Uncontested Divorce

As the Pilot Project resumes in 2022 after a pause during covid when parties were unable to meet to sign the documents, the Committee will assist Justice Sunshine with its implementation.

5. Recommendations in Response to Covid-19

During 2021, our Committee again assisted Judge Sunshine in responding to covid. Judge Sunshine again asked the Committee for their suggestions about court rules, technology and health issues relating to matrimonial practice during covid, as well for their suggestions for dealing with evidence and ways to conduct hearings and court conferences in a safe manner.

6. Follow-up to White Paper on Forensic Reports in Custody Cases

A number of bills were introduced in the Legislature in recent years regulating or prohibiting the use of forensic evaluations in custody and visitation proceedings.¹³¹ To address concerns about forensics reports in custody cases as evidenced by some of these bills,¹³² our Committee prepared an informational White Paper which is attached as Appendix “ H ” to our 2021 report.¹³³ The White Paper does not discuss specific bills, but rather is intended to inform policymakers, advocates and the public at large about the purpose of forensic evaluations and the role they play in custody cases.

Our White Paper continued to have significance in 2021, especially while the topic was being studied by the Governor’s Blue Ribbon Commission on Forensics. The White Paper is available at [2021-Matrimonial.pdf \(nycourts.gov\)](https://www.nycourts.gov/2021-Matrimonial.pdf). We provided a copy to the Governor’s Blue Ribbon Commission on Forensics and to and members of the Legislature. We hope our White

¹³⁰ See Notes 19 and 20 supra for a copy of A/O/270/20 and for members of the MPARC Special Subcommittee on Harmonization of A/O 270/20 with the Matrimonial Rules

¹³¹ Some of these bills have been motivated by tragic incidents involving children. Judge Sunshine has been appointed to the NYS Unified Court System’s Advisory Council on Child Fatalities chaired by the Hon. Edwina Mendelson, Deputy Chief Administrative Judge.

¹³² Some of the bills we studied included not only A. 05621 Weinstein/ S.4686 Biaggi which we discuss at length in this report in connection with our Committee’s proposal on access to forensics in custody cases, but also A. 9888 Dinowitz, A. 10424 Hevesi, and S. 8459 Sanders.

¹³³ Our 2021 Report with Appendices is available at [2021-Matrimonial.pdf \(nycourts.gov\)](https://www.nycourts.gov/2021-Matrimonial.pdf). As discussed elsewhere in this report, we have also proposed a matrimonial rule to increase transparency in Statements of Understanding by forensic evaluators in custody cases.

Paper will continue to be a valuable information resource in 2022 for the public and the Legislature in evaluating the use of forensic reports in custody cases.¹³⁴

7. Presumptive Early ADR Statewide Initiative in Matrimonial Cases

In 2020 we continued our efforts to assist Judge Sunshine as Statewide Coordinating Judge for Matrimonial Cases with implementation of the Statewide Presumptive Early ADR Initiative. Along with Judge Sunshine, former Committee member Hon. Andrew Crecca, (now Administrative Judge for Suffolk County), and Committee member Elena Karabatos, Esq, are members of the Chief Judge's Advisory Committee on ADR, led by John S. Kiernan, and are actively promoting the concept of presumptive mediation and alternative dispute resolution in their local Judicial Districts. This project became a priority in 2020 since ADR proved an effective alternative to resolving certain matrimonial issues while the covid pandemic limited access to judicial resources. On September 15, 2020, Suggested Statewide Family and Matrimonial Mediation Protocols were approved by Chief Judge Janet DiFiore's and Chief Administrative Judge Marks's Statewide Alternate Dispute Resolution (ADR) Committee chaired by John Kiernan. MPARC Committee member Elena Karabatos along with other members of the Chief Judge's Advisory Committee on ADR, was extremely helpful in assisting Judge Sunshine in drafting the Suggested Protocols. The Committee and Judge Sunshine will continue their efforts to assist Lisa Courtney, Statewide ADR Coordinator, as well as the Chief Judge's ADR Commission, in furthering the ADR Initiative throughout 2022.

8. Alternative Parenting Arrangements, the Child Parent Security Act and the Committee's White Paper on Surrogacy

During 2020, our Committee continued to study surrogacy 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 we continued to follow the latest developments on alternative parenting arrangements and access rights.

¹³⁴ The Subcommittee on the White Paper on Forensics in Custody Cases was chaired by Hon. Laura Drager (Ret.). Members of the Subcommittee were Committee members Hon. Ellen Gesmer, Hon. Sondra Miller, (Ret.), Hon Emily Ruben, Hon. Jacqueline Silberman,(Ret.) RoseAnn Branda, Esq., Stephen Gassman, Esq., Stephen McSweeney, Esq., and Harriet Weinberger, Esq., 2d Dept AFC Director.

The Subcommittee gratefully acknowledges information provided for the White Paper by Hon. Mary Slisz, Supervising Matrimonial Judge Erie County Supreme Court, Alton L Abramowitz, Esq., Sharon Sayers, Esq. and Eric Tepper, Esq. of our Committee; as well as by Hon. Richard Dollinger, Acting Supreme Court Justice, Monroe County; Lisa Courtney, Statewide ADR Coordinator; Natasha Pasternack, Family Counseling Case Analyst, 2d Judicial District; Linda Kostin, AFC Director, 4th Department; Nancy Matles, 2d Department AFC Program; Bridget O'Connell, Erie County Mediation Program; Betsy Ruslander, AFC Director, 3rd Department; Lee Rosenberg, Esq (of the NYSBA Family Law Section), and Cynthia Snodgrass, Court Attorney Referee, Ontario County Supreme Court.

We also continued our study of surrogacy legislation. In 2017 and 2018, we studied a bill introduced by Assemblywoman Paulin as 2017-18 A. 6959. In 2019, we studied a new version of the bill introduced by Senator Hoylman as 2019-20 S.2071-A. Assemblywoman Paulin amended her bill and reintroduced it in May 2019 as A. 1071-B. The bill was further amended in June 2019 as S. 2017-B/ A.01071C.

Our Committee did an intensive study of the bill as amended through June 2019 as well as of 1) the 2017 report by the New York State Task Force on Life and the Law titled *Revisiting Surrogate Parenting: Analysis and Recommendations for Public Policy on Gestational Surrogacy* and 2) the Uniform Parentage Act published by the National Conference of Commissioners on Uniform State Laws.

While the Committee could not reach a consensus on whether to support or oppose the Hoylman/Paulin bill, the Committee adopted and prepared a “White Paper” on Surrogacy in New York State to review the issues presented, with a focus on the impact of the bill on the courts, in the hopes that it would serve as a resource as various proposals were debated in the future. The paper was attached as Appendix “H” to our 2020 report available at <https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/Matrimonial-MPARCReport2020.pdf>.¹³⁵

In 2020 just before the Governor declared covid an emergency in March, several new bills were introduced regarding surrogacy legislation which the Subcommittee studied, including S.07717/ Barrett A.09847. Ultimately, a bill entitled Judgment of Parentage of Children Conceived Through for Assisted Reproduction and Surrogacy Legitimization (S.7506B/A.9506B). was enacted as Governor’s Budget Bill as Chapter 56, Laws of 2020 eff. 2/15/21 as Article 5C of the Family Court Act.

The Subcommittee continues to study the enacted law in detail to see what may still require attention, but has initially concluded that it contains provisions which are more advantageous than provisions in prior bills on points examined in the White Paper. The law legitimizes gestational surrogacy in New York and requires the intended parents to pay for medical insurance for the surrogate for twelve months after birth of the child. It also provides for informed consent of the surrogate, a Surrogate’s Bill of Rights, and a six-month residency requirement. Another improvement is that if the agreement is unclear, the court will decide parentage based on the best interests of the child despite the lack of a genetic connection, The Department of Health is required to maintain records. Many of these points were discussed in our Committee’s White Paper.

During 2021, the Committee continued to explore the topic of surrogacy and reviewed the proposed Chapter Amendments pending in the Legislature .¹³⁶ The Committee has

¹³⁵ It was drafted by a sub-committee chaired by Hon. Ellen Gesmer, Associate Justice of the Appellate Division First Department assisted by Hon. Laura Drager, now retired, Hon. Jacqueline Silbermann (Ret.), Susan Bender, Esq., Kathleen Donelli, Esq., Elena Karabatos, Esq., and Michael Mosberg, Esq.

¹³⁶ See A.7674 Lavine (OCA 16) Proposed Chapter Amendment to Child Parent Security Act –referred to Judiciary 5/19/21 based on the Family Court Advisory and Rules Proposal- see [Bill Search and Legislative Information | New](#)

included in this report a new legislative proposal amending the Child Parent Security Act to allow County Clerks and Court/Clerks to provide an anonymous caption in public files for parentage proceedings despite restrictions in statutory and court rules in order to ensure compliance with the Act's sealing provisions.

Our Committee also continues to follow development of the law in this important area as it has developed after the enactment of the Marriage Equality Act (L. 2011, c. 95)¹³⁷, the 2015 ruling of the Supreme Court of the United States in *Obergefell v. Hodges*,¹³⁸ and the 2016 decision of the New York Court of Appeals holding 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).

Our work on the White Paper on Surrogacy built upon our efforts to study changes in the law on alternative parenting arrangements and surrogacy dating back to the Brooke decision in 2016. The Committee first considered 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 was reluctant to recommend a proposal establishing rights of same sex female couples without protecting rights of same sex male couples. However, we were 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 was needed. Based on the recommendation of our Ad Hoc Committee on Alternative Parenting Arrangements,¹³⁹ 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 Committee¹⁴⁰ 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

[York State Assembly \(nyassembly.gov\)](http://nyassembly.gov); and A6832 Paulin/ S6386 Hoylman Proposed Chapter Amendment to Child Parent Security Act 4/12/21 referred to Judiciary – see (

¹³⁷ This act 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.

¹³⁸ See *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed.2d 609 (Supreme Court 2015 where 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.

¹³⁹ Members of the Ad Hoc Committee on Alternative Parenting Arrangements were Hon. Jacqueline Silbermann, Hon. Laura Drager (now retired), Hon. Ellen Gesmer, Susan Bender, Esq., and Michael Mosberg, Esq.

¹⁴⁰ Hon. Ellen Gesmer and Susan Bender, Esq. supervised the students' work during the project which ran from January through April 2016.

Contracts”, (the Columbia Students Report”).¹⁴¹ The report served as a valuable resource to our Committee.

The Committee has also followed development of the case law since *Brooke S.B. v. Elizabeth A.C.C.* to assist its review of surrogacy and the proposed Parent Child Act. In *Frank G. v. Renee P.-F.*,¹⁴² 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. At the end of 2017, 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. v. Elizabeth A.C.C.*

In 2018, a Second Department decision held that the petitioner did not sustain her burden of establishing standing to seek visitation. In that case the biological mother had died, and the same sex partner of the biological mother argued that the mother had consented to a parent-like relationship because the same sex partner had moved in before the child was born and played a role in the child's daily upbringing until the mother died, even though there was no pre-conception agreement. The Appellate Division stated: “*while Matter of Brooke S.B. v. Elizabeth A.C.C...expanded the definition of “parent” beyond biological and adoptive parents to include a person who establishes, by clear and convincing evidence, that he or she agreed with the biological parent of the child to conceive and raise the child as co-parents, ...The petitioner failed to demonstrate that the mother consented to anything more than the petitioner assisting her with child-rearing responsibilities.*” The court noted as a key factor in their decision the fact that the mother executed a will naming the respondents rather than petitioner as guardians of the child after learning she had terminal cancer (see *Garnys v. Westergaard*, 158 A.D.3d 762, 763–64, 71 N.Y.S.3d 5a54 (N.Y. App. Div. 2018)).

In 2019, Susan L. Bender, Esq., a member of our Committee, presented together with Eric I. Wrubel, Esq., a CLE session at the Judicial Institute on alternative parenting case law development

¹⁴¹ The Columbia Students Report is available online at [columbia_sexuality_and_gender_law_clinic_-_surrogacy_law_and_policy_report_-_june_2016.pdf](#)

¹⁴² *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).

since the *Brooke S.B. v. Elizabeth A.C.C.* decision.¹⁴³ We note the significant Second Department decision in *Matter of Chimienti v. Perperis*, (2019 NY Slip Op. 02866) which was discussed in the program. The case is significant because it expands upon *Brooke S.B. v. Elizabeth A.C.C.* to find standing to seek custody and visitation based on equitable estoppel. It also allows equitable estoppel to be applied where the presumption of legitimacy had been conclusively rebutted.

In 2020, a decision of the Appellate Division Fourth Department held that petitioner lacked standing under DRL § 70(a) to seek joint custody of, and visitation with a child which would result in a tri-custodial arrangement among the biological mother and father of the child, and the mother's partner. (see *Tomeka N.H. v. Jesus R.*, 183 A.D.3d 106, 107–08, 122 N.Y.S.3d 461, 463, leave to appeal denied, 185 A.D.3d 1480, 125 N.Y.S.3d 620 (2020)). Although the petitioner had a close relationship with the child and although the mother and petitioner had agreed after conception and after the relationship with the father ended to help raise the child together, the Court relied on the fact that nothing in the *Brooke* decision “would ever countenance a tri-custodial arrangement, and in fact the decision shows the opposite. As noted, the Court highlighted that Domestic Relations Law § 70 was limited to two parents...” *Tomeka N.H. v. Jesus R.*, Supra at 112, 466. But for an apparently conflicting view from a lower court, see *Raymond T. v. Samantha G.*, 59 Misc. 3d 960, 961, 74 N.Y.S.3d 730, 731 (N.Y. Fam. Ct. 2018).

