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

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

January 2016

Tribute to Steven J. Eisman, Esq.

On November 19, 2015, we learned of the tragic and sudden loss of our esteemed member, Steven J. Eisman, Esq. at the age of 61.

Mr. Eisman was executive partner of the Lake Success law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf where he co-chaired the divorce and family law practice.

In June, 2015 he was elected president of the Nassau County Bar Association. He was a fellow of the American Academy of Matrimonial Lawyers, a delegate-at-large to the executive board of the New York Bar Association Family Law Committee, and a former member of the Tenth Judicial District Screening Committee for many years. In addition he was committed to charitable and public causes, including the Nassau County Bar Association's "We Care Fund," and served as counsel to the New York District Kiwanis Foundation.

Mr. Eisman was appointed to our Committee in June, 2014 by then Chief Administrative Judge A. Gail Prudenti. In the short time we knew him, we came to respect his great intellect, his extensive knowledge about Matrimonial Law, his leadership, energy, and uncanny ability to solve difficult problems with ease. He participated fully in our Committee's activities. He found time to travel to Albany with us to visit with legislators about our legislative proposal for the Maintenance Guidelines Law in the spring of 2015. As recently as July, 2015, he published an article in the *New York Law Journal* about that law which was awaiting the Governor's signature at the time.

Mr. Eisman received numerous well deserved honors and awards recognizing his stature as a matrimonial attorney. However, he was not just a prominent divorce attorney, he was a friend whose magnetic charm and gentlemanly manner will be sorely missed. This was evident at his funeral which a number of the members of our Committee attended, (our November 20th meeting the day of his funeral having been cancelled to allow our Committee members to attend). His love and closeness, first and foremost with the members of his family, but also with members of his law firm and the bench and bar, were evident. The enormous outpouring of sympathy at his funeral attests to the high regard everyone had for him.

Our Committee expresses our deepest condolences to his wife Kathy, his children, his partners at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Wolf, and to the Nassau County Bar Association.

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1. Introduction and Executive Summary

Introduction

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

Executive Summary

The Committee was established in June, 2014 when it held its organizational meeting. It met monthly beginning in September, 2014 and prepared its 2015 Annual Report after only four meetings. It continued to meet monthly from January through May, 2015.[1] After a summer hiatus, the Committee resumed monthly meetings in September, 2015 through December, 2015.[2]

Committee's Statutory Proposals Enacted in 2015

In its first full year of operation, 2015, the Committee had three statutory proposals adopted as part of the Office of Court Administration's 2015 Legislative Program (OCA 2015) enacted into law. In addition to the maintenance guidelines bill (OCA 2015-64) which was signed into law by the Governor on September 25, 2015 as chapter 269 of the Laws of 2015, two other of the Committee's legislative proposals were also enacted into law namely, OCA 2015-37 (Treatment of maintenance in calculating child support), (A.7637 S. 5691) and OCA 2015-31 (Simplification of Counsel Fees Application for Unrepresented Litigant, (A.7221 S. 5190). The former was signed by the Governor on October 26, 2015 as chapter 387 of the Laws of 2015, and the latter was signed by the Governor on November 21, 2015, as chapter 447 of the Laws of 2015.

[1] The March meeting was cancelled due to the fact that so many members of the Committee were involved in preparing for the Matrimonial Seminar held on March 24-25, 2015.

[2] The November meeting was cancelled to allow Committee members to attend the funeral of our esteemed member Steven J. Eisman, Esq.

The Committee considers the passage of the Maintenance Guidelines Law as the most significant accomplishment in the field of Matrimonial Law since the enactment of no-fault divorce in 2010. Our Maintenance Guidelines proposal was a compromise reached by a Working Group[3] with widely divergent positions, brought together by Justice Jeffrey Sunshine, Chair of the Committee, in order to end the divisions within the matrimonial community that had existed over the enactment of post-divorce maintenance guidelines and over whether there should be a continuation of temporary maintenance guidelines enacted in 2010 [L. 2010, c. 371].

The law regarding treatment of maintenance in calculation of child support was based on a proposal by the Family Court Advisory and Rules Committee, which our Committee also supported. It works in conjunction with the Maintenance Guidelines Law to provide for greater uniformity in treatment of maintenance and child support awards in New York. Later in this Report we will describe the new tools the Committee recommends to implement both the new Maintenance Guidelines Law and the new law regarding treatment of maintenance in child support calculations.

Our proposal regarding simplification of counsel fee applications by unrepresented litigants will simplify applications for counsel fees in divorce actions by unrepresented litigants. Although the Second Department in the seminal opinion of *Prichep v Prichep* 52 A.D.3d 61, 858 N.Y.S.2d 667 (App. Div. 2008, Prudenti, P.J.), suggests that an affidavit by unrepresented litigants detailing fee arrangements with counsel ought not to be required by courts, our Committee recommended the change because unrepresented litigants might not be aware of case law and might be unable to complete the application for counsel fees because they could not submit a detailed affidavit setting forth fee arrangements with counsel. Enactment of this law now codifies *Prichep* on a statewide basis, and is intended, along with a number of other recommendations described later in this Report, "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."[4]

Committee Rule Proposals Adopted in 2015

During 2015, the Committee's first full year in operation, the Administrative Board approved the Committee's new rule proposals on redaction of confidential information in matrimonial actions. The new rules will become effective upon issuance of an Administrative Order. These proposals were not included in our Committee's 2015 Annual Report, but were developed after the Report was submitted, based on questions raised in an article in the *New York Law Journal*[5] about the exemption of matrimonial actions from the new court rules which became effective January 1, 2015 regarding redaction of personal information (see 22 NYCRR §

[3] The organizations represented in the Working Group included the Family Law Section of the New York State Bar Association, the New York Maintenance Standards Coalition, the Women's Bar Association of the State of New York, and the New York Chapter of the American Academy of Matrimonial Lawyers. Sandra Rivera, Esq. and Michelle Haskins, Esq. represented the Women's Bar Association of the State of New York; Alton Abramowitz, Esq. and Eric Tepper, Esq. represented the Family Law Section of the New York State Bar Association; Elena Karabatos, Esq. represented the New York Chapter of the American Academy of Matrimonial Lawyers; and Emily Ruben, Esq. (now Hon. Emily Ruben) and Kate Wurmfeld, Esq. represented the NYS Maintenance Standards Coalition.

[4] *See* D.R.L. § 237(a).

[5] *See* article by Peter E. Bronstein in the *New York Law Journal* on December 2, 2014.

202.5(e)). While we agree that greater protections for personal information revealed in matrimonial actions is warranted in this Internet age, we do not believe that a blanket rule such as section 202.5(e) should apply to all papers filed in matrimonial actions because some of the information such as complete social security numbers, addresses, birthdates, employers' name, and names and social security numbers and birthdates of children is required by third party agencies of state government, which need the identifying information to enforce child support and maintenance laws in conformity with D.R.L. § 240-a and D.R.L. § 240-b. D.R.L. §235 already protects as confidential most of the documents in the matrimonial action. Moreover, the trial judge may need to know other information potentially damaging to the family to make a reasoned decision on custody, visitation, support, maintenance, counsel fees, or equitable distribution, and to explain that decision as required.

Thus we recommended a two pronged approach to better protect confidential information in matrimonial actions. First, we proposed an amendment to 22 NYCRR § 202.5(e) to prevent the information or testimony revealed in a matrimonial action from being revealed in another civil action. Second, we recommended a limited rule on redaction of personal information from written decisions in contested matrimonial actions to be 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. When such information is not redacted from written decisions, there is a high risk that such information will be revealed to public scrutiny notwithstanding D.R.L. § 235, because written decisions are often published or discussed in the New York Law Journal, or published in the New York State Law Reports. Such written decisions often discuss the most private details of the parties' lives and finances because the courts are required by various provisions of the Domestic Relations Law to justify in writing their decisions about maintenance, equitable distribution, and child support.

The full text of both rule proposals as well as the complete justification for both proposals is contained a packet sent out for public comment by the Office of Court Administration contained in Appendix A attached to this Report.

New Statutory Proposals for 2016

Our recommendations for 2016 include a new proposal to amend D.R.L. § 237(a) to allow a limited appearance by attorneys for counsel fee applications. While our 2015 statutory proposal was aimed at simplification of the counsel fee application process for unrepresented litigants, this new proposal is designed to make it easier for non- monied spouses to have the funds to engage counsel to represent them in divorce actions by encouraging attorneys to make applications for counsel fees without fear of becoming the attorney of record in the action.

D.R.L. § 237(a) was designed to give courts discretion to award counsel fees to non-monied spouses so that they could prosecute their actions on a level playing field. D.R.L. § 237 (a) was further strengthened by chapter 329 of the Laws of 2010 to provide a *rebuttable presumption* that counsel fees be awarded to the non-monied spouse.

Unfortunately, the intent of D.R.L. §237(a) has been too often thwarted by the unwillingness of attorneys to assist non-monied spouses in applying for counsel fees because of

the fear of becoming attorney of record in the action without assurance of payment of their fees if the application for fees was denied. Our proposal is designed to make D.R.L. § 237(a) accomplish the purpose for which it was intended, namely, to make sure that as between the monied and non-monied spouse in a divorce action, the "matrimonial scales of justice" are balanced.[6] Our proposed rule requires that the attorney comply with his/her ethical responsibilities under the Rules of Professional Conduct and state rules and regulations regarding procedures for attorneys in domestic relations matters, including the obligation to provide the client with a statement of client's rights and a written retainer agreement to ensure that the client understands the limited scope of the representation. We will demonstrate why limited scope representation for the purposes of making sure that the non-monied spouse is adequately represented in a matrimonial action, with the protections built into the proposed rule, is a reasonable exception to the standard rules governing attorney conduct in litigation matters.

New Form Proposal for 2016

We recommend that a Revised Net Worth Statement form be adopted in lieu of the form currently required pursuant to 22 NYCRR § 202.16(b). [7] This revision will simplify the form for unrepresented litigants by eliminating unnecessary or confusing provisions and by making the form easier to read and understand. It will also make the form gender neutral, and make the categories of expenses more applicable to the realities of life in 2016 than when it was originally created and revised in the 1980's and 1990's.

New Rule Proposals for 2016

We recommend two new rule proposals as priorities for 2016. First is a new Custody Severance Rule Proposal which would amend the matrimonial rules for contested actions by adding a new 22 NYCRR § 202.16(n). The proposed rule would require the Judge in a bifurcated trial in a divorce action 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.[8] This rule is necessary because so often Judges conduct bifurcated trials allowing the issues pertaining to custody to be determined before issues pertaining to financial relief. The custody trial often comes first because it is in the best interests of the

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[6] Even before the statute was amended by chapter 329 of the Laws of 2010 to create a rebuttable presumption of counsel fees to the non-monied spouse, the New York Court of Appeals described the grant of discretion to the court in D.R.L. § 237 to require a party to a divorce action to pay fees directly to the other party's attorney to enable the other party to proceed in the action, as follows: *"This enactment, which has deep statutory roots, is designed to redress the economic disparity between the monied spouse and the non-monied spouse. Recognizing that the financial strength of matrimonial litigants is often unequal—working most typically against the wife, the Legislature invested Trial Judges with the discretion to make the more affluent spouse pay for legal expenses[1] of the needier one. The courts are to see to it that the matrimonial scales of justice are not unbalanced by the weight of the wealthier litigant's wallet" (see O'Shea v. O'Shea*, 93 N.Y.2d 187, 190, 711 N.E.2d 193, 195 (1999)).

[7] The rule requires that sworn statements of net worth shall be in substantial compliance with the form contained in "Chapter III, Subchapter A of Subtitle D (Forms) of this Title." (*see* 22 NYCRR § 202.16(b)). Said rule is part of the matrimonial rules applicable to contested divorce actions.

[8] We propose this rule as 22 NYCRR. § 202.16(n) because our proposal regarding redaction of personal information from written decisions was adopted as 22 NYCRR. § 202.16(m).

children, but no appeal of the custody decision is possible until the final judgment of divorce. This rule will provide a statewide, uniform procedure to enable the immediate appeal of a custody decision even if the rest of the divorce action remains pending. The main purpose of this rule proposal is to protect the children, who will suffer irreparable harm by having to wait years for the final decision on custody. In addition it will allow the families to get on with their lives sooner and will avoid the Appellate Court's feeling compelled to send the custody issue back to the trial court because the facts have become stale.

Further supplementing our efforts to assist courts in seeking to assure that both parties to a matrimonial action are adequately represented, we also propose an amendment to 22 NYCRR§ 202.16(k)(3) regarding adoption of a statewide Form of Application for Counsel Fees by an Unrepresented Litigant in contested cases. This rule proposal is designed to implement the new statute concerning simplification of applications for counsel fees which was enacted in 2015 as chapter 447 of the Laws of 2015 upon our Committee's recommendation. In addition to adoption of the new form, the rule also clarifies that the requirements of D.R.L. § 237(a) for an affidavit detailing fee arrangements with counsel still apply to both parties if they are represented by counsel. It has come to our attention that, since the requirements of the rule apply to the party making a motion, answering parties are in practice often not submitting the affidavit detailing fee arrangements with counsel, thinking the rule applies only to the moving party. This practice puts the moving party at a considerable disadvantage by having to reveal litigation finances without receiving the same information from their opponent. Since D.R.L. § 237(a) requires the affidavit of both represented parties, the answering party should still be obligated to submit the affidavit. Our rule amendment will ensure that they do so.

Previously Endorsed Statutory and Rule Proposals

In 2014, when we were preparing our first Annual Report to the Chief Administrative Judge as a standing Committee, so much attention was directed at the proposal for a compromise on the issue of maintenance guidelines that was dividing the matrimonial community, that other proposals were deferred.

We recommend a previously endorsed measure from our 2015 Report as one of our highest priorities this year, namely, reconsideration of a measure to strengthen enforcement by contempt in Supreme Court [D.R.L. § 245]. This measure would amend D.R.L. § 245 to eliminate the requirement that other enforcement remedies be exhausted before contempt can be sought against a person who fails to pay any sum of money required by an order or the judgment in a matrimonial proceeding. By contrast, enforcement by contempt in Family Court does not require exhaustion of remedies before the contempt remedy can be ordered. As stated in the Practice Commentaries, there is no reason why a lesser standard should exist for non-payment of support and other sums ordered to be paid in a divorce proceeding in Supreme Court than in Family Court.

"Because the requirements for establishing contempt and seeking commitment under DRL § 245 are far more rigorous than the requirements under Family Court Act § 454, where the enforcing party seeks commitment, the enforcing party should consider commencing the enforcement proceeding in Family Court, rather than in Supreme Court. It is unfortunate that

there is such a marked difference in remedy in the two forums. There is no logical reason why incarceration should be more difficult to obtain in Supreme Court, when incarceration based on the same default under the same order may more readily be obtained in Family Court. Incarceration is an important enforcement technique. All too often defaulting spouses and parents manage to locate the resources needed to purge contempt in order to avoid incarceration. It would be appropriate for the Legislature to amend DRL § 245 to bring it into line with Family Court Act § 454. In this way, the Supreme Court would have the same array of enforcement tools as the Family Court."[9]

Our proposed amendment to D.R.L. § 245 was incorporated by the Office of Court Administration in its 2015 legislative program and introduced in the Legislature as A. 7253 Weinstein /S. 5189 Bonacic. The proposal passed the Senate but not the Assembly. We believe the reason for the Assembly's unwillingness to act on the bill was based on an incorrect interpretation of what the proposal says regarding the Civil Rights Law, and lack of knowledge about the protections built into the Judiciary and Civil Rights Laws for obligors faced with contempt, namely the right to notice of possible imprisonment, the cap on the length of maximum imprisonment, the right to purge, the right to prove inability to pay, the burden on the party seeking contempt to prove the elements of civil contempt under applicable case law, and the right to assigned counsel for the indigent obligor, all of which protections are retained by the proposal. We intend to show why this proposal is so important to protecting the rights of non-monied spouses to have their matters heard fairly in matrimonial proceedings. The current version of D.R.L. § 245 with its exhaustion of remedies requirement discriminates against non-monied spouses awarded support or counsel fees by allowing monied spouses to obstruct or delay enforcement in Supreme Court. We also believe the current rule adds to the significant caseload burden in Family Court because wherever possible enforcement actions are brought in Family Court rather than Supreme Court.

