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

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

January 2023

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Introduction

The Matrimonial Practice Advisory and Rules Committee is one of the standing advisory committees established by the Chief Administrative Judge pursuant to section 212(1) (q) of the Judiciary Law, consisting of judges and attorneys from around the State. The Committee annually recommends to the Chief Administrative Judge legislative proposals in the field of matrimonial law to be considered for the Chief Administrative Judge's Legislative Program. These proposals are based on the Committee's observations and studies, review of case law and legislation, and suggestions received from the bench and bar. In addition, the Committee provides its comments and recommendations to the Chief Administrative Judge on pending legislative proposals concerning matrimonial law. The Committee also assesses existing court rules and court forms and advises the Chief Administrative Judge on the need for additional rules and forms, and on the development of practices to assist judges, litigants and attorneys in the timely and productive management of matrimonial matters. The Committee also assists the New York State Judicial Institute (established pursuant to section 219-a of the Judiciary Law) with providing legal education for judges and court attorneys handling matrimonial matters. Major matrimonial legislative and rule reforms recommended by the Committee from 2015 through 2022, were approved by the Chief Administrative Judge and in turn were successfully adopted by the Legislature or by administrative order of the Chief Administrative Judge after consultation with the Administrative Board of the Courts. "The cumulative effect of these changes continues to increase the fair administration of justice in matrimonial cases."[1]

In 2020 and again in 2021, the court system had to confront the demands of operating in the midst of covid-19, the worst pandemic faced by New York and the country in a century, and quickly found innovative new ways to provide access to justice during covid-19. Beginning in March 2020, when former Governor Cuomo declared a state of emergency, the Committee concentrated their efforts on assisting the court system under the auspices of Judge Sunshine as Statewide Coordinating Judge for Matrimonial Cases, with the development of a virtual justice system while simultaneously trying to address the needs of those lacking the ability or the funds to access the judicial system virtually. The heroic efforts of the staff of the Division of Technology of the Office of Court Administration were essential in helping to accomplish this. A great step forward in 2020 was the expansion of the NYSCEF system to accommodate new electronic filings of matrimonial cases with exceptions for self-represented litigants and attorneys lacking technology skills. During 2021, as the courts gradually opened up to in person proceedings where possible, NYSCEF was an invaluable tool, allowing a safe and efficient method of filing and uploading documents. We are grateful for the invaluable assistance of Jeffrey Carucci, recently retired NYS Courts Director of E-Filing, in promoting this expansion from 53 counties for which e-filing of matrimonial actions on a consensual basis was first available in May 2020 to 61 of the State's 62 counties as of September 28, 2021.[2]

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

[2] See A/O 282/21 dated September 28, 2021 available at. AO.282.21.pdf (state.ny.us) Thanks to Jeffrey Carucci, recently retired Director of E-Filing, for supplying these statistics.

During 2020, the Committee re-examined its legislative and rule proposals to identify those proposals with special covid related significance and to develop new proposals to deal with future emergencies such as covid. During 2021, the Committee continued to view its proposals in this fashion,

In 2022, it became possible to focus on a return to the Courthouse as the Omicron variant coupled with greater vaccination rates posed a much less serious threat. On September 14, 2022, a memo was sent by Nancy Barry, Chief of Operations, and Justin Barry, Chief of Administration, to all UCS Judges and Non-Judicial Personnel announcing that effective September 15, 2022,[3] masks would no longer be required in a Unified Court System facility unless there was a return from isolation or exposure to someone with Covid-19. While the Committee still recommends its proposals dealing with future emergencies should they arise, we no longer believe it necessary for us to focus on proposals with special covid significance. In this 2023 report, we therefore list them, along with our other previously endorsed proposals in this year's report without distinguishing which proposals have covid related significance***, but focusing instead on which proposals will best serve the fair and efficient administration of justice in matrimonial cases as our major priority. These include our legislative proposal for divorce venue based on residence, a legislative proposal for mandatory electronic filing in matrimonial cases with exceptions for attorneys who lack technical abilities and for self-represented litigants, and support for an increase in fees for Assigned Counsel and Attorneys for Children***

We will also describe in this report our other efforts to improve the divorce process in New York State through collaboration of the Committee with the Office of the Statewide Judge for Matrimonial Cases and the Committee, including assistance with the Presumptive Early ADR Initiative, simplification of the Uncontested Divorce process, and other ongoing initiatives as will be outlined in detail in this report.

[3] See Letter dated September 14, 2022 from Nancy Barry, Chief of Operations, and Justin Barry, Chief of Administration attached as Appendix "B to this report."

II. Statewide Coordinating Judge for Matrimonial Cases

On June 1, 2018, the Chief Administrative Judge sent a Memorandum to Administrative Judges announcing the appointment of Hon. Jeffrey Sunshine as Statewide Coordinating Judge for Matrimonial Cases.[4] Since then, Judge Sunshine, in coordination with the Committee, has undertaken a number of statewide matrimonial initiatives to improve the fair and efficient administration of justice in matrimonial cases.

A. Covid-19 and the Return to the Courthouse

1. History of Expansion of NYSCEF for Matrimonial Cases During Covid

As Statewide Coordinating Judge for Matrimonial Cases, Judge Sunshine advised the Chief Administrative Judge, the Deputy Chief Administrative Judges, and the Administrative Judges on the court system's response to the pandemic for matrimonial cases after consulting with the members of the matrimonial bar, including officers of the New York State Bar Association's Family Law Section, New York Chapter of the American Academy of Matrimonial Lawyers, and WBASNY's Matrimonial and Family Law Committee Chairs. He also met with the matrimonial judges and the Administrative Judges in each Judicial District at the beginning of the pandemic and continues to meet with the Judges on a District by District basis.

When the covid pandemic began, paper filings were prohibited for non-essential actions because of safety concerns, and matrimonial actions were initially not deemed one of the essential case types. In late May 2020, the Chief Administrative Judge announced that filings of new non-essential matters including divorce would commence. This took place right after Memorial Day through e-filing in those counties that already have e-filing for other civil matters, and through paper filings and delivery of documents through use of the new Unified Court System's Electronic Document Delivery System (EDDS) in counties where the NYSCEF system is unavailable.[5] Administrative Order 111-20 dated May 15, 2020 brought counties already on the NYSCEF system for civil matters into use of NYSCEF in matrimonial actions, a significant development.[6] Since issuance of Administrative Order 111-20, additional counties were added by subsequent Administrative Orders. In all these Administrative Orders, the rights of unrepresented parties to file, serve and be served by paper rather than electronically are maintained.

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

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[4] See Letter of Appointment attached as Appendix "A" to this report.

[5] See Memo of Chief Administrative Judge to all Trial Court Judges and Justices dated May 20, 2020 attached to our 2022 report as Appendix "B." Our 2022 report to the Chief Administrative Judge is available at 2022-Matrimonial.pdf (nycourts.gov)

[6] See A/O /111/20 available at http://ww2.nycourts.gov/sites/default/files/document/files/2020-05/AO-111-20.pdf

On June 1, 2020, Administrative Order 116-20 became effective which contained rules for consensual and mandatory electronic filing in various case types in different counties on the NYSCEF system. Appendix B to said Administrative Order 116-20 contained rules for consensual e-filing in matrimonial cases in Supreme Court. Appendix B is extremely important because, among other things, it protects the privacy of documents filed electronically in matrimonial actions as required by DRL 235. It also prohibits forensic reports in custody matters and other matters involving children which often contain sensitive information from being filed electronically (which might present a risk of improper dissemination). Said Administrative Order has been updated in the ensuing months as to case types in different counties which may be searched easily by a link on the NYSCEF website.

When the Child Parent Security Act went into effect in February 2021, a memorandum was sent out by John McConnell (then OCA Executive Director, now retired) and Nancy Barry (OCA Director of Operations) after consultation with Judge Sunshine. The memorandum reminded Matrimonial Judges that the confidentiality and sealing provisions of the new law as well as those of DRL 235 must be complied with, and that the court files in such proceedings may only be viewed by the parties or their counsel.[7] The memorandum informed Judges about a new form Application for Anonymous Caption to allow applicants to seek a court order to request an anonymous caption in all publicly viewable court records regarding proceedings under the Child Parent Security Act in order to comply with the requirements of said Act.

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

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

On May 25, 2021, a revision to Appendix B attached as Appendix ”C” to this report was adopted by A/O 162/21, available at AO.162.21.pdf (state.ny.us). This expanded the use of NYSCEF to include "plenary actions for child support, custody or visitation, an order of protection or an application pursuant to the new Child Parent Security Act …”[8]. It also expand ed the privacy

[7] See Memorandum dated March 4, 2021 regarding confidentiality of filings under the Child Parent Security Act attached to our 2022 report as Appendix “B-2 .” Our 2022 report to the Chief Administrative Judge is available at 2022-Matrimonial.pdf (nycourts.gov)

[8] The new Child Parent Security Act was enacted as Chapter 56, L. 2020.

protections for documents filed in matrimonial actions by prohibiting certain types of information from being filed on NYSCEF in order to protect the parties and their children in proceedings involving children. The rules for consensual e-filing in matrimonial cases now provide as follows:

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

2. Expansion of NYSCEF to Include Filings of Uncontested Joint Divorce Pilot Program

During 2022, the Pilot Project on Joint Uncontested Divorce was reinstituted, having been put on hold during the pandemic because parties could not meet to agree and sign the necessary documents. However, the Pilot Project had been created before the expansion of NYSCEF to include matrimonial filings. During 2022, Judge Sunshine and his Counsel modified the forms for the Project to allow for NYSCEF filings, and they worked with NYSCEF staff to create menus to accept the Pilot Project forms for filing on NYSCEF in the five Counties where the Pilot Project is authorized.

3. Resumption of In-Court Proceedings and Development of Hybrid Model and Statement of Hon. Jeffrey Sunshine to the Commission to Reimagine the Future of the NYS Courts

As the Covid threat has diminished during 2022, in person proceedings have resumed. However experience has shown that in some circumstances virtual proceedings are still a useful tool. Indeed, the Commission to Reimagine the Future of the NYS Courts has been examining how the courts can best deliver justice as we return to in person proceedings.