The *Tomeka* case was cited by the Fourth Department in 2021 as one of the reasons for granting reversal of Family Court's denial of putative father's motion to vacate an acknowledgement of paternity by the mother's boyfriend. The Appellate Division wanted to eliminate any question of the putative father as sole legal father genetic testing revealed he was the biological father and noted the putative father's concern about a potential three party parenting arrangement prohibited under *Tomeka*. (*Ryan M.E. v. Shelby S.*, 191 A.D.3d 1315, 140 N.Y.S.3d 649 (2021)). In another notable case in 2021, the Appellate Division Second Department held that a same sex partner's post conception behavior could be evidence of a preconception agreement to conceive and raise the child together pursuant to *Brooke S.B.* regardless of the fact that the mother and the partner had broken up prior to conception. The Appellate Division therefore affirmed the lower court order denying the same sex partner's objections to the mother's petition for child support (*Scott v. Adrat*, 196 A.D.3d 585, 151 N.Y.S.3d 431 (2021)).

Our Committee continues to follow this evolving area of the law in order to advise the Chief Administrative Judge.

¹⁴³ The session was entitled “Who Says You Are a Parent? Issues Evolving Since *Brooke S.B.*”

9. Assistance to the Judicial Institute with Training of New and Experienced Matrimonial Judges and Referees

During 2021, the Committee's assistance to the Judicial Institute with training of Judges continued despite the pandemic. Members of the Committee presented sessions at virtual summer/fall seminars on a variety of topics. Sessions are already being planned for New Judges School in January 2022. A Lunch and Learn session planned by the Committee was also presented on December 14, 2021 about the new Adult Dependent Support Bill recently signed as Chapter 437, Laws of 2021. This program provided an overview of the new law, including special issues Judges, Support Magistrates, and Referees should be aware of in determining applications for child support under its provisions.

10. 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 entire training period and for a period of at least one year following the assignment.”¹⁴⁴

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 on matrimonial law at the Judicial Institute are planned by Judge Sunshine with our Committee's Education Subcommittee. These sessions train new matrimonial judges on various aspects of handling matrimonial cases. At the 2022 new judges trainings sponsored by the Judicial Institute, the Statewide Coordinating Judge for Matrimonial Cases will introduce new judges to matrimonial cases and discuss as part of the Chief Judge's Excellence Initiative the resources available for judges hearing matrimonial cases from his office and the Committee as well as practical concerns relating to adjudication of matrimonial cases. Many members of the Committee serve as presenters at the trainings. Judge Sunshine continues to serve as a resource to judges hearing matrimonial cases and to meet with the new judges at the training.

¹⁴⁴ Matrimonial Commission, Report to the Chief Judge of the State of New York [Feb 2006], available at [Matrimonial Commission - N.Y. State Courts \(nycourts.gov\)](https://www.nycourts.gov/matrimonial-commission), at page 16.

11. Matrimonial Mandatory Parent Education Pilot Projects in Coordination with the Statewide Office of Professional and Court Services

The Committee continues to work to implement an Administrative Order effective October 1, 2018 creating mandatory parent education pilot projects in seven counties “as early as practicable.”¹⁴⁵ The Administrative Order requires parents in contested matrimonial cases to attend mandatory parent education and awareness training. In order to make sure matrimonial judges in the seven counties have the necessary information, Judge Sunshine as Statewide Coordinating Judge for Matrimonial Cases, has posted material on the SharePoint site for matrimonial judges about the programs including a draft data form, a list of providers, a proposed participant satisfaction survey, the Parent’s Handbook, Rule 144, the Pilot Administrative Order, and procedures for administration of the program. Hon. Sondra Miller (Ret.), and Hon. Jacqueline Silbermann (Ret.), both Honorary Chairs of our Committee, have been active in promoting this program. In accordance with recommendations of our Committee the OCA Parent Education and Awareness Program approved on November 20, 2019 its first online parent education program pursuant to Part 144 of the Rules of the Chief Administrative Judge (22 NYCRR Part 144). This program will make it easier for victims of intimate partner violence who so desire to receive the training in safety as for those who do not have access to live programs.¹⁴⁶ A second on-line program by Family Kind was also approved last fall.

A program on Parent Education was presented as part of the Judicial Seminars last year. Hon. Sondra Miller, (Ret.), Honorary Chair of the Committee, Dan Weitz, Director, Division of Court and Professional Services, Harriet Weinberger, Director of the Law Guardian Department for the Appellate Division, Second Department and member of our Committee, and Dolores Gebhardt, a matrimonial practitioner, were the presenters.

¹⁴⁵ See AO/252/18 creating parent education pilot projects attached as Appendix “N” to our 2019 Annual Report to the Chief Administrative Judge available at [2019-Matrimonial.pdf \(nycourts.gov\)](#)

¹⁴⁶ See Committee Comments on JROPE Proposal dated January 25, 2018 attached as Appendix “M” to our 2019 Annual Report to the Chief Administrative Judge available at [2019-Matrimonial.pdf \(nycourts.gov\)](#)

B. Ongoing Committee Development Efforts

1. Assistance with Court Simplification Legislative Proposal of Hon. Janet DiFiore, Chief Judge

During 2022, consideration and input from the perspective of the matrimonial bench and bar on the Court Simplification Legislative Proposal of Hon. Janet DiFiore, Chief Judge will remain a priority of the Committee.¹⁴⁷ The Committee will assist Judge Sunshine with coordination and implementation if the proposal is adopted by the Legislature and approved by the voters.

2. Consideration of the Ramification of Changes in Federal Tax Law on Deductibility of Maintenance and Whether There is Need for Changes in the Maintenance Guidelines Law

Another significant issue which our Committee is studying is the repeal of the alimony deduction under the Federal Tax Cuts and Jobs Act (Public Law 115-97). Under this law, maintenance payments are no longer deductible by the payor or included in the income of the payee spouse.

Because of this change in federal law, at least one state has amended its maintenance statute on the theory that its maintenance guidelines law was formulated based on the premise that payments would be deductible to the payor and taxable to the payee. This tax treatment had been part of the federal tax code since 1942.¹⁴⁸ Complicating the matter is the fact that in New York State, maintenance is still deductible to the payor. The Illinois legislature has passed legislation which changes the definition of income in their maintenance statute from gross income to net income, thereby attempting to alleviate the problems caused by the federal legislation.¹⁴⁹ Before the new federal law was enacted, the New York State Bar Family Law Section issued a memo of opposition to the possible effects of the treatment of alimony in the new law, stating:

“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.”¹⁵⁰

During 2022, we will continue our efforts to explore the ramifications of the 2017 changes in the federal tax code and their effect on divorce litigation, including their effect on the New York maintenance and child support laws. To further this effort, our members Elena Karabatos, Esq. and Eric Tepper, Esq. presented judicial trainings at Summer Seminars 2019 on what judges should

¹⁴⁷ The proposal would eliminate New York’s complicated structure of eleven trial courts, replacing it with a three level structure. See Footnote 14 supra for a description of the details of the proposal.

¹⁴⁸ See “A Change Is Needed: The Taxation of Alimony and Child Support,” 48 Clev. St. L. Rev. 361 (2000).

¹⁴⁹ See Illinois Public Act 100-0293 enacted in 2018.

¹⁵⁰ See NYSBA Family Law Section Memorandum of Opposition attached as Appendix “P” to our 2019 Annual Report to the Chief Administrative Judge available at [2019-Matrimonial.pdf \(nycourts.gov\)](https://www.nycourts.gov/2019-Matrimonial.pdf)

look for when reviewing requests for deviations from guideline maintenance based on the change in the federal tax law.

Our Committee continues to consider whether the 2017 federal tax law changes necessitate a change in the New York Maintenance Guidelines Law in view of the fact that the Maintenance Guidelines Law already includes tax considerations as a factor for deviations. We are also aware of the possibility that the federal tax law could be further revised under the new Administration. Our Committee is also considering whether any other provisions in the maintenance guidelines law enacted in 2015 may need revisiting.

IX. Special Welcome and Tribute

Our Committee welcomed two new members in 2021: Faith G. Miller, Esq. of the White Plains law firm of Miller Zeiderman LLP and Seema Ali Rizzo, Esq. of the Rochester law firm of Gallo & Iacovangelo, LLP, who were appointed to the Committee by Chief Administrative Judge Lawrence Marks on January 21, 2021 and May 13 , 2021, respectively.

We also pay tribute to Sharon Kelly Sayers, Esq. who retired from our Committee in 2021. We wish her well on her retirement. We thank her for her service to our Committee and valuable insights on the practice of matrimonial law in Rochester.

X. Subcommittees

BEST PRACTICES

Alton L. Abramowitz
Hon. E. Laura Drager, (Ret.), Reporter
Hon. Betty Weinberg Ellerin (Ret.)
Hon. Ellen Gesmer
Christopher S. Mattingly
Stephen P. McSweeney
Hon. Sondra Miller (Ret.)
Hemalee J. Patel
Florence Richardson
Yesenia Rivera-Sipes
Hon. Jacqueline W. Silbermann
Zenith T. Taylor

DIVERSITY AND INCLUSION

Hon. Cheryl A. Joseph
Hon. Jeffrey Goodstein
Hon. La Tia W. Martin
Hon. Emily Ruben
Yesenia Rivera-Sipes
Zenith T. Taylor

EDUCATION

Rose Ann C. Branda
Kathleen Donelli
Hon. Betty Weinberg Ellerin (Ret.)
Donna England
Stephen J. Gassman
Elena Karabatos
Florence Richardson
Bruce J. Wagner
Harriet Weinberger

FORENSICS

RoseAnn C. Branda
Hon. Laura E. Drager (Ret.)
Stephen J. Gassman
Hon. Ellen Gesmer
Stephen McSweeney
Hon. Sondra Miller (Ret.)
Hon. Emily Ruben
Hon. Jacqueline W. Silbermann (Ret.)
Harriet Weinberger

FORMS

Hon. Linda Christopher
Kathleen Donelli
Hon. Cheryl A. Joseph
Elena Karabatos
Susan Kaufman, Reporter
Stephen P. McSweeney
Hon. Mary Slisz
Zenith T. Taylor

HARMONIZATION OF A/O 270/20 WITH MATRIMONIAL RULES

Hon. E. Laura Drager (Ret.)
Hon. Jeffrey Goodstein
Hon. Cheryl A. Joseph
Elena Karabatos
Hon. Mary Slisz

LEGISLATION

Susan L. Bender, Reporter
Hon. Laura E. Drager
Stephen J. Gassman
Hon. Ellen Gesmer
Hon. Jeffrey D. Lebowitz
Hon. La Tia Martin
Hon. Sondra Miller (Ret.)
Michael A. Mosberg
Hon. Emily Ruben
Eric A. Tepper
Harriet Weinberger

RULES

Rose Ann C. Branda
Susan L. Bender
Hon. Jeffrey Goodstein
Natasha Y. Ingram
Elena Karabatos
Christopher S. Mattingly
Hemalee J. Patel, Reporter
Hon. Jacqueline W. Silbermann
Eric A. Tepper
Bruce J. Wagner

SPECIAL ISSUES SUBCOMMITTEE

Alton Abramowitz, Esq.
Hon. Jeffrey Goodstein
Hon. Cheryl A. Joseph
Stephen P. McSweeney
Christopher S. Mattingly
Faith G. Miller
Hon. Jacqueline W. Silbermann (Ret.)

SURROGACY

Susan L. Bender, Esq.
Kathleen Donelli, Esq.
Hon. Laura Drager (Ret.)
Hon. Ellen Gesmer
Elena Karabatos, Esq.
Michael A. Mosberg, Esq.
Hon. Jacqueline W. Silbermann

UNCONTESTED DIVORCE

RoseAnn C. Branda
Hon. Linda Christopher
Hon. Ellen Gesmer
Hon. Cheryl A. Joseph
Elena Karabatos
Stephen P. McSweeney
Michael A. Mosberg
Yesenia Rivera-Sipes
Hon. Emily Ruben
Hon. Jacqueline W. Silbermann

XI. 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 2022

Respectfully submitted,
Honorable Jeffrey S. Sunshine, Chair
Alton L. Abramowitz, Esq.
Susan L. Bender, Esq.
Rose Ann C. Branda, Esq.
Honorable Linda Christopher
Kathleen Donelli, Esq.
Honorable Laura E. Drager [Ret.]
Honorable Betty Weinberg Ellerin [Ret.], Hon. Chair
Donna England, Esq.
Steven J. Eisman, Esq. (deceased)
Stephen J. Gassman, Esq.
Honorable Ellen Gesmer
Honorable Jeffrey Goodstein
John J. Grimes, Esq.(deceased)
Natasha Y. Ingram, Esq.
Honorable Cheryl A. Joseph
Elena Karabatos, Esq.
Honorable Jeffrey D. Lebowitz [Ret.]
Honorable La Tia W. Martin
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Hon. Mary Slisz
Zenith T. Taylor, Esq.
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Bruce J. Wagner, Esq.
Harriet Weinberger, Esq.
Susan W. Kaufman, Esq. Counsel

XII. Appendices to Report of Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge, January 2022

A - Chief Administrative Judge Marks's Letter of Appointment of Hon. Jeffrey Sunshine as Statewide Coordinating Judge for Matrimonial Cases

B -Memorandum from Chief Administrative Judge Marks dated May 20, 2020 re Acceptance for E-Filing of Non-Essential Matters

B-1- Revised Rules Governing Consensual E-Filing in Matrimonial Actions found in Appendix B to Administrative Order 162/21 dated May 25, 2021

B-2 Memorandum dated March 4, 2021 of John W. McConnell and Nancy Barry on Child Parent Security Act and Letter Application for an Anonymous Caption

B-3- Memorandum dated April 5, 2021 of Nancy Barry re Virtual Evidence Courtrooms in Matrimonial Cases

C- Letter from Justice Sunshine to Eileen D. Millett, Counsel, re Requests for Public Comment on Uniform Civil Rules and Harmonization of Uniform Civil Rules with the Matrimonial Rules

D- Bar Association Support for Mandatory E-Filing in Matrimonial Actions

D-1 Letter of Support for Mandatory E-filing in Matrimonial Actions from Director of Family Violence Unit of Legal Aid Society

E - Description of Committee's Legislative and Rule Proposals Adopted from 2015-2020

F-1 - Excerpt from Committee's 2018 Annual Report Describing Proposal on Access to Forensics in Custody Cases

F-2 - Report by the Matrimonial Law Committee and the Children and the Law Committee of the New York City Bar Association dated May 2019

F-3 - Memoranda of Opposition to 2019-20 A.5621/S.4686 by the Women's Bar Association of the State of New York, the Family Law Section of the New York State Bar Association, and the American Academy of Matrimonial Lawyers, New York Chapter

G - OCA Court Statistics on Divorce Filings Full Year 2011 – 2020

G-1 OCA Court Statistics on Uncontested Divorce Filings of Erie, Monroe, Suffolk, and Westchester Counties from 2014 to 2020

G-2 OCA Court Statistics on Uncontested Divorce Filings in the Five Boroughs of New York City from 2014 to 2020.