We also reiterate our divorce venue statutory and rule proposals from 2015, noting that the justification for such proposals remains. Indeed we have learned that New York County is not the only County that is impacted by excessive C.P.L.R. § 509 designations by Plaintiffs in uncontested divorce actions. Counties such as Erie County are encountering similar problems, making the problem not just a "downstate issue." We restate our proposal for a new provision labeled C.P.L.R. § 514, which we believe is the best solution to the problems highlighted by Hon. Matthew Cooper in *Castenada* v *Castenada,*[10] even though we are aware of concerns that requiring venue based on residence may threaten the efficient processing of uncontested divorces because certain counties may not be set up to handle the large volume of cases. We believe these concerns are unwarranted and that all counties could adapt, if necessary, just as they do to other matters within their jurisdiction; but if these concerns persist, we urge serious consideration of our two other divorce venue proposals from 2015, namely, a rule proposal for Post Judgment Enforcement and a rule proposal for a Uniform Form Venue Order requiring expedited transfer of files to the proper county. Neither of the latter proposals will affect the processing of

[9] Alan Scheinkman, Practice Commentaries, N.Y. Dom. Rel. Law § 245 (McKinney).

[10] *Castaneda v Castaneda*, 36 Misc 3d 504, at 506 [Sup Ct 2012].

uncontested divorces and will greatly alleviate the burdens of counties like New York County with excessive C.P.L.R. § 509 designations.

Our proposal for a PC Conference Order/Stipulation Where Grounds are Resolved to Limit Discontinuances at the Time of Trial pursuant to C.P.L.R. § 3217(a) is restated in this Report. As we stated in last year's Report, the issue of unilateral discontinuances of matrimonial actions at the time of, or shortly before, trial exists because of the unique nature of matrimonial actions, which involve personal relationships and highly charged emotions. As a result, parties in divorce cases frequently delay filing complaints and other pleadings until late in the action, sometimes years after service of the summons, and then suddenly discontinue the action without need for court approval pursuant to C.P.L.R. 3217(a) at the time of or just before trial. At this point in the litigation, much time, effort and judicial resources have been expended. To remedy this procedural delaying tactic, the Committee proposes an amendment to the matrimonial rules to adopt a Supplemental Order/Stipulation where grounds are resolved after the Preliminary Conference Order has been signed. Since fault is no longer an issue in most cases because of the enactment of no-fault divorce, the form Order would require the parties to stipulate as to grounds and waive their right to unilaterally discontinue without the court's permission in the event pleadings are not filed within sixty days.

Also restated from last year are our suggestions for consideration of amendments to the prior legislative proposal (Weinstein A. 290) on access to forensic reports in custody cases. The Committee reviewed A. 8342-A, as last amended in June, 2014, which was never enacted. A new version of said bill was introduced as Weinstein A. 290 on January 7, 2015. The Committee's concerns as to A.8342-A, to be discussed later in this report, continued to be applicable to the version introduced in January, 2015, which has not been amended further. In reviewing A. 8342-A, the Committee revisited the issues which the former Matrimonial Practice Advisory Committee had addressed.[11] We recommend certain important changes in the bill before it is enacted. Mindful that there are differing views among the Family Court and matrimonial communities as to dissemination of forensic reports in custody cases to unrepresented litigants, the Committee has developed some suggestions for resolving these differences which will be discussed.

Last year we stated in our report that we would explore ways to prevent identity theft, such as elimination of all but the last 4 digits of Social Security Numbers in the Judgment of Divorce. However, we have not resolved our concerns in this regard because such information is necessary for other agencies of government to administer the child support laws. We continue to explore this issue.

We also plan to explore a number of new issues in 2016. These new issues include a new project for renumbering and reclassification of certain sections of the Domestic Relations Law such as D.R.L. § 240 to make it easier to understand. We plan to explore a statewide project for Mentoring of New or Newly Assigned Matrimonial Judges. At the same time we will pursue research on alternative parenting arrangements, a topic that is receiving widespread attention in

[11] The former Matrimonial Practice Advisory Committee ceased operations in March, 2014 and was reconstituted as a new standing committee of the Chief Administrative Judge in June, 2014.

light of *Obergefell v. Hodges*,[12] 135 S.Ct.2071. Other new projects will be consideration of how the Child Support Standards Act as adopted in New York should deal with shared custody cases. Lastly, we will explore revision of the contested divorce matrimonial rule regarding a Form Preliminary Conference Order with the purpose of improving the form to make it more useful for streamlining issues at the outset of the divorce, while also making its use more uniform statewide.[13]

In 2016, the Chair of the Committee, Hon. Jeffrey S. Sunshine, will continue the extensive outreach to members of the matrimonial bench and bar on behalf of the Committee. A list of his speaking engagements and visits throughout the state is included later in this Report.

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

Matrimonial Practice Advisory and Rules Committee:

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[12] *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed.2d 609 (Supreme Court 2015).
[13] Although the form required by 22 NYCRR §202.16(f)(V)(2) is substantially in accordance with the form attached thereto, we have learned that many districts use their own form.

II. Maintenance Guidelines Law [L. 2015, c. 269] and Law as to Treatment of Maintenance in Child Support Calculations [L. 2015, c. 387]

A. Report on Development of Worksheets and Calculators for Supreme Court

On September 25, 2015, The Governor signed the new temporary and permanent (or post-divorce) spousal maintenance guidelines [L. 2015, c. 269]. A memorandum was sent to all Judges assigned to Matrimonial Parts, Family Court Judges and Support Magistrates by Ron Younkins, Executive Director of the Office of Court Administration, dated October 7, 2015, notifying them of the passage of the new law and effective dates. The memo advised that the new maintenance guidelines law is effective as to temporary maintenance October 25, 2015 (30th day after Governor's September 25, 2015 signature) and as to permanent (or post-divorce) spousal maintenance and Family Court provisions January 25, 2015 (120th day after Governor's September 25, 2015 signature). It is applicable to all matrimonial and Family Court actions commenced on or after those dates.

By October 25, 2015, the effective date for the temporary maintenance provisions, the Office of Court Administration posted a new temporary maintenance worksheet and temporary maintenance calculator developed by the Committee in collaboration with the Office's Department of Technology to replace the temporary maintenance guidelines worksheet and calculator in effect pursuant to D.R.L. § 236(B)(5-a) enacted in 2010, currently posted on the Divorce Resource Website at https://www.nycourts.gov/divorce/Temporary_Maintenance.shtml. The prior version was retained on the website to assist Judges and litigants to calculate temporary maintenance for divorces commenced prior to October 25, 2015.

On October 30th, the Judicial Institute, in coordination with our Committee, broadcast a Lunch and Learn training session on the fundamentals of the new law and how it will impact the Judiciary.[14] The Judicial Institute is also planning a Lunch and Learn broadcast to coincide with the effective date of the new law to instruct Judges and Court Attorneys about the new post-divorce forms and calculators that the Committee is developing with help from the Department of Technology.[15]

The Committee has created a Combined Post-Divorce Maintenance[16] and Child Support Standards Act Worksheet to implement both the new Maintenance Guidelines law as well as the new law about treatment of maintenance in child support calculations which becomes effective on January 24, 2016, ninety days after signature by the Governor on October 26, 2015. Fortunately Monday, January 25, 2016, is the first business day that both laws take effect.

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[14] Justice Jeffrey Sunshine, Chair of the Committee, moderated the session. Elena Karabatos, Esq. and Eric Tepper, Esq., both members of the Working Group that drafted the Compromise bill, were presenters.

[15] Susan Kaufman, Esq. Counsel to the Committee, will present an overview of the new forms and calculators, and Abigail Mattaro, Esq., Principal Law Clerk to Committee Chair Jeffrey S. Sunshine and Hemalee Patel, Esq., Special Referee in Richmond County, will present examples of calculations from actual cases.

[16] The term "post-divorce" maintenance is used in the maintenance guidelines law at D.R.L. § 236(B)(6) to refer to maintenance ordered in the judgment of divorce to be paid by one spouse for support of the other spouse after the divorce is final. Maintenance during the pendency of the action is called "temporary maintenance" pursuant to D.R.L. § 236(B)[5-a]. "Spousal Support" denotes support to be paid by one spouse for support of the other spouse ordered in Family Court pursuant to F.C.A. § 412.

Supplementing this Worksheet is an Excel Calculator that the Committee is developing with assistance from the Office of Court Administration's Department of Technology. The Department of Technology is also developing an Online Calculator which can be accessed by the general public even if they do not have Excel software, which is not universally available to the general public. The Excel Calculator is more difficult to use than the Calculator will be when it becomes available, because the Excel Calculator requires the entry of code responses by the user in order to work properly, while the Online Calculator will require only yes and no answers. The new Excel Calculator and Online Calculator are being developed as tools for the convenience of users to make calculations easier for Judges, litigants and attorneys making calculations of maintenance and child support in Supreme Court. We anticipate that these new calculation tools will be ready by the January 25, 2016 effective date. Since the Excel Calculator work can be saved by the user, unlike work on the Online Calculator, we will encourage users of the Online Calculator to print out their work so as to have a record of their calculations.

When the new Maintenance Guidelines Law becomes effective as to post-divorce maintenance on January 25, 2016, the maintenance guidelines will apply to uncontested divorces for the first time. Our Committee is proposing revisions to the uncontested divorce packet to include new worksheets for maintenance and child support calculations which will not only reflect the new law but will allow those with Internet access the option to use the new Calculators as tools for their convenience in making the calculations. We also recommend revisions to the packets to incorporate new findings required to be made by the court regarding post-divorce maintenance.[17]

A list of the new maintenance child/support worksheets and Calculators for contested and uncontested divorce cases effective 1/25/16 proposed by the Committee is shown in Appendix B to this report. A list of the new forms and revisions to prior forms in the uncontested divorce packet proposed by the Committee is attached as Appendix C to this report.

Highlights of these revisions include:

- New notice of guideline maintenance to be served with the summons to ensure that unrepresented litigants have notice of the new guideline maintenance obligation as required by statute, since so many uncontested divorce judgments are by default.

- New annual income worksheet form (UD-8(1)) - follows the Child Support Standards Act income and deductions with a few changes required by the new Maintenance Guidelines Law:

  1- Maintenance paid to party spouse not deducted from gross income because the new Maintenance Guidelines Law requires maintenance to be calculated first.

  2- Income from income producing property distributed or to be distributed pursuant to a final judgment of divorce is included in gross income.

[17] The packet revisions will also include some new affidavits of service to make it easier for unrepresented litigants to validate service of the Judgment of Divorce and the Proposed Poor Person's Order when applicable.

- New maintenance guideline worksheet (UD-8(2)) takes income figures from the annual income worksheet.

- New child support worksheet form (UD-8(3)) takes income figures from the annual income worksheet. This form includes the adjustments for maintenance in calculating child support required by Chapter 387 of the Laws of 2015 – to include maintenance in the payee's income and to deduct the maintenance from the payor's income with a corresponding order in the judgment of divorce requiring adjustment in the child support order upon termination of maintenance without prejudice to the right to seek a modification in child support pursuant to D.R.L. § 236(B)(9)(2).

- Prior Form UD-8 and instructions will be replaced by new forms UD-8(1) and UD-8(3) compatible with the new Calculators being developed by the Department of Technology in collaboration with our Committee, which complies with the new laws and computes add-ons after the low income adjustment, as intended by a 2011 law regarding indigent child support obligors (L. 2011, c. 436).

B. Position on Statutory Proposal Regarding Duration of Spousal Support and Amendment of Biennial Adjustment of "Income Cap" in Maintenance Guidelines Law [F.C.A § 412(2)(d), F.C.A. § 412(10), D.R.L. § 236 (B)[5-a](b)(5), D.R.L § 236 (B)(6) (b) (4)](new)

The Family Court Advisory and Rules Committee ("FCARC") submitted a proposal for our review attached as Appendix D to this Report. This proposal would modify the spousal support portion of the Maintenance Guidelines law (F.C.A §412(10)) to give the Family Court power, in its discretion to set the duration of spousal support orders by considering the length of the marriage. The proposal would also specify that the duration of spousal support orders is included in what the Family Court has authority to modify in the event of a substantial change in circumstances. The Committee believes that the duration of spousal support orders issued by Family Court is a subject better left to the FCARC. Our Committee defers to FCARC on this proposal without objection.

The FCARC proposal further contained a provision amending Family Court Act §412(2)(d) and Domestic Relations Law § 236B(5-a)(b)(5) and § 236B(6)(b)(4) to fix the date of the biennial adjustment of the temporary, post-divorce and spousal maintenance "income caps" at March 1 rather than January 31 as currently provided, and to provide that the adjustment would commence in 2018, rather than 2016 as currently provided. Our Committee supports this portion of the FCARC proposal, and we are including it in our Report as our own recommendation. By making the date March 1st, the adjustment of the maintenance income cap would coincide with the date of adjustment of the Child Support Combined Parental Income Cap,[18] as well as the date of adjustment of the federal poverty income level and self-support reserve. Regarding adjustment of the year when the income cap adjustment in the maintenance guidelines law should commence, we agree that 2016 is too soon.

However, we recommend a slight adjustment of the Income Cap insofar as the date the increase will be based on. The bill enacted as chapter 269 of the Laws of 2015 took over a year to draft and get passed by the Legislature and signed by the Governor. At the time the process began in June, 2014, adjustment of the cap on a date in 2016 seemed appropriate. Since the law takes complete effect on January 25, 2016, an adjustment in January or March, 2016 seems much too soon. Nevertheless, the Office of Court Administration will be required to make the adjustment on January 31, 2016 as required by the statute. Therefore, we suggest a slight modification to the FCARC proposal to provide that the increase in the cap on March 1, 2018 will be based on the increase from $175,000 rather than the cap as adjusted on January 31, 2016. We believe this accords with the intent of the Working Group.[19]

Because we defer to FCARC without objection on their proposal regarding duration of spousal support orders, we have copied only that portion of their proposal relating to the adjustment date as our proposal below, but with a variation from their proposal as to the date from the which the increase on March 1, 2018 will be based:

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[18] The date of adjustment of the Child Support Combined Income Cap was changed to March 1st by chapter 347 of the Laws of 2015 so as to conform with the date of adjustment of the Self Support Reserve pursuant to Social Services Law § 111-i(2)(b).

[19] *See* Note 3, supra, for composition of the Working Group.

Proposal:

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

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

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

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

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

(5) "Income cap" shall mean up to and including one hundred seventy-five thousand dollars of the payor's annual income; provided, however, beginning [January thirty-first] March first, two thousand [sixteen] eighteen and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index

for all urban consumers (CPI–U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap. For the adjustment on March first, two thousand eighteen only, the "then income cap" shall mean one hundred seventy five thousand dollars notwithstanding that it may have been modified on January thirty first, two thousand sixteen.

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

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

§4. This act shall take effect immediately.

III. New Statutory Proposal

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

We propose a 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.

This idea 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.[20] However, our Committee decided that a statutory amendment to the Domestic Relations Law **§** 237(a) dealing with applications for counsel fees by the non- monied spouse was the most effective way to proceed. Inasmuch the rules regarding attorney appearances are contained in C.P.L.R. § 321, our proposed amendment provides that it applies notwithstanding the provisions of C.P.L.R. § 321. Said statute states that once a party has appeared in an action, such party may not act in person in the action except by consent of the court. It also states that an attorney can only withdraw from a case under certain specified conditions.[21]

A 2002 Report on Unbundled Services by a State Bar Commission (the "NYSBA Report"),[22] at Footnote 2, suggests language for amendment of C.P.L.R. § 321 to accommodate

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

[21] C.P.L.R § 321 reads as follows:
(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."