Working in conjunction with NYSCEF staff and with input from the Committee, a pilot project was approved in early September 2020 using NYSCEF for the submission of evidence in matrimonial actions. After discussions with the local Administrative Judges, the following Matrimonial Parts were designated to participate in this pilot project: First, Second, Seventh, Ninth, and Thirteenth Judicial Districts.

On April 5, 2021, Nancy Barry, Chief of Operations, issued a memorandum stating that the pilot program designed by the NYSCEF Teams at the Department of Technology working in close coordination with Judge Sunshine and Jeffrey Carucci, had been expanded to all contested matrimonial actions filed through NYSCEF and might also be available in the future for matters not filed electronically. She also announced that it would now include a "Virtual Evidence Courtroom (VEC) module", by which documents can be submitted to the court and parties for trial use through a NYSCEF-based system in both fully remote and hybrid trial settings." [9]

On November 7, 2022, Judge Sunshine submitted written testimony to the Commission to Reimagine the Future of the NYS Courts in November, 2022 describing the technology, practices and

[9] See Memorandum from Nancy Barry, Chief of Operations, dated April 5, 2021 re Virtual Evidence Courtrooms in Matrimonial Cases attached as Appendix "C-1."

policies adopted in response to the covid-19 pandemic in matrimonial cases. Included in the Statement were certain legislative proposals of the Committee designed to improve technology and practices in response to covid-19. A copy of the Statement is attached to this report as Appendix "C-2"

IV. Collaboration of the Office of the Statewide Coordinating Judge for Matrimonial Cases With the Matrimonial Practice Advisory and Rules Committee

A. Harmonization of Matrimonial Rules with Revised Uniform Rules for Supreme and County Courts

1. Adoption of Revisions to Matrimonial Rules

In the spring of 2021, Judge Sunshine and his Counsel Susan Kaufman sent a memorandum to the Chief Administrative Judge summarizing the Committee's comments on Harmonization with the Matrimonial Rules of the newly revised Uniform Rules for Civil Courts adopted by A/O 270/20.[10] Thereafter, at the request of the Administrative Board of the Courts, the Committee that drafted the rules under the leadership of former PJ Scheinkman reconvened. Judge Scheinkman and Judge Sunshine met on a number of occasions and went through the rules and their concerns. On October 1, 2021, a Request for Public Comment by December 1st on proposed amendments to the general Uniform Rules was posted. Subsequently, on October 26, 2021, a Request for Public Comment emphasizing harmonization of the Uniform Rules with the Matrimonial Rules that our Committee and Justice Scheinkman's Committee had endorsed was also posted. After further discussions about the proposals by Judge Sunshine with former PJ Scheinkman, the Chief Administrative Judge signed Administrative Order 141/22 dated June 13, 2022 with the approval of the Administrative Board, which amended the Uniform Rules and revised the Matrimonial Rules harmonizing them with the Uniform Rules.(see AO-141-22.pdf (nycourts.gov). [11]

2. Revision of Preliminary Conference Order to Harmonize with the Revised Uniform Rules

In conjunction with A/O 141/22, the Chief Administrative Judge also signed a second Administrative Orders dated June 13, 2022 with the approval of the Administrative Board. A/O/142/22 adopted a revised Preliminary Conference Stipulation/Order-Contested Matrimonial Forms ("PC Order") for use in matrimonial matters effective July 1, 2022. The revised form (see Exhibit A to A/O/142/22) was posted on the Divorce Resources website under Statewide Official

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[10] A/O 270/20, which amended the Uniform Rules for the Supreme and County Courts, is available at AO-270-20.pdf (multiscreensite.com)

[11] The revisions to the Matrimonial Rules covered by A/O/141/22 relate to Rules 202.16 and 202.16-b. Rule 202.16(o) (which has been renumbered and was formerly Rule 202.16(m) concerning Omission or Redaction of Confidential Personal Information from Matrimonial Decisions) and Rule 202.16-a concerning Automatic Orders in Matrimonial Actions remain in effect and unchanged.

Said Administrative Order was revised to correct some typographical errors on July 25, 2022. (see AO 141a-22.pdf (nycourts.gov)

Forms at Divorce Forms | NYCOURTS.GOV effective July 1, 2022. The revisions in the PC Order are designed to implement the newly harmonized Matrimonial Rules into the form

3. Pilot Project Regarding Testimony by Affidavit on Direct on Consent of Parties In Custody Cases Not Involving Domestic Violence

Following the adoption of the new Supreme Court and Matrimonial Rules effective July 1, 2022, new objections were raised after the public comment period had expired to that portion of the new Matrimonial Rule 202.16(n) which prohibited use of testimony by affidavit on direct in cases involving domestic violence and custody, despite the fact many members in the Matrimonial Bar are opposed to testimony by affidavit in such cases. To resolve the issue, Judge Sunshine developed a very limited pilot project based in part upon the protocols of Hon. Douglas Hoffman, of New York County Supreme Court. Once it is approved by the Chief Administrative Judge, it is to be implemented in only one Part in each of the four Departments, excluding domestic violence and exclusive occupancy cases from the Pilot Project entirely. The Judges who will supervise the Pilot Project once it is approved will be Hon. Douglas Hoffman in the 1st J.D., Hon. Kim O'Connor in the 3rd J.D., Hon. Mary Slisz in the 8th J.D. and Hon. Robert Ondrovic in the 9th J.D. The Pilot Project is expected to commence in early 2023. A survey to developed by the OCA Research Department will be sent to litigants upon completion of a settlement or decision so that the Courts can assess satisfaction of litigants with use of affidavit testimony on direct examination in their cases.

B. Other Ongoing Projects and Responsibilities of the Office of the Statewide Coordinating Judge in Collaboration with the Committee

1. Assistance with Presumptive Early ADR Statewide Initiative in Matrimonial Cases

During 2023, the Committee and Judge Sunshine will make it a priority to assist Lisa Courtney, Statewide ADR Coordinator, in promoting the Presumptive Early ADR Initiative. The Initiative will include both private mediation and court sponsored mediation programs through virtual mediation, with implementation through the offices of Hon. Norman St. George Deputy Chief Administrative Judge for Courts outside NYC and Hon. Deborah Kaplan, Deputy Chief Administrative Judge for the Courts inside NYC. Along with Judge Sunshine, former Committee member Hon. Andrew Crecca, (now Administrative Judge for Suffolk County), and Committee member Elena Karabatos, Esq, are members of the Chief Judge's Advisory Committee on ADR, led by John S. Kiernan, and are actively promoting the concept of presumptive mediation and alternative dispute resolution in their local Judicial Districts.

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

In September, 2020, Statewide Suggested Matrimonial and Family Mediation Protocols to assist courts in setting up local programs, was approved by the Statewide Alternate Dispute Resolution Committee. Currently work is proceeding further on combined Matrimonial -Family Protocols.

In November, 2020 the Statewide ADR Office, with support from Judge Sunshine, received approval to convene family/ matrimonial/ DV-oriented/ADR stakeholders to develop screening tools and guidelines and trainings for mediators. In 2021, a project in coordination with the Judicial Institute and the Statewide ADR Coordinator, was developed to provide 24 hours of mediation training to 56 Judges in matrimonial Parts during 2022. Efforts were also made to increase staffing of ADR Coordinators. Administrative Order 119/22a was signed 5/11/22 adopting new intimate partner violence screening training for matrimonial and family court mediators who mediate matters for the Court pursuant to Part 146 of the Rules of the Chief Administrative Judge.

On February 3, 2022, the Administrative Board of the Courts requested Public Comment on a proposal by the Statewide Alternative Dispute Resolution ("ADR") Advisory Committee. Judge Sunshine reported to OCA Counsel that the Matrimonial Practice Advisory and Rules Committee supports the proposal. A revised proposal is presently under consideration.

ADR has proved to be an effective alternative to resolving certain matrimonial issues. As more and more ADR programs with different models are adopted in different parts of the State, efforts will proceed to train mediators and hire more staff.

2. Efforts to Promote Diversity In Matrimonial Practice - Planned Matrimonial Summit with NYC Bar Association Tentative April 17, 2023

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

Judge Sunshine appointed a Subcommittee on Diversity and Inclusion which met frequently during 2021 on ways to increase diversity in the matrimonial bar by coordinating with Bar Associations and Law Schools.[12] Based on the Subcommittee's recommendations, the Committee and Judge Sunshine did outreach to local and State Bar Associations on ways to increase diversity and inclusion in the Matrimonial Bar. Judge Sunshine made proposals to Bar Associations on behalf of the Committee to hold a Joint Summit on these issues in order to attract a more diverse pool of attorneys interested in pursuing careers in matrimonial practice and to encourage matrimonial firms to increase recruiting of attorneys of color.

Following a suggestion by Committee members Hon. Cheryl Joseph and La Tia Martin on behalf of the Diversity Subcommittee, Judge Sunshine has discussed plans to hold such a program in

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

the spring of 2023 for law students attending law schools inside and outside of New York City, recent law school graduates, and matrimonial law firms with the Matrimonial Law Committee of the New York City Bar Association in conjunction with Hon. Edwina Mendelson, Deputy Chief Administrative Judge and the Office for Justice Initiatives.

3. Gender Fairness in the New York Courts

On November 23, 2020, the Gender Fairness Survey conducted by the New York State Judicial Committee on Women in the Courts was released. The Survey is available at www.nycourts.gov/LegacyPDFS/IP/womeninthecourts/Gender-Survey-2020.pdf. The Committee continues to review the Survey and its recommendations in connection with ensuring gender fairness in matrimonial practice.

4. Efforts to Promote Awareness about Consensual Uncontested Divorce Pilot Project in Pilot Counties

During the first months after Judge Sunshine's appointment, he worked with a small working group of the Committee to develop the framework for a Consensual Divorce Program for Uncontested Divorces.

The project simplifies the uncontested divorce process for a great number of litigants, thereby increasing access to justice and court efficiency simultaneously.[13]

After a number of early drafts by the small working group of the Committee,[14] the pilot project was finalized by Counsel Susan Kaufman and Judge Sunshine with help from Sun Kim of the Division of Technology and was approved by the Administrative Board in September 2019. It was to be implemented in Kings, Ontario, Broome and Westchester Counties in early 2020. Unfortunately,

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

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

despite expectations that the pilot project would proceed swiftly, the pilot project was on pause during the pandemic until parties can be together to sign the documents.