H- Memorandum from then Presiding Justice A. Gail Prudenti (Ret.) dated March 7, 2008.

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

Appendices to Report of Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge, January 2022

A - Chief Administrative Judge Marks's Letter of Appointment of Hon. Jeffrey Sunshine as Statewide Coordinating Judge for Matrimonial Cases

B -Memorandum from Chief Administrative Judge Marks dated May 20, 2020 re Acceptance for E-Filing of Non-Essential Matters

B-1- Revised Rules Governing Consensual E-Filing in Matrimonial Actions found in Appendix B to Administrative Order 162/21 dated May 25, 2021

B-2 Memorandum dated March 4, 2021 of John W. McConnell and Nancy Barry on Child Parent Security Act and Letter Application for an Anonymous Caption

B-3- Memorandum dated April 5, 2021 of Nancy Barry re Virtual Evidence Courtrooms in Matrimonial Cases

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

Appendix A



Lawrence K. Marks
Chief Administrative Judge

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

MEMORANDUM

June 1, 2018

TO: Administrative Judges

FROM: Lawrence K. Marks *LM*

SUBJECT: Statewide Coordinating Judge for Matrimonial Cases

It is my pleasure to announce the appointment of Hon. Jeffrey S. Sunshine as Statewide Coordinating Judge for Matrimonial Cases. Some of you may recall that a similar position existed some years ago, but was not continued when Hon. Jacqueline Silbermann retired from the bench.

As you know, matrimonial cases are an important, and challenging, component of our civil case inventories. Contested matrimonials often demand extensive resources, judicial and otherwise, and are frequently plagued by delays and other complications. Members of the matrimonial bar, among others, have approached me in recent months to advocate for re-designating an experienced judge who can work with the Administrative Judges, matrimonial part judges and the matrimonial bar to better promote the goals of the Chief Judge's Excellence Initiative.

Judge Sunshine is an ideal candidate to take on this role. He has extensive experience in the matrimonial field, both as a practitioner and as a judge in Kings County Supreme Court. He also chairs our Matrimonial Practice Advisory and Rules Committee, which has recommended numerous administrative rules and other measures that have streamlined and improved matrimonial case adjudication. In his new role, Judge Sunshine will work with all of you to develop protocols and best practice models to expedite the processing of contested cases, revise and streamline the uncontested divorce process, work to promote and expand mediation in divorce actions, act as a liaison between the court system and the matrimonial bar, promote e-filing in matrimonial cases and work with the Judicial Institute on matrimonial judicial education programs. He will

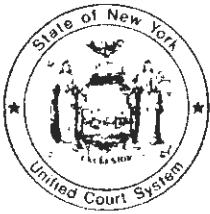
also continue to serve as chair of our Matrimonial Practice Advisory and Rules Committee, and will continue to handle a matrimonial caseload in Kings Supreme Court.

Judge Sunshine will be a valuable resource for all of you in your efforts to successfully manage your matrimonial inventories. He will be reaching out to you in the coming weeks.

cc: Hon. Janet DiFiore
Hon. Michael V. Cocco
Hon. George J. Silver
Hon. Edwina G. Mendelson

Appendix B

*State of New York
Unified Court System*



Lawrence K. Marks
Chief Administrative Judge

*25 Beaver Street
New York, N.Y. 11204
(212) 428-2100*

MEMORANDUM

May 20, 2020

TO: All Trial Court Justices and Judges

FROM: Lawrence K. Marks *LM*

SUBJECT: Filing of New Cases

I hope you and your families are all doing well. As you know, among the series of steps we have taken in recent weeks to restore judicial services in the Unified Court System has been the return this week of judges and designated staff to courthouses in upstate counties in which the Governor has eased restrictions on commercial activity. In addition to expanding judicial services, courts and county clerk's offices in those counties are now accepting the filing of new non-essential matters through the New York State Electronic Filing System (NYSCEF).

Consistent with the goal of expanding court activity while maintaining appropriate standards of public health and safety, we will be taking another important operational step commencing Monday, May 25. Beginning that day, e-filing through the NYSCEF system -- including the filing of new non-essential matters -- will be restored in those counties of the state that have not yet met the benchmarks required to participate in the Governor's regional reopening plan. Those counties include the five New York City counties, Nassau and Suffolk counties, and Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester counties.

In recognition of the continued curtailment of in-court activities of court personnel and the public -- and in contrast to the usual practice in consensual e-filing matters -- this restoration of NYSCEF usage will be limited to cases in which represented parties file and serve all papers electronically. (Unrepresented litigants may continue to file, serve and be served papers through non-electronic means in those cases).

This expanded use of NYSCEF will permit a significant broadening of civil litigation in a manner that continues to ensure the highest measure of health and safety to judges, court personnel and the public. As always, thank you for your cooperation and support.

cc: Chief Judge Janet DiFiore
Hon. George Silver
Hon. Vito Caruso
Administrative Judges
County Clerks

Appendix B-1

APPENDIX B

Rules Governing the Consensual Electronic Filing
of Matrimonial Actions in Supreme Court

(a) Application

(1) On consent, documents may be filed and served by electronic means in matrimonial

Except as otherwise required by this order/appendix, the provisions of 22 NYCRR § 202.5-b shall apply.

(2) For purposes of this order/appendix:
actions in the Supreme Court of authorized counties subject to the conditions set forth below.

(i) "Matrimonial actions" shall mean those actions set forth in CPLR § 105(p) and DRL § 236, as well as plenary actions for child support, custody or visitation, an order of protection or an application pursuant to the Child Parent Security Act, wherein:

(A) the action is contested, and addresses issues including, but not limited to, alimony, counsel fees, pendente lite, maintenance, custody and visitation, child support or the equitable distribution of property; or

(B) the action is uncontested; or

(C) the action is a post-judgment application that either (1) addresses an underlying matrimonial action that was commenced electronically, or (2) is electronically initiated with the purchase of a new index number.

(ii) A "party" or "parties" shall mean the party or parties to the action or counsel thereto (as set forth in 22 NYCRR § 202.5-b(a)(2)(viii)) and the attorney(s) for the minor child(ren).

(3) No paper or document filed by electronic means in a matrimonial action shall be available for public inspection on-line or at any computer terminal in the courthouse or the office of the County Clerk.

(4) Nothing in this section shall be construed to abrogate existing personal service requirements as set forth in the domestic relations law, family court act or civil practice law and rules.

(5) Unless otherwise directed by the court, evaluations or investigations of the parties or a child by a forensic mental health professional (including underlying notes), and reports by a probation service or a child protective service in proceedings involving custody, visitation, neglect or abuse, and other matters concerning children shall not be filed electronically.

(6) Service of the initiating documents in post-judgment applications subject to consensual e-filing must be effectuated in hard copy and accompanied by a notice of electronic filing (for post-judgment matrimonial proceedings). Proof of hard copy service shall be filed by electronic means.

Appendix B-2



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

MEMORANDUM

March 4, 2021

To: Hon. George J. Silver
Hon. Vito C. Caruso

From: John W. McConnell *Q*
Nancy Barry *NB*

Re: Child-Parent Security Act (L.2020, c. 56, Part L [eff. Feb. 15, 2021]) --
Letter Application for Use of an Anonymous Caption in Court Records Subject to
Public View

=====

As you know, proceedings for establishing parentage under the Child-Parent Security Act (L. 2020, c. 56, Part L; "CPSA", "Act") are subject to various confidentiality provisions under State law, including a general sealing provision under the Act itself. Accordingly, the court file and papers in these proceedings may only be viewed by the parties or counsel or by court order.

To further this goal of confidentiality, the Hon. Jeffrey Sunshine, Statewide Coordinating Judge for Matrimonial Cases, has developed a model letter application by which an applicant may seek a court order directing use of an anonymous caption in all publicly viewable court records in CPSA matters, including the clerk's minutes, public docket listings, and similar records. A copy of this application, which is expected to be filed along with the commencement documents in a CPSA proceeding, is attached as Exh. A.

In addition, two new case types have been added to the "Other Special Proceeding" dropdown window list in the UCS NYSCEF system: "Child-Parent Security Act (Assisted Reproduction)" and "Child-Parent Security Act (Surrogacy Agreement)". Documents uploaded through NYSCEF in these case types will automatically be shielded from public view, as the Act requires.

Please note, however, that if a CPSA proceeding is filed in paper format rather than electronically and includes an application similar to Exh. A, the County Clerk should not enter the child's name in the clerk's minutes if such minutes are immediately available for public view. Instead, the child's name should be listed as "ANONYMOUS" until the court has ruled on the application.

Please distribute this memorandum further as you deem appropriate. Questions on this subject can be directed to the Hon. Jeffrey Sunshine, Statewide Coordinating Judge for

Matrimonial Cases (jsunshin@nycourts.gov). Questions regarding e-filing can be directed to NYSCEF@nycourts.gov. As always, thank you for your kind assistance.

c: Hon. Jeffrey S. Sunshine
County Clerks
District Executives
New York City Chief Clerks
Surrogate's Court Chief Clerks
Jeffrey Carucci
Michele Gartner
Susan Kaufman

EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

-----X

In the Matter of a Parentage Proceeding

Concerning [Child's Name] _____

Index No. _____

Assigned Judge: _____

A child conceived as a result of

☐ Surrogacy Agreement ☐ Assisted Reproduction
Agreement

Letter Application for Order
Directing Use of an Anonymous
Caption in All Publicly Viewable
Case Listings

Petitioner(s)

-----X

I, _____, a party in this matter, counsel in good standing representing a party in this matter, and/or counsel admitted pro hac vice, hereby respectfully request that the Court direct the use of an anonymous caption in all publicly-viewable listings of the case, including the clerk's minutes, public dockets, and similar court records and publications.

As per the CPSA, the documents filed or e-filed within the proceeding shall remain under seal and therefore are required to include the child's name in the caption.

Dated: _____

☐ Attorney ☐ Pro Hac ☐ Party (unrepresented)

Signature: _____

Print Name: _____

Attorney Representing - (Identify Party): _____

Firm Name: _____

Address: _____

E-mail: _____

Phone#: _____

-----X
FOR COURT USE:

☐ application is **APPROVED**; and the County Clerk is directed to maintain the anonymous caption in any publicly-viewable case listing.

Dated: _____

Hon.

Appendix B-3



MEMORANDUM

April 5, 2021

TO: Hon. George Silver
Hon. Vito C. Caruso

FROM: Nancy Barry NB

RE: Virtual Evidence Courtrooms in Matrimonial Cases
=====

As you may recall, over the past few months a pilot program for submission of virtual evidence before and during virtual trials has been used in selected matrimonial cases in New York, Kings, Westchester, and Ontario counties. This program was designed by our NYSCEF team at the Division of Technology, in close coordination with the Hon. Jeffrey Sunshine, Statewide Coordinating Judge for Matrimonial Cases, and Jeff Carucci, Statewide Coordinator for Electronic Filing.

I am pleased to report that, effective today, the pilot program is being expanded to include all contested matrimonial matters filed through NYSCEF throughout the State. Moreover, the program now includes a Virtual Evidence Courtroom (VEC) module, by which documents can be submitted to the court and parties for trial use through a NYSCEF-based system in both fully remote and hybrid trial settings. Instructions on this new system, including a video recording for court users, can be found at the NYSCEF website at www.nycourts.gov/efile.¹ Although currently a case must be filed through NYSCEF to use this platform, we anticipate that it will be more broadly available in the future for matters that are not electronically filed.

Please distribute this memorandum further as you deem appropriate. Questions on this subject can be directed to Justice Sunshine (jsunshin@nycourts.gov). Questions regarding the NYSCEF-based aspects of the program can be directed to NYSCEF@nycourts.gov. As always, thank you for your kind assistance.

c: Hon. Lawrence K. Marks
Hon. Edwina G. Mendelson
Hon. Jeffrey S. Sunshine
County Clerks
Scott Murphy
Linda Dunlap-Miller
Michelle Smith
Jeffrey Carucci
Susan Kaufman

¹ The instructions may be accessed by selecting the "Virtual Evidence Courtroom" link located under the Help menu at the top right side of the home page.

Appendix C



STATE OF NEW YORK
UNIFIED COURT SYSTEM
360 ADAMS STREET
BROOKLYN, NY 11201
(347) 296-1527

LAWRENCE K. MARKS
Chief Administrative Judge

JEFFREY S. SUNSHINE
Statewide Coordinating Judge for
Matrimonial Cases

TO: Eileen D. Millett, Esq., Counsel, Office of Court Administration

FROM: Hon. Jeffrey S. Sunshine 

RE: Request for Public Comment on Uniform Civil Rules and Harmonization of Uniform Civil Rules with the Matrimonial Rules

DATE: December 13, 2021

Thank you for the opportunity to provide comment on the proposed amendments described in the two Requests for Public Comment dated October 1st and 26th.

The Matrimonial Practice Advisory and Rules Committee appreciates the proposed modifications put forth by the Administrative Board of the Courts and the consideration of the predecessor Harmonization document dated April 21, 2021.

We respectfully request the Administrative Board to consider those remaining provisions of the Harmonization proposal that have not been modified by the amendments described in the October 1st Request.

As always, please let me know if I may be of further assistance.

cc: Susan Kaufman, Esq.