[22] 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.

limited scope representation.[23] In the NYSBA Report, the Commission also expressed the view that limited scope representation in a litigation context was problematic while it is often justified in a transactional context, and should be allowed in court-annexed or non-profit legal services programs that are structured to accommodate an a limited appearance by pro bono attorneys.[24]

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.[25] Rule 1.16 (c) provides 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.[26]

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

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, 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 of these requirements clearly spelled out.[27]

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[23] Footnote 2 of the NYSBA Report provides:
"If a limited appearance to accommodate unbundling were considered desirable, an amendment to CPLR Rule 321 would be required. Section 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."

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

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

[26] *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.

[27] 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

By enacting Judiciary Law 35(8) in 2006, the Legislature implicitly authorized attorneys to provide unbundled or limited scope legal services to level the playing field for non-monied spouses in matrimonial actions. Although the 2006 bill memo in support of Judiciary Law section 35(8)[28] 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, implicitly, the Legislature was saying 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.[29]

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

Proposal:

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

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

Section 1. Subdivision a of section 237 of the domestic relations law as amended by chapter 447 of the laws of 2015 is hereby 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

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.

[28] *See* bill memo 2006 A. 10447 attached as Appendix E to this Report.

[29] *Supra*, at note 28.

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.

IV. New Proposal for Revised Net Worth Statement Form Pursuant to 22 NYCRR § 202.16(b)] (new)

A. Revised Net Worth Statement [(Chapter III, Subchapter A of Subtitle D (Forms), 22 NYCRR § 202.16(b)] (new)

22 NYCRR § 202.16(b) requires a Net Worth Statement to be exchanged between the parties and filed with the court pursuant to section 236 of the Domestic Relations Law. The form of the Net Worth Statement is to be "substantially in compliance with" the form contained in Chapter III, Subchapter A of Subtitle D (Forms). The Committee recommends revision of the form of Net Worth Statement presently contained in Chapter III, Subchapter A of Subtitle D (Forms).

In matrimonial actions, the Statement of Net Worth sets forth a party's personal and financial information in a clear, concise manner for disclosure to the Court and the other party. The form provides basic information about the family, their monthly expenses, and all assets and liabilities in their names. Although the form is required to be submitted at the Preliminary Conference, the Statement of Net Worth continues to be one of the most frequently referenced forms through all stages in a matrimonial litigation.

The original form of the Statement of Net Worth (the "form") was promulgated in 1980 when the Equitable Distribution Statute was first enacted.[30] The form was later revised in the 1990s but no further revision has been made since that time. As a result, the nature of parties' expenses and other financial information has changed, while the form has become less and less reflective of modern financial reality.

The proposed revised form, attached as Appendix F to this Report, was created with the following objectives in mind:

1. Providing for the form to be gender-neutral;
2. Providing for the form to be easier for unrepresented parties to read and understand, while reducing the need for attorneys to explain the meaning of its contents to clients and supervise their completion of it;
3. Simplifying the form to eliminate or replace unnecessary and/or confusing categories; and
4. Updating the categories to make the form more applicable to modern-day expenses.

In consideration of the foregoing, the Committee examined those portions of the form which have been frequently misinterpreted or have been otherwise problematic in their professional experiences. The proposed revision to the form achieves the above goals and objectives, as explained herein.

SECTION I: FAMILY DATA

The Family Data section has been revised to remove terms such as "Husband" and "Wife" in order to make the form gender-neutral. Throughout the revised form, parties are

[30] A sworn Statement of Net Worth is required by The Domestic Relations Law § 236(B)(4) "in all matrimonial actions and proceedings in which alimony, maintenance or support is in issue … ."

referred to as "Plaintiff," "Defendant," or "yourself/your spouse." Information that may lead to confusion and is not relevant to the parties' financial net worth (*e.g.* "date separated") has also been removed.

Other categories have been explained more clearly and in greater detail, such as the distinction between "children" born of the subject marriage and "children" born from another relationship. The revised Family Data section includes information concerning all minor children of the deponent but the line pertaining to "dependents" is moved, more appropriately, to the Gross Income section (Section III).

The revised form also requires that dates of birth be provided for children of the subject marriage, rather than current ages. This enables Courts and counsel to rely on the information provided well after the date of the form's execution.

SECTION II: EXPENSES

First and foremost, the introductory paragraph of the Statement of Net Worth has been revised to make it clear to the litigant that, in addition to his or her Net Worth, this Statement also provides information pertaining to expenses. The instructions also provide for expenses to be computed on a monthly basis only. This will not only reduce confusion and provide clearer directions to litigants, but it will also provide uniformity and avoid situations in which one litigant prepares his or her expenses on a weekly basis while the other party lists them monthly, making the figures difficult to compare. In addition, the instructions have been clarified to require the disclosure of current expenses, as many litigants have expressed confusion as to whether they should report their pre-commencement or post-commencement expenses. The form states that, if their expenses have changed recently, those changes should also be noted. This will provide for more uniformity in Statements of Net Worth submitted by both parties in an action.

Due to the passage of time since the form's last revision, the "Expenses" section in the current version is extremely outdated. For example, in the "Utilities" section, the current form provides only for one "telephone" expense, which may be interpreted by a litigant as pertaining to cellular service, landline service, or both. Furthermore, "telephone" expenses are listed as a "utility" yet cable television service is listed under the "Recreational" category. The Committee has determined that this has led to confusion among litigants, as cable television service today is commonly purchased along with landline telephone service and Internet service (which is also unrepresented in the current form). As a result, the Committee has noted both duplication and omission of those expenses in matrimonial litigation. The form has also been updated to refer to satellite television service.

The revised form provides a separate line item for landline telephone and cellular telephone service in the utilities section. Separate lines are also provided in the utilities section for cable/satellite television service and for Internet service. Clarifying the expenses, which are overbroad in light of modern technology, and including them in the same section will make it easier for litigants to understand which line refers to which household expense.

Similarly, other expenses have been re-categorized in order to clarify the type of expense and put it in the more logical category (*e.g.* "school lunches" have been moved from the "Food" category to the "Education Costs" category to make it more clearly applicable as an expense for

the children). The "Clothing" section has been revised to pertain only to the litigant preparing the form (removing the gender labels) and to the children, as many parties have expressed confusion over how to determine the other spouse's clothing expense. Other duplicative items have been consolidated, such as "Household Maintenance," which no longer requires separate lines for each type of repair as well as cleaning supplies (which may be duplicative of the "grocery" purchases). Miscellaneous obsolete items, such as tapes, CDs, and video rentals have also been removed.

The Expenses section has been revised to make the form more relevant to a typical modern household's expenses. Certain confusing items have been relabeled and/or placed in a more appropriate category and unnecessary and/or obsolete items have been removed altogether. The proposed revision to the Expenses section is far more self-explanatory to a layperson, unfamiliar with the form.

SECTION III: GROSS INCOME

The instructions pertaining to the Gross Income section have been modified to provide for clearer disclosure. Pursuant to the revised instructions, if the party's income has changed within the last year, he or she must provide an "explanation" of the change. This change provides for more substantive and relevant information than the old form, which requires that only the identity of the employer and wage paid be disclosed in the event of such a change. In addition, the current form's instructions seem to suggest that a party need only disclose the prior year's tax return or Form W-2 if there has been a change in his or her income. We have revised that instruction to clarify that a party's most recently filed income tax return must be attached, in all circumstances.

In addition to requiring the attachment of the party's most recently filed return, the revised form also requires that the party attach all Forms W-2 and 1099, as well as Schedules K-1 received in connection with the attached tax return. This would provide the other party and the Court with a better understanding of not only the extent of the deponent's income, but also the source(s) of that income.

The Gross Income section has been revised to simplify it by requiring less detail. The revised form makes it clear that the litigant is to provide his or her total annual income (and payroll deductions are no longer defined as "weekly" in order to avoid confusion), as it should be reported on his or her most recently filed tax return.

SECTION IV: ASSETS

The proposed revised form lists the assets in categories that are more understandable to a layperson. For example, we have added a category for "Retirement Assets," which includes both vested and contingent interests, to assist unrepresented litigants.

The order in which assets are listed has been changed to allow for parties with simple financial portfolios to avoid confusion and "skip" to the next section if they do not hold more "complex" assets, such as business interests, securities, tax shelters, etc., which have all been moved to the end of the "Assets" section.

In addition, a line has been added to all accounts to provide information of the balance not only as of the date the form is signed, but also as of the date of commencement. Disclosure

of those values early on (and likely at a time when the applicable statements are still available for free download on the Internet) will aid the parties and the Court in determining the values of those assets that are subject to equitable distribution later on at trial.

SECTION V: LIABILITIES

The proposed changes will make it easier for litigants to understand which sections apply to their specific debts and liabilities. This will help avoid not only the litigants' confusion, but the Court's and counsel's as well when interpreting the forms submitted. For example, a section specifically intended to address "credit card debt" has been added to the Liabilities section. This change makes it easier for litigants to better categorize their debts, which they may not recognize as an "account payable". In addition, home equity lines of credit have been distinguished from regular mortgages. Other minor changes include clarification of labels and other terms used to describe certain items.

SECTION VI: ASSETS TRANSFERRED

(unchanged)

SECTION VII: LEGAL AND EXPERT FEES

Sections VII, VIII, and IX of the current form ("Support Requirements," "Counsel Fee Requirements," and "Accountant and Appraisal Fees Requirements," respectively) have been consolidated into one section, which provides only the amounts paid to attorneys and experts by that party. The reason for this change is that it is confusing to many litigants that the Statement of Net Worth appears to serve an application for *pendente lite* relief in the form of support and interim counsel and expert fees. In order to make it clear that the Statement of Net Worth does not constitute an application, the "requests" for those interim items should be removed. With regard to the support payments made and received, that information has been added to the "Expenses" and "Gross Income" sections and need not be presented again here. Accordingly, the revised version of the form simplifies, rather than duplicates, the information to be provided by each party. Moreover, we note that the information removed from the form in the proposed revision pertains largely to expert fees and appraisals, which is addressed in the Preliminary Conference form.

SIGNATURE SECTION

The revised Statement of Net Worth form makes it clear that the litigant is signing it "under oath, subject to the penalties of perjury." While this has always been true because the litigant's signature is required to be notarized, it has now been explicitly stated in the form for litigants to read and understand the significance of notarizing their signature. Finally, the litigant is asked to indicate whether the Statement of Net Worth being filled out is his or her first, second, third, (*etc.*) such Statement. Given the length of litigation, this line will make it easier for counsel, parties and Judges to label and distinguish between older and more current Statements.

While the foregoing examples are but some of the changes contained in the proposed revision to the current form, the clarification and simplification of many of the terms used, as well as the removal and replacement of obsolete items, will make the form easier to understand for litigants, attorneys, and Courts alike. Where the language is clearer and is less subject to

interpretation – and misinterpretation – the parties' finances will be portrayed more accurately and the Statement of Net Worth will hold even greater value to all of those involved.

The current version of 22 NYCRR § 202.16(b) reads as follows:

> "(b) Form of Statements of Net Worth.
>
> Sworn statements of net worth, except as provided in subdivision (k) of this section, exchanged and filed with the court pursuant to section 236 of the Domestic Relations Law, shall be in substantial compliance with the Statement of Net Worth form contained in Chapter III, Subchapter A of Subtitle D (Forms) of this Title."

Accordingly, we propose that the current form be revised and replaced with the attached proposed revision contained in Appendix F to this report.

V. New Rule Proposals

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

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

To remedy this problem, the Matrimonial Practice Advisory and Rules Committee recommends adding a new section 202.16(n) to the Uniform Civil Rules for the Supreme Court and the County Court. The rule requires the trial Judge in a divorce action where a decision has been reached on custody but other ancillary issues have not been litigated or resolved, to sever the custody issues resolved from the remaining issues in the case, and to direct entry of judgment thereon, thus allowing immediate appeal, if sought, of the custody issues resolved.[31]

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

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

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

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[31] 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 appealability and an apparently strained use of the new rule to escape the rigors of that limitation. No such difficulty should be anticipated in this state with its tradition of interlocutory appeals. Accordingly, the Federal limitation requiring "an express determination that there is no just reason for delay" is omitted. (*see* N.Y. C.P.L.R. § 5012 (McKinney)).

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

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

Proposal:

22 NYCRR§ 202.16 is hereby amended by the addition of a new subdivision (n) 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 §5012.

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

In 2015, the Legislature passed and the Governor signed into law our proposal to amend DRL§ 237(a) to clarify and codify on a statewide basis what is implicit in *Prichep v.Prichep,* 52 A.D.3d 61, 858 N.Y.S.2d 667 (2d Dept. 2008)), that unrepresented litigants[32] should not be required to file an affidavit detailing fee arrangements when seeking counsel fees. We now propose an amendment to 22 NYCRR **§** 202.16 (k) (3). The new rule amendment both mirrors the statutory amendment exempting unrepresented litigants from the detailed fee affidavit requirement, and also adopts a new statewide form, *i.e.*, "Unrepresented Litigant Application for Counsel Fees." It consists of an Order to Show Cause together with an Affidavit in Support. The new form is designed to make it easier for pro se litigants to apply for counsel fees. Without funds to hire counsel to make a formal motion for counsel fees, Pro Se Litigants often do not know where to start in making the application. Compounding the problem is the unwillingness of many attorneys to make a motion on their behalf for counsel fees because of fear of becoming attorney of record in the matter.[33] We believe that unrepresented litigants will benefit by having a form available they can fill out themselves to obtain the fees to hire counsel to prosecute their matters. The Committee thought it prudent to leave out of the form instructions on filing because procedures might differ from county to county. The Committee also provided in the Order that the fees be paid directly to an attorney retained by the unrepresented litigant to ensure that the fees would be used for the purpose intended.

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

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

[32] 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.

[33] *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 hereby amended to read as follows:

(3) No motion for counsel fees and expenses shall be heard unless the moving papers also include the affidavit of the movant's attorney stating the moneys, if any, received on account of such attorney's fee from the movant or any other person on behalf of the movant, the hourly amount charged by the attorney, the amounts paid, or to be paid, to counsel and any experts, and any additional costs, disbursements or expenses, and the moneys such attorney has been promised by, or the agreement made with, the movant or other persons on behalf of the movant, concerning or in payment of the fee. An unrepresented litigant shall not be required to file such an affidavit when making an application for an award of counsel fees and expenses; provided he or she has submitted an affidavit that he or she is unable to afford counsel with supporting proof, including a statement of net worth and if available, W-2 statements and income tax returns for himself or herself. However, the party opposing such motion, if represented by counsel, must still promptly submit such an affidavit as part of the answering papers as still required pursuant to section 237 of the Domestic Relations Law. An affidavit attached to an Order to Show Cause or motion filed by an unrepresented litigant shall comply with this rule if it is substantially in compliance with an Appendix to 22 NYCRR §202.16 to be promulgated. Fees and expenses of experts shall include appraisal, accounting, actuarial, investigative and other fees and expenses to enable a spouse to carry on or defend a matrimonial action or proceeding in the Supreme Court.

See Form of Proposed Application for Counsel Fee by Unrepresented Litigant attached as Appendix G to this Report to be promulgated as an Appendix to 22 NYCRR §202.16.

VI. Previously Endorsed Statutory Proposal

A. Reconsideration of Measure to Strengthen Enforcement by Contempt in Supreme Court [D.R.L. § 245] (new)

As a priority for 2016, the Committee again recommends that the Legislature should amend D.R.L. § 245 to eliminate the requirement that other enforcement remedies be exhausted before contempt can be sought against a person who fails to pay child support, spousal support or combined child and spousal support or any other monetary sum ordered to be paid pursuant to a court order or judgment in a matrimonial proceeding.