In December 2021, with improvement of covid-19 metrics and gradual reopening of the courts, the pilot project resumed and was expanded to Queens.[15] In December, 2021, and again in February, 2022, Judge Sunshine advised Administrative Judges of the pilot counties of Kings, Queens, Ontario, Broome and Westchester of the resumption of the project, and that they would be receiving revised packages of forms for posting on their websites reflecting statutorily mandated changes in income caps and calculations pursuant to the Maintenance Guidelines and Child Support Standards Act. Printed copies of the revised form packages were also mailed to the pilot counties. In addition, NYSCEF was adapted to accommodate filings of the pilot forms.

Notwithstanding these efforts, it became clear by the summer of 2022 that participation in the Pilot Counties was low, and that efforts would need to be made to publicize the Project as an option in those counties.

On October 18, 2022, Judge Sunshine and his Counsel Susan Kaufman, co-presented a CLE to the Broome County Bar Association about the Project, and explained that many of the forms needed for an uncontested divorce would not be necessary for a Joint Uncontested Divorce in the Pilot Project. Similar presentations are planned with the Judicial Institute in 2023. It is hoped that these efforts will result in greater utilization of the forms and feedback from the Pilot Counties in 2023 so that the uncontested divorce process can be simplified.

5. Implementation of Reporting Requirements of Child Parent Security Act

The Child Parent Security Act (the "CPSA") took effect on February 15, 2021 (L. 2020, c. 56). On November 15, 2021 Judge Sunshine sent a memorandum advising Administrative Judges, District Executives, County Clerks, and NYC Chief Clerks about the new Child Parent Security Act's requirements about reporting parentage orders. On April 4, 2022, Judge Sunshine sent a subsequent memorandum reporting that the Office of Children and Family Services ("OCFS") had adopted a new Putative Father's Registry form for Court Determination of Parentage. He attached copy of the new Form LDSS-2726 (12/21) to his memo for use in reporting all parentage cases – paternity, assisted reproduction, and surrogacy as of April 4, 2022. Copies of both memoranda were sent to the County Clerks because the County Clerk as Clerk of the Court is required to send the forms on Supreme Court filings. If the filing is in Surrogate's or Family Court, the clerks of those courts, and not the County Clerks, send the reporting forms.

[15] The expansion to Queens had been approved in early September, 2021 by then Deputy Chief Administrative Judge for Courts inside New York City George Silver, as well as by the Chief Administrative Judge.

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

On behalf of his Office, Judge Sunshine's Counsel Susan Kaufman continues to coordinate with the New York State Office of Temporary Disability (OTDA) on matters involving child and spousal support, including revisions to Income Withholding Order ("IWO") forms currently used in child and spousal support cases in Supreme Court which are posted on the Divorce Resources Website. These revisions are promulgated from time to time by the New York State Office of Temporary and Disability Assistance (OTDA) in response to changes in the law imposed by the federal Office of Child Support Enforcement. The OTDA promulgated forms involving child support are required for use in NewYork State pursuant to CPLR §§ 5241 and 5242 and Social Services Law § 111-b(14) and are federally mandated.

In 2023, we hope to continue our discussions with the Director of Technology about a possible means to share child support applications with the Support Collection Unit (the "SCU,") without which the SCU is unable to provide support services – even though a court has expressly ordered that support be paid through the SCU in a secure manner. This idea was being explored further with the policy and information technology staff of OTDA and the OCA Division of Technology to see what is feasible. In the meantime, a short form Application for Child Support Services drafted by Judge Sunshine's Counsel has been posted on the Divorce Resources Website to make it easier for litigants to apply for child support services.

7. Efforts to Improve and Keep Updated Divorce Resources Website

The Divorce Resource Website on the public Internet website of the Court System is an important resource for litigant, attorneys and Judges. Throughout 2022, Judge Sunshine and his Counsel Susan Kaufman, have worked to improve the resources on the website and to keep it updated, including suggestions from the Committee, and will continue to do so in 2023. The following describes some of those efforts.

a) Revision of Divorce Forms to Reflect Statutorily Mandated Revisions in Calculations of Maintenance and Child Support

On March 1, 2022, Judge Sunshine's Counsel Susan Kaufman revised six of the Uncontested Divorce Forms and Instructions and three of the Contested Divorce Forms to reflect bi-annual adjustment of the maintenance and child support income caps along with changes in the Self Support Reserve and Federal Poverty Income Level for a single person. On alternate years, the income caps do not require adjustment. However, the Self Support Reserve and Federal Poverty Level, which also affect calculations of maintenance and child support, change annually on March 1st. Maintenance and Child Support Worksheets and Calculators for both uncontested and contested divorces were amended as of March 1, 2022 to reflect these changes, and will have to be amended again on March 1, 2023 to reflect the changes in the Self Support Reserve and Federal Poverty Level. The Maintenance and Child Support forms may be accessed for use by the general public on the Unified Court System's Divorce Resources website at http://www.nycourts.gov/divorce/MaintenanceChildSupportTools.shtml.

An important change to the Calculators, which was made by Counsel Susan Kaufman working with members of the OCA Department of Technology Office of Court Research in 2020 has made the Calculators much more useful. The new version, which was posted on the Divorce Resources website in early February 2020, allows litigants to calculate child support when maintenance is zero or an amount is agreed to by the parties different from the guideline amount of maintenance pursuant to the Maintenance Guidelines Act. This improvement in the Calculators makes it much more useful, not just for the Joint Divorce Uncontested Program, but for all divorces with children.

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

b) Additional Resources Added to Divorce Resources Website

Recent improvements have been made to the Court System's Divorce Resources Website at http://ww2.nycourts.gov/divorce/index.shtml which is maintained by Counsel Susan Kaufman,. A new category of resources was added to the Divorce Resources website for "Covid-19 Divorce Resources."

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

A new category for "Parentage Proceedings" was added to the website to reflect the new Child Parent Security Act (Chapter 56, L. 2020).

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

The Joint Divorce Pilot Forms were also posted on Divorce Resources at Uncontested Joint Divorce Pilot Project - Divorce Resources | NYCOURTS.GOV. The posting includes information as to which counties are currently authorized for use of the Pilot Forms.

Judge Sunshine and his Counsel and the Committee will continue their efforts to improve and update the Divorce Resources Website during 2023.

8. Efforts to Speed Processing of Divorce Cases

a) Top 20 Most Common Mistakes in Filling out and Filing the Uncontested Divorce Forms Posted on Divorce Resources Website

In 2021, Judge Sunshine's Office began a project to reduce the backlog in processing Uncontested Divorces by anticipating and preventing the most common mistakes by litigants in filling out and filing the uncontested divorce form documents. Suggestions were solicited from Court Attorneys and members of the Committee who regularly process these forms, with a view toward publicizing the list for use by litigants. In early 2022, the Top 20 Mistakes in Filling out and Filing Uncontested Divorce Forms Posted on Divorce Resources was posted on the Divorce Resources Website at Top-20-Most-Common-Mistakes-When-Filling-out-UD-Forms.pdf (nycourts.gov). Hopefully, this effort will serve to reduce delays in processing of uncontested divorces by obviating the need for court staff to send back papers because of missing or incorrect items.

b) Project to Prevent the Most Common Mistakes in Filling out and Filing the Contested Divorce Forms

Judge Sunshine and his Counsel will continue work on a Project to Prevent the Most Common Mistakes in Filling out and Filing the Contested Divorce Forms in 2023.

9. Recommendations on Bills Involving Forensics Evaluations in Custody Cases, Domestic Violence Training, and Review of Report of Governor's Blue-Ribbon Commission on Forensics in Custody Evaluations

A number of bills were introduced in the Legislature in recent years regulating or prohibiting the use of forensic evaluations in custody and visitation proceedings.[16] To address concerns about forensics reports in custody cases as evidenced by some of these bills,[17] our Committee prepared an

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

[17] Some of the bills we studied in 2019-20 included not only A. 05621 Weinstein/ S.4686 Biaggi which we discuss at length in this report in connection with out Committee's proposal on access to forensics in custody cases, but also A. 9888 Dinowitz, A. 10424 Hevesi, and A.10669 Hunter/ S. 8549 Sanders.

informational White Paper which is attached as Appendix " H " to our 2021 report.[18] The White Paper does not discuss specific bills, but rather is intended to inform policymakers, advocates and the public at large about the purpose of forensic evaluations and the role they play in custody cases.

Our White Paper continued to have significance in 2021, especially while the topic was being studied by the Governor's Blue-Ribbon Commission on Forensics. The White Paper is available as an Appendix H to our 2021 report available at 2021-Matrimonial.pdf (nycourts.gov). We provided a copy to the Governor's Blue-Ribbon Commission on Forensics and to and members of the Legislature. [19]

After the Governor's Blue-Ribbon Commission on Forensics in Custody Cases was released in December, 2021, our Committee studied the report.[20] In addition to the eleven specific Recommendations designed to correct flaws and biases in the use of custody evaluations in New York, the Commission also considered whether custody evaluations should be used at all. A slim majority of the Commission (11-9) were in favor of eliminating forensic custody evaluations entirely as harmful and lacking scientific evidence, among other things. The remaining nine members of the Blue-Ribbon Commission took the position that forensic evaluations in custody cases are a valuable tool for courts in making determination of custody and that flaws in forensic evaluations can be corrected. Our Committee also worked with the Court Advisory and Rules Committee and OCA Legislative Counsel to provide comments to the Legislature on some of the bills that were introduced in response to the report which were designed to correct concerns about forensic evaluations.

One such bill passed both Houses of the Legislature in 2022 is Senate 6385-B/Assembly 2375-C. This bill amends the Domestic Relations Law and the Executive Law in relation to court ordered forensic evaluations in proceedings involving child custody and visitation. The bill permits a court to appoint a forensic evaluator in such proceedings provided he or she is a New York State-licensed psychologist, social worker, or psychiatrist who has, within the past two years, completed a training program provided by a lay advocacy group. Based on recommendations from our Committee and the Family Court Advisory and Rules Committee when the bill was presented to the Governor for her action, the Judiciary recommended to her that there be enactment of a chapter amendment to the bill correcting several issues with its provisions. The bill was signed on December 23, 2023 by the Governor as chapter 740, Laws of 2022, with a Memo No. 57 regarding changes in the law she has

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

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

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

[20] See Governor's Blue-Ribbon Commission Report on Forensic Custody Evaluations, December 2021, available at Microsoft Word - Blue-Ribbon Commission Report FINAL 2022.docx (ny.gov)

agreed to make with the Legislature after the bill is signed. A proposed chapter amendment to this new law was introduced as S.860 (Hoylman) on January 6, 2023. It is available at Bill Search and Legislative Information | New York State Assembly (nyassembly.gov).