Appendix D

Bar Association Support for Mandatory E-Filing in Matrimonial Actions

1- Resolution of the Family Law Section of the NYS Bar Association, July 9, 2020

2- News Release of the Women's Bar Association of the State of New York ("WBASNY"), August 28, 2020, available at https://www.wbasny.org/post_news/wbasny-supports-mandatory-e-filing-in-matrimonial-matters/

NEW YORK STATE BAR ASSOCIATION
FAMILY LAW SECTION
Meeting of the Executive Committee, July 9, 2020

RESOLUTION TO SUPPORT E-FILING IN MATRIMONIAL ACTIONS

WHEREAS, electronic filing in all civil matters is a safe alternative to in-person filings in order to mitigate the effects of the COVID-19 outbreak upon the judicial officers, staff, and users of the Unified Court System, and is an efficient, convenient and practical tool to afford the legal community access to courts;

NOW, THEREFORE, IT IS HEREBY RESOLVED,

The Family Law Section of the New York State Bar Association reiterates and reaffirms its continuing support for mandatory e-filing in both contested and uncontested matrimonial actions. Mandatory e-filing provides a safe and easy way to litigate those actions and, with the present exemption for *pro se* litigants and lawyers not having the necessary technology, eliminates the potential to deprive individuals of access to justice.

LEGISLATION

Independent Immigration Courts – 2020

2020 – Court Restructuring

[View more »](#)

WBASNY SUPPORTS MANDATORY E-FILING IN MATRIMONIAL MATTERS

(New York, NY, Friday, August 28, 2020) – The Women’s Bar Association of the State of New York (WBASNY) supports mandatory electronic filing (e-filing) in both contested and uncontested matrimonial actions throughout the Unified Court System. Mandatory e-filing, with exemptions for *pro se* litigants and lawyers not having the necessary technology, would enable litigants to advance their cases and eliminate potential barriers to access to justice. It would also mitigate the effects of the COVID-19 outbreak on the courts.

Currently, procedural inconsistencies among the different judicial departments and districts throughout the state make it increasingly complicated and cumbersome for attorneys and litigants. For example, it can be difficult to convert a traditional matrimonial case into an e-file case, resulting in delays that may negatively affect clients’ cases. The lack of in-person accessibility to the courts during the height of the COVID-19 crisis and the continuing recommendations from the Centers for Disease Control and Prevention to avoid gatherings and to socially distance, impacts numerous issues in matrimonial litigation, including, but not limited to, establishing valuation dates, procuring dates of commencement for the purposes of establishing support, and managing the delicate issue of parenting schedules, which involve the rights of parents and children and their health and safety.

WBASNY considers establishing statewide mandatory e-filing in matrimonial matters to be an important step toward promoting the fair and equal administration of justice.

###

The Women’s Bar Association of the State of New York (WBASNY) is the professional membership organization of choice for more than 4,000 attorneys throughout New York State, and the largest statewide women’s bar association in the country. For four decades, WBASNY has been a singularly important resource for women lawyers, with professional networking, continuing legal education programming, leadership training, and advocacy

for the rights of women, children, and families. Through involvement with WBASNY's 20 regional chapters and its 40-plus substantive law committees, WBASNY's members collaborate with one another on a variety of issues and perform public and community service, in furtherance of its mission to promote the advancement of the status of women in society and women in the legal profession; to promote the fair and equal administration of justice; and to act as a unified voice for its members with respect to issues of statewide, national and international significance to women generally and women attorneys in particular. WBASNY holds United Nations NGO status with the U.N.'s Department of Public Information, and Special Consultative status in association with the U.N. Economic and Social Council (ECOSOC). WBASNY is also a founding member of the National Conference of Women's Bar Associations.

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Appendix D-1

September 9, 2020

Honorable Jeffrey Sunshine
Statewide Coordinating Judge for Matrimonial Cases
Kings County Supreme Court
360 Adams St.
Brooklyn, New York 11201

John K. Carroll
President

Janet E. Sabel
*Attorney-in-Chief
Chief Executive Officer*

Adriene L. Holder
*Attorney in Charge
Civil Practice*

Marshall Green
*Attorney-in-Charge
Bronx Neighborhood Office*

Via email: JSunshin@nycourts.gov

Dear Judge Sunshine:

I am writing as the Director of the Family/Domestic Violence Unit of The Legal Aid Society. The Legal Aid Society handles matrimonial matters in all five boroughs of New York City. We currently have hundreds of contested and uncontested matters pending in all five boroughs.

As such, we fully support mandatory e-filing for matrimonial matters. Currently, each court has a different approach to filing, e-filing and retrieving documents. Though we can enter Manhattan Supreme court to file documents, we must mail them in the Bronx, make appointments in Brooklyn and e-file using EDDS in Queens. Should we seek to convert our cases to e-filed cases, again, each borough varies with its approach. Should our adversary not agree to e-filing, we must make a motion in Queens so a judge can decide the matter. Yet in the Bronx, if both parties do not agree, there will be no e-filing. In Staten Island, thankfully, the policy stating that attorneys could not e-file if they were seeking a fee waiver, has been changed.

The amount of resources we, and the court system, are expending for paper filing is exorbitant. With e-filing, we will be able to electronically file summons, motions, and other documents. We can have judgments uploaded for pick up, without having to determine if we can go the courthouse, must mail the documents or make appointments.

We understand that e-filing when working with pro se litigants can be difficult. We support an opt-in process for cases where both parties are not represented. Pro Se litigants must still be able to go to courthouses to file their documents and should still receive paper copies of documents that have been filed. Though some pro se litigants may choose to opt-in, the majority of pro se litigants we speak to do not have the technology to e-file. This would still allow for an attorney on a case to e-file, but they would have to mail copies of documents to pro se litigants.

Justice In Every Borough.

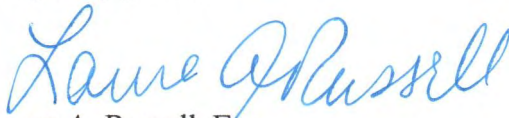
As many of our cases involve survivors of domestic violence, we know that survivors of domestic violence will need to have some confidentiality of their information. Currently, survivors can keep their addresses confidential. We would also ask that before a pro se litigant opts into the e-filing system they are given a notice that their email will be given to the other party, and that they should consider creating a new email just for litigation purposes.

Finally, we know the court system is facing severe budget cuts, but we would ask the e-filing resource center, which is currently overloaded and delayed on their responses, and the e-filing clerks of each borough, who will be assisting pro se litigants, be a priority in any funding necessary for this system to work.

I understand that e-filing has worked in many other practice areas and we are glad it will come to matrimonials. We understand that implementation will be complex, as each court has different filing methods, but we are hopeful that the courts will come together to create a single methodology for e-filing.

I welcome the opportunity to discuss this with you further. Should you have any questions, do not hesitate to call me at (646) 660-4629, or to email me at LARussell@legal-aid.org. Thank you.

Very truly yours,



Laura A. Russell, Esq.
Director,
Family/Domestic Violence Unit

Appendix E

Legislative and Rule Proposals of Matrimonial Practice Advisory and Rules Committee Adopted from 2015 through 2020

2015

Maintenance Guidelines Law and Simplification of Counsel Fee Affidavits for Self-Represented Litigants in 2015

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 group¹ 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 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.

¹ 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.

2016

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 § 454² 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*).³

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 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.

² 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”

³ *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).

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.⁴ One of the noteworthy provisions in the revised Preliminary Conference Order form requires the parties to waive a voluntary discontinue once grounds have been resolved, thereby preventing parties from discontinuing after considerable resources and effort have been spent on the case. 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, 2016⁵ 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

⁴ These forms, together with fillable versions thereof, are available on the Divorce Resources website at <http://ww2.nycourts.gov/divorce/forms.shtml#Statewide>

⁵ 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,⁶ 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.

2017:

***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,⁷ 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 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

⁶ See article by Peter E. Bronstein in the *New York Law Journal* on December 2, 2014.

⁷ See Memorandum by John McConnell dated January 18, 2017 available at <http://www.nycourts.gov/rules/comments/PDF/MatrimonialApplications.pdf>

and affirmations,⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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.

⁸ 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.

⁹ 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.

¹⁰ See Memorandum available at <http://www.nycourts.gov/rules/comments/PDF/MatrimonialFormOfJudgment.pdf>

¹¹ See Comments of Sanctuary for Families dated March 7, 2017 attached as Appendix "A" to our 2018 report available at

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.¹² 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

¹² 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.

purpose of modifications of maintenance, support, custody and visitation is only to the extent 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, contained 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 our 2018 report available at <http://www.nycourts.gov/ip/judiciaryslegislative/pdfs/2018-MatrimonialPractice-ADV-Report.pdf>

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 later in this report.

2018:

New Rule as to Judgments in Matrimonial Actions; Forms (to include Instructions Addressing Transfer of Title to a Marital Home) Adopted in 2018

At the request of and in consultation with the Office of Policy and Planning, the Committee proposed an amendment to subparagraphs (2) and (4) of 22 NYCRR 202.50(b) as to the form of judgments required in matrimonial actions, after having been 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. When parties are involved in a divorce action, it is often agreed that one spouse may remain in the marital home. Where a foreclosure action has also been brought, or is brought after the divorce judgment is signed, the spouse seeking to remain in the home cannot proceed with the loan modification if the deed is titled in the name of both spouses. The purpose of this proposed rule was 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. With this amendment, parties will be alerted as part of the judgment that separate documents related to the transfer of a residence must be signed and filed, thereby allowing the spouse residing in the marital property to obtain clear title to the marital home and apply for a mortgage loan modification if a foreclosure action is commenced. Additionally, if the property is never transferred to a spouse, either when both spouses are granted the property, or it is agreed that they will maintain joint ownership post-divorce, and thereafter a foreclosure action is commenced, the non-titled spouse may never receive notice of the foreclosure action once commenced. Unfortunately, many litigants believe mistakenly that the provisions for transfer of a residence contained in an agreement, decision or judgment complete the transfer and they do not realize that a deed or other transfer documents must be executed and filed for this to be accomplished.

The modified rule was adopted by Administrative Order A/O/191/18 dated May 21, 2018, which also adopted a revised Uncontested Divorce Judgement of Divorce (Form UD-11) and

Revised Uncontested Divorce Instructions in compliance with amendments to 22 NYCRR 202.50(b)(2) and new 22 NYCRR 202.50(b)(4) regarding the required form of judgments of divorce.¹ The modified rule allows the Supreme Court, in a post judgment matrimonial action, to enforce the specific requirement of the transfer of the property contained in the new decretal paragraph required in the Judgment of Divorce. The addition to the Uncontested Divorce Instructions now alerts litigants that separate documents must be executed to transfer the residence.

Amended Rule as to Form of Decretal Clause Concerning Settlement Agreements in Judgments of Divorce Adopted in 2018

In 2018, an amendment to 22 NYCRR 202.50(b) (3) concerning the form of required decretal clauses in judgments of divorce² was adopted to make clear whether a Settlement Agreement referenced in the judgment has actually been entered into between the parties in each case. This rule amendment was adopted by Administrative Order 269/18 of the Chief Administrative Judge, and a further revised form of UD-11 Judgment of Divorce was posted on the Divorce Resources website on September 30, 2018 at http://ww2.nycourts.gov/divorce/divorce_withchildrenunder21.shtml. The rule allows a thirty-day grace period for papers submitted using the prior form of judgment.

Adoption of Revised and Updated Statement of Client's Rights and Responsibilities for Representation with Fee Pursuant to 22 NYCRR 1400.2 adopted in 2018

During 2018, our Committee's proposal³ for the Appellate Divisions to adopt a revision to the Statement of Client's Rights and Responsibilities required pursuant to 22 NYCRR 1400.2 was circulated for public comment by Memorandum from OCA Counsel John W. McConnell dated June 22, 2018 available at <https://www.nycourts.gov/LegacyPDFS/RULES/comments/PDF/MatrimonialStatementClientsRightsResponsibilities.pdf>. The Family Law Section of the New York State Bar Association submitted a memorandum of support available at <http://ww2.nycourts.gov/sites/default/files/document/files/2018-11/PC-ClientsRightsResponsibilities.pdf>. After the public comment period expired, the proposal was approved by the Administrative Board, and was adopted by the Appellate Divisions effective February 15, 2019. It is available on the Divorce Resources website at <https://ww2.nycourts.gov/divorce/part1400.shtml>. The revision updates the document which was originally adopted in 1994 and last amended in 1995 and provides clarifications of the rights and responsibilities based on actual experience of members of our Committee who are practicing matrimonial attorneys and judges familiar with matrimonial litigation as it is practiced today. Without detracting from the information provided in the prior form, the revisions will reduce the number of attorney client disputes by clarifying matters that are not clear in the prior form. Adoption of the revised form will improve satisfaction of both litigants and

¹ See Administrative Order 191/18 available at <https://www.nycourts.gov/LegacyPDFS/divorce/pdfs/AO-re-Matrimonial-J-Rule.pdf>

² The form of required decretal clauses in judgments of divorce had previously been amended in 2017 in connection with our Committee's divorce venue rule proposal for post judgment enforcement and modification applications [22 NYCRR § 202.50(b)(3)]. However, the language as to Settlement Agreements merely required the date of the Settlement Agreement to be inserted, without clarifying whether a Settlement Agreement exists if no date is filled in. This language had been in the form of judgment for many years.

³ The members of the Special Subcommittee on Revision of Client's Rights and Responsibilities were Hon. Jeffrey Sunshine, Chair of the Committee, Hon. Sondra Miller (Ret.), Hon. Jeffrey Lebowitz (Ret.), Hon. Hope Zimmerman, Susan Bender, Esq., and Kathleen Donelli, Esq., Susan Kaufman, Counsel to the Committee, served as Counsel, and Matthew Schwartz, then Assistant Law Clerk to Judge Sunshine, served as Reporter.

attorneys with the matrimonial litigation process. It will also improve court operational efficiency and further the Excellence Initiative by reducing delays caused by attorney withdrawal or substitution of counsel as well as the volume of malpractice and fee dispute litigation.

See Memorandum from Susan W. Kaufman to John W. McConnell for a detailed analysis of the changes in the revised form attached as Appendix D to our 2019 Annual Report to the Chief Administrative Judge which is available at <https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/2019-Matrimonial.pdf>.