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

The need for this proposal was highlighted by the Matrimonial Commission chaired by the now retired Appellate Division Justice Sondra Miller in its 2006 Report to the Chief Judge. The Commission stated:

> *Consistent with this recommended requirement, the Commission urges a change in the rules and substantive law pertaining to the enforcement of court orders. … . First, it recommends that Domestic Relations Law § 245 be amended to provide Supreme Court judges with the same authority to enforce orders by contempt now enjoyed by Family Court judges.*[34]

[34] Matrimonial Commission Report, *supra*, at page 24.

In a footnote, the Commission contrasted D.R.L. § 245 with Family Court Act § 454,[35] which allows Family Court Judges to immediately enforce non-compliance with contempt without exhausting other remedies or following the procedures provided in § 245 of the Domestic Relations Law and § 756 of the Judiciary Law (see New York Court of Appeals decision in *Powers v Powers*).[36] While it would be logical in Family Court, as well as Supreme Court, to employ less threatening enforcement tools than contempt especially on the first default in payment, the unfortunate truth is that in many cases, exhaustion of remedies becomes a delaying tool which allows the other spouse to frustrate and obstruct the laws of this State, including the child support and maintenance guideline laws, as applied by the courts. Counsel fee orders issued in a divorce proceeding pursuant to D.R.L. § 237(a) could wait years before a non-monied spouse could enforce them, thus rendering the clear words of the statute meaningless as follows: *"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 (emphasis supplied),*** *pendente lite, so as to enable adequate representation from the commencement of the proceeding."*

Indeed, in its 2006 Report, the Matrimonial Commission specifically recommended a change to allow enforcement of counsel fee awards without exhaustion of remedies, saying: *"Finally, enforcement of fee awards, or failure to do so, was raised as a concern by members of the bench and bar. Where a party's refusal to pay court-awarded attorney's fees is found to be "willful or deliberate", the court should be given authority to enforce such orders via the contempt powers of the court without the necessity of first reducing such orders and attempting to collect the awards via money judgment, and to impose alternate remedies, such as the striking of the pleadings of the obstructionist party."*[37]

Our 2015 proposal, based on an earlier 2009-2010 bill introduced by Assemblywoman Weinstein (A. 5979) and Senator Sampson (S. 2977) was incorporated in its 2015 legislative agenda by the Office of Court Administration as OCA 2015-54 and introduced in the legislature as A. 7253 Weinstein /S. 5189 Bonacic.

The bill passed the Senate but not the Assembly. We have heard of some resistance to this proposal, although no formal memo of opposition has been received by our Committee. We believe the resistance was based on a belief that support obligors are too easily sent to jail for contempt in Family Court without exhaustion of other remedies. Those espousing this view do

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[35] 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 … ."

[36] *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, 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).

[37] Matrimonial Commission Report, supra, at p. 62.

not wish to give Supreme Court these same powers. There is also a belief that the proposal will impact support obligors who live at or near the poverty level, who have no means of paying the sums they owe to their spouse from jail or otherwise.

In our view, these concerns are based on an incorrect interpretation of what the proposal says about superseding the provisions of the Civil Rights Law insofar as they are in conflict regarding suits on installment payments, and a lack of knowledge about the protections of the Civil Rights and Judiciary Laws as to length of maximum imprisonment, the right to purge, the right to prove inability to pay, the requirement for notice of possibility of arrest or imprisonment, the right to assigned counsel for obligors charged with contempt in Supreme Court who cannot afford counsel, and the burdens on the party seeking contempt to prove civil contempt under case law.

The bill contained the following sentence copied from D.R.L. § 245 as it currently exists:

> "The *defaulting spouse may be proceeded against under the order in the same manner and with the same effect as though the installment payment was directed to be paid by a separate and distinct order,* ***the provisions of the Civil Rights Law being superseded insofar as they are in conflict (emphasis supplied)****.*

This provision relates only to the right to sue on successive installments. It refers to the following language in § 72 of the Civil Rights Law: "*but the prisoner shall not be again imprisoned upon a like process issued in the same action or arrested in any action upon any judgment under which the same may have been granted."* The language quoted does not mean that the other protections of the Civil Rights Law are superseded. Those other protections "limit the length of imprisonment based on contempt in the nonpayment of alimony, maintenance, distributive awards or special relief in matrimonial actions, or counsel fees in divorce cases, to three months for a default of less than $500, and to six months for a sum of that amount or over[38] (*see* § 118:354. Generally, 19A Carmody-Wait 2d § 118:354).

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[38] **The full text of §72 of the Civil Rights Law reads as follows:**

§ 72. Term of imprisonment of civil prisoner: No person shall be imprisoned within the prison walls of any jail for a longer period than three months under an execution or any other mandate against the person to enforce the recovery of a sum of money less than five hundred dollars in amount or under a commitment upon a fine for contempt of court in the nonpayment of alimony, maintenance, distributive awards or special relief in matrimonial actions or counsel fees in a divorce case where the amount so to be paid is less than the sum of five hundred dollars; and where the amount in either of said cases is five hundred dollars or over, such imprisonment shall not continue for a longer period than six months. It shall be the duty of the sheriff in whose custody any such person is held to discharge such person at the expiration of said respective periods without any formal application being made therefor. No person shall be imprisoned within the jail liberties[1] of any jail for a longer period than six months upon any execution or other mandate against the person to enforce the recovery of a sum of five hundred dollars or over or for a longer period than three months where the amount is less than five hundred dollars, and no action shall be commenced against the sheriff upon a bond given for the jail liberties by such person. In computing the term of imprisonment time spent within the prison walls of any jail and time spent within the jail liberties shall be included. Notwithstanding such a discharge in either of the above cases, the judgment creditor in the execution, or the person at whose instance the said mandate was issued, has the same remedy against the property of the person imprisoned which he or she had before such execution or mandate was issued; but the prisoner shall not be again imprisoned upon a like process issued in the same action or arrested in any action upon any judgment under which the same may

Second, the protections of the Judiciary Law still apply. As stated in Carmody Wait: "*…where the misconduct proved consists of an omission to perform an act or duty which is yet in the power of the offender to perform, he or she may be imprisoned only until he or she has performed it and paid the fine imposed … Moreover, as in other cases of civil contempt, the defaulting spouse may move to be relieved from the imprisonment under the Judiciary Law, on the ground that he or she is unable to endure the imprisonment, or to pay the sum or perform the act or duty required to be paid or performed in order to entitle him or her to be released. After serving the maximum term in prison for contempt in the nonpayment of an installment of spousal support, the defaulting spouse becomes immune from any further attempt to compel payment of that installment by contempt proceedings"* (*see* Carmody Wait 2d, *supra*).

Not only does the party charged with contempt have the right to purge, and the right to be excused from imprisonment on the ground of inability to endure imprisonment or inability to pay, such party must be given notice of possible imprisonment, pursuant to section 756 of the Judiciary Law, which requires a notice on motion or order to show cause to appear in court with a legend printed in at least 8 point bold type stating: **FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR IMMEDIATE ARREST AND IMPRISONMENT FOR CONTEMPT OF COURT**.[39] This requirement applies notwithstanding the provision in the proposal that provides: "No demand of any kind upon the defaulting spouse shall be necessary in order that he or she be proceeded against and punished for failure to make any such payment or to pay any such installment; personal service upon the defaulting spouse of an uncertified copy of the judgment or order under which the default has occurred shall be sufficient."

Moreover, in addition to the protections of Judiciary Law 756 and the Civil Rights Law, the New York courts have generally imposed a heavy burden on imposition of civil contempt as a remedy. There must be "the existence of a lawful order expressing an unequivocal mandate of

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have been granted. Except in a case hereinbefore specified nothing in this section shall affect a commitment for contempt of court [fn 1: "Jail liberties provisions have been repealed."]

[39] Judiciary Law 756 reads as follows: An application to punish for a contempt punishable civilly may be commenced by notice of motion returnable before the court or judge authorized to punish for the offense, or by an order of such court or judge requiring the accused to show cause before it, or him, at a time and place therein specified, why the accused should not be punished for the alleged offense. The application shall be noticed, heard and determined in accordance with the procedure for a motion on notice in an action in such court, provided, however, that, except as provided in section fifty-two hundred fifty of the civil practice law and rules or unless otherwise ordered by the court, the moving papers shall be served no less than ten and no more than thirty days before the time at which the application is noticed to be heard. The application shall contain on its face a notice that the purpose of the hearing is to punish the accused for a contempt of court, and that such punishment may consist of fine or imprisonment, or both, according to law together with the following legend printed or type written in a size equal to at least eight point bold type:

WARNING:
YOUR FAILURE TO APPEAR
IN COURT MAY RESULT IN
YOUR IMMEDIATE ARREST
AND IMPRISONMENT FOR
CONTEMPT OF COURT

which the party had knowledge; the disobedience of such order; and that the rights and remedies of a party to the action were prejudiced by the violation of the order."[40]

This fall, the Court of Appeals partially eased the burdens on spouses seeking enforcement by contempt in Supreme Court by resolving the issue whether the imposition of civil contempt includes the burden to prove willfulness. In *El-Dehdan*, the defendant violated the trial court's order to deposit the proceeds of sale of certain properties in escrow with plaintiff's attorney to protect her rights in certain properties she had been awarded in equitable distribution which the defendant had sold. Defendant invoked the Fifth Amendment privilege against self-incrimination because he was charged with both civil and criminal contempt, refusing to proffer evidence of inability to pay even as to the civil contempt charge, submitting only an affidavit that he had no funds. The Court upheld the Appellate Division's finding of civil contempt without a finding of willfulness, saying: "We, therefore, agree with the Appellate Division that civil contempt is established, regardless of the contemnor's motive, when disobedience of the court's order 'defeats, impairs, impedes, or prejudices the rights or remedies of a party' (*El-Dehdan*, 114 A.D.3d at 17, 978 N.Y.S.2d 239 [citation omitted])." The Court held that a negative inference could be drawn from the defendant's having invoked the privilege against self-incrimination in a civil context, and answered in the affirmative the certified question as to whether the Appellate Division properly affirmed the Supreme Court, not only as to their finding that civil contempt does not require a finding of willingness, but also, as to their holding that the requirement for exhaustion of remedies under D.R.L. § 245 was satisfied by a finding that exhaustion of remedies would be ineffectual where execution against assets was not possible (because the defendant had transferred them out of his name).[41]

This decision is a recognition by the highest court in the State of the need to soften the barriers that D.R.L. § 245 creates for the spouse seeking to enforce a monetary obligation ordered by the court in a divorce proceeding. Unfortunately, while the Court of Appeals holding is a significant step forward, only legislative action can overcome the impediments that D.R.L. § 245 creates for non-monied spouses seeking enforcement of orders of support, maintenance, counsel fees and other sums ordered to be paid in matrimonial proceedings. It is not always so clear as it was in *El-Dehdan* that exhaustion of remedies will be ineffectual because there are no assets left in the defendant's name. Until the Legislature acts to correct the inconsistency between the powers of the Supreme and Family Courts with regard to enforcement of such important obligations, non-monied spouses in Supreme Court will still have to prove that exhaustion of remedies will be ineffectual, a burden not imposed on petitioners seeking contempt in Family Court. While they will not have to prove willfulness, they will still have to prove the requirements for civil contempt, including a knowing violation of a lawful mandate of the court. Thus despite this decision, the burden of enforcement by contempt in Supreme Court remains considerably greater than in Family Court.

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[40] *See*, Jeffry G. Gallet and Mareen M. Finn, Spouse and Child Support in NY § 15:17.
[41] *El-Dehdan v. El-Dehdan*, 114 A.D.3d 4, 23-24, 978 N.Y.S.2d 239, 255 (2013) *aff'd*, 26 N.Y.3d 19, 41 N.E.3d 340 (2015).

Moreover, the spouse charged with contempt would be entitled, if they are unable to afford counsel, to assigned counsel pursuant to Judiciary Law § 35(8) which requires assignment of counsel in Supreme Court in all cases where assigned counsel would be required in Family Court pursuant to Section 262 of the Family Court Act. Thus fears that the party charged with contempt would face a jail term without proper representation by counsel are unfounded.

Indeed, the greater concern is whether the non-monied spouse seeking to enforce payment of spousal or child support or counsel fees through a levy on assets or other remedies would be awarded sufficient attorney's fees to pursue remedies to exhaustion over what could be a period of years under DRL § 245 as currently drafted. While indigent obligors *defending* claims of contempt and possible imprisonment would be entitled to assigned counsel, litigants *asserting* contempt would not be entitled to assigned counsel even if they are indigent, and many litigants in Supreme Court cannot afford to hire counsel to pursue such claims (*see* Judiciary Law § 35(8) and F.C.A § 262).

Ultimately, it should be emphasized that the Supreme Court needs equally strong mechanisms to enforce compliance with support obligations in divorce matters as the Family Court. The interest of the state in Supreme Court is equally strong as in Family Court, in making sure that children and families receive adequate support.

We believe that, unless the proposal is adopted, the law actually discriminates against the non-monied spouse in a divorce action because it protects the monied spouse from the contempt remedy for non-payment of sums ordered to be paid unless all other remedies have been exhausted. Monied spouses against whom support orders are entered in Family Court may obstruct or delay enforcement by bringing a divorce action in Supreme Court. If the parties are not married, they must resolve child and spousal support disputes in Family Court where there is no requirement for exhaustion of remedies. Thus it is the non-monied spouse in Supreme Court who faces the greatest obstacles to enforcement.

To demonstrate how difficult it is for Justices in Supreme Court to impose the contempt remedy under the existing statute, an unreported decision from Nassau County is illustrative. In *Nancy L.I. v. Alan I.,* Supreme Court of Nassau County (Balkin, J.), after years of litigation, a judgment of divorce was entered in 1995 incorporating a 1994 agreement of separation ordering the defendant to pay child support, and a proportional share of medical and educational and related expenses for the children of the marriage. Proceedings for contempt began in 1999, but it took six years and numerous contempt proceedings before the court was able to say that all alternative remedies of sequestration, the giving of securities, enforcement of a money judgment or an income execution order had been exhausted. From the entry of the judgment of divorce, ten years had passed before the contempt holding in this matter. All the while, defendant (who had at one time held a seat on the New York Mercantile Exchange earning over $300,000 per year, refused to honor his child support obligations because of what the Court described as "voluntary unemployment" in refusing to work in menial positions actually available to him. After holding defendant in contempt in an earlier proceeding, the defendant failed to pay the

purge amount, having accumulated arrears of over $100,000 in child support over the period.[42] As the statute is currently written, the court properly waited to impose the contempt remedy in this case until all other remedies were exhausted. "The courts have been rather consistent in adhering to this statutory prerequisite and, where the record does not warrant the presumptive conclusion that the other enforcement remedies would be ineffective, the appellate courts have stricken and vacated the contempt orders" (*see* 1 New York Matrimonial Law and Practice § 8:29).

Finally, the different standards force litigants seeking contempt to select Family Court as a venue because the standard of proof in Family Court is less than in Supreme Court. This further burdens the Family Courts' extensive caseloads.

For the above reasons, the Committee believes it is imperative that this legislation be enacted. Without this legislation, the benefits of the new Maintenance Guidelines Legislation (L. 2015, c. 269)) and the Child Support Standards Act (L. 1989, c. 567), for low income and moderate income families seeking maintenance and child support in Supreme Court will not be fully realized. Nor will the provisions of D.R.L. § 237(a) regarding presumption of counsel fees for the non-monied spouse, achieve its goal of leveling the playing field in divorce actions.