Another such bill our Committee studied was A. 5398 (Hevesi)) A/S7425A (Kaplan), as to which our Committee had a number of suggestions for improvement, while acknowledging the tragic circumstances that gave rise to the bill and the crucial importance of protecting children from harm. Together with the Family Court Advisory and Rules Committee, we have communicated our suggestions to the Legislature in the hopes of improving the legislation to better protect the safety of children**.**

10. Response to Request for Public Comment on Proposed Financial Eligibility Rules for Assigned Counsel

In responding to the request of the Office of Court Administration for comment on the new Assigned Counsel Eligibility Rule to be adopted as 22 NYCRR §205.19, the Committee proposed an amendment clarifying that the rule would not impair rights of non-monied spouses, former spouses and parents to seek and obtain counsel of their choice pursuant to DRL §237 in matrimonial cases in Supreme Court where Judiciary Law §35(8) is applicable.[21] The Committee's proposed amendment was included in the final rule adopted. The Committee believes that the new rule will increase access to justice for indigent litigants.

11. Project to Update Sample Forms on Divorce Resources Website

During 2022, the members of the Forms Subcommittee began work on a project to update the Sample Forms on the Divorce Resources Website for Litigants, Attorneys and Judges since the old Sample Forms were outdated and were taken down from the Website. In addition to updating the forms to reflect changes in matrimonial law, the Committee is planning to add a number of new forms, including an Affidavit in Support of Order to Show Cause for Confidentiality Order and Order to Show Cause for Confidentiality Order; an Affidavit in Support of Order to Show Cause for Alternative Service and Order to Show Cause for Alternative Service; a Sample Form Notarization Acceptable for Deed to be Recorded; and an Affidavit of Appearance and Adoption of Stipulation Agreement.

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

During 2023, our Committee continued to study surrogacy in light of the landmark Court of Appeals decision in *Matter of Brooke S.B v. Elizabeth A.C.C.* (2016 NY Slip Op 05903) as we continued to follow the latest developments on alternative parenting arrangements and access rights.

[21] A copy of the Committee's Response to the Request for Public Comment on the Proposed Assigned Counsel Eligibility Rule is attached to this report as Appendix "C-3."

We also continued our study of surrogacy legislation. In 2017-2019 we studied a number of bills introduced by Assemblywoman Paulin and Senator Hoylman.[22] Our Committee did an intensive study of these bills as amended through June 2019 as well as of: 1) the 2017 report by the New York State Task Force on Life and the Law titled *Revisiting Surrogate Parenting: Analysis and Recommendations for Public Policy on Gestational Surrogacy* and 2) the Uniform Parentage Age published by the National Conference of Commissioners on Uniform State Laws.

While the Committee could not reach a consensus on whether to support or oppose the Hoylman/Paulin bill, the Committee adopted and prepared a "White Paper" on Surrogacy in New York State to review the issues presented, with a focus on the impact of the bill on the courts, in the hopes that it would serve as a resource as various proposals were debated in the future. The paper was attached as Appendix "H" to our 2020 report available at https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/Matrimonial-MPARCReport2020.pdf.[23]

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

During 2021 and 2022, the Subcommittee continued to study the enacted law in detail to see what may still require attention, but initially concluded that its provisions are more advantageous than provisions in many of the prior bills, on points examined in the White Paper. The law legitimatizes gestational surrogacy in New York and requires the intended parents to pay for medical insurance for the surrogate for twelve months after birth of the child. It also provides for informed consent of the surrogate, a Surrogate's Bill of Rights, and a six-month residency requirement. Another improvement is that if the agreement is unclear, the court will decide parentage based on the best interests of the child despite the lack of a genetic connection, Additionally, the Department of Health is required to maintain records. Many of these points were discussed in our Committee's White Paper on Surrogacy referenced above.

The Committee included in the 2022 report and again proposes in this report a chapter amendment to the Child Parent Security Act to allow County Clerks and Court Clerks to provide an anonymous caption in public files for parentage proceedings despite restrictions in statutory and court rules in order to ensure compliance with the Act's sealing provisions. During 2022, we received a suggestion to limit our proposal to anonymous captions for surnames only in order to make it easier to search records without endangering confidentiality. This proposal is acceptable to us, and we have modified our proposal accordingly in this year's report. We are

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

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

also reviewing a number of other proposed Chapter Amendments pending in the Legislature.[24]

Our Committee also continues to follow development of the law in this important area as it has developed after the enactment of the Marriage Equality Act (L. 2011, c. 95)[25], the 2015 ruling of the Supreme Court of the United States in *Obergefell v Hodges,*[26] and the 2016 decision of the New York Court of Appeals holding that "where a partner shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological non-adoptive partner has standing to seek visitation and custody under Domestic Relations Law 70." (see *Matter of Brooke S.B v. Elizabeth A.C.C.* (2016 NY Slip Op 05903 at 2).[27] Most recently, we note the passage of the Respect for Marriage Law enacted in December, 2022.

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

Judge Sunshine serves as a liaison to the Judicial Institute on matrimonial education and training. During 2022, the Committee's assistance to the Judicial Institute with training of Judges continued. Members of the Committee presented sessions at virtual seminars for New Judges School and Legal Updates. Sessions are already being planned for New Judges School in January 2023. A Lunch and Learn session planned by the Committee was presented on the new Cannabis Legislation and its Impact in Matrimonial Cases on September 30, 2022 moderated by Judge Sunshine and presented by Retired Judges Barry Kamins and Joan Kohout.

14. Mentoring of New or Newly Assigned Matrimonial Judges

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

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

The Committee continues to assist with implementation of an Administrative Order effective

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[24] See A.7674 Lavine Proposed Chapter Amendment to Child Parent Security Act – based on the Family Court Advisory and Rules Proposal- see Bill Search and Legislative Information | New York State Assembly (nyassembly.gov); and A6832B Paulin/ S6386B Hoylman Proposed Chapter Amendment to Child Parent Security Act– see Bill Search and Legislative Information | New York State Assembly (nyassembly.gov)

[25] This act adopted section 10(a) of the Domestic Relations Law providing that a marriage is valid regardless of whether the parties are of the same or different sex.

[26] See *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed.2d 609 (Supreme Court 2015 where the Supreme Court, in 2015, held that the right to marry is a fundamental right and upheld the rights of same-sex couples to marry.

[27]

October 1, 2018 creating mandatory parent education pilot projects in seven counties "as early as practicable."[28] In accordance with recommendations of our Committee, the OCA Parent Education and Awareness Program approved on November 20, 2019 its first online parent education program pursuant to Part 144 of the Rules of the Chief Administrative Judge (22 NYCRR Part 144). This program is known as Able2Adjust (also known nationally as Online Parenting Programs). A second on-line program by Family Kind was also approved the following year. These programs made it easier for victims of intimate partner violence who so desire to receive the training in safety as well as for those who do not have access to live programs.[29] The Pilot Parent Education Programs continue in contested matrimonial cases with children under eighteen in Monroe, Nassau, New York, Ontario, Tompkins, Washington and Westchester Counties. Data is being compiled on changes to these programs since the pandemic (e.g., how their services have been impacted -- number of program hours, moving programs onto Zoom from in-person or providing both). Updates based on this data may be implemented in the near future.

C. Outreach to the Bench and Bar

During 2023, the Committee will focus its efforts on promoting our legislative proposals for divorce venue and electronic filing in matrimonial actions and an increase in assigned counsel and Attorney for Children fees while working to promote the Statewide Early Presumptive ADR Initiative.

In 2023, the Chair of the Committee, Hon. Jeffrey S. Sunshine, and members of the Committee, will continue their extensive outreach to members of the matrimonial bench and bar. Judge Sunshine and the Committee members will continue to conduct and participate in CLE programs and panels, and to gather input and insights from the bench and bar on matrimonial issues.

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

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

IV. *Executive Summary (Measures Endorsed)*

The Committee was established in June 2014 when it held its organizational meeting. Since then, the Committee has met monthly, with occasional breaks during the mid-summer months and holidays. During 2020, the March meeting was cancelled due to covid, and thereafter all monthly meetings were held virtually in the interest of public safety. During 2020, the Committee met monthly starting in April through the summer and fall without its usual summer break. During 2021 and 2022, the Committee resumed a more normal schedule.

Appendix "E "to this report contains a detailed description of the Committee's legislative and rule proposals which were approved by the Chief Administrative Judge and adopted by the Legislature or by administrative order with approval of the Administrative Board of the Courts from 2015 through 2021.

During 2022, our Committee's proposal for Harmonization of the Matrimonial Rules with the Uniform Rules for Supreme and County Courts was adopted. Administrative Order 141/22 effective July 1, 2022 adopted revisions to the Matrimonial Rules harmonizing them with the Uniform Rules as also amended by said Administrative Order (see revised 22 NYCRR 202.16 and 202.16-b available at PART 202. Uniform Civil Rules For The Supreme Court & The County Court | NYCOURTS.GOV.[30] The proposal had been endorsed by both Former Presiding Justice Alan Scheinkman, as Chair of the Committee that drafted the changes to the Uniform Rules in 2020, and Justice Sunshine, as Chair of the Matrimonial Practice Advisory and Rules Committee, in order to harmonize the Matrimonial Rules with the changes to the Uniform Rules adopted by Administrative Order 270/20. As part of the Harmonization, a revised Preliminary Conference Stipulation/Order-Contested Matrimonial Forms ("PC Order") for use in matrimonial matters effective July 1, 2022 was adopted by Administrative Order 142/22. The revised form is posted on the Divorce Resources website under Statewide Official Forms effective July 1, 2022. The revisions in the PC Order are designed to implement the newly harmonized Matrimonial Rules into the form. The Adoption of Administrative Orders 141/22 and 142/22 was a major accomplishment, as it resolves outstanding questions about conflicts between the Uniform Rules as amended by Administrative Order 270/20 and the existing matrimonial rules.