2019

Our Committee's proposal for amendment of the biennial adjustment of the "Income Cap" in the Maintenance Guidelines Law (A.07518/ S. 5515) was signed by the Governor on 11/20/19 as c. 523, L. 2019. We proposed this measure so that the date of adjustment of the maintenance guidelines income cap would coincide with the date of adjustment of the CSSA income cap on March 1st every other year.⁴ This proposal 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 of 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 within a two-month period, on January 31st and again on March 1st every other year. Although this measure seems ministerial in nature, its enactment will further the goals of both operational and decisional excellence.

Following the adoption of the revised Client's Rights and Responsibilities for representation with fee which was adopted by Joint Order of the Appellate Divisions at the end of 2018 upon the recommendation of our Committee to the Chief Administrative Judge, the Committee recommended a second Joint Order further revising 22 NYCRR 1400.2 to conform the version of the Client's Rights and Responsibilities in domestic relations matters when representation is without fee to the version where the attorney is being paid a fee. Both versions are available at <https://ww2.nycourts.gov/divorce/part1400.shtml>. The version for representation with fee, which was effective February 15, 2019, focuses on reducing the number of attorney client disputes by clarifying matters that are not clear in the existing form, not only as to the attorney client relationship, but also to what is often the subject of the greatest contention between attorneys and litigants in the matrimonial litigation process where the attorney is being paid a fee, namely, retainer agreements and attorney's fees. Like the version for representation with fee, the version for representation without fee is much clearer regarding responsibilities of both attorneys and litigants, but omits provisions concerning fees and retainer agreements. The Proposal was adopted by Joint Order of the Presiding Justices of the Appellate Divisions on April 16, 2019 effective June 1, 2019. Memoranda of Counsel outlining the provisions of both versions is attached as Appendix "E" to our 2020 report to the Chief Administrative Judge available at <https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/Matrimonial-MPARCReport2020.pdf>

In 2019, the Consensual Divorce Pilot Project was also approved by the Administrative Board.

2020:

In October, 2020 two Committee proposals designed to make the processing of matrimonial cases more efficient and fairer for self-represented litigants during the pandemic were posted for public comment by the Administrative Board with comments requested by November 30, 2020 at

⁴ An identical proposal (which was coupled with a proposal put forth by the Family Court Advisory and Rules Committee authorizing temporary spousal support in connection with temporary orders of protection) which we also supported was also signed by the Governor as c. 335, L. 2019.

<http://ww2.nycourts.gov/rules/comments/index.shtml>. The proposals were approved in final form by the Administrative Board at a meeting in December 2020, and were adopted by Administrative Order of the Chief Administrative Judge by A/O/ 31/21.

The first proposal amended the rule on motions for counsel fees and expenses in contested cases (22 NYCRR § 202.16 (k)) to cover costs of e-filing for self-represented litigants. Frequently, self-represented parties that desire to e-file are unable to have computer access or afford internet accessibility. This amendment will further the legislative intent of leveling the playing field in matrimonial litigation underlying DRL§237. The amendment makes clear that a self-represented litigant lacking the ability to e-file themselves could pay someone to e-file for them (or assist them) and make a motion to have the monied spouse pay for the costs either before the consent or pendente lite or later. Under the proposal, if the self-represented party did not wish to use e-filing, he or she could still file by paper as permitted under the current statute and court rules. This measure will both increase access to justice and encourage greater use of e-filing.

The second proposal amended 22 NYCRR § 202.16-b to expand the page limitations rule for pendente lite applications that has been in effect since 2017 as to all forms of written applications, including post-judgment applications in contested Supreme Court matrimonial actions. During and subsequent to the covid emergency, there will be numerous applications for relief, not only because of unresolved pending matters, but also because of the increased volume of new applications. Adoption of this rule will reduce the volume of the submissions and the duplication of efforts, thereby increasing court efficiency.

Appendix F-1

Excerpt from 2018 Report of the Matrimonial Practice Advisory and Rule Committee to the Chief Administrative Judge regarding Key Provisions of Modified Proposal on Forensics in Custody Cases in Response to Suggestions from the theChief Administrative Judge’s Family Court Advisory and Rules Committee and the New York Public Welfare Association, Inc.

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 Kaithlyn 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.

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

Appendix F-2

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

**A.5621
S.4686**

**M. of A. Weinstein
Sen. Biaggi**

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

THIS BILL IS OPPOSED

The Matrimonial Law and Children and the Law Committees of the New York City Bar Association (the “Committees”) write to provide feedback on the proposed legislation which would 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 has proposed a similar but not identical bill (OCA 27-2019).¹

The Committees support the approach taken in OCA 27-2019 with a few minor changes and clarifications detailed below. Although A.5621/S.4686 contains several valuable elements, it goes too far in guaranteeing parties access to forensic reports. We believe that OCA 27-2019 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 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.

¹ See “Report of the Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge of the Courts of the State of New York,” Jan. 2019 at 34, <https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/2019-Matrimonial.pdf> (“Previously-Endorsed Legislative Proposal #3”).

² See, e.g., “Custody Forensics: Reform on the Horizon?”, N.Y. Law J., March 7, 2013.

REASONS FOR SUPPORTING OCA 27-2019

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 OCA 27-2019 follows our recommendation. A.5621/S.4686, 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.

OCA 27-2019 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 OCA 27-2019 and A.5621/S.4686 is that OCA 27-2019 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.5621/S.4686 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 J., Mar. 22, 2017.

SUGGESTED CHANGES TO OCA 27-2019

The Committees recommend some small changes to OCA 27-2019. 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 OCA 27-2019 and A.5621/S.4686 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 OCA 27-2019 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 OCA 27-2019 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, OCA 27-2019 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

⁵ This language also appears in A.5621/S.4686.

⁶ OCA 27-2019 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.5621/S.4686, or another general term be used instead.

trials. It 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, OCA 27-2019 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 OCA 27-2019, with the minor changes discussed above, rather than A.5621/S.4686. 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)

Reissued May 2019

Appendix F-3

**Appendix F-3, 2022 Report of Matrimonial Practice Advisory and Rules
Committee to Chief Administrative Judge**

Memoranda of Opposition to 2019-20 A.5621/S.4686 by:

- 1- Women's Bar Association of the State of New York
- 2- Family Law Section of the New York State Bar Association
- 3- American Academy of Matrimonial Lawyers, New York Chapter



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LAW NEWS

**WBASNY is Proud to See
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2019 – A.5621 / S.4686

Position Statement – 2019

A.5621 (Weinstein) / S.4686 (Biaggi)

Oppose

WBASNY strongly opposes those portions of A.5621/S-4686 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 irreparable harm that will result from intentional or unintentional dissemination 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 will have no impact on this irreparable harm to parents and children resulting from the release of such information via the Internet and/or social media. In addition, this will create a very real potential for editing and falsifying the evaluation. A contempt proceeding, if any, will only add to the cost and delay of custody litigation which is not in the best interest of children and their families.

We are particularly concerned that victims of domestic violence will be targeted and further harmed by this Bill. If parties are given copies of forensic reports, an abuser can easily inflict more abuse on the victim with threats and actual disclosure of the forensic report to employers, relatives and other members of the public.

Providing forensic evaluation reports to parents directly will have a chilling effect on the formulation and 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 and parties will be reluctant to be open and honest with evaluators. The bill will burden already 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. The forensic reports have always been part of a court record that is sealed

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LEGISLATION

2019 – A.2477-B / S.5343**2019 – A.3876 / S.2992**[View more »](#)

and not available to the public. This Bill could result in public disclosure of those sealed court files without a court Order. 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 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. This is the practice in many courts and should be a uniform rule throughout New York State.

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 for 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).

Custody determinations are made to promote the best interests of children. There is no argument as to due process since the restriction is only as to the actual possession of a physical copy of the forensic report and raw data. In all circumstances, there should not be a restriction to the access and review of the forensic report and raw data under court or attorney supervision. Accordingly, all court procedures and rights should be fashioned so as not to interfere with achieving a result that is in the best interests of children in New York State.

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New York State Bar Association

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March 19, 2019

REPORT NO. 1

PREPARED BY FAMILY LAW SECTION COMMITTEE ON LEGISLATION

A05621

Sponsored by: M. of A. Weinstein, Seawright, Taylor

Multi-sponsored by: M. of A. Braunstein, Cook, Glick, & Jaffee

Effective Date: The ninetieth day after the bill becomes a law.

A **BILL** to amend Domestic Relations Law §70 and §240, as follows (the “Bill”): 1) to provide that all parties, their counsel and the attorney for the child shall have a right to a copy of the court-ordered forensic report and a copy of the forensic evaluator’s file in child custody cases, subject to the issuance of a protective order pursuant to Section 3103 of the Civil Practice Law and Rules (“CPLR”); and 2) upon application to the court, any person retained to assist counsel or any party shall be provided with a copy of the forensic report, again subject to the issuance of a protective order; and 3) to amend §251(c) and (d) and §651 of the Family Court Act to provide that Sections 3101 and 3103 of the CPLR apply to pre-trial discovery of court-ordered forensic reports in child custody cases.

RULE & SECTION OF LAW REFERRED TO: DRL §70 and §240; FCA §251 and §651.

THE FAMILY LAW SECTION OPPOSES THIS BILL

The Family Law Section supported a prior 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 data 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 as drafted.

Chair of the Section: Eric A. Tepper, Esq.

Opinions expressed are those of the Committee preparing this resolution and cannot represent those of the entire New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

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A. 5621

April 18, 2019

By: M. of A. Weinstein
Assembly Committee: Judiciary
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 New York Chapter of the American Academy of
Matrimonial Lawyers opposes this legislation and supports
the memorandum in opposition prepared by the Family Law
Section of the New York State Bar Association dated March
19, 2019.

Ronnie Schindel
President
American Academy of Matrimonial Lawyers
New York Chapter

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Appendix G

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

UNCONTESTED MATRIMONIALS

Location	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
TOTAL STATE	45,618	47,263	49,785	47,379	9%	0%
NYC	25,470	26,266	27,687	24,094	9%	-8%
NEW YORK	12,737	12,591	14,352	14,143	13%	12%
BRONX	2,086	3,012	2,647	2,620	27%	-13%
KINGS	5,068	5,546	5,267	2,646	4%	-52%
QUEENS	4,992	4,581	4,818	4,403	-3%	-4%
RICHMOND	587	536	603	282	3%	-47%
Outside NYC	20,148	20,997	22,098	23,285	10%	11%
ALBANY	524	596	677	671	29%	13%
ALLEGANY	146	139	135	123	-8%	-12%
BROOME	319	386	381	442	19%	15%
CATTARAUGUS	135	162	199	186	47%	15%
CAYUGA	134	157	151	181	13%	15%
CHAUTAUQUA	304	274	401	384	32%	40%
CHEMUNG	196	191	230	214	17%	12%
CHENANGO	134	112	163	155	22%	38%
CLINTON	264	268	255	266	-3%	-1%
COLUMBIA	121	121	88	142	-27%	17%
CORTLAND	137	127	175	176	28%	39%
DELAWARE	95	81	92	61	-3%	-25%
DUTCHESS	607	582	670	677	10%	16%
ERIE	1,187	1,291	1,476	1,634	24%	27%
ESSEX	75	59	95	113	27%	92%
FRANKLIN	113	106	144	127	27%	20%
FULTON	174	189	163	180	-6%	-5%
GENESEE	111	128	133	150	20%	17%
GREENE	100	104	131	98	31%	-6%
HAMILTON	0	0	0	0	0%	0%
HERKIMER	125	124	112	117	-10%	-6%
JEFFERSON	478	539	537	651	12%	21%
LEWIS	63	73	81	78	29%	7%
LIVINGSTON	152	174	166	186	9%	7%
MADISON	142	141	152	135	7%	-4%
MONROE	1,403	1,399	1,294	1,542	-8%	10%
MONTGOMERY	101	80	129	130	28%	63%
NASSAU	1,826	1,825	1,826	1,850	0%	1%
NIAGARA	311	318	349	340	12%	7%
ONEIDA	383	334	452	393	18%	18%
ONONDAGA	959	1,355	1,014	1,380	6%	2%
ONTARIO	188	231	211	273	12%	18%
ORANGE	318	641	214	743	-33%	16%
ORLEANS	94	96	85	136	-10%	42%
OSWEGO	214	215	273	273	28%	27%
OTSEGO	113	109	134	120	19%	10%
PUTNAM	137	136	147	144	7%	6%
RENSSELAER	288	320	371	387	29%	21%
ROCKLAND	393	416	424	417	8%	0%
ST LAWRENCE	279	271	334	322	20%	19%
SARATOGA	583	542	687	624	18%	15%
SCHENECTADY	349	334	438	400	26%	20%
SCHOHARIE	47	44	83	68	77%	55%
SCHUYLER	46	42	53	54	15%	29%
SENECA	56	64	43	67	-23%	5%
STEBEN	178	241	215	279	21%	16%
SUFFOLK	2,403	2,384	2,589	2,506	8%	5%
SULLIVAN	197	202	174	183	-12%	-9%
TIOGA	159	161	166	209	4%	30%
TOMPKINS	242	222	277	247	14%	11%
ULSTER	304	279	515	394	69%	41%
WARREN	185	178	221	218	19%	22%
WASHINGTON	184	170	194	185	5%	9%
WAYNE	156	165	175	181	12%	10%
WESTCHESTER	2,083	1,959	2,031	1,894	-2%	-3%
WYOMING	112	110	135	135	21%	23%
YATES	21	30	38	44	81%	47%