Proposal:

AN ACT to amend the domestic relations law, in relation to providing additional enforcement mechanisms for collection of spousal or child support or other sums owing as required by a judgment or order

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

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

§ 245. Enforcement by contempt proceedings of judgment or order in action for divorce, separation or annulment. Where a spouse, in an action for divorce, separation, annulment or declaration of nullity of a void marriage, or for the enforcement in this state of a judgment for divorce, separation, annulment or declaration of nullity of a void marriage rendered in another

[42] See *Nancy L.I. v. Alan I.*, 9 Misc.3d 1121(A) (2005), 862 N.Y.S.2d 809, 2005 N.Y. Slip Op. 51716(U).

state, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, [and it appears presumptively, to the satisfaction of the court, that payment cannot be enforced pursuant to section two hundred forty-three or two hundred forty-four of this chapter or section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules,] the aggrieved spouse may make application pursuant to the provisions of section seven hundred fifty-six of the judiciary law to punish the defaulting spouse for contempt, and where the judgment or order directs the payment to be made in installments, or at stated intervals, failure to make such single payment or installment may be punished as therein provided, and such punishment, either by fine or commitment, shall not be a bar to a subsequent proceeding to punish the defaulting spouse as for a contempt for failure to pay subsequent installments, but for such purpose such spouse may be proceeded against under the said order in the same manner and with the same effect as though such installment payment was directed to be paid by a separate and distinct order, and the provisions of the civil rights law are hereby superseded so far as they are in conflict therewith. Such application may also be made without any previous sequestration or direction to give security [where the court is satisfied that they would be ineffectual] or any application for enforcement by any other means. No demand of any kind upon the defaulting spouse shall be necessary in order that he or she be proceeded against and punished for failure to make any such payment or to pay any such installment; personal service upon the defaulting spouse of an uncertified copy of the judgment or order under which the default has occurred shall be sufficient.

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

VII. Previously Endorsed Divorce Venue Proposals

A. Statutory Proposal for Divorce Venue [C.P.L.R. 514] (new)

Another priority of the Committee continued from 2015 is to address the problem of venue rules in matrimonial actions pursuant to the request of the New York County Matrimonial Judges. Plaintiffs regularly utilize the mechanism allowed by C.P.L.R. § 509 to designate venue in the county of their choice (often New York County), even though none of the parties are residents of that county. The reason why C.P.L.R. § 509 designations of venue are so frequent is partly for the convenience of attorneys who do not want to travel to file papers, and partly to take advantage of what is widely believed to be expedited processing of divorces in certain counties such as New York County. The problems arising from being "A Mecca for Matrimonial Matters" were pointed out in *Castaneda v Castaneda*, 36 Misc 3d 504, at 506 [Sup Ct 2012], where Justice Matthew Cooper discussed the burden on New York County's judicial resources, especially for uncontested divorces.[43]

Besides pointing out the huge burden on resources of New York County and the unfairness to residents of New York County who must compete for limited judicial resources, Judge Cooper noted that CPLR 509 designations increase the likelihood that defendants who reside in foreign counties will not respond to a summons and will default in the action. Rather than travel to a distant county which may be expensive and time consuming, defendant is more likely to do nothing or mail back the defendant's affidavit consenting to the uncontested divorce. Justice Cooper suggests that one of the reasons plaintiffs in distant counties may choose to file in New York County is that they know their spouse will be likely to default if they must travel to Manhattan. As a result, divorce mills flourish, and the number of uncontested divorces processed in counties like New York County increases. When these defendants begin to understand the consequences of having defaulted in that important issues relating to spousal support, custody and support of children, and distribution of marital property have been inadequately addressed in the action, they try to vacate the default judgment or bring actions for post judgment relief to modify the terms. As Justice Cooper observes about New York County: "A good portion of the post judgment matrimonial motions heard in this county are those brought by out-of-county defendants seeking to vacate default judgments." (*Castaneda v Castaneda*, *supra*, at 511).

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[43] Court statistics show that in 2011 there were 49,785 uncontested divorces filed statewide of which 14,352 were filed in New York County and 27,687 were filed in all of New York City. Thus, in 2011, approximately 29% of the statewide uncontested filings were filings in New York County and approximately 52% of New York City uncontested filings were in New York County. In 2012, there were 46,201 uncontested divorces filed statewide of which 13,519 were filed in New York County and 24,465 were filed in all of New York City. Thus, in 2012, approximately 29% of the statewide uncontested filings were filings in New York County and approximately 55% of New York City uncontested filings were in New York County. In 2013, there were 47,500 uncontested divorces filed statewide of which 14,479 were filed in New York County and 26,051were filed in all of New York City. Thus, in 2013, approximately 30% of the statewide uncontested filings were filings in New York County and approximately 56% of New York City uncontested filings were in New York County. In 2014, there were 46,974 uncontested divorces filed statewide of which 13,662 were filed in New York County and 25,990 were filed in all of New York City. Thus, in 2014 approximately 29% of the statewide uncontested filings were filings in New York County and approximately 53% of New York City uncontested filings were in New York County. These figures show that the burden on New York County has remained constant since 2011. *See* Appendix H showing court statistics attached which have been updated through 2014.

During 2015, we learned that the problem is not limited to New York County. On a recent trip upstate, Justice Sunshine, Chair of the Committee, met with members of the matrimonial Bench in Buffalo and Rochester.[44] He learned that a major concern of matrimonial Judges in these areas is the large number of uncontested divorce actions filed in their counties. If we examine 2014 Court Research Statistics on Uncontested Divorce Filings, we find that Erie County where Buffalo is located and Monroe County where Rochester is located both had sizable numbers of filings, as did Nassau, Suffolk and Westchester[45]. The other boroughs of New York City, aside from Richmond, each had an even greater number.[46] New York County unquestionably still bears the greatest burden with its 13,662 uncontested divorce filings in 2014.[47] Nevertheless there can be no doubt that the need for divorce venue reform is a statewide issue, not limited to New York County.

A number of thoughtful proposals have been made in the last few years of ways to change the C.P.L.R. rules in actions by bar association groups and judges and clerks in New York County. These proposals would have overridden the ability of plaintiff to designate the place of trial in divorce actions by amending C.P.L.R. § 509. Under existing C.P.L.R. § 509, only the plaintiff has this ability, and under existing C.P.L.R. § 511, only the defendant may demand a change in the designation. Courts do not have the power to change designations of venue in matrimonial actions made by plaintiffs outside of the county of residence of one of the parties if defendants do not ask for a change in venue, even though C.P.L.R. § 503(a) requires venue to be the county of residence.[48] One such proposal to change the divorce venue rules would have applied only to divorces involving minor children of the marriage. The Committee agrees that divorces involving minor children are in need of venue related to residence so that the courts can make appropriate decisions as to custody and parenting time and support as to the child, having, where appropriate, the involvement of an attorney for the child familiar with the services available where the child resides. However, our Committee believes that all divorce actions should have venue related to residence. Another such proposal by the New York State Bar Standing C.P.L.R. Committee, which our Committee was asked to review, would have applied to all matrimonial actions, but that proposal requires venue to be the county of residence of one of the parties, not taking into account at all the residence of the children.

The Matrimonial Practice Advisory and Rules Committee has put forth its own proposal to adopt a new C.P.LR § 514, which is an omnibus matrimonial venue proposal which applies to

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[44] These meetings were arranged by Hon. Sharon Townsend in Buffalo and by Hon. Richard Dollinger and Sharon Sayers, Esq. in Rochester. Both Justice Townsend and Ms. Sayers are 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.

[45] 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 2,424, and for Westchester County were 1,978 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2013 and 2014 contained in Appendix H).

[46] Uncontested divorce filings for the Bronx were 3,914, for Kings were 4,331, for Queens were 3,556, and for Richmond were 527 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2013 and 2014 contained in Appendix H).

[47] See Appendix H showing court statistics for uncontested divorce filings in 2014.

[48] "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.)).

all divorce actions, not just uncontested divorces, as well as actions in Supreme Court for custody and visitation, all applications to modify a Supreme Court order of custody or visitation, all post judgment proceedings, and all matrimonial actions described in D.R.L. § 236(B). By providing a good cause exception to the requirement that venue in matrimonial actions shall be the residence of one of the parties, it allows courts to take into account the residence of the children where there are children, resources of various legal services organizations, or issues related to protecting the location of alleged domestic violence victims. It avoids courts' having to change improper venue designations *sua sponte* because it supersedes C.P.L.R. § 509. Rather than allow courts to transfer venue to the proper county, a time consuming process fraught with delays, this proposal requires that venue be proper in the first place, but gives the court authority for good cause shown to allow the trial to proceed in the county where it was brought even if the venue is not the county of residence. Thus delays in transferring venue *sua sponte* will be avoided, although the defendant is still free to demand a change of venue pursuant to C.P.L.R. § 511. It is only when the court decides not to allow the trial to proceed when a venue transfer will be needed. Thus the percentage of transfers of venue will be much smaller. Moreover, by having a separate C.P.L.R. rule for matrimonial venue, much the way as there is a separate rule for consumer credit in C.P.L.R. § 513, the Committee's new proposal avoids the cumbersome drafting problems entailed in amending sections of the C.P.L.R. (such as C.P.L.R. §§ 509 and 511) intended to apply to all types of actions.

The Committee is aware of concerns that C.P.L.R. § 509 plaintiff designations of venue in uncontested divorces are necessary for the efficient processing of uncontested divorces by the courts. The Committee believes that efficient processing of uncontested divorces is possible throughout the State, and that the burden on particular counties such as New York County must be lessened. Above all, fairness to litigants must take precedence over concerns about processing. The Committee is also aware that certain attorneys will find the rule burdensome. The Committee intends that the good cause exception will address this issue.[49] The good cause exception is also intended to address other special situations such as the need to maintain confidentiality of a party or child's address because of domestic violence concerns, or situations where the parties and children no longer reside in New York State, to name but a few. Subdivision (d) of the new proposal expressly permits the Court for good cause shown to "allow the trial to proceed before it, notwithstanding that venue would not lie pursuant to subdivision (b) of this section." Similarly subdivision (b) of the new proposal contains a good cause exception to the requirement that venue shall be in the county where either party resides. This will prevent forum shopping by agreement to the detriment of the children whose cases will be heard in venues unfamiliar to the Court.

As discussed later in this report, the Committee continues to recommend a rule proposal for post judgment enforcement and a rule proposal for a uniform form venue order requiring expedited transfer of files to the proper county. Neither of the latter proposals will affect the processing of uncontested divorces, since post judgment enforcement takes place after a divorce is final, and expedited transfer of files to the proper county can only improve the efficient

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

processing of divorce actions, whether they be contested or uncontested. If concerns about efficient processing of uncontested divorces continue to be a concern, then it is our hope that our Committee's two rule proposals will be given consideration in 2016 as a means of lightening the burdens on counties impacted by large numbers of C.P.L.R. § 509 venue designations.

Proposal:

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

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

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

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

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

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

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

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

B. Divorce Venue Rule Proposal for Post Judgment Enforcement [22 NYCRR § 202.50(b)(3)] (new)

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

This proposal grew out of concerns about the numerous post judgment applications to enforce, vacate or modify judgments entered in uncontested divorces in New York County as discussed by Justice Cooper in *Castenada*.[50] To reduce the workload for judicial staff of New York County and other counties frequently designated as the county of venue pursuant to CPLR § 509, and to provide a venue related to residence where there are children of the marriage, the idea was proposed that the uncontested judgment of divorce Form (UD-11) be amended to include an order that post judgment applications for matters relating to child support, custody and visitation be brought in the county where one of the parties resides rather than in the county where the judgment was entered (as is the current practice) to be included in the same decretal paragraph where the Supreme Court retains jurisdiction in such matters concurrent with Family Court.

While our Committee would have preferred to recommend the proposal as applicable to all post judgment applications (including applications for modifying, vacating and enforcing judgments of divorce) so as to provide the maximum relief to counties burdened by C.P.L.R. § 509 designations, we are proposing this measure as a court rule applicable only to applications for post judgment enforcement after an action is completed, in order not to conflict with the controlling venue rules in Article 5 of the C.P.L.R., which pertain to the trial of an action.[51] As so limited to post judgment enforcement, the rule proposal will not change the venue rules as to applications to set aside or amend a judgment of divorce (e.g. defendant never served, error in judgment, *etc.*). Until the C.P.L.R. is amended either through enactment of a new C.P.L.R. § 514 changing venue rules applicable to the trial of an action as proposed earlier in this report, or by some other proposal, such applications would still have to be heard in the court where judgment was entered if our rule proposal were adopted since the existing venue statute would be applicable to such proceedings as they pertain to the trial of the action. Nevertheless, the new rule, if adopted, would at least provide some significant relief regarding enforcement of judgments and orders in matrimonial matters in Supreme Court.

At the same time that our Committee limited its proposal to post judgment enforcement so as not to conflict with existing C.P.L.R. rules governing venue of the trial of an action, we expanded this proposal to apply all types of divorce actions, whether contested or uncontested. The Committee also recommends that the proposal should apply to all post judgment

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[50] *Castaneda v. Castaneda, supra at note 10.*

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

enforcement, even where there are no minor children. To address the special concerns when there are minor children of the marriage, our Committee recommends that applications for post judgment enforcement should be brought in the county where one of the parties, or a child or the children reside, except for good cause. To specify that enforcement applications involving minor children always be in the county where the child or children reside might be too rigid in certain cases. Similarly, to specify that enforcement applications involving children always be in the county where one of the parties resides might result in forum shopping by the parents, without taking into account the child(ren)'s needs. Thus the proposal allows some flexibility in specifying that enforcement proceedings shall be brought where one of the parties, or a child or the children reside, while leaving it up to the discretion of the Judge whether there is good cause to make an exception.[52]

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

Proposal:

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

*3) Additional Requirement with Respect to Uncontested and Contested Judgments of Divorce***.** In addition to satisfying the requirements of paragraphs (1) and (2) of this subdivision,

[52] Similar considerations about good cause exceptions that apply to our statutory venue proposal would apply to this rule proposal as well, e.g. the need to ease the burden on attorneys or legal staff of certain poverty law programs with limited resources who must travel long distances to file papers, the need to protect confidentiality of addresses of a party or child in cases of domestic violence, or situations where parties and children have moved out of state. In such circumstances, the court would have discretion to accept venue in a county within New York State that is other than the county of residence of the parties or the children.

every judgment of divorce, whether uncontested or contested, shall include the following decretal paragraphs:

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

ORDERED AND ADJUDGED, that any applications brought in Supreme Court to enforce the provisions of this Judgment shall be brought in a County wherein one of the parties reside; provided that if there are minor children of the marriage, such applications shall be brought in a County wherein one of the parties or the child or children reside, except for good cause shown; and it is further

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

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

Proposal:

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

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

(b) Whenever a Judge orders venue to be transferred to another county in a matrimonial action, the order shall read substantially as follows: [*see* Appendix I to this Report for the proposed form Order to Expedite Changes in Venue]

VIII. Previously Endorsed Rule Proposal on Discontinuances

A. Proposed PC Conference Order/Stipulation Where Grounds are Resolved to Limit Discontinuances at the Time of Trial Pursuant to C.P.L.R. § 3217(a) [22 NYCRR § 202.16(f)(2)(v)

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

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

Proposal:

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

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

are resolved, the completion of a supplemental preliminary conference order/stipulation where grounds are resolved substantially in the form contained in Appendix "G-1" to these rules; and

See Appendix J of this Report for the proposed Form Supplemental Preliminary Conference Stipulation/Order

Later in this report, we will discuss a future project to revise the Preliminary Conference Order itself.

IX. Previously Endorsed Position on Forensics in Custody Cases

A. Recommendation on Existing Legislative Proposal [Weinstein 2015-16 A. 290]

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

Before any court rule was adopted, legislation on the subject was introduced (A. 8432). Consideration of the proposals by the Administrative Board of the Courts was suspended pending possible action on this legislation. The former Committee was asked to review the legislation proposed by Assemblywoman Helene Weinstein, dated December 27, 2013, and the Matrimonial Practice Advisory and Rules Committee was asked to review the amended legislation which seeks to amend the Domestic Relations Law and the Family Court Act, in relation to child custody disputes (A. 8432-A). A new version of said bill was introduced as A. 290 (Weinstein) on January 7, 2015. The Committee's concerns as to A. 8342-A continue to be applicable to the 2015-16 version.