Proposals for 2023:

Committee's Three Legislative Priorities for 2023

For 2023, with the easing of the covid pandemic threat, we no longer classify our proposals according to whether they have covid related significance. Instead, we group them solely according to their significance for the fair and efficient administration of justice for matrimonial cases. With this criterion in mind, the Committee has three top legislative priorities for 2023.

Statutory Proposal for Divorce Venue

Our first and most compelling legislative priority in 2023 is our statutory proposal on divorce venue. This proposal is for an omnibus special matrimonial venue statute which requires that venue

[30] Administrative Order 141a/22 was adopted on July 27, 2022 correcting two minor technical errors in the Exhibit B attached to Administrative Order 141/22,

be related to residence in all divorce actions as well as in actions in Supreme Court for custody and visitation, all applications to modify a Supreme Court order of custody or visitation, all post judgment proceedings, and all matrimonial actions described in DRL§ 236(B)(2).

This proposal addresses the problem of divorce filings pursuant to CPLR 509 which allows venue to be designated by the plaintiff in counties without a proper nexus to the parties or their children. Our proposal is supported not just by New York County, but by many Judicial Districts throughout the State similarly burdened. The burden of CPLR 509 venue designations has been great on particular counties upstate and downstate for many years, for example, in the 1st, 2nd, 6th, 7th, and 8th Judicial Districts. While statistics are not yet available for the full year 2022, the burden on these and many other Districts around the State appears to have continued, even though filings were generally reduced due to the pandemic. See Appendix "G" to this report showing Court Research statistics for every County in the State from 2011 to 2021. We have concerns about this problem in all parts of the State, not just New York County as discussed in *Castaneda v Castaneda*.[31] Indeed, we have recently received reports from Administrative Judges and District Executives in the western, northern and middle portions of the State about large numbers of out of county uncontested divorce filings for 2021, many of them from New York County and Kings County. It was reported to us that one Judge in a County on the northern tier of the State had 987 uncontested divorce cases assigned to him in 2021. Of those 987 filings, 476 were filings by attorneys from distant counties, including 280 from one attorney in New York County, two from another attorney in New York County, eight from one attorney in Kings County, and 186 from one attorney in the Village of Pomona in Rockland County. We have also learned that in Albany County, there were a total of 231 out of county divorce filings in the period from January 1, 2019 through December 14, 2021.

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

Electronic filing has alleviated problems for defendants caused by CPLR 509 venue designations and also made it easier for plaintiffs to file and prosecute divorce actions in the county of

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

residence without the need to forum shop because divorce actions will proceed more efficiently. But our legislative proposal is still urgently needed.

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

We first introduced our divorce venue proposal in our 2017 Annual Report. This proposal was adopted as part of the OCA 2017 Legislative Program (OCA #52) and was introduced in the Legislature as 2017-18 as S. 5736. Later in this report, we will detail modifications we made to provisions of the proposal in 2019 and 2020 to address comments we received from bar groups and others. The modified proposal in its current form was introduced by Assemblyman Dinowitz as 2019-20 A.7517.[32]

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

Proposal for Mandatory Electronic Filing in Matrimonial Actions

In this report, we again endorse the proposal of the Office of Court Administration as one of our three key legislative priorities. This proposal, which would authorize the Chief Administrative Judge to mandate e-filing in matrimonial actions, was first introduced by the Office of Court Administration in 2019, and was modified and expanded in 2021 to permit the Chief Administrative Judge to institute e-filing on a mandatory or voluntary basis in all of the State's trial courts and in any class of cases, including matrimonial cases.

In 2015, the Legislature enacted CPLR 2111(b)(2)(A), which authorized the Chief Administrative Judge in his or her discretion to mandate the electronic filing of court papers in all cases in Supreme Court, after consultation with the bar and county clerks and agreement from the

[32] This bill is available at https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A07517&term=2019&Summary=Y&Memo=Y&Text=Y

county clerks in counties outside New York City, with only a limited number of exceptions.[33] One of those exceptions was in matrimonial actions. Since 2015, experiments with consensual electronic filing in matrimonial cases in counties such as Westchester have proven very successful, and in our 2019 and subsequent reports, our Committee unanimously recommended the further step of eliminating the matrimonial action exception to mandatory electronic filing. Allowing the Chief Administrative Judge to require electronic filing in such actions after consultation with and consent of the county clerks and the bar in certain counties will eliminate frustration of litigants in filing papers, reduce delays by courts in reviewing submissions, and increase confidence in the judicial process for the reasons we will outline in detail later in this report.

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

The importance of mandatory electronic filing in matrimonial actions cannot be overstated. Many bar associations have expressed support for mandatory e-filing in matrimonial cases. Attached to this report as Appendix "D," are the Resolution of the Family Law Section of the NYS Bar Association and News Release of the Women's Bar Association of the State of New York ("WBASNY") available at https://www.wbasny.org/post_news/wbasny-supports-mandatory-e-filing-in-matrimonial-matters/. The WBASNY News Release points out that "Mandatory e-fling, with exemptions for pro se litigants and lawyers not having the necessary technology, would enable litigants to advance their cases and eliminate potential barriers to access to justice. It would also mitigate the effects of the COVID-19 outbreak on the courts." Mandatory e-filing in matrimonial

[33] The legislation provides:
2. In the rules promulgated pursuant to subdivision (a) of this section, the chief administrator may eliminate the requirement of consent to participation in this program in: (A) one or more classes of cases (excluding matrimonial actions as defined by the civil practice law and rules, … (i) Notwithstanding the foregoing, the chief administrator shall not eliminate the requirement of consent in any county until after he or she shall have consulted with members of the organized bar including but not limited to city, state, county and women's bar associations; with institutional legal service providers; with not-for-profit legal service providers; with attorneys assigned pursuant to article eighteen-B of the county law; with unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any program of electronic filing in such county that requires consent or who would be affected by a program of electronic filing in such county should the requirement of consent be eliminated; with any other persons in the county as deemed to be appropriate by the chief administrator; and with the county clerk of such county (where the affected court is the supreme court of a county outside the city of New York), and (ii) only after affording them the opportunity to submit comments with respect thereto, considering any such comments, including but not limited to comments related to unrepresented litigants and, in the instance of any county outside the city of New York, obtaining the agreement thereto of the county clerk thereof. All such comments shall be posted for public review on the office of court administration's website (N.Y. CPLR 2111 (McKinney).

actions with exceptions for pro se litigants and attorneys lacking technical skills is also endorsed by legal service providers who represent indigent litigants.[34] Our Committee again supports the modified and expanded legislative proposal as necessary to the fair and efficient processing of matrimonial cases. The modified and expanded proposal remains one of our key priorities in 2023. We urge the Legislature to enact this legislation and the Governor to sign it in 2023.

Support for Increase in Assigned Counsel and Attorney for Child Fees

Our third legislative priority this year is the passage of legislation which would increase assigned counsel rates to at least $120 per hour for misdemeanors and to at least $150 per hour in all other matters, including matrimonial cases on issues where such counsel is assigned, with an annual cost of living increase based on inflation determined by the CPI. This CPI increase is an essential feature of any such legislation, inasmuch as the Legislature has not raised the assigned counsel fee rate in 19 years. It is also essential that legislation be enacted to remove the existing caps on total compensation received of $2400 for misdemeanors and $4400 for all other matters including matrimonial cases. Such legislation will not only increase access to justice for the most vulnerable in our society, but will also ensure efficient processing of cases because attorneys will be available on Panels to accept assignments.[35]

The Committee is extremely concerned about the lack of a rate increase since 2004 for attorneys for children and attorneys for adults assigned pursuant to FCA §§ 249 and 262 and pursuant to Judiciary Law § 35 and FCA § 1120. The current rate of $75 per hour with a statutory maximum of $4,400 (absent extraordinary circumstances)[36] was established in 2004 and is woefully inadequate. Compared to fees earned by matrimonial attorneys in the private sector, this rate of compensation discourages many attorneys from joining panels which would require them to accept assignments to represent indigent clients and children on matters involving important issues of custody and visitation and intimate partner violence. We understand it is especially difficult for judges handling matrimonial cases in all parts of the State to make appointments of assigned counsel and attorneys for children because it is difficult to attract new attorneys to serve on panels and there are an increasing number of attorneys leaving the panel or retiring.

Parental representation is an issue in Supreme Court matrimonial actions as well as in Family Court.[37] Judiciary Law §35(8) (L. 2006, c. 538) requires Supreme Court Justices to appoint counsel to represent an indigent party in a divorce action on issues over which the Family Court could have exercised jurisdiction such as custody and visitation, family offense proceedings, paternity, and contempt/willful violation proceedings on behalf of a respondent. This important legislation and

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

[35] We note that there is currently a bill introduced in the Legislature that would accomplish these goals. It is 2021-22 A.6013 Magnarelli/ S. 03527 Bailey, Gaughran, available at Bill Search and Legislative Information | New York State Assembly (nyassembly.gov) . We would support that bill or any other similar bill.

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

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

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

Representation is also an issue in Supreme Court regarding representation of children by attorneys for children where independent legal representation is not available. Judiciary Law 35(7) (L. 1989, c. 571) requires Supreme Court and Surrogate Court Justices and Judges to appoint a Law Guardian (now attorney for the child) to represent a child in an action on issues over which the Family Court would have had jurisdiction and as to which the Family Court could have appointed a Law Guardian (now attorney for the child) pursuant to FCA § 249. This right is paramount to protection of the best interests of children in custody and visitation cases (see Koppenhoefer v. Koppenhoefer,159 A.D.2d 113, 558 N.Y.S.2d 596 (1990)).[38]

These concerns are shared by the New York State Bar Association which approved a resolution on June 18, 2018 calling for legislation increasing assigned counsel rates, including rates pursuant to Judiciary Law § 35.[39] These concerns are also shared by the Women's Bar Association of the State of New York, which recently issued a position statement supporting legislation increasing assigned counsel fees (see 2021 – A.6013 / S.3527 | wbasny).