CONTESTED MATRIMONIALS

Location	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
TOTAL STATE	13,849	14,238	14,538	14,736	5%	3%
NYC	3,185	3,169	3,426	3,213	8%	1%
NEW YORK	971	1,147	995	1,140	2%	-1%
BRONX	267	252	434	260	63%	3%
KINGS	723	729	797	760	10%	4%
QUEENS	857	705	819	736	-4%	4%
RICHMOND	367	336	381	317	4%	-6%
Outside NYC	10,664	11,069	11,112	11,523	4%	4%
ALBANY	181	266	232	319	28%	20%
ALLEGANY	38	41	46	33	21%	-20%
BROOME	164	179	166	231	1%	29%
CATTARAUGUS	72	85	60	83	-17%	-2%
CAYUGA	54	88	75	89	39%	1%
CHAUTAUQUA	160	127	160	119	0%	-6%
CHEMUNG	60	64	66	67	10%	5%
CHENANGO	54	45	44	56	-19%	24%
CLINTON	65	67	91	78	40%	16%
COLUMBIA	47	39	57	47	21%	21%
CORTLAND	35	36	32	35	-9%	-3%
DELAWARE	41	37	27	24	-34%	-35%
DUTCHESS	296	252	341	329	15%	31%
ERIE	1,305	1,313	1,159	1,287	-11%	-2%
ESSEX	25	36	32	27	28%	-25%
FRANKLIN	40	38	36	55	-10%	45%
FULTON	65	60	51	89	-22%	48%
GENESEE	76	89	51	67	-33%	-25%
GREENE	41	28	56	57	37%	104%
HAMILTON	0	0	0	0	0%	0%
HERKIMER	81	89	66	75	-19%	-16%
JEFFERSON	132	145	85	131	-36%	-10%
LEWIS	24	29	18	15	-25%	-48%
LIVINGSTON	62	36	50	49	-19%	36%
MADISON	47	68	79	47	68%	-31%
MONROE	734	719	655	891	-11%	24%
MONTGOMERY	37	41	42	44	14%	7%
NASSAU	1,168	1,185	1,208	1,067	3%	-10%
NIAGARA	282	261	270	253	-4%	-3%
ONEIDA	259	260	282	292	9%	12%
ONONDAGA	521	564	615	549	18%	-3%
ONTARIO	125	130	148	114	18%	-12%
ORANGE	356	327	391	363	10%	11%
ORLEANS	28	30	34	34	21%	13%
OSWEGO	147	174	181	171	23%	-2%
OTSEGO	37	46	62	51	68%	11%
PUTNAM	117	133	97	95	-17%	-29%
RENSSELAER	120	170	151	191	26%	12%
ROCKLAND	221	287	238	325	8%	13%
ST LAWRENCE	70	80	87	73	24%	-9%
SARATOGA	204	199	295	236	45%	19%
SCHENECTADY	145	136	132	91	-9%	-33%
SCHOHARIE	20	15	29	23	45%	53%
SCHUYLER	11	19	9	22	-18%	16%
SENECA	20	25	36	36	80%	44%
STEBEN	68	48	79	78	16%	63%
SUFFOLK	1,563	1,773	1,630	1,768	4%	0%
SULLIVAN	42	49	51	63	21%	29%
TIOGA	51	34	46	51	-10%	50%
TOMPKINS	48	37	56	58	17%	57%
ULSTER	127	145	180	143	42%	-1%
WARREN	78	72	77	71	-1%	-1%
WASHINGTON	50	69	58	54	16%	-22%
WAYNE	96	84	76	103	-21%	23%
WESTCHESTER	688	620	728	720	6%	16%
WYOMING	40	43	59	50	48%	16%
YATES	26	37	30	34	15%	-8%

SUPREME COURT CIVIL - MATRIMONIALS FILED & DISPOSED
COMPARISON REPORT: 2011 vs 2012

UNCONTESTED MATRIMONIALS

Location	Full Year 2011 (01/03/2011 - 01/01/2012)		Full Year 2012 (01/02/2012 - 12/30/2012)		2011 vs 2012	
	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed
TOTAL STATE	50,312	47,379	46,201	49,804	-8%	5%
NYC	27,687	24,094	24,465	26,362	-12%	9%
NEW YORK	14,352	14,143	13,519	13,413	-6%	-5%
BRONX	2,647	2,620	3,356	3,485	27%	33%
KINGS	5,267	2,646	3,379	5,358	-36%	102%
QUEENS	4,818	4,403	3,662	3,328	-24%	-24%
RICHMOND	603	282	549	778	-9%	176%
Outside NYC	22,625	23,285	21,736	23,442	-4%	1%
ALBANY	677	671	644	664	-5%	-1%
ALLEGANY	135	123	120	137	-11%	11%
BROOME	381	442	416	434	9%	-2%
CATTARAUGUS	199	186	193	204	-3%	10%
CAYUGA	151	181	174	186	15%	3%
CHAUTAUQUA	401	384	383	394	-4%	3%
CHEMUNG	230	214	215	208	-7%	-3%
CHENANGO	163	155	145	133	-11%	-14%
CLINTON	255	266	281	287	10%	8%
COLUMBIA	88	142	86	124	-2%	-13%
CORTLAND	175	176	149	135	-15%	-23%
DELAWARE	92	61	101	99	10%	62%
DUTCHESS	670	677	658	691	-2%	2%
ERIE	1,476	1,634	1,446	1,745	-2%	7%
ESSEX	95	113	88	100	-7%	-12%
FRANKLIN	144	127	120	122	-17%	-4%
FULTON	163	180	161	187	-1%	4%
GENESEE	133	150	143	159	8%	6%
GREENE	131	98	111	105	-15%	7%
HAMILTON	0	0	0	0	0%	0%
HERKIMER	112	117	94	122	-16%	4%
JEFFERSON	537	651	558	615	4%	-6%
LEWIS	81	78	71	72	-12%	-8%
LIVINGSTON	166	186	148	157	-11%	-16%
MADISON	152	135	142	111	-7%	-18%
MONROE	1,294	1,542	1,370	1,512	6%	-2%
MONTGOMERY	129	130	106	136	-18%	5%
NASSAU	1,826	1,850	1,822	1,681	0%	-9%
NIAGARA	349	340	366	358	5%	5%
ONEIDA	452	393	439	350	-3%	-11%
ONONDAGA	1,014	1,380	972	1,368	-4%	-1%
ONTARIO	211	273	208	248	-1%	-9%
ORANGE	741	743	755	814	2%	10%
ORLEANS	85	136	48	107	-44%	-21%
OSWEGO	273	273	262	258	-4%	-5%
OTSEGO	134	120	135	134	1%	12%
PUTNAM	147	144	160	167	9%	16%
RENSSELAER	371	387	303	377	-18%	-3%
ROCKLAND	424	417	373	459	-12%	10%
ST LAWRENCE	334	322	276	291	-17%	-10%
SARATOGA	687	624	621	688	-10%	10%
SCHENECTADY	438	400	396	415	-10%	4%
SCHOHARIE	83	68	68	82	-18%	21%
SCHUYLER	53	54	44	43	-17%	-20%
SENECA	43	67	51	69	19%	3%
STEUBEN	215	279	198	264	-8%	-5%
SUFFOLK	2,589	2,506	2,456	2,760	-5%	10%
SULLIVAN	174	183	188	203	8%	11%
TIOGA	166	209	176	136	6%	-35%
TOMPKINS	277	247	218	212	-21%	-14%
ULSTER	515	394	381	406	-26%	3%
WARREN	221	218	232	238	5%	9%
WASHINGTON	194	185	184	216	-5%	17%
WAYNE	175	181	181	209	3%	15%
WESTCHESTER	2,031	1,894	1,958	1,903	-4%	0%
WYOMING	135	135	104	90	-23%	-33%
YATES	38	44	38	57	0%	30%

CONTESTED MATRIMONIALS

Location	Full Year 2011 (01/03/2011 - 01/01/2012)		Full Year 2012 (01/02/2012 - 12/30/2012)		2011 vs 2012	
	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed
TOTAL STATE	14,538	14,736	13,652	15,115	-6%	3%
NYC	3,426	3,213	3,379	3,161	-1%	-2%
NEW YORK	995	1,140	911	1,023	-8%	-10%
BRONX	434	260	741	290	71%	12%
KINGS	797	760	628	737	-21%	-3%
QUEENS	819	736	722	736	-12%	0%
RICHMOND	381	317	377	375	-1%	18%
Outside NYC	11,112	11,523	10,273	11,954	-8%	4%
ALBANY	232	319	174	338	-25%	6%
ALLEGANY	46	33	42	46	-9%	39%
BROOME	166	231	196	178	18%	-23%
CATTARAUGUS	60	83	64	84	7%	1%
CAYUGA	75	89	65	90	-13%	1%
CHAUTAUQUA	160	119	137	162	-14%	36%
CHEMUNG	66	67	70	54	6%	-19%
CHENANGO	44	56	55	51	25%	-9%
CLINTON	91	78	69	96	-24%	23%
COLUMBIA	57	47	43	31	-25%	-34%
CORTLAND	32	35	24	39	-25%	11%
DELAWARE	27	24	28	30	4%	25%
DUTCHESS	341	329	295	382	-13%	16%
ERIE	1,159	1,287	1,118	1,191	-4%	-7%
ESSEX	32	27	29	40	-9%	48%
FRANKLIN	36	55	24	77	-33%	40%
FULTON	51	89	66	83	29%	-7%
GENESEE	51	67	69	81	35%	21%
GREENE	56	57	29	46	-48%	-19%
HAMILTON	0	0	0	0	0%	0%
HERKIMER	66	75	44	57	-33%	-24%
JEFFERSON	85	131	106	122	25%	-7%
LEWIS	18	15	25	14	39%	-7%
LIVINGSTON	50	49	44	56	-12%	14%
MADISON	79	47	63	61	-20%	30%
MONROE	655	891	645	898	-2%	1%
MONTGOMERY	42	44	34	33	-19%	-25%
NASSAU	1,208	1,067	1,097	1,038	-9%	-3%
NIAGARA	270	253	262	303	-3%	20%
ONEIDA	282	292	269	308	-5%	5%
ONONDAGA	615	549	606	561	-1%	2%
ONTARIO	148	114	103	135	-30%	18%
ORANGE	391	363	367	422	-6%	16%
ORLEANS	34	34	31	41	-9%	21%
OSWEGO	181	171	153	176	-15%	3%
OTSEGO	62	51	46	34	-26%	-33%
PUTNAM	97	95	112	90	15%	-5%
RENSSELAER	151	191	122	211	-19%	10%
ROCKLAND	238	325	269	372	13%	14%
ST LAWRENCE	87	73	100	96	15%	32%
SARATOGA	295	236	233	299	-21%	27%
SCHENECTADY	132	91	116	106	-12%	16%
SCHOHARIE	29	23	41	33	41%	43%
SCHUYLER	9	22	14	18	56%	-18%
SENECA	36	36	30	43	-17%	19%
STEUBEN	79	78	64	78	-19%	0%
SUFFOLK	1,630	1,768	1,368	1,912	-16%	8%
SULLIVAN	51	63	43	75	-16%	19%
TIOGA	46	51	44	52	-4%	2%
TOMPKINS	56	58	69	54	23%	-7%
ULSTER	180	143	149	139	-17%	-3%
WARREN	77	71	62	70	-19%	-1%
WASHINGTON	58	54	59	69	2%	28%
WAYNE	76	103	84	98	11%	-5%
WESTCHESTER	728	720	742	699	2%	-3%
WYOMING	59	50	40	44	-32%	-12%
YATES	30	34	20	38	-33%	12%

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

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	2014		2015		2014 vs 2015		2014		2015		2014 vs 2015	
	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%
STEBEN	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

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	2015		2016		2015 vs 2016		2015		2016		2015 vs 2016	
	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%
ERE	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%
STELLEN	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%
TOGA	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%