Mindful that there are differing views among the Family Court and matrimonial communities as to dissemination of forensic reports in custody cases to unrepresented litigants, the Committee has developed some suggestions for resolving these differences which are discussed below in footnote 54 to this Report. We restate these suggestions this year in the hope that these suggestions can begin to bridge the differences on this important subject.

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

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

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

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

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

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

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

The members of this Committee endorse the amended bill in principle. We recognize the need to reform the custody forensic process and procedures, and recognize the need for uniformity. Please see attached as Appendix K the former Committee's Proposal Regarding Access to Forensic Reports in Custody Cases dated October 24, 2012 ("10.24.12 Proposal") submitted to the Honorable A. Gail Prudenti, Chief Administrative Judge of the Office of Court Administration.[53]

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

1. A majority of the Matrimonial Practice Advisory and Rules Committee do not endorse the dissemination of the forensic report or the file "to any party". We continue to endorse the position articulated in the 10.24.12 Proposal: "Each party shall be permitted to read the report and make notes concerning it but shall not be permitted to have a copy. A represented party may read it in his or her attorneys' office. An unrepresented party may read it in the courthouse or other secure location after executing an affidavit in the form attached as Exhibit B."[54]

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

[54]The Committee has carefully considered the due process and access to justice arguments put forth relating to the treatment of pro se (or unrepresented) litigants as opposed to litigants represented by attorneys. The Committee appreciates the concern expressed by the Appellate Division, First Department, in *Sonbuchner v. Sonbuchner*, 96 A.D.3d 566, 947 N.Y.S.2d 80, 83 (App. Div. 2012). There is a real danger that the dissemination to the public of the reports could prove to cause long lasting damage and embarrassment to many, and those concerns must outweigh reasonable restrictions imposed on self-represented litigants. Attorneys and other forensic experts are subject to professional discipline if reports are released. The safeguarding of the reports in professional offices is easier, and dissemination or viewing of the reports by children and other non-party household members could cause irreparable harm. To impose upon a moving party the obligation and cost to prove contempt places an unfair burden and expense on innocent parties to the action. The remedy of contempt does not protect non-parties as well from improper dissemination of reports. In addition, contempt for dissemination in violation of a court order years after a

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

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

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

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

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

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case is resolved is not a practical remedy. The enactment of Judiciary Law § 35(8) which provides for the appointment of counsel for those who cannot afford to hire counsel, does limit the number of self-represented litigants in custody disputes. Even those who decline the appointment of counsel can be assigned counsel for the limited purpose of supervising the review of the report and trial preparation related thereto. For those who remain self-represented, the Committee wholly endorses a statutory requirement for the appointment of counsel for self-represented litigants for such limited purpose, so that the self-represented litigant will be able to review the report in counsel's office with counsel and have access to the report to prepare for trial on the same terms as a represented litigant. However, even with such requirements in place, the Committee notes that there will be times that attorneys and self-represented litigants are treated differently in the judicial process. These differences in treatment range from how litigants enter a courthouse, to the screening that they must undergo, to the requirements as to attorneys being escrow agents while self-represented litigants are not. In certain instances, judicial discretion allows self-represented litigants greater leeway than represented litigants, such as the ability to testify in the narrative or to introduce an exhibit without formality. The Committee believes that reasonable advantages afforded to self-represented litigants along with reasonable restrictions imposed upon self-represented litigants are, to some extent, unavoidable consequences of the fact that self-represented litigants are not trained and licensed members of the bar.

X Status of Exploration of Ways to Prevent Identify Theft

A. Last 4 digits of Social Security Number in Judgment of Divorce [D.R.L. 240-a]

The Committee also considered recommending a change in D.R.L. § 240-a to require only the last four digits of the social security number in the judgment of divorce. However, the Committee is mindful that this change will impact child support enforcement,[55] and believes that further study of court operations is necessary to ensure that the full social security number records remain available for child support enforcement. The Committee also wants to make sure there would be no other unintended consequences if the requirement were changed. The Committee is mindful that D.R.L. § 235 does at least provide some protection from identify theft by restricting access to certain contents of matrimonial court files, including judgments, to the parties and their attorneys. Admittedly, this protection may not be sufficient in this age of cyber fraud, and the Committee will continue to explore this issue.

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

XI. Pending and Future Projects

A. Renumbering and Reclassification of Certain Sections of the Domestic Relations Law to Make Them Easier to Understand

Certain sections of the Domestic Relations Law are so long that they are very difficult to understand, even for experienced matrimonial attorneys. The numbering of certain sections is extremely confusing, using reverse sequences of numbers which make sense to those skilled in the art of legislative drafting, but which leave the layman perplexed. For example D.R.L. § 240 has a subdivision 1 which requires the court to verify the status of any child of the marriage as to custody and support, a subdivision 1(a) which authorizes the court to grant visitation to grandparents, a subdivision (a-1) requiring the court to review decisions and reports of the Central Registry in making custody decisions; and a subdivision (1-a) regarding admissibility of reports made to the Central Registry. One could easily confuse these provisions since they all use the number "1" and the letter "a" in some fashion. There is also a D.R.L. § 240(a-2) concerning Military Status, a D.R.L. § 240(b) regarding availability and requirements as to what the court should order as to health insurance for the children, a D.R.L. § 240(1-b) which includes the Child Support Standards Act, and a D.R.L. § 240(2) regarding child support enforcement.

Moreover, while D.R.L. § 240 contains provisions regarding custody and visitation, child support, and orders of protection, these topics are also covered elsewhere in the Domestic Relations Law. To name but a few examples of overlap, a writ of habeas corpus for custody may be sought pursuant to D.R.L. § 70; and while D.R.L. § 240 (1-b) covers the obligation to pay child support and expenses for child care, health insurance, and educational expenses, D.R.L. § 236(B) (8)(a) also authorizes the court to require that health insurance policies protect the spouse and or children of the marriage as long as maintenance or child support or a distributive award is due. Similarly D.R.L. § 236(B) (9) contains provisions regarding enforcement and modification of orders or judgments in matrimonial actions, while D.R.L. § 240(2) addresses child support enforcement as well. Orders of protection are provided for in D.R.L. § 240(3) as well as D.R.L. § 252. The overlap between parts of the Domestic Relations Law adds to the difficulties in understanding.

Our Committee plans to explore suggestions for the Legislature to consider to renumber and reclassify sections such as D.R.L. § 240 to make them easier to understand. With the number of unrepresented litigants increasing, it is important to make sure the laws applicable to matrimonial actions can be understood.

B. Mentoring of New or Newly Assigned Matrimonial Judges

An important issue our Committee plans 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."[56]

This recommendation of the Matrimonial Commission was made prior to the severe budget cuts that the courts experienced in recent years. Limited resources do not always make it possible today for a senior judge to be available to mentor New or Newly Assigned matrimonial judges. Moreover, senior judges often assume heavy caseloads, leaving little time for mentoring their peers. The New Judges Trainings at the Judicial Institute,[57] which includes an Introduction to Matrimonial Law for New and Newly Assigned Matrimonial Judges, helps introduce new Judges to the new subject matter. This year there will be a basic track at the Matrimonial Seminar held in March, 2016 for New and Newly Assigned Judges, who will be able to attend the sessions for experienced Judges as well. Despite budget difficulties, we plan to explore ways to follow up the trainings at the Judicial Institute with one on one mentoring. This is only fair to the new Judges and the litigants who come before them.

C. Project to Research Alternative Parenting Arrangements

In 2011, New York State adopted the Marriage Equality Act (L. 2011, c. 95) which adopted section 10(a) of the Domestic Relations Law providing that a marriage is valid regardless whether the parties are of the same or different sex. In *Obergefell v Hodges*[58], the Supreme Court in 2015 held that the right to marry is a fundamental right and upheld the rights of same-sex couples to marry. In light of these changes in the law, our Committee has been considering what legislative changes should be made to protect the rights of same sex couples in alternative parenting arrangements. In 2015, our Committee reviewed the Child Parent Security Act (A. 4319 /S. 2765), but decided that this bill would be difficult to support as presently written. Not only does it permit multiple parents of the same child, but it may lead to child support issues. It also legalized gestational surrogacy contracts in New York State, currently illegal, an issue our Committee has not yet studied.[59] We discussed a simple proposal to amend section 73 of the Domestic Relations Law to establish the co-motherhood rights of the non-biological mother in lesbian couples. However, we decided to table this proposal pending further study because it may not go far enough in protecting children born to married men by artificial insemination using their sperm. The Committee is reluctant to recommend a proposal establishing rights of same sex female couples without protecting rights of same sex male couples. However, we are mindful that any proposal which protects rights of married men regarding children born by artificial insemination raises issues of surrogate parenting. Thus the Committee decided further study is needed. Based on the recommendation of our Ad Hoc Committee on Alternative Parenting Arrangements,[60] we decided to accept the gracious offer of Professor Suzanne Goldberg of Columbia Law School, who is Executive Vice President for

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[56] *Supra*, at page 16.

[57] These trainings are planned by the Hon. Sharon Townsend, Vice Dean of the NYS Judicial Institute for Family and Matrimonial Law, who is also Chair of the Committee's Education Subcommittee, in coordination with the Hon. Jeffrey Sunshine, Chair of the Committee and Susan Kaufman, Esq., Counsel to the Committee, as well as members of the Education Subcommittee.

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

[59] We note that the Governor's Task Force on Life and the Law is currently studying the issue whether gestational surrogacy should be legalized in New York.

[60] Members of the Ad Hoc Committee on Alternative Parenting Arrangements are Hon. Jacqueline Silbermann, Hon. Laura Drager, Hon. Ellen Gesmer, Susan Bender, Esq., and Michael Mosberg, Esq.

University Life and the Director of the Center for Gender and Sexuality Law, to provide our Committee a team of four clinic students to work on this as a project next semester under supervision by members of our Committee[61] in order to assist our Committee in formulating a recommendation to the Chief Administrative Judge.

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

One commentator describes New York's position as more extreme than other jurisdictions in not permitting payments by the custodial parent to the non-custodial parent in shared custody cases, even when the custodial parent has far greater assets than the noncustodial parent who needs the support to able to provide for the child during parenting time.[62] In a 2013 First Department decision, the Appellate Division, stated: "*In finding that the father could be considered the noncustodial parent, the motion court improperly focused on the parties' financial circumstances rather than their custodial status.*"[63] Accordingly the Appellate Division reversed the trial court as to the child support award to the mother. The court cited the Court of Appeals decision in *Bast v. Rossoff,* 91 N.Y.2d 723, 675 N.Y.S.2d 19, 697 N.E.2d 1009 [1998] for the proposition that the clear language of the statute required no exceptions to the Child Support Standards Act formula requiring payment by the non-custodial parent to the custodial parent in shared custody situations, notwithstanding the circumstances of the case.

The dissent by Acosta, J. raised issues as to the correctness of this approach as follows: "*I respectfully dissent from the dismissal of the mother's cause of action for child support because the majority's rigid application of the statute sacrifices the child's well being at the altar of an arithmetic formula. It forces the child to bear the economic burden of his parents' decisions, even where, as here, the child, whose father is a millionaire, is in danger of living in poverty, solely to preserve uniformity and predictability in child support awards. I do not believe this result is what the legislature intended in drafting the Child Support Standards Act (CSSA), especially since the CSSA clearly did not envision every possible custodial situation."*[64]

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

E. Project to Revise Statewide Preliminary Conference Order form pursuant to 22 NYCRR §202.16 (f) (2) (v)

Despite the adoption of 22 NYCRR § 202.16(f)(V)(2) requiring the signing at the Preliminary conference of a Preliminary Conference Order substantially in accordance with the

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[61] Hon. Ellen Gesmer and Susan Bender, Esq. have volunteered to supervise the students' work during the project which will run from January through April, 2016.

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

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

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

form attached thereto, we think the form could be further improved to reflect adoption of the new Maintenance Guidelines Law, to better streamline the issues to be resolved in contested divorce cases, and to provide acknowledgement of notice by unrepresented parties of the guideline maintenance obligation required by the new Maintenance Guidelines Law (L. 2015, c. 269) by both parties to the action in contested cases.[65] Our Committee plans to explore a revision of the form to be adopted pursuant to the rule with a view to encouraging greater uniformity in use of the form statewide.

[65] For Uncontested Divorce Cases, there will be a new Notice of Guideline Maintenance required to be served with the summons which will ensure that unrepresented parties receive notice; but in contested divorce actions, the court has various options to ensure that unrepresented parties have notice of the new statutory obligation, including statements on the record, agreement recitations, or affidavits acknowledging notice signed by the unrepresented litigants.

XII. Committee Outreach

On behalf of the Committee, the Honorable Jeffrey S. Sunshine, Chair of the Committee, maintains contact with bar associations, legislators, and other groups active in the matrimonial field throughout the State. Through this outreach, the Chair of the Committee is able to provide valuable feedback and communication and recommendations to the Committee regarding issues of importance in the field of Matrimonial Law. For example on a visit to Buffalo and Rochester in October, 2015, Justice Sunshine learned that the impact of C.P.L.R section 509 designations is an upstate as well as downstate issue as described earlier in this Report regarding our Divorce Venue proposals.

During the 2015 calendar, Hon. Jeffrey Sunshine, Chair of the Committee, had the following speaking engagements and outreach visits:

Family and Divorce Mediation Council, New York, NY - December 9, 2015

Bay Ridge Lawyer's Association - November 18, 2015

NY Judicial Institute Webinar on "New Maintenance Guidelines Legislation" - October 30, 2015

Erie County Matrimonial Judges and Lawyers, Buffalo, NY - October 7, 2015

Family Violence Task Force, Rochester, NY - October 6, 2015

Monroe County Matrimonial Judges and Lawyers, Rochester, NY - October 6, 2015

Westchester Women's Bar Association, White Plains, NY - September 30, 2015

Queens County Bar Association - September 16, 2015

Richmond County Matrimonial Judges and Lawyers Luncheon - September 7, 2015

New York State Bar Association - Family Law Section - Summer Meeting - July 11, 2015

Nassau County Bar Association - June 16, 2015

Visits to New York State Legislature - May 18-19 and June 20, 2015[66]

New York State Bar Association - Family Law Session Keynote Address - January 29, 2015

New York City Bar Association - January 15, 2015

[66] The following members of the Committee joined Justice Sunshine in the visit to the Legislature on May 19-20: Hon. Andrew Crecca, Emily Ruben, Esq. (now Hon. Emily Ruben), Steven Eisman, Esq., Elena Karabatos, Esq., Susan Kaufman, Esq., and Eric Tepper, Esq. Michelle Haskins, a member of the Working Group describe in Note 3 supra, also joined in the visit.

XIII. Subcommittees

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

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

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

LEGISLATION
Susan L. Bender, Reporter
Thomas R. Cassano
Hon. Andrew Crecca
Hon. Laura Drager
Steven J. Eisman (deceased)
Stephen J. Gassman
Hon. Ellen Gesmer
Hon. Sondra Miller
Michael A. Mosberg
Emily Ruben
Eric A. Tepper
Harriet Weinberger

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

XIV. Conclusion

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

January, 2016

Respectfully submitted,

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

Susan W. Kaufman, Esq. Counsel

XV. Appendices A- K to Report to Chief Administrative Judge Matrimonial Practice Advisory and Rules Committee

January, 2016

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A - Adopted Matrimonial Redaction and Confidentiality Rule Proposals OCA Packet
B - List of Proposed Maintenance/Child Support Worksheets and Calculators for Contested and Uncontested Divorce Cases effective 1/25/16
C - List of Proposed Uncontested Divorce Packet Forms Showing New and Revised Forms as of 1/25/16
D - FCARC Proposal on Duration of Spousal Support Orders and Biennial Adjustment of the "Income Cap" in the Maintenance Guidelines Law
E - 2006 A. 10447 Bill Memo
F - Form of Proposed Revised Net Worth Statement
G - Form of Proposed Application for Counsel Fees by Unrepresented Litigant
H - OCA Court Statistics on Divorce Filings Full Year 2011, 2012, 2013 and 2014
I - Form of Proposed Statewide Order to Expedite Changes in Venue
J - Form of Proposed Supplemental Preliminary Conference Order/Stipulation Where Grounds are Resolved
K - Former Matrimonial Practice Advisory Committee Rule Proposal dated October 24, 2012

APPENDIX A

STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2150
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

MEMORANDUM

July 15, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed amendment of 22 NYCRR § 202.5(e), relating to inclusion in definition of confidential personal information of documents, testimony or evidence protected as confidential or sealed in matrimonial actions under DRL § 235 which are referenced in other civil actions; and amendment of 22 NYCRR § 202.16, relating to redaction of certain personal information from written decisions in contested matrimonial matters.