During 2022, a Decision and Order dated July 25, 2022 by Hon. Lisa Headley (Supreme Court of New York County) on Motion for Injunctive Relief by NY County Lawyers Association et al v. the State of New York, the City of New York, New York City Department of Finance, and Sherif Soliman emphasized the importance of increasing assigned counsel rates by granting a motion for an interim preliminary injunction directing defendants in the case to pay assigned counsel $158 per hour retroactively to February 2, 2022, the date the Order to Show Cause was filed. This case was a step forward, but the ruling is not being followed outside New York City, and the final remedy must come from the State Legislature. A second lawsuit has now been filed by the New York State Bar Association mirroring the 2022 suit in the rest of the State. [40]

At the outset of the pandemic, we recognized that the severe budget cuts imposed by the Covid -19 pandemic necessitated postponing action on this recommendation. Now that both covid and the dire budgetary situation has eased, we are therefore hopeful that legislation increasing assigned counsel rates will be enacted in 2023. Such legislation will not only increase access to justice for the most vulnerable in our society, but will also ensure efficient processing of cases because attorneys will be available on Panels to accept assignments.

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

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

[40] See "Assigned counsel pay fight continues with new suit," by Jacob Kaye, *Queens Daily Eagle*, December 1, 2022.

Previously Endorsed and Modified Committee Legislative Proposals

Proposal to Amend DRL § 211 Regarding Commencement of Matrimonial Actions

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

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

We resubmit our proposal to modify the automatic orders statute in this report. The proposal accomplishes several goals. It modifies the statute to provide that in the event of an emergency declared by the Governor which results in a prohibition on filing the summons, the automatic orders will become effective upon plaintiff upon service of the summons on the defendant rather than upon the filing of the summons as it currently reads. It also updates and clarifies the automatic orders statute, and amends it to provide notice to the other spouse of a tax lien, foreclosure, bankruptcy or litigation once a divorce action has been commenced. It also adds a prohibition on use of electronic devices to obtain information about the other party without their knowledge and consent during the pendency of the action, which becomes more and more relevant as technology developments have moved faster through virtual meetings and work at home.

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

We again this year submit our composite proposal that modifies various provisions of the Domestic Relations Law and Family Court Act which presently either completely prohibit or provide that no modification shall reduce or annul arrears of child support or maintenance accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief prior to the accrual of such arrears.[41] Our proposal would clarify that the declaration by the Governor of a state of emergency which resulted in a prohibition on filing such application by the Chief Judge or Chief Administrative Judge during such emergency, shall constitute good cause for failure to make application for such relief and permit the court to grant relief retroactively to the date of declaration of the emergency or to such other subsequent date as the court

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

in its discretion might deem appropriate. This proposal is intended to provide some relief to the payor or payee spouse who can prove entitlement for relief (e.g., change of circumstances) but was prevented from filing because of the emergency; but there is a limitation of six months for the application to be filed after filing is again permitted by the Administrative Order of the Chief Judge or Chief Administrative Judge. The proposal also makes clear throughout that not only the payor, but also the payee, will be able to apply for relief under the provisions which allow the payee to seek upward modifications of support "nunc pro tunc" based on newly discovered evidence.

In the case of our proposed revisions to DRL §236(B)(9)(b) (2)(iii), and FCA §451, the proposal not only clarifies that emergencies declared by the Governor resulting in a prohibition on filing qualify as good cause without any question, but also amends these statutes to remove the absolute prohibitions on the court's modifying child support awards retroactively even for good cause to conform with case law where courts have aimed at greater flexibility where applications are prevented because of "rare circumstances resulting in grievous injustice"[42] or "impossibility"[43] such as a public health emergency. As Professor Merrill Sobie comments about such cases with regard to FCA § 451 in the Practice Commentaries:

"The subset of cases at least provides a precedent for limited relief, although even an expanded "rare circumstance" or "impossibility" prerequisite is difficult to meet. In the more usual situations, for example where the temporarily unemployed person reduces support payments without seeking a modified court order, the doctrine is of no avail. Presumably, the "rare circumstances" or "impossible" safety net may also be employed when seeking an upward modification, although every case to date has involved a downward modification petition. (Suppose, for example, the custodial parent and the child were seriously injured in an accident, precluding their petitioning for the needed and legally justified child support increase.) Applying the overly rigid rule may harm either party, and an expanded equitable exception is needed to temper the statute's impact."[44]

Rebuttable Presumption on Proof of Expenses in Matrimonial Cases

We resubmit our legislative proposal for a rebuttable presumption on proof of expenses in matrimonial cases pursuant to CPLR rule 4533-c. This measure had special covid related significance because it enables parties to introduce expenses without having to produce the person who performed the service, which was especially difficult during covid. But it continues to have significance even

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

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

[44] N.Y. Fam. Ct. Act § 451 (McKinney).

after the pandemic has eased since it allows parties in matrimonial actions to introduce evidence of expenses more easily. The proposal would impose a cap of $10,000 on invoices in matrimonial cases, a much more realistic amount than the existing $2,000 cap on invoices in general civil cases pursuant to rule 4533-a. As Vincent Alexander observes in the Practice Commentaries regarding the general rule for all civil cases, "The amount specified in the rule as originally adopted has steadily increased by amendment over time and is long overdue for an upward adjustment." (CPLR 4533-a (McKinney)). The rule we propose for matrimonial actions would also allow invoices for any court-ordered expenses, a much broader category than allowed under rule 4533-a, and would allow more than one invoice per provider. These differences are designed to make it easier for matrimonial litigants, especially unrepresented litigants, to admit documents into evidence. We propose the new rule as a separate rule for matrimonial cases because, in family matters, it is especially frequent and necessary for small expenses to be incurred for children's expenses for several children and other family matters.

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

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

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

> "*It is long past time to amend not only the dollar limitation set forth in the statute, but to allow a greater number of invoices from the same provider, particularly if there is testimony and/or other documentary evidence offered to substantiate the claims. A combination of bills or invoices; a credit card statement; canceled check; Venmo or Zelle message; or an email or text message-together with testimony of the party who paid the invoice or bill-should present a sufficient indicia of reliability to prove payment of an expense.*
>
> *Conclusion*
>
> *If New York state is not prepared to adopt a residual hearsay exception that codifies when any hearsay statement should be admissible-after the adverse party is given reasonable notice of the intent to offer the statement-so long as there is a guarantee of trustworthiness (see Fed. R. Evid. 807), there should at least be an amendment to CPLR 4533-a to relax some of the onerous requirements under the Rule. This would benefit practitioners who want to be assured that their*

evidence will be admitted at trial, rather than trusting that the court will determine that a litigant has provided a sufficient foundation for the admission of bills and invoices into evidence."[45]

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

It is our hope that the proposal will be enacted in 2023. This proposal is designed to make it easier for matrimonial litigants to admit documents as to their expenses into evidence.

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

We have decided not to resubmit our proposal to allow a limited appearance by counsel to apply for counsel fees on behalf of the non-monied spouse because we are gratified to say that it is no longer needed. In 2022, CPLR 321 was amended by Chapter 710, Laws of 2022 to provide for limited scope representation by adding a new subdivision (d) which requires the attorney to file with the court a notice of appearance of the limited scope representation. The notice of appearance must state the purposes of the limited scope representation, and unless otherwise directed by the court, the attorney may proceed with the limited scope representation and then file a notice of completion when the representation is completed. The new statute is undoubtedly an important step forward.

During 2023 we plan to propose a court rule designed to implement the new statute in matrimonial cases.

Access to Forensics in Custody Cases

We again resubmit our proposal on access to forensics in custody cases. The subject of access to forensic reports has been widely discussed among the legal community in the last few years. It is one aspect of the examination of the use of forensic reports in custody cases covered in our White Paper on Forensic Reports in Custody Cases which was attached as Appendix H to our 2021 report.[46] It was also discussed in Recommendation #7 of the Governor's Blue-Ribbon Commission Report on Forensic Custody Evaluations, where the importance of access to such reports was recognized, although Commission members differed on whether physical copies of forensic evaluation reports should be provided to litigants.[47]

In January 2013, three different rule proposals on access to forensic reports in custody cases were put out for public comment on this subject. These proposals differed with respect to the terms on which self-represented litigants would have access to the reports. Before any court rule was adopted, legislation on the subject was introduced (A. 8342-A). Consideration of the proposals by the Administrative Board of the Courts was suspended pending possible action on this legislation. A new version of said bill was introduced as A. 290 on January 7, 2015. The Committee's concerns as to A. 8342-A continued to be applicable to the 2015-16 version. The Committee expressed these concerns in

[45] See Sugarman, Marilyn, "Proof of Expenses: Time for an Amendment to CPLR 4533-a, NYLJ, 11/16/21.

[46] Our 2021 Report with Appendices is available at 2021-Matrimonial.pdf (nycourts.gov).

[47] See Governor's Blue-Ribbon Commission Report on Forensic Custody Evaluations , December, 2021, at pages 11-12, available at Microsoft Word - Blue-Ribbon Commission Report FINAL 2022.docx (ny.gov)

our 2016 Annual Report to the Chief Administrative Judge. On January 12, 2017, a 2017-18 version of said bill was introduced as A.1533/S.6300.

As stated in our prior reports, we believe that there is a real danger that the dissemination to the public of the reports or copies thereof on the Internet could prove to cause long lasting damage and embarrassment to many, and those concerns must outweigh reasonable restrictions imposed on self-represented litigants. Attorneys and other forensic experts are subject to professional discipline if reports are released, while parties, including self- represented litigants, face only potential contempt charges which are unlikely to result in a meaningful remedy for innocent victims including children whose personal lives are exposed.