NEW YORK STATE UNIFIED COURT SYSTEM
SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED - TWO YEAR COMPARISON

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	2016		2017		2016 vs 2017		2016		2017		2016 vs 2017	
	Filed	Disposed	Filed	Disposed	% Chg Filed	% Chg Disp	Filed	Disposed	Filed	Disposed	% Chg Filed	% Chg Disp
TOTAL STATE	45,150	48,282	42,857	46,054	-5%	-5%	12,090	14,480	11,335	13,795	-6%	-5%
NYC	24,327	25,910	23,208	24,476	-5%	-6%	3,295	3,507	3,307	3,309	0%	-6%
NEW YORK	11,340	12,995	10,382	10,440	-8%	-20%	823	902	753	979	-9%	9%
BRONX	4,382	3,918	4,365	4,915	0%	25%	724	526	739	551	2%	5%
KINGS	3,983	4,074	3,550	4,247	-11%	4%	687	899	669	632	-3%	-30%
QUEENS	4,013	4,209	4,352	4,351	8%	3%	774	834	804	803	4%	-4%
RICHMOND	609	714	559	523	-8%	-27%	287	346	342	344	19%	-1%
Outside NYC	20,823	22,372	19,649	21,578	-6%	-4%	8,795	10,973	8,028	10,486	-9%	-4%
ALBANY	579	590	570	618	-2%	5%	166	285	160	297	-4%	4%
ALLEGANY	83	89	71	72	-14%	-19%	34	42	25	39	-26%	-7%
BROOME	549	372	376	366	-32%	-2%	167	159	180	169	8%	6%
CATTARAUGUS	166	140	129	161	-22%	15%	52	40	42	47	-19%	18%
CAYUGA	127	170	124	138	-2%	-19%	45	108	48	76	7%	-30%
CHAUTAUQUA	274	295	241	225	-12%	-24%	82	88	87	85	6%	-3%
CHEMUNG	251	248	194	190	-23%	-23%	50	57	49	51	-2%	-11%
CHENANGO	121	126	105	110	-13%	-13%	48	45	32	59	-33%	31%
CLINTON	207	237	207	235	0%	-1%	67	78	71	86	6%	10%
COLUMBIA	142	131	139	145	-2%	11%	39	32	32	64	-18%	100%
CORTLAND	320	303	598	591	87%	95%	30	26	27	33	-10%	27%
DELAWARE	94	108	72	114	-23%	6%	30	55	31	44	3%	-20%
DUTCHESS	601	608	598	608	0%	0%	272	256	191	257	-30%	0%
ERIE	1,762	2,173	1,350	1,862	-23%	-14%	830	830	720	935	-13%	13%
ESSEX	82	105	64	66	-22%	-37%	19	21	30	21	58%	0%
FRANKLIN	85	77	88	99	4%	29%	45	57	28	71	-38%	25%
FULTON	138	138	160	130	16%	-6%	52	76	38	77	-27%	1%
GENESEE	111	128	126	117	14%	-9%	40	53	52	54	30%	2%
GREENE	101	113	78	97	-23%	-14%	21	39	36	33	71%	-15%
HERKIMER	63	66	76	90	21%	36%	61	47	45	76	-26%	62%
JEFFERSON	413	411	371	450	-10%	9%	126	141	121	196	-4%	39%
LEWIS	46	54	50	53	9%	-2%	9	37	12	28	33%	-24%
LIVINGSTON	136	134	145	145	7%	8%	49	66	24	52	-51%	-21%
MADISON	132	157	86	92	-35%	-41%	67	70	52	71	-22%	1%
MONROE	1,339	1,335	1,285	1,332	-4%	0%	614	801	485	569	-21%	-29%
MONTGOMERY	107	124	98	82	-8%	-34%	27	46	29	36	7%	-22%
NASSAU	1,818	1,719	1,695	2,424	-7%	41%	1,063	1,124	936	1,200	-12%	7%
NIAGARA	318	275	267	308	-16%	12%	208	274	185	216	-11%	-21%
ONEIDA	384	295	297	287	-23%	-3%	232	286	196	256	-16%	-10%
ONONDAGA	773	1,126	771	1,187	0%	5%	495	450	535	442	8%	-2%
ONTARIO	458	478	386	417	-16%	-13%	78	147	64	109	-18%	-26%
ORANGE	549	672	584	639	6%	-5%	293	396	267	356	-9%	-10%
ORLEANS	61	79	77	77	26%	-3%	19	20	22	24	16%	20%
OSWEGO	205	192	237	206	16%	7%	122	122	118	129	-3%	6%
OTSEGO	119	122	104	95	-13%	-22%	26	39	36	33	38%	-15%
PUTNAM	128	120	132	150	3%	25%	90	138	85	82	-6%	-41%
RENSSELAER	307	344	295	299	-4%	-13%	91	139	104	156	14%	12%
ROCKLAND	374	472	312	473	-17%	0%	164	269	170	223	4%	-17%
SARATOGA	524	545	526	496	0%	-5%	225	348	177	292	-21%	-16%
SCHENECTADY	357	432	342	268	-4%	-38%	103	196	117	148	14%	-24%
SCHOHARIE	51	39	49	60	-4%	54%	22	21	18	21	-18%	0%
SCHUYLER	49	69	45	41	-8%	-41%	8	16	12	9	50%	-44%
SENECA	50	71	30	42	-40%	-41%	24	43	19	18	-21%	-58%
ST LAWRENCE	219	238	230	249	5%	5%	78	92	106	148	36%	61%
STEUBEN	215	266	200	252	-7%	-5%	57	79	48	80	-16%	1%
SUFFOLK	2,396	2,883	2,272	1,872	-5%	-35%	1,237	1,868	1,167	1,704	-6%	-9%
SULLIVAN	135	174	153	181	13%	4%	46	70	32	83	-30%	19%
TIOGA	103	117	109	111	6%	-5%	34	45	23	30	-32%	-33%
TOMPKINS	205	178	188	182	-8%	2%	50	58	36	38	-28%	-34%
ULSTER	363	374	347	347	-4%	-7%	139	162	131	194	-6%	20%
WARREN	192	191	180	200	-6%	5%	54	58	50	63	-7%	9%
WASHINGTON	174	253	138	150	-21%	-41%	42	95	38	63	-10%	-34%
WAYNE	136	132	107	120	-21%	-9%	72	76	55	59	-24%	-22%
WESTCHESTER	2,004	1,958	2,062	2,123	3%	8%	637	721	598	737	-6%	2%
WYOMING	99	83	86	107	-13%	29%	31	46	32	36	3%	-22%
YATES	28	43	27	27	-4%	-37%	13	20	4	11	-69%	-45%

NEW YORK STATE UNIFIED COURT SYSTEM
SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED - TWO YEAR COMPARISON

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	2017		2018		2017 vs 2018		2017		2018		2017 vs 2018	
	Filed	Disposed	Filed	Disposed	Filed % Chg	Disp % Chg	Filed	Disposed	Filed	Disposed	Filed % Chg	Disp % Chg
TOTAL STATE	42,857	46,054	43,847	47,788	2%	4%	11,335	13,796	11,553	13,926	2%	1%
NYC	23,208	24,476	23,789	24,772	3%	1%	3,307	3,309	3,402	3,479	3%	5%
BRONX	4,365	4,915	4,276	5,053	-2%	3%	739	551	760	489	3%	-11%
KINGS	3,550	4,247	4,652	4,365	31%	3%	669	632	758	873	13%	38%
NEW YORK	10,382	10,440	9,448	9,871	-9%	-5%	753	979	763	932	1%	-5%
QUEENS	4,352	4,351	4,856	4,915	12%	13%	804	803	838	863	4%	7%
RICHMOND	559	523	557	568	0%	9%	342	344	283	322	-17%	-6%
Outside NYC	19,649	21,578	20,058	23,016	2%	7%	8,028	10,487	8,151	10,447	2%	0%
ALBANY	570	618	555	607	-3%	-2%	160	297	186	315	16%	6%
ALLEGANY	71	72	104	103	46%	43%	25	39	26	37	4%	-5%
BROOME	376	366	344	337	-9%	-8%	180	169	159	180	-12%	7%
CATTARAUGUS	129	161	159	180	23%	12%	42	47	36	52	-14%	11%
CAYUGA	124	138	105	138	-15%	0%	48	76	43	72	-10%	-5%
CHAUTAUQUA	241	225	287	275	19%	22%	87	85	80	89	-8%	5%
CHEMUNG	194	190	189	189	-3%	-1%	49	51	53	58	8%	14%
CHENANGO	105	110	98	112	-7%	2%	32	59	19	45	-41%	-24%
CLINTON	207	235	190	188	-8%	-20%	71	86	53	65	-25%	-24%
COLUMBIA	139	145	151	143	9%	-1%	32	64	44	45	38%	-30%
CORTLAND	598	591	777	743	30%	26%	27	33	23	33	-15%	0%
DELAWARE	72	114	80	67	11%	-41%	31	44	35	58	13%	32%
DUTCHESS	598	608	598	624	0%	3%	191	257	221	299	16%	16%
ERIE	1,350	1,862	1,638	2,063	21%	11%	720	935	833	1,112	16%	19%
ESSEX	64	66	71	56	11%	-15%	30	21	14	25	-53%	19%
FRANKLIN	88	99	104	85	18%	-14%	28	71	26	64	-7%	-10%
FULTON	160	130	123	123	-23%	-5%	38	77	47	61	24%	-21%
GENESEE	126	117	118	130	-6%	11%	52	54	42	66	-19%	22%
GREENE	78	97	91	86	17%	-11%	36	33	31	36	-14%	9%
HERKIMER	76	90	62	93	-18%	3%	45	76	31	47	-31%	-38%
JEFFERSON	371	450	362	374	-2%	-17%	121	196	126	156	4%	-20%
LEWIS	50	53	61	86	22%	62%	12	28	14	23	17%	-18%
LIVINGSTON	145	145	147	216	1%	49%	24	52	37	32	54%	-38%
MADISON	86	92	114	82	33%	-11%	52	71	49	66	-6%	-7%
MONTROE	1,285	1,332	1,226	1,300	-5%	-2%	485	569	459	548	-5%	-4%
MONTGOMERY	98	82	101	92	3%	12%	29	36	28	36	-3%	0%
NASSAU	1,695	2,424	1,749	1,845	3%	-24%	936	1,200	968	1,266	3%	6%
NIAGARA	267	308	229	258	-14%	-16%	185	216	183	198	-1%	-8%
ONEIDA	297	287	346	333	16%	16%	196	256	219	230	12%	-10%
ONONDAGA	771	1,187	844	1,344	9%	13%	535	442	536	582	0%	32%
ONTARIO	386	417	336	357	-13%	-14%	64	109	74	101	16%	-7%
ORANGE	584	639	605	677	4%	6%	267	356	311	350	16%	-2%
ORLEANS	77	77	77	76	0%	-1%	22	24	27	25	23%	4%
OSWEGO	237	206	202	187	-15%	-9%	118	129	95	89	-19%	-31%
OTSEGO	104	95	105	87	1%	-8%	36	33	34	43	-6%	30%
PUTNAM	132	150	123	137	-7%	-9%	85	82	65	73	-24%	-11%
RENSSELAER	295	299	288	306	-2%	2%	104	156	105	121	1%	-22%
ROCKLAND	312	473	278	476	-11%	1%	170	223	159	226	-6%	1%
SARATOGA	526	496	506	487	-4%	-2%	177	292	179	270	1%	-8%
SCHENECTADY	342	268	316	311	-8%	16%	117	148	107	120	-9%	-19%
SCHOHARIE	49	60	69	55	41%	-8%	18	21	11	29		38%
SCHUYLER	45	41	38	40	-16%	-2%	12	9	9	14	-25%	56%
SENECA	30	42	53	59	77%	40%	19	18	17	25	-11%	39%
ST LAWRENCE	230	249	253	275	10%	10%	106	148	81	105	-24%	-29%
STEBEN	200	252	201	212	1%	-16%	48	80	35	56	-27%	-30%
SUFFOLK	2,272	1,872	2,273	3,489	0%	86%	1,167	1,704	1,132	1,617	-3%	-5%
SULLIVAN	153	181	147	165	-4%	-9%	32	83	42	72	31%	-13%
TIOGA	109	111	89	80	-18%	-28%	23	30	32	35	39%	17%
TOMPKINS	188	182	203	168	8%	-8%	36	38	28	48	-22%	26%
ULSTER	347	347	330	304	-5%	-12%	131	195	144	139	10%	-29%
WARREN	180	200	190	196	6%	-2%	50	63	47	65	-6%	3%
WASHINGTON	138	150	161	163	17%	9%	38	63	33	46	-13%	-27%
WAYNE	107	120	120	149	12%	24%	55	59	72	65	31%	10%
WESTCHESTER	2,062	2,123	1,982	2,191	-4%	3%	598	737	636	761	6%	3%
WYOMING	86	107	63	62	-27%	-42%	32	36	40	36	25%	0%
YATES	27	27	27	35	0%	30%	4	11	15	20	275%	82%

NEW YORK STATE UNIFIED COURT SYSTEM, DIVISION OF TECHNOLOGY AND THE OFFICE OF COURT RESEARCH 1/16/2020
SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	Full Year 2018		Full Year 2019		2018 vs 2019		Full Year 2018		Full Year 2019		2018 vs 2019	
	Filed	Disposed	Filed	Disposed	F% Chg	D% Chg	Filed	Disposed	Filed	Disposed	F% Chg	D% Chg
TOTAL STATE	43,844	47,756	44,531	48,328	2%	1%	11,527	13,577	11,179	14,136	-3%	4%
NYC	23,789	24,772	23,815	24,450	0%	-1%	3,402	3,479	3,193	3,500	-6%	1%
Bronx	4,276	5,053	4,461	5,530	4%	9%	760	489	795	625	5%	28%
Kings	4,652	4,365	4,800	4,484	3%	3%	758	873	682	771	-10%	-12%
New York	9,448	9,871	9,134	8,850	-3%	-10%	763	932	743	940	-3%	1%
Queens	4,856	4,915	4,818	4,865	-1%	-1%	838	863	709	862	-15%	0%
Richmond	557	568	602	721	8%	27%	283	322	264	302	-7%	-6%
Outside NYC	20,055	22,984	20,716	23,878	3%	4%	8,125	10,098	7,986	10,636	-2%	5%
Albany	555	607	590	622	6%	2%	186	315	179	245	-4%	-22%
Allegany	104	103	93	99	-11%	-4%	26	37	19	36	-27%	-3%
Broome	344	337	295	333	-14%	-1%	159	180	131	267	-18%	48%
Cattaraugus	159	180	161	167	1%	-7%	36	52	52	59	44%	13%
Cayuga	105	138	141	191	34%	38%	43	72	57	134	33%	86%
Chautauqua	287	275	275	232	-4%	-16%	80	89	66	69	-18%	-22%
Chemung	189	189	186	181	-2%	-4%	53	58	55	60	4%	3%
Chenango	98	112	152	179	55%	60%	19	45	32	64	68%	42%
Clinton	190	188	216	168	14%	-11%	53	65	77	79	45%	22%
Columbia	151	143	120	114	-21%	-20%	44	45	33	33	-25%	-27%
Cortland	777	743	856	879	10%	18%	23	33	25	43	9%	30%
Delaware	80	67	75	89	-6%	33%	35	58	20	55	-43%	-5%
Dutchess	598	624	540	561	-10%	-10%	221	299	209	291	-5%	-3%
Erie	1,638	2,052	1,491	2,084	-9%	2%	826	924	782	1,118	-5%	21%
Essex	71	56	69	66	-3%	18%	14	25	21	22	50%	-12%
Franklin	104	85	113	113	9%	33%	26	64	28	62	8%	-3%
Fulton	123	123	151	142	23%	15%	47	61	39	79	-17%	30%
Genesee	118	130	95	123	-19%	-5%	42	66	44	93	5%	41%
Greene	91	86	87	98	-4%	14%	31	36	34	37	10%	3%
Herkimer	62	93	44	83	-29%	-11%	31	47	29	54	-6%	15%
Jefferson	362	374	449	524	24%	40%	126	156	110	194	-13%	24%
Lewis	61	86	39	56	-36%	-35%	14	23	14	25	0%	9%
Livingston	147	216	123	122	-16%	-44%	37	32	35	43	-5%	34%
Madison	114	82	120	86	5%	5%	49	66	54	34	10%	-48%
Monroe	1,220	1,291	1,385	1,778	14%	38%	453	524	424	760	-6%	45%
Montgomery	101	92	106	95	5%	3%	28	36	23	36	-18%	0%
Nassau	1,749	1,845	2,099	1,820	20%	-1%	968	1,266	959	1,110	-1%	-12%
Niagara	229	258	273	296	19%	15%	183	198	174	289	-5%	46%
Oneida	346	333	428	352	24%	6%	219	230	185	221	-16%	-4%
Onondaga	844	1,344	752	1,264	-11%	-6%	536	582	585	550	9%	-5%
Ontario	336	357	281	331	-16%	-7%	74	101	90	111	22%	10%
Orange	605	677	610	846	1%	25%	311	350	257	317	-17%	-9%
Orleans	77	76	88	88	14%	16%	27	25	26	24	-4%	-4%
Oswego	202	187	189	178	-6%	-5%	95	89	117	98	23%	10%
Otsego	105	87	93	92	-11%	6%	34	43	33	37	-3%	-14%
Putnam	123	137	144	207	17%	51%	65	73	74	92	14%	26%
Rensselaer	289	305	294	398	2%	30%	105	121	110	164	5%	36%
Rockland	278	476	352	456	27%	-4%	159	226	194	214	22%	-5%
Saratoga	506	487	501	515	-1%	6%	179	270	176	205	-2%	-24%
Schenectady	316	311	341	298	8%	-4%	107	120	91	157	-15%	31%
Schoharie	69	55	36	71	-48%	29%	11	29	19	27		-7%
Schuyler	38	40	45	32	18%	-20%	9	14	4	6	-56%	-57%
Seneca	53	59	44	44	-17%	-25%	17	25	17	29	0%	16%
St. Lawrence	253	275	218	243	-14%	-12%	81	105	93	88	15%	-16%
Steuben	201	212	210	225	4%	6%	35	56	47	32	34%	-43%
Suffolk	2,273	3,489	2,255	2,952	-1%	-15%	1,132	1,617	1,154	1,440	2%	-11%
Sullivan	147	165	148	158	1%	-4%	42	72	39	38	-7%	-47%
Tioga	89	80	112	101	26%	26%	32	35	24	33	-25%	-6%
Tompkins	203	168	207	142	2%	-15%	28	48	35	37	25%	-23%
Ulster	330	304	366	338	11%	11%	144	139	165	164	15%	18%
Warren	190	196	142	168	-25%	-14%	47	65	48	64	2%	-2%
Washington	161	163	164	175	2%	7%	33	46	50	56	52%	22%
Wayne	120	149	125	139	4%	-7%	72	65	33	66	-54%	2%
Westchester	1,984	2,180	2,111	2,635	6%	21%	623	624	557	932	-11%	49%
Wyoming	63	62	82	78	30%	26%	40	36	31	29	-23%	-19%
Yates	27	35	34	51	26%	46%	15	20	7	14	-53%	-30%