==========

Effective January 1, 2015, redaction of confidential personal information (CPI) is required in papers filed in civil matters in the Supreme and County Courts (22 NYCRR § 202.5[e]) (Exh. A). The Matrimonial Practice Advisory and Rules Committee has recommended an amendment of section 202.5(e) that would expand the definition of CPI to include any documents or sealed testimony or evidence in a matrimonial action protected as confidential under Domestic Relations Law § 235 and which are attached as exhibits or referenced in papers filed in any other civil action (Exh. B, p.1). According to the Committee, the amendment is intended to prevent public disclosure in a separate civil action of confidential information or testimony revealed in a matrimonial action (Id., pp. 4-5).

The Committee also recommends an amendment of the rules applicable to contested matrimonial actions (22 NYCRR § 202.16) to require the court to omit or redact certain personal information from written decisions (Exh. B, p. 3). Under the proposal, a court would be required to use the parties' initials rather than full names in written decisions involving sensitive issues such as allegations of domestic violence, abuse or neglect, juvenile delinquency or mental health issues, and to use the initials of children under the age of 18. Home addresses of parties and children would be subject to redaction by the court in written decisions as would dates of birth, except for year of birth. The court would have discretion to omit or redact information beyond that required by the rule. The proposal would not apply to judgments or orders entered by the court. The proposal would not require parties to redact personal information from papers submitted to the court for filing.

Persons wishing to comment on these proposals should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than September 10, 2015.**

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

EXHIBIT A

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend the Uniform Civil Rules of the Supreme and County Courts by adding a new section 202.5(e), relating to the omission or redaction of confidential personal information, to read as set forth below, effective January 1, 2015. Compliance with this rule shall be voluntary from January 1 through February 28, 2015, and mandatory thereafter.

§ 202.5 Papers Filed in Court

* * *

(e) Omission or Redaction of Confidential Personal Information.

(1) Except in a matrimonial action, or a proceeding in surrogate's court, or a proceeding pursuant to article 81 of the mental hygiene law, or as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the parties shall omit or redact confidential personal information in papers submitted to the court for filing. For purposes of this rule, confidential personal information ("CPI") means:

i. the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof;

ii. the date of an individual's birth, except the year thereof;

iii. the full name of an individual known to be a minor, except the minor's initials; and

iv. a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number, except the last four digits or letters thereof.

(2) The court sua sponte or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing CPI in accordance with the requirement of 22NYCRR §216.1 that any sealing be no broader than necessary to protect the CPI; for good cause permit the inclusion of CPI in papers; order a party to file an unredacted copy under seal for in camera review; or determine that information in a particular action is not confidential. The court shall consider the pro se status of any party in granting relief pursuant to this provision.

(3) Where a person submitting a paper to a court for filing believes in good faith that the inclusion of the full confidential personal information described in subparagraphs (i) to (iv) of

paragraph (1) of this subdivision is material and necessary to the adjudication of the action or proceeding before the court, he or she may apply to the court for leave to serve and file together with a paper in which such information has been set forth in abbreviated form a confidential affidavit or affirmation setting forth the same information in unabbreviated form, appropriately referenced to the page or pages of the paper at which the abbreviated form appears.

(4) The redaction requirement does not apply to the last four digits of the relevant account numbers, if any, in an action arising out of a consumer credit transaction, as defined in subdivision (f) of section one hundred five of the civil practice law and rules. In the event the defendant appears in such an action and denies responsibility for the identified account, the plaintiff may without leave of court amend his or her pleading to add full account or CPI by (i) submitting such amended paper to the court on written notice to defendant for in camera review or (ii) filing such full account or other CPI under seal in accordance with rules promulgated by the chief administrator of the courts.

* * *

Chief Administrative Judge of the Courts

Dated: November 6, 2014

AO/198/14

EXHIBIT B

To John McConnell, OCA Counsel

From Susan Kaufman, Counsel to Matrimonial Practice Advisory and Rules Committee

cc: Hon. Jeffrey Sunshine, Chair, Matrimonial Practice Advisory and Rules Committee

re: Matrimonial Practice Advisory and Rules Committee Redaction Rule Proposals

Date: June 8, 2015

Please see two rule proposal recommendations to the Chief Administrative Judge from the Matrimonial Practice Advisory and Rules Committee concerning Redaction and Confidentiality in matrimonial actions followed by the Justification for both proposals.

First Rule Proposal Amendment

22 NYCRR section 202.5(e) is hereby amended to read as follows:

(e) Omission or Redaction of Confidential Personal Information.

(1) Except in a matrimonial action, or a proceeding in surrogate's court, or a proceeding pursuant to article 81 of the mental hygiene law, or as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the parties shall omit or redact confidential personal information in papers submitted to the court for filing. For purposes of this rule, confidential personal information ("CPI") means:

i. the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof;

ii. the date of an individual's birth, except the year thereof;

iii. the full name of an individual known to be a minor, except the minor's initials; and

iv. a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number, except the last four digits or letters thereof.

v. any of the documents or testimony in a matrimonial action protected by Domestic Relations Law section 235 or evidence sealed by the court in such an action which are attached as exhibits or referenced in the papers filed in any other civil action. For purposes of this rule, a matrimonial action shall mean: an action to annul a marriage or declare the nullity of a void marriage, an action or agreement for a separation, an action for a divorce, or an action or proceeding for custody, visitation, writ of habeus corpus, child support, maintenance or paternity.

(2) The court **sua sponte** or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing CPI in accordance with the requirement of 22NYCRR §216.1

that any sealing be no broader than necessary to protect the CPI; for good cause permit the inclusion of CPI in papers; order a party to file an unredacted copy under seal for in camera review; or determine that information in a particular action is not confidential. The court shall consider the **pro se** status of any party in granting relief pursuant to this provision.

(3) Where a person submitting a paper to a court for filing believes in good faith that the inclusion of the full confidential personal information described in subparagraphs (i) to (v) of paragraph (1) of this subdivision is material and necessary to the adjudication of the action or proceeding before the court, he or she may apply to the court for leave to serve and file together with a paper in which such information has been set forth in abbreviated form a confidential affidavit or affirmation setting forth the same information in unabbreviated form, appropriately referenced to the page or pages of the paper at which the abbreviated form appears.

(4) The redaction requirement does not apply to the last four digits of the relevant account numbers, if any, in an action arising out of a consumer credit transaction, as defined in subdivision (f) of section one hundred five of the civil practice law and rules. In the event the defendant appears in such an action and denies responsibility for the identified account, the plaintiff may without leave of court amend his or her pleading to add full account or CPI by (i) submitting such amended paper to the court on written notice to defendant for in camera review or (ii) filing such full account or other CPI under seal in accordance with rules promulgated by the chief administrator of the courts.

Second Rule Proposal (new):

22NYCRR section 202.16 is hereby amended by adding a new subdivision (m) as follows:

(m) Omission or Redaction of Confidential Personal Information from Matrimonial Decisions

(1) Except as otherwise provided by rule or law or court order, and whether or not a sealing order is or has been sought, the court shall redact the following confidential personal information in issuing written decisions in matrimonial matters subject to this section.

i. the taxpayer identification number of an individual or an entity, including a social security number, an employer identification number, and an individual taxpayer identification number, except the last four digits thereof;

ii. the actual home address of the parties to the matrimonial action and their children;

iii. the full name of an individual known to be a minor under the age of eighteen (18) years of age, except the minor's initials;

iv. the date of an individual's birth (including the date of birth of minor children), except the year of birth;

v. the full name of either party where there are allegations of domestic violence, neglect, abuse, juvenile delinquency or mental health issues, except the party's initials

vi. a financial account number, including a credit and/or debit card number, a bank account number, an investment account number, and/or an insurance account number (including a health insurance account number), except the last four digits or letters thereof.

(2) Nothing herein shall require parties to omit or redact personal confidential information as described herein or 22NYCRR § 202.5(e) in papers submitted to the court for filing; nor shall this rule apply to judgments or orders entered by the court.

(3) Nothing herein shall prevent the court from omitting or redacting more personal confidential information from a written decision than is required by this rule, either on motion or sua sponte.

Justification:

Recently, the Administrative Board of the Courts approved 22NYCRR section 202.5(e) requiring attorneys to redact certain confidential information from court filings in Supreme and County Court in all cases with certain exceptions. One such exception was for Matrimonial actions. In an article published in the *New York Law Journal* on December 2, 2014, Peter E. Bronstein questioned the wisdom of exempting matrimonial actions from the section 202.5(e), saying: *"It is time that we expand the protection of parties' privacy in matrimonial actions beyond the duty of the clerks to seal the files. It is impossible to get divorced without commencing a court proceeding. Since only a judge can pronounce a divorce and the rules require extensive financial disclosure, the court should also undertake to preserve the privacy of that material."* Mr. Bronstein notes that even when parties' initials are used in the New York Law Journal, the New York State Law Reports will include the parties' full names when the decision is published. Indeed, we note that even when the trial Judge uses initials rather than names to protect identity, the Appellate Division may use the full names on appeal. Mr. Bronstein also notes that the powers of search engines such as "google" once full names of the parties are revealed compounded by the ability of parties to a divorce to e-file papers revealing details of the divorce action in civil actions without the protections of DRL§ 235 as occurred recently in *Kelly v. Kelly.*

While we agree that some additional protections for matrimonial decisions are necessary in this internet age, we do not believe that a blanket rule such as section 202.5 (e) should apply to all papers filed in matrimonial actions because some of the information such as complete social security numbers, addresses, birthdates, employers' name, and names and social security numbers and birthdates of children are required by third party agencies of state government, which need the identifying information to enforce child support and maintenance laws in conformity with D.R.L. §240-a and D.R.L. §240-b. DRL §235 already protects as confidential most of the documents in the matrimonial action.

Moreover, the trial judge may need to know other information potentially damaging to the family to make a reasoned decision on custody, visitation, support, maintenance, counsel fees, or equitable distribution and to explain that decision as required by various provisions in the Domestic Relations Law, as Mr. Bronstein points out. Indeed, when someone goes to court, they expose their personal information to public scrutiny. There must be a balancing between the right to an open, public proceeding on the one hand, which will ensure fairness to the opposing party, and the protection of children's identity and the identification of financial information that could lead to theft. To impose too broad a redaction rule in matrimonial actions would hamper

the ability of judges to use their discretion in applying the matrimonial laws of this state. As stated in a recent First Department Decision upholding the trial court's decision not to allow the plaintiff to proceed anonymously, the Appellate Division stated:" The trial court did not improvidently exercise its discretion in finding that plaintiff's privacy concerns were outweighed by, inter alia, the fact that the action was brought against an individual defendant, relates to his private life and reputation, and puts plaintiff's credibility at issue (*see Doe v Shakur*, 164 FRD 359, 361 n 1 [SD NY 1996]; *cf. Doe v Szul Jewelry, Inc.*, 2008 NY Slip Op 31382[U] [Sup Ct, NY County 2008]), and under *488 mined by her reporting her story to the media before serving defendant with process (*see Doe v Kidd*, 19 Misc 3d 782, 789 [Sup Ct, NY County 2008]). "[C]laims of public humiliation and embarrassment . . . are not **2 sufficient grounds for allowing a plaintiff . . . to proceed anonymously" (*Doe v Shakur*, 164 FRD at 362; *Doe v New York Univ.*, 6 Misc 3d 866, 879 [Sup Ct, NY County 2004]; *cf. Doe No. 2 v Kolko*, 242 FRD 193 [ED NY 2006]) (*See Anonymous v. Lerner*, 124 A.D.3d 487, 487-88, 998 N.Y.S.2d 619 (1st Dept. 2015).

The Matrimonial Practice Advisory and Rules Committee recommends a two pronged approach to better protect confidential information in matrimonial actions. First, we propose an amendment to 22NYCRR §202.5(e) to prevent the information or testimony revealed in an action for divorce, an action or agreement for a separation, or an action or proceeding for custody, visitation, writ of habeus corpus, child support, maintenance or paternity, otherwise protected under DRL§ 235, or evidence sealed by the court in such an action, from being revealed in another civil action as happened in the *Kelly v. Kelly* proceeding discussed by Mr. Bronstein. The proposed rule amendment, like 22 NYCRR 202.5(e), puts the onus on parties submitting papers for filing to prune and redact, rather than on the Court and County Clerks. The proposed amendment would add a new subsection (v) to the items included in the definition of "confidential personal information" which the parties must redact under 22NYCRR §202.5(e)(1). At the same time, 22NYCRR §202.5(e)(3) would be amended to apply to the new subsection (v).

Second, we recommend a limited rule on redaction of personal information from written decisions in matrimonial actions as heretofore delineated. Our rule proposal would be added to 22NYCRR§ 202.16 containing the matrimonial rules applicable to contested matrimonial actions where judicial determinations are to be made. The rule would not apply to uncontested divorce actions where written decisions would be unlikely, and would not require parties to omit or redact personal confidential information in papers submitted to the court for filing. Nor would the rule apply to judgments or orders entered by the court. Thus required information would be available for support enforcement and other necessary government functions to carry out state and federal laws. And while the rule would require parties' initials rather than full names to be used in all written decisions involving certain types of sensitive issues where there are allegations of domestic violence, neglect, abuse, juvenile delinquency or mental health issues, the rule would not require parties' names to be redacted in other cases where embarrassing or

harmful information is less likely. Similarly initials rather than full names of children would be required only up to the age of majority, but not up to the age of 21. The actual home address of the parties would be redacted under our rule proposal, but employers' names and addresses could be revealed, as could birth years of the parties and their children in the interest of allowing the full facts of the case to come out, unless the Judge exercises his/her discretion as expressly authorized under the proposal to redact more in the written decision than is required by the rule under the circumstances of the case, either on motion or sua sponte.

APPENDIX B

APPENDIX B

LIST OF PROPOSED MAINTENANCE/CHILD SUPPORT WORKSHEETS AND CALCULATORS FOR CONTESTED AND UNCONTESTED DIVORCE CASES

EFFECTIVE 1/25/16

Worksheets

Worksheets to calculate guideline amounts of maintenance and child support. Optional tools to help with calculations are below.