In our 2017 Annual Report to the Chief Administrative Judge, the Committee developed a new proposal on access to forensics in custody cases, which we hoped would resolve the differences as to treatment of self-represented litigants by providing access to the report and the complete evaluator's files to the parties, including self-represented litigants, attorneys, independent forensic experts hired to assist the attorneys, and the attorney for the child, on terms which respect the due process rights of self-represented and represented litigants, while providing better protections against unauthorized dissemination than were contained in the original bill. As in A.1533/S.6300, access to the evaluator's file would include access to the entire file related to the proceeding including, but not limited to, all underlying notes, test data, raw test materials, underlying materials provided to or relied upon by the court-ordered evaluator and any records, photographs or other evidence. Our proposal was accepted as part of the Office of Court Administration's 2017 Legislation program and was introduced as 2017-18 S. 6579. Memoranda in opposition to 2017-18 A.1533/S.6300 and in support of 2017-18 S. 6579 were sent to legislators by the Family Law Section of the New York State Bar Association, the Women's Bar Association of the State of New York, the New York City Bar Matrimonial Law Committee and Committee on Children and the Law and the New York Chapter of the Academy of Matrimonial Lawyers.[48] Also supporting our proposal was the Children's Law Center of Brooklyn.[49]

Our proposal was amended in 2018 as S. 6579-A based upon changes we recommended at the suggestion of the Family Court Advisory and Rules Committee and the New York Public Welfare Association, Inc., whose concerns were addressed in the modified proposal.[50] These changes do not detract from the essential feature of our proposal which provides access to the reports and notes and evaluator's file to attorneys and litigants while ensuring greatly increased protections to prevent confidential information in the report from being disseminated indiscriminately (as compared to A.1533/S.6300 or the current version thereof, which is 2021-2022 A. 8110 Weinstein/S. 00753 Biaggi). While our draft permits attorneys and independent forensic evaluators hired to assist attorneys and self-represented litigants to have a copy of the forensic report upon execution of an affidavit containing assurances to the court against further dissemination and return of the report and

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

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

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

files at conclusion of the litigation, our draft does not permit represented parties or self-represented litigants to have a copy of the report. Instead, we allow represented parties to read the report in the office of their attorney, to discuss the report with their attorney, and to make notes about the report, while we allow self-represented parties to read the report at the court or other location and to make notes about the report. For a detailed description of the key provisions of the amended proposal, see Appendix "F-1" to this report.

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

> *"The Matrimonial Law and Children and the Law Committees of the New York City Bar Association (the "Committees") write to provide feedback on the proposed legislation which would amend the Family Court Act and the Domestic Relations Law regarding the use of reports from court-appointed forensic evaluators ("forensics") in child custody disputes.*
>
> *The Matrimonial Practice Advisory and Rules Committee of the Office of Court Administration has proposed a similar but not identical bill (OCA 27-2019)…*
>
> *The Committees support the approach taken in OCA 27-2019 with a few minor changes and clarifications detailed below. Although A.5621/S.4686 contains several valuable elements, it goes too far in guaranteeing parties access to forensic reports. We believe that OCA 27-2019 strikes a better balance among the competing interests…*
>
> *The Committees are pleased that OCA 27-2019 follows our recommendation. A.5621/S.4686, however, presumptively gives represented parties the right to copies of the forensic report. In the age of smartphones and social media, that will make it all too easy for distraught parents to publicize the very personal and embarrassing information that must often be included in forensics' reports.*
>
> *OCA 27-2019 also provides more extensive mechanisms for ensuring the confidentiality of forensic reports. In particular, attorneys and others who receive access to forensic reports would be required to sign affidavits promising to not disseminate the reports without permission. Such procedures should be included in any legislation enacted on this issue."*[51]

In addition to the opposition of the New York City Bar Association Committees quoted above, there was also opposition to 2019-20 A. 05621 Weinstein/S. 4686 Biaggi by the Women's Bar

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

Association of the State of New York, the Family Law Section of the New York State Bar Association, and the American Academy of Matrimonial Lawyers, New York Chapter.[52] Aside from the risk of dissemination of private information about children and families, A. 05621 Weinstein S. 4686 Biaggi also created substantial risk for victims of intimate partner violence. As stated by the Women's Bar Association of the State of New York in their 2019 Position Statement in Opposition, a copy of which is contained in Appendix F-3 to this report:

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

Our Committee strongly supports the concept that all litigants should have the ability to read the reports. It is primarily the method of access that appears to be in dispute. It is our hope that our version of the forensics bill or a compromise between our proposal and the current version of A. 5621/S.4686 can be enacted in 2023 so that the important issue of access to forensic reports in custody cases can be addressed.

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

Shared Custody Proposal

We resubmit our proposal from our 2021 report which relates to child support in shared custody situation by proposing a legislative amendment to the Child Support Standards Act to address the situation in *Rubin v. Salla,* 107 A.D.3d 60, 71, 964 N.Y.S.2d 41 (2013).

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

> "*I respectfully dissent from the dismissal of the mother's cause of action for child support because the majority's rigid application of the statute sacrifices the child's well-being at the altar of an arithmetic formula. It forces the child to bear the economic burden of his parents' decisions, even where, as here, the child, whose father is a millionaire, is in danger of living in poverty, solely to preserve uniformity and predictability in child support awards. I do not believe this result is what the legislature intended in drafting the Child Support Standards Act (CSSA), especially since the CSSA clearly did not envision every possible custodial situation."* (*Rubin v. Salla*, 107 A.D.3d 60, 73-74, 964 N.Y.S.2d 41, 52-53 (2013).

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

In 2021, our proposal was introduced in the Legislature by Assemblyman Lavine, Chair of the Assembly Judiciary Committee, as A. 7804. We hope it will be enacted in 2023.

Firearms Seizure Proposal (Modified)

Enacted into law as chapter 55 of the Laws of 2020, were amendments to the Criminal Procedure Law and the Family Court Act which authorized courts to issue search and seizure orders regarding firearms in connection with orders of protection. Said legislation did not amend the Domestic Relations Law or otherwise address the Supreme Court's statutory authority in a matrimonial action to issue search and seizure orders regarding firearms possessed in violation of an order of protection issued thereunder. Specifically, the Legislature did not add the new search and seizure provisions to sections 240(3)(h) and 252(9) of the Domestic Relations Law, which incorporate by reference the firearms surrender and license suspension and revocation requirements of CPL § 530.14 and Family Court Act §§ 842-a and 846-a. Notwithstanding, in both plenary and consolidated matrimonial proceedings, the Supreme Court retains inherent authority to issue such orders and may do so where necessary and proper to ensure compliance with its order and the safety of protected parties. The Supreme Court has general original jurisdiction in law and equity under the State Constitution even without statutory authorization. [53] Despite the case law, a statutory change is in order so as to avoid confusion.

We again propose amendments conforming sections 240(3)(h) and 252(9) of the Domestic Relations Law to the CPL and Family Court Act as amended by chapter 55 of the Laws of 2020. The proposal was adopted as 2021 OCA #45. During 2021, A.7957 was introduced by Assemblyman Lavine, Chair of the Assembly Judiciary Committee, based on our proposal. The bill passed the Assembly and was referred to the Senate.

We have this year amended our proposal to mirror the recently enacted provisions of chapter 576 of the Laws of 2022, which amends paragraph (c) of subdivision 1 of Family Court Act §842-a to make the obligation of the court to issue orders for seizure of firearms mandatory, not discretionary, where the respondent or defendant willfully violates an order to surrender weapons, but which allows orders for weapons seizures based upon good cause shown to remain discretionary with the court.

We hope this legislation will be enacted in 2023 so that there will be no confusion on this subject. The Courts have meanwhile adopted a form Seizure Order for Supreme Court based on the Supreme Court's inherent authority.[54]

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

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

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

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

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

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

While CPLR 6347 states that **"**no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding," a finding in a proceeding for an extreme risk order of protection would not be binding on a judge determining custody or visitation of a minor child, but merely a relevant and important factor to consider in the best interest of the child. Moreover CPLR 6346 provides that, upon expiration of the extreme risk order of protection, all records shall be sealed; but specifically provides that such records shall be accessible to courts of the Unified Court System, among other necessary parties.[55] This language makes clear that the Legislature intended this information to be available to judges making custody and visitation decisions.

Thus, we continue to strongly recommend an amendment of the new statute to specifically require the court to provide a copy of the extreme risk order of protection to the statewide computerized registry so that judges making decisions on custody and visitation can rely on having access to this information which will help protect children from danger.

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

We continue to endorse again this year our proposal to amend DRL §232 to allow for alternative service of the divorce summons by email or social media. This legislation is necessary

[55] § 6346 provides:
Expiration of an extreme risk protection order. 1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order...except that such records shall be made available to:

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

because Supreme Court frequently feels compelled to order service by publication in matrimonial actions when personal service on the defendant cannot be made because the defendant cannot be found. Service by publication, however, is generally expensive and often ineffective. In our view, there should be a practical alternative available to the Courts.

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

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

We again submit our previously-endorsed legislative proposal to amend the Domestic Relations Law to require marriage licenses in all cases. If this proposal is adopted, courts will no longer be required to examine questions of the validity of marriages if the loopholes in the law requiring marriage licenses are eliminated, thus reducing litigation and increasing certainty

Amendment to CPLR 3217(a) Regarding Voluntary Discontinuances in Matrimonial Actions

We again submit our previously-endorsed legislative proposal to amend CPLR 3217(a) to prevent parties from voluntarily discontinuing actions once a notice of appearance has been filed in the action. The adoption of the revised Preliminary Conference Order form by court rule adopted by Administrative Order upon our Committee's recommendation did much to prevent parties from voluntarily discontinuing matrimonial actions after the expenditure of time and resources.[56] However, the proposed CPLR amendment would still be desirable as discussed later in this report.

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

The Committee again proposes this year an amendment to the Child Parent Security Act enacted in 2020 as chapter 56, Laws of 2020. The amendment would ensure that the sealing provisions of the Act are not compromised by rules requiring parties' names in captions in papers. The Child Parent Security Act provides that Court records relating to parentage proceedings shall be sealed with certain exceptions for child support administration by state authorities, but may be available for inspection and copying only by the parties or the child. However, pursuant to both the CPLR and Court Rule, the County Clerk as the Clerk of the Supreme Court or the Surrogate's Court Clerk where the initial petition is filed is required to display the names of parties unless the statute, a court rule or court order specially prohibits.[57] These rules are intended for the typical type of

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

[57] See CPLR 2101 (c) which reads as follows:

litigation where the parties' interests are adverse to each other and the defendant needs to know the plaintiff's identity in order to defend the case, and where there is no statutory sealing requirement as there is with the Child Parent Security Act.[58] Even then, there are exceptions granted depending on the facts of the case.[59] By contrast, in most cases under the Child Parent Security Act, the parties petition the court consensually for a judgment of parentage, and rules as to names of parties in captions are inapplicable.