NYS Unified Court System, Division of Technology and Court Research
Superior Civil
Matrimonial Cases Filed and Disposed

Location		CONTESTED MATRIMONIALS						UNCONTESTED MATRIMONIALS					
		Filed			Disposed			Filed			Disposed		
		2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change
Statewide		11,241	8,390	-25%	12,732	7,381	-42%	44,522	33,354	-25%	46,865	31,131	-34%
NYC	Total	3,201	2,083	-35%	3,522	1,492	-58%	23,821	16,129	-32%	24,850	13,695	-45%
	Bronx	795	425	-47%	626	174	-72%	4,467	3,939	-12%	5,547	3,125	-44%
	Kings	684	494	-28%	783	323	-59%	4,800	2,781	-42%	4,533	2,122	-53%
	New York	747	472	-37%	944	487	-48%	9,134	6,306	-31%	9,155	5,455	-40%
	Queens	711	503	-29%	864	324	-63%	4,817	2,689	-44%	4,892	2,562	-48%
	Richmond	264	189	-28%	305	184	-40%	603	414	-31%	723	431	-40%
ONYC	Total	8,040	6,307	-22%	9,210	5,889	-36%	20,701	17,225	-17%	22,015	17,436	-21%
	Albany	179	127	-29%	245	152	-38%	590	478	-19%	622	576	-7%
	Allegany	19	21	11%	36	10	-72%	93	85	-9%	99	73	-26%
	Broome	133	114	-14%	216	92	-57%	281	277	-1%	288	328	14%
	Cattaraugus	52	36	-31%	59	30	-49%	161	125	-22%	167	96	-43%
	Cayuga	57	40	-30%	56	53	-5%	141	129	-9%	176	129	-27%
	Chautauqua	66	59	-11%	69	46	-33%	275	193	-30%	232	189	-19%
	Chemung	56	40	-29%	58	52	-10%	187	172	-8%	180	153	-15%
	Chenango	32	24	-25%	64	22	-66%	152	92	-39%	179	113	-37%
	Clinton	77	47	-39%	79	60	-24%	216	166	-23%	168	181	8%
	Columbia	33	12	-64%	33	21	-36%	120	122	2%	114	120	5%
	Cortland	25	24	-4%	43	29	-33%	856	536	-37%	879	548	-38%
	Delaware	20	18	-10%	55	33	-40%	75	54	-28%	89	70	-21%
	Dutchess	209	201	-4%	291	144	-51%	540	516	-4%	561	534	-5%
	Erie	791	677	-14%	783	506	-35%	1,487	1,441	-3%	1,660	1,434	-14%
	Essex	20	13	-35%	19	18	-5%	70	63	-10%	67	75	12%
	Franklin	28	22	-21%	62	26	-58%	113	62	-45%	113	72	-36%
	Fulton	39	32	-18%	79	42	-47%	151	125	-17%	142	127	-11%
	Genesee	44	29	-34%	93	53	-43%	95	87	-8%	123	103	-16%
	Greene	34	14	-59%	37	33	-11%	87	81	-7%	98	81	-17%
	Herkimer	29	23	-21%	54	43	-20%	44	56	27%	83	75	-10%
	Jefferson	113	79	-30%	153	91	-41%	456	525	15%	489	587	20%
	Lewis	14	16	14%	25	17	-32%	39	31	-21%	56	37	-34%
	Livingston	35	14	-60%	34	32	-6%	123	130	6%	117	100	-15%
	Madison	54	37	-31%	34	71	109%	120	100	-17%	86	70	-19%
	Monroe	434	364	-16%	451	371	-18%	1,379	1,164	-16%	1,481	1,236	-17%
	Montgomery	23	24	4%	36	24	-33%	106	74	-30%	95	83	-13%
	Nassau	959	736	-23%	1,116	479	-57%	2,100	1,401	-33%	1,825	1,555	-15%
	Niagara	173	133	-23%	220	151	-31%	273	230	-16%	283	238	-16%
	Oneida	185	156	-16%	221	124	-44%	428	300	-30%	352	258	-27%
	Onondaga	594	490	-18%	491	464	-5%	746	571	-23%	1,022	675	-34%
	Ontario	91	74	-19%	102	86	-16%	283	289	2%	297	268	-10%
	Orange	257	232	-10%	265	193	-27%	611	536	-12%	659	622	-6%
	Orleans	26	14	-46%	24	14	-42%	88	71	-19%	88	74	-16%
	Oswego	117	79	-32%	98	85	-13%	189	153	-19%	178	119	-33%
	Otsego	33	25	-24%	34	26	-24%	93	97	4%	86	96	12%

Location		CONTESTED MATRIMONIALS						UNCONTESTED MATRIMONIALS					
		Filed			Disposed			Filed			Disposed		
		2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change
ONYS	Putnam	74	66	-11%	73	54	-26%	145	109	-25%	158	122	-23%
	Rensselaer	110	89	-19%	124	81	-35%	298	255	-14%	312	264	-15%
	Rockland	196	137	-30%	182	110	-40%	351	405	15%	423	395	-7%
	Saratoga	176	138	-22%	205	152	-26%	501	462	-8%	515	464	-10%
	Schenectady	91	69	-24%	157	76	-52%	341	258	-24%	298	268	-10%
	Schoharie	20	17	-15%	24	20	-17%	36	33	-8%	71	29	-59%
	Schuyler	4	8	100%	6	5	-17%	45	47	4%	32	33	3%
	Seneca	17	11	-35%	19	16	-16%	44	48	9%	34	50	47%
	St. Lawrence	93	63	-32%	87	68	-22%	218	225	3%	245	204	-17%
	Steuben	47	32	-32%	32	43	34%	210	138	-34%	225	108	-52%
	Suffolk	1,158	799	-31%	1,443	877	-39%	2,257	1,808	-20%	2,955	1,487	-50%
	Sullivan	39	38	-3%	37	39	5%	148	137	-7%	157	158	1%
	Tioga	24	29	21%	33	24	-27%	112	81	-28%	101	75	-26%
	Tompkins	35	26	-26%	37	29	-22%	207	146	-29%	142	193	36%
	Ulster	165	105	-36%	164	106	-35%	366	278	-24%	338	250	-26%
	Warren	48	42	-13%	53	39	-26%	142	141	-1%	152	151	-1%
	Washington	50	33	-34%	56	61	9%	164	134	-18%	175	137	-22%
	Wayne	33	52	58%	66	34	-48%	125	105	-16%	139	94	-32%
	Westchester	571	475	-17%	634	333	-47%	2,107	1,792	-15%	2,260	1,781	-21%
	Wyoming	31	21	-32%	29	17	-41%	82	61	-26%	78	51	-35%
	Yates	7	11	57%	14	12	-14%	34	30	-12%	51	27	-47%

Appendix G-1

Appendix G-1 to Report of Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge for 2022

Court Statistics on Uncontested Divorce Filings in Erie, Monroe, Nassau, Suffolk, and Westchester from 2014 -2020

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 “G”). 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 “G”). 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 “G”). In 2017, Erie County had 1,350 uncontested divorce filings, and Monroe County had 1,285 uncontested divorce filings. Similarly, uncontested divorce filings for 2017 for Nassau County were 1,695, for Suffolk County were 2,272, and for Westchester County were 2,062 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2016 and 2017 contained in Appendix “G”). In 2018, Erie County had 1,638 uncontested divorce filings, and Monroe County had 1,226 uncontested divorce filings. Similarly, uncontested divorce filings for 2018 for Nassau County were 1,749, for Suffolk County were 2,273, and for Westchester County were 1,982 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2017 and 2018 contained in Appendix “G”). In 2019, Erie County had 1,491 uncontested divorce filings, and Monroe County had 1,385 uncontested divorce filings. Similarly, uncontested divorce filings for 2019 for Nassau County were 2,099, for Suffolk County were 2,255, and for Westchester County were 2,111 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2018 and 2019 contained in Appendix “G”). In 2020, Erie County had 1441 uncontested divorce filings, and Monroe County had 1164 uncontested divorce filings. Similarly, uncontested divorce filings for 2020 for Nassau County were 1401, for Suffolk County were 1808, and for Westchester County were 1792 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2019 and 2020 contained in Appendix “G”). Statistics for the full year 2021 are not available yet.

Appendix G-2

Appendix G-2 to Report of Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge for 2022

Court Statistics on Uncontested Divorce Filings in the Five Boroughs of New York City from 2014 -2020

In 2014 Uncontested divorce filings for the Bronx were 3,914, for Kings were 4,331, for New York were 13,662, 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 “G”). In 2015, Uncontested divorce filings for the Bronx were 3,845, for Kings were 4,389, for New York were 12,799, 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 “G”). In 2016, Uncontested divorce filings for the Bronx were 4,382, for Kings were 3,983, for New York were 11,340, 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 “G”). In 2017, Uncontested divorce filings for the Bronx were 4,365, for Kings were 3,550, for New York were 10,282, for Queens were 4352, and for Richmond were 559 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2016 and 2017 contained in Appendix “G”). In 2018, uncontested divorce filings for the Bronx were 4276, for Kings were 4,652, for New York were 9,448, for Queens were 4,856, and for Richmond were 557 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2017 and 2018 contained in Appendix “G”). In 2019, uncontested divorce filings for the Bronx were 4,461, for Kings were 4,800, for New York were 9134, for Queens were 4,818, and for Richmond were 602 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2018 and 2019 contained in Appendix “G”). In 2020, uncontested divorce filings for the Bronx were 3939, for Kings were 2,781, for New York were 6306, for Queens were 2,689, and for Richmond were 414 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2019 and 2020 contained in Appendix “G”). Statistics for the full year 2020 are not available yet.

Appendix H

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M E M O R A N D U M

To: All Administrative Judges
From: Presiding Justice A. Gail Prudenti
Date: March 7, 2008
Re: Custody orders in matrimonial actions

The purpose of this memorandum is to bring to your attention a recurrent problem concerning certain orders that are being issued in matrimonial actions. It appears that a number of Justices in the matrimonial parts are conducting bifurcated trials to allow the issues of custody and/or visitation to be determined before those of equitable distribution and/or grounds for matrimonial relief. Courts are issuing *orders* that purport to finally determine the issues of custody and visitation. Making an order in these circumstances is not proper procedurally and such orders present appealability problems that I wish to bring to your attention.

Generally, an order decides a motion (CPLR 2219) and not the issues raised by the pleadings. When an action is tried by a court without a jury, its determination with respect to disputed issues of fact that are raised by the pleadings is to be made in a decision, not an order (*see*, CPLR 4213). An interlocutory or final judgment is then issued on the decision (*see*, CPLR 5011). As stated by CPLR 5011 “[a] judgment is the determination of the rights of the parties in an action or special proceeding and may be either interlocutory or final. A judgment shall refer to, and state the result of, the verdict or decision.”

Where the Supreme Court holds a trial on the issues of custody and/or visitation separately from the trial on the issues of equitable distribution and/or grounds for matrimonial relief, it should render a decision and not an order at the end of the trial. The entry of a custody and/or visitation “order” following a trial of those issues does not comply with the CPLR. Even if such an order were proper, an appeal therefrom would require leave of either the Justice who made it or of the Appellate Division. CPLR 5701(a)(2) states: “[a]n appeal may be taken to the appellate division as of right in an action originating in the Supreme Court . . . from an order . . . where the motion it decided was made upon notice”. The custody and/or visitation orders that are being issued after a trial are not appealable as of right as they do not decide a motion made upon notice.

The appropriate course for the Supreme Court after a bifurcated trial limited to the issues of custody and/or visitation is to render a decision and to direct the parties to settle or submit an interlocutory judgment concerning those issues. Such an interlocutory judgment is appealable as of right (*see* CPLR 5011; 5012; 5701[a][1]).

Appendix I

(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,

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

-against-

Index No. _____

[Fill in Name] Defendant.

-----X

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 Must 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,

vs.

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

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 ☐ **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]