Uncontested Divorce Worksheets (Part of Uncontested Divorce Packets)

Form UD-8(1) Annual Income Worksheet

Form UD-8(2) Maintenance Guidelines Worksheet

Form UD-8(3) Child Support Worksheet

Contested Divorce Worksheets

Temporary Maintenance Worksheet (for actions commenced before 10/25)

Temporary Maintenance Worksheet (for actions commenced on or after 10/25)

Post-Divorce Maintenance/Child Support Worksheet

Calculators

Calculator tools for completing Maintenance/Child Support Forms –

Post-Divorce Maintenance/Child Support Online Calculator

- complete using a web browser
- easily refreshed
- no software required
- work cannot be saved

Post-Divorce Maintenance/Child Support Downloadable Excel Calculator

- Need Microsoft Excel software
- download file to computer
- can save file for later use
- Printable

Temporary Maintenance Calculator: Fillable PDF form that can be saved

Calculator for actions commenced before 10/25

Calculator for actions commenced on or after 10/25

APPENDIX C

Proposed Rev. Forms Eff 1/25/16

THE PAPERS NEEDED TO OBTAIN AN UNCONTESTED DIVORCE IN NEW YORK STATE:

Notice of Automatic Orders

Notice of Guideline Maintenance for actions commenced on or after 1/25/16 eff. 1/25/16 NEW)

Notice Concerning Continuation of Health Care Coverage

1) Summons With Notice (Form UD-1) rev. 1/25/16 OR 1a) Summons (to be served with Verified Complaint) (Form UD-1a)

2) Verified Complaint (Form UD-2) rev. 1/25/16

3) Affidavit of Service (Form UD-3) rev. 1/25/16

4) Sworn Statement of Removal of Barriers to Remarriage (Form UD-4)
and Affidavit of Service (Form UD-4a)

5) Affirmation (Affidavit) of Regularity (Form UD-5) rev. 1/25/16

6) Affidavit of Plaintiff (Form UD-6) rev. 1/25/16

7) Affidavit of Defendant (Form UD-7) rev. 1/25/16

8(1)Annual Income Worksheet (Form UD-8(1) eff. 1/25/16 NEW

8(2) Maintenance Guidelines Worksheet (Form UD-8(2))for divorces commenced on or after 1/25/16 (NEW)

8(3)) Child Support Worksheet (Form UD-8-4)) eff. 1/25/16 NEW

8a) Support Collection Unit Information Sheet (Form UD-8a) rev. 1/25/16

8b) Qualified Medical Child Support Order ("QMCSO") (Form UD-8b)

9) Note of Issue (Form UD-9)

10) Findings of Fact/Conclusions of Law (Form UD-10) rev. 1/25/16

11) Judgment of Divorce (Form UD-11) rev. 1/25/16

12) Part 130 Certification (Form UD-12)

13) Request for Judicial Intervention("RJI") (Form UD-13) and Addendum (Form 840M)

14) Notice of Entry (Form UD-14)

15) Affidavit of Service of Judgment of Divorce (new) eff. 1/25/16 NEW

Certificate of Dissolution of Marriage

Self-Addressed and Stamped Postcard

UCS-111 (UCS Divorce and Child Support Summary Form) rev. 1/25/16

SUPPLEMENTAL APPENDIX OF FORMS

A. Income Withholding Order and Applying for Child Support Services

A-1 Application for Child Support Services*

A-2 Income Withholding Order form for Child Support and Combined Child and Spousal Support - LDSS-5037 (Non-IV-D IWO)

A-2A Income Withholding Order Form for Spousal Support only - LDSS-5038 (Spousal Support Only IWO)

(Important Note: LDSS-5037 and LDSS-5038 are the actual Forms)

A-2B Income Withholding for Support**:** General Information and Instructions for Issuing - LDSS-5039*

(*Important Note: Do not complete this form. Use it as a guide when filling out the actual Forms.)*

B. New York State Case Registry Filing Form with Instructions attached

C. Notice of Settlement

D. Poor Person Order

E. Affidavit in Support of Application to Proceed as a Poor Person

F. Affidavit of Service of Proposed Poor Person's Order (new) eff. 1/25/16 NEW

***available at** **http://www.nycourts.gov/divorce/divorce_withchildrenunder21.shtml**

Index to New Proposed Uncontested Divorce Forms Eff. 1/25/16

Notice of Guideline Maintenance [New]
Annual Income Worksheet (Form UD-8(1) [New]
Maintenance Guidelines Worksheet (Form UD-8(2)
Child Support Worksheet (Form UD-8-3)[New]
Affidavit of Service by Mail of JOD (Form UD-15) [New}

Supplemental Appendix of Forms:
F. Affidavit of Service of Proposed Poor Person's Order [New]

Index to Proposed Uncontested Divorce Forms Eff. /25/16

Summons With Notice (Form UD-1) Eff. 1/25/16
Verified Complaint (Form UD-2) Eff. 1/25/16
Affidavit of Service (Form UD-3) Eff. 1/25/16
Affirmation (Affidavit) of Regularity (Form UD-5) Eff. 1/25/16
Affidavit of Plaintiff (Form UD-6) Eff. 1/25/16
Affidavit of Defendant (Form UD-7) Eff. 1/25/16
Support Collection Unit Information Sheet (Form UD-8a) Eff. 1/25/16
Findings of Fact/Conclusions of Law (Form UD-10) Eff. 1/25/16
Judgment of Divorce (Form UD-11) Eff. 1/25/16
UCS-111 (UCS Divorce and Child Support Summary Form) Eff. 1/25/16

APPENDIX D

Calculation of the spousal maintenance "cap" and duration of spousal maintenance orders in Family Court

The new spousal maintenance guidelines statute [Laws of 2015, ch. 269] is silent with respect to the duration of Family Court spousal support orders, while at the same time allowing the Supreme Court to set an end-date to temporary maintenance. The omission of a duration provision appears to be based on an assumption that Family Court spousal support orders are short-term and are quickly superseded by Supreme Court maintenance orders. For many Family Court litigants, this is simply not the case. Many Family Court litigants have scant resources to follow through on a divorce. Hiring an attorney is simply not an option for many of the litigants and even if they file on their own, there are significant filing fees. Even with the current no-fault grounds, pro se divorces are still too difficult for many people and many litigants oppose divorce on religious or cultural grounds. There is no justification for distinguishing between family and Suprteme Court with respect to the authority to set a duration for an order of spousal support.

Significantly, many spousal support petitions are filed in Family Court because local departments of social services require them to be filed in order for the petitioner to qualify for public assistance when no children are involved. These are usually disposed of quickly by the Family Court when the respondent spouses demonstrate that they have little ability to pay spousal support. Although they are currently empowered to do so (SSL §§ 102, 111-b(2)), the local departments of social services do not as a rule appear and prosecute the cases. Even when they file against spouses for child support, they do not generally seek spousal support awards. The creation of spousal support standards may very well encourage local departments to appear on behalf of recipients and aggressively seek spousal support. As counties seek to reduce their public assistance burden, they are increasingly likely to seek spousal support orders against litigants who often have little means or ability to follow through with a divorce.

The result will be that support orders which would have reasonable time limits in Supreme Court, based upon the length of the marriage, will be infinite in length if issued by the Family Court. Since there is no provision in the deviation grounds to consider the length of the marriage, the lower earning spouse in a one-month marriage would be granted non-durational support in Family Court at the same level as a spouse in a 20-year marriage.

The Family Court Advisory and Rules Committee is submitting a proposal to address this anomaly in the spousal maintenance statute by authorizing jurists in Family Court to specify a duration in its orders of spousal maintenance. Orders would be presumed not to be time-limited unless so specified, but the Family Court, in its discretion, as in Supreme Court, would be able to set a duration with consideration of the length of the marriage. Additionally, the proposal would amend Family Court Act §412(10) and Domestic Relations Law §236B(5-a)(b)(5) and §236B(6)(b)(4) to fix the date of the biennial adjustment of the spousal maintenance "cap" at March 1st, rather than January 31st, and would commence the adjustment process in 2018, rather than 2016. This would conform the adjustment date to that already in effect for the child support income "cap," self-support reserve and poverty level.

Proposal:

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

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

Section 1. Paragraph (d) of subdivision 2 and subdivision 10 of section four hundred twelve of the family court act, as amended by chapter 269 of the laws of 2015, is amended to read as follows:

2. * * *

(d) "income cap" shall mean up to and including one hundred seventy-five thousand dollars of the payor's annual income; provided, however, beginning [January thirty-first] March 1st, two thousand [sixteen] eighteen and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

10. (a) Unless otherwise specified, a spousal support order shall be non-durational. The court may in its discretion set the duration of spousal support by considering the length of the marriage.

(b) The court may modify an order of spousal support, including its duration, upon a showing of a substantial change in circumstances. Unless so modified, any order for spousal support issued pursuant to this section shall continue until the earliest to occur of the following:[a.](i) a written stipulation or agreement between the parties;

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

[c.](iii) issuance of a judgment of divorce or other order in a matrimonial proceeding:

[d.](iv) the death of either party.

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

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

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

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

§4. This act shall take effect immediately.

APPENDIX E

A10447 Summary:

BILL NO A10447

SAME AS SAME AS

SPONSOR Weinstein (MS)

COSPNSR Bradley

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

Amd S35, Judy L

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

A10447 Actions:

BILL NO A10447

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

A10447 Votes:

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

A10447 Memo:

BILL NUMBER: A10447

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

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

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

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

LEGISLATIVE HISTORY : New Bill, 2006.

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

EFFECTIVE DATE : Immediately.

A10447 Text:

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

10447

I N A S S E M B L Y

March 24, 2006

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

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

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

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

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

S 2. This act shall take effect immediately.

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

LBD155

APPENDIX F

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

Plaintiff,

STATEMENT OF NET WORTH DATED:

- against -

Index No.

Date Action Commenced:

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

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

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

the _____ herein, being duly sworn, deposes and says that, **subject to the penalties of perjury**, the following is an accurate statement as of **, 2015**, of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), **statement of income from all sources** and statement of assets transferred of whatsoever kind and nature and wherever situated and statement of expenses:

I. FAMILY DATA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

		c. Location	
		d. Original price or value	
		e. Source of funds to acquire	
		f. Amount of lien unpaid	
		g. Value as of date of commencement	
		h. Estimate Current Value	
		i. Value as of date of commencement	
		7.2 a. Description	
		b. Title Owner	
		c. Location	
		d. Original price or value	
		e. Source of funds to acquire	
		f. Amount of lien unpaid	
		g. Value as of date of commencement	
		h. Estimate Current Value	
		i. Value as of date of commencement	
		TOTAL:	$
		IF YOU HAVE NO OTHER ASSETS OR BUSINESS INTERESTS, GO TO THE LIABILITIES SECTION ON PAGE 16	
F.	8.	Value Interest in any Business	
		8.1 a. Name and Address of Business	
		b. Type of Business (corporate, partnership, sole proprietorship or other)	
		c. Your percentage of interest	
		d. Date of acquisition	
		e. Original price or value	

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

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

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

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

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

		h. Amount of debt as of date of commencement	
		i. Amount of current debt	
		TOTAL: Mortgages Payable	
D.	4.	Home Equity and Other Lines of Credit	
		4.1 a. Name and address of mortgagee	
		b. Address of property mortgaged	
		c. Mortgagor(s)	
		d. Original debt	
		e. Date of incurring debt	
		f. Monthly or other periodic payment	
		g. Maturity date	
		h. Amount of current debt	
		i. Current equity	
E.	6.	Notes Payable	
		6.1 a. Name and address of noteholder	
		b. Debtor	
		c. Amount of original debt	
		d. Date of incurring debt	
		e. Purpose	
		f. Monthly or other periodic payment	
		g. Amount of debt as of date of commencement	
		h. Amount of current debt	
		TOTAL: Notes Payable	$
F.	7.	Brokers Margin Accounts	
		7.1 a. Name and address of broker	
		b. Amount of original debt	
		c. Date of incurring debt	

		d. Purpose	
		e. Monthly or other periodic payment	
		f. Amount of debt as of date of commencement	
		g. Amount of current debt	
		TOTAL: Broker's Margin Accounts	
G.	8.	Taxes Payable	
		8.1 a. Description of Tax	
		b. Amount of Tax	
		c. Date Due	
		TOTAL: Taxes Payable	$
H.	9.	Loans on Life Insurance Policies	
		9.1 a. Name and address of insurer	
		b. Amount of loan	
		c. Date incurred	
		d. Purpose	
		e. Name of Borrower	
		f. Monthly or other periodic payment	
		g. Amount of debt as of date of commencement	
		h. Amount of current debt	
		TOTAL: Loans on Life Insurance	
I.	10.	Installment accounts payable (security agreements, chattel mortgages)	
		10.1 a. Name and address of creditor	
		b. Debtor	
		c. Amount of original debt	
		d. Date of incurring debt	
		e. Purpose	

		f. Monthly or other periodic payment	
		g. Amount of debt as of date of commencement	
		h. Amount of current debt	
		TOTAL: Installment Accounts	$
J.	11.	Other Liabilities	
		11.1 a. Description	
		b. Name and address of creditor	
		c. Debtor	
		d. Original amount of debt	
		e. Date incurred	
		f. Purpose	
		g. Monthly or other periodic payment	
		h. Amount of debt as of date of commencement	
		i. Amount of current debt	
		11.2 a. Description	
		b. Name and address of creditor	
		c. Debtor	
		d. Original amount of debt	
		e. Date incurred	
		f. Purpose	
		g. Monthly or other periodic payment	
		h. Amount of debt as of date of commencement	
		i. Amount of current debt	
		TOTAL: Other Liabilities	$
		TOTAL LIABILITIES	$

VI. ASSETS TRANSFERRED

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

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

VII. LEGAL & EXPERT FEES

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

_____

_____

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

_____

_____

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

_____

Sworn to before me this
day of _____, 2015

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

_____
Notary Public

Attorney Certification:

_____

APPENDIX G

(This section will be filled in by the Court)
At IAS Term Part ____ of the Supreme Court of the State of New York, held in and for the County of _____at the Courthouse located at _____, New York on the ____ day of _____,20___.

PRESENT: HON. _____
Justice of the Supreme Court

----------X

_____
[*Fill in Name*] Plaintiff,

-against-

_____
[*Fill in Name*] Defendant.

----------X

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

Index No. _____

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

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

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

_____

_____

_____.

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

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

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

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

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

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

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

ENTER

_____
HON.
Supreme Court Justice

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

_____
[*Fill in Name*] Plaintiff,

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

vs.

Index No._____

_____
[*Fill in Name*] Defendant.

----------X

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

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

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

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

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

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

_____
(Please list names and ages of children)

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

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

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

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

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

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

Check One:

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

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

8. Applications for Prior Relief:

Check One:

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

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

_____

_____

_____

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

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

_____
[Print Your Name Here]

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

_____
[NOTARY PUBLIC]

APPENDIX H

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

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

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

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

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

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

APPENDIX I

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

P R E S E N T:

_____,
Justice.

- -x

Index No.:

Plaintiff,

EXPEDITED
CHANGE OF VENUE ORDER
FOR A
MATRIMONIAL ACTION

- against -

Defendant.

- -x

Upon ☐ motion or ☐ consent, it is hereby,

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

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

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

latter clerk pursuant to CPLR §511 (d)

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

This shall constitute the order of the court.

E N T E R Forthwith,

_____

J. S. C.

APPENDIX J

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

Plaintiff,

- against -

Index No.:_____

Defendant.
----------X **Part No.:_____**

SUPPLEMENTAL PRELIMINARY CONFERENCE STIPULATION/ORDER WHERE GROUNDS ARE RESOLVED

PRESIDING:_____
Justice of the Supreme Court

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

The parties further agree:

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

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

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

Dated:

SO ORDERED:

_____

Justice of the Supreme Court

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

On the _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

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

On the _____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

APPENDIX K

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

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

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

October 24, 2012

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

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

Dear Judge Prudenti:

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

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

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

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

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

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

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

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

Very truly yours,

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

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

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

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

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

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

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

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

----------X

Plaintiff, **Index No.:_____**

- against -

AFFIRMATION OF COUNSEL REGARDING FORENSIC REPORT

Defendant.

----------X

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

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

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

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

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

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

Dated: _____, New York
_____, 2012

_____
Attorney's Signature

_____
(Please Print Name)

EXHIBIT B

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

----------X

,

Plaintiff, **Index No.**

- against -

AFFIDAVIT
REGARDING
,
Defendant. **FORENSIC REPORTS**

----------X

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

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

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

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

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

_____

Sworn to or affirmed before me

on _____, 2012

_____

Notary Public

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

----------X

Plaintiff, **Index No.:_____**

- against -

AFFIDAVIT REGARDING

Defendant. **FORENSIC REPORT**

----------X

STATE OF NEW YORK)

ss:

COUNTY OF _____)

I, _____, swear or affirm as follows:

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

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

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

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

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

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

_____

Signature

_____

(Please Print Name)

Sworn to before me
the ____ day of_____, 2012

_____

Notary Public