Showing the names of the parties or the child in the caption of any document in the file could threaten the sealing protections of the Child Parent Security Act. However, in Supreme Court actions, at present, the only way for a litigant to ensure that names of the parties or child will not be revealed in the caption of a document in the proceedings is by submitting a required letter application for an anonymous caption in all publicly viewable case listings. A model sample letter application is posted on NYSCEF and is available on Divorce Resources at letter.application.pdf (state.ny.us), but may also be submitted in hard copy. Once the application is approved by the court, the County Clerk or Surrogate's Court Clerk is authorized not to disclose the name of the child or any party in the caption on any document publicly viewable. However, use of the letter application requires an application in every case and wastes judicial resources as well as litigants' time. It would be far more efficient to amend the statute as we propose. Our proposal would allow the County Clerk (as the clerk of the Supreme Court) or the Surrogate's Court Clerk who receives the files not to display the name of the child or party in any document, index or minutes available to the public. During 2022, we received a suggestion to limit our proposal to anonymous captions for surnames only in order to make

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> c) Caption. Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the index number of the action if one has been assigned. In a summons, a complaint or a judgment the title shall include the names of all parties, but in all other papers it shall be sufficient to state the name of the first named party on each side with an appropriate indication of any omissions.
> N.Y. C.P.L.R. 2101 (McKinney).

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

> " In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator's rule or order of the court:…
>
> (ii) The summons, complaint, petition, or judgment sought to be filed with the County Clerk contains an "et al" or otherwise does not contain a full caption;

[58] See *Doe v. Roman Cath. Archdiocese of New York*, 64 Misc. 3d 1220(A), 117 N.Y.S.3d 468 (N.Y. Sup. Ct. 2019) where Justice Ruderman stated:
" The rationale for the disclosure of a plaintiff's name in a complaint or petition is grounded in the basic due process rights of notice and an opportunity to be heard" (3B Carmody-Wait 2d § 28:6) [Note: online treatise]."

[59] See 82 N.Y. Jur. 2d Parties § 5 stating:
"However, a plaintiff may be permitted to proceed anonymously if there are good reasons for doing so and the plaintiff's identification can be made with enough certainty to allow the court to acquire jurisdiction."

it easier to search records without endangering confidentiality. This suggestion is acceptable to us, and we have modified our proposal accordingly in this year's report. We strongly urge adoption of our proposal to ensure confidentiality of highly intimate information, while preserving judicial resources and promoting efficiency.

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

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

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

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

In our 2022 report, the Committee proposed a chapter amendment to the new law to: 1) enumerate what the court should consider as to the best interest of a companion animal when awarding its possession in a matrimonial proceeding and 2) clarify that the definition of a companion animal does not include service animals since such animals should generally be awarded to the party whom they are trained to assist without consideration of such animals' best interests. The Committee again puts forth this proposal.

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

A bill previously introduced in Rhode Island excludes service animals from the definition of companion animals whose best interests should be considered when awarding possession in a matrimonial proceeding. The bill enacted in New York has no presumption or preference as to awarding possession of a service animal utilized by one of the parties or the children. The Rhode Island bill also sets forth specific factors for the court to consider in determining the best interest of the animal, while the enacted New York law lacks any such guidance for Judges making such determinations. See 2021 Bill Text RI H.B. 5580. Both features of the Rhode Island bill were copied into our proposed chapter amendment to the newly enacted DRL 236(B) (5)(d)(15). We again urge passage of this chapter amendment in 2023.

Previously Endorsed Committee Rule Proposals

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

There is currently much debate about forensic reports. As an Appendix H to our 2021 report, we provided a White Paper on Forensic Reports in Custody Cases to address this important topic, a copy of which we furnished to the Legislature and to the Governor's Counsel. The White Paper is available at 2021-Matrimonial.pdf (nycourts.gov). We have also been studying the report of the Governor's Blue-Ribbon Commission on Forensic Custody Evaluations since it was issued in December, 2021.[60]

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

Amendment to Automatic Orders Rule

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

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

We again include in this report a rule proposal to amend the requirement in the matrimonial rules that the Statement of Proposed Disposition must be filed with the court with the Note of Issue.[61] Our proposal would allow the Statement of Proposed Disposition to be filed later at a pre-trial conference after the Note of Issue has been filed, or as otherwise directed by the court. This would save litigants expense by not having to submit the Statement of Disposition when the issues have not

[60] See Governor's Blue-Ribbon Commission Report on Forensic Custody Evaluations, December 2021, available at Microsoft Word - Blue-Ribbon Commission Report FINAL 2022.docx (ny.gov)

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

been clearly defined, thereby increasing access to justice for matrimonial litigants and saving time for judges in reviewing premature submissions.

Custody Severance Rule Proposal

We also restate our custody severance rule proposal designed to speed custody and visitation decisions. This proposal promotes faster and fairer resolutions of custody determinations, as to which delays can result in harmful effects on children and families.

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

We also restate our proposed amendment to 22 NYCRR § 202.16(k)(3) to reform the rules related to matrimonial proceedings regarding motions for counsel fees by the non-monied spouse pursuant to DRL §237, not only as to the elimination of the attorney's affirmation, but also as to adoption of a form of affidavit to be used by self-represented litigants in applying for counsel fees. Our rule amendment proposal also makes clear what is in fact required by the statute but unfortunately is not always understood, namely, that when the non-monied spouse is represented by an attorney, the attorney for the monied spouse must submit the required billing documentation with the answering papers for the motion for counsel fees by the non-monied spouse, just as the attorney for the non-monied spouse must submit the documentation with the moving papers. Otherwise, the non-monied spouse will be at a disadvantage by having to reveal details that the monied spouse could keep confidential.

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

Matrimonial Practice Advisory and Rules Committee:

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

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

V. Three Committee Legislative Priorities (Previously Endorsed)

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

Our first and most compelling legislative priority this year is our statutory proposal on divorce venue. This proposal is for an omnibus special matrimonial venue statute which requires that venue be related to residence in all divorce actions as well as in actions in Supreme Court for custody and visitation, all applications to modify a Supreme Court order of custody or visitation, all post judgment proceedings, and all matrimonial actions described in DRL§ 236(B)(2).

This measure will improve the efficient operation of the courts' disposition of divorce cases while at the same time furthering access to justice.

Plaintiffs have for many years been regularly utilizing the mechanism allowed by CPLR 509 to designate venue in the county of their choice even though none of the parties are residents of that county. The reason why CPLR 509 designations of venue have been so frequent is partly for the convenience of attorneys who do not want to travel to file papers, and partly to take advantage of what is widely believed to be expedited processing of divorces in certain counties. The problems arising from being "A Mecca for Matrimonial Matters" were pointed out in *Castaneda v Castaneda*, 36 Misc 3d 504, at 506 [Sup Ct 2012].

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

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

Compounding the need for the omnibus matrimonial venue statute we propose, was a new law enacted in 2017 amending CPLR 503 (a) to permit as another option to venue related to residence of the parties, venue in which a substantial part of the events or omissions giving rise to the claim occurred. This new law (L. 2017, c. 366) was not designed with matrimonial actions in mind. By adding another venue option unrelated to residence without changing plaintiff's ability to designate a venue unrelated to residence pursuant to CPLR 509, which remains intact, it only underscores the immediate need for our omnibus matrimonial divorce venue legislation. Not only will our proposal override CPLR 509 designations (except where expressly permitted in cases where addresses of the parties are not a matter of public record or where confidentiality orders exist), it will also override the provisions of the new law.

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

We have ever increasing concerns about the need for this proposal as the burden of CPLR 509 designations of venue in foreign counties unrelated to residence has increased on Judges all over the State, depriving litigants in their home counties of judicial resources, negatively impacting outcomes for the parties and their children, and requiring judges to appoint counsel and mental health professionals in distant counties with whom they are not familiar. We have concerns about this problem in all parts of the State, not just New York County as discussed in *Castaneda*. Indeed, we have recently received reports from Administrative Judges and District Executives in the western, northern and middle portions of the State about large numbers of out of county uncontested divorce filings for 2021, many of them from New York County and Kings County. It was reported to us that one judge in a county on the northern tier of the State had 987 uncontested divorce cases assigned to him in 2021. Of those 987 filings, 476 were filings by attorneys from distant counties, including 280 from one attorney in New York County, two from another attorney in New York County, eight from one attorney in Kings County, and 186 from one attorney in the Village of Pomona in Rockland County. We have also learned that in Albany County, there were a total of 231 out of county divorce filings in the period from January 1, 2019 through December 14, 2021.

The burden of CPLR 509 venue designations has been great on judges in particular counties upstate and downstate for many years, for example, in the 1st, 2nd, 6th, 7th, and 8th Judicial Districts. While statistics are not yet available for the full year 2022, the burden on these and many other Districts around the State appears to have continued, even though filings were generally reduced due to the pandemic. See Appendix "G" to the report showing Court Research statistics for every County in the State from 2011 to 2021.

On a trip upstate in the fall of 2015, Justice Sunshine, Chair of the Committee, met with members of the matrimonial Bench in Buffalo and Rochester.[62] He learned that a major concern of

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

matrimonial judges in these areas is the large number of uncontested divorce actions filed in their counties. Court Research Statistics on Uncontested Divorce Filings show that Erie County where Buffalo is located and Monroe County where Rochester is located both have sizable numbers of filings as do Nassau, Suffolk and Westchester. See Appendix G-1 to this report showing Court Statistics on Uncontested Divorce Filings in these Counties yearly since 2014. The boroughs of New York City, aside from Richmond, each have an even greater number. See Appendix G-2 to this report showing Court Statistics on Uncontested Divorce Filings in the five boroughs of New York City yearly since 2014.

A number of thoughtful proposals have been made in the last few years concerning ways to change the CPLR rules by bar association groups and judges and clerks in New York County. These proposals would have overridden the ability of plaintiffs to designate the place of trial in divorce actions by amending CPLR 509. Under existing CPLR 509, only the plaintiff has this ability, and under existing CPLR 510(1), only the defendant may demand a change in the designation.[63] 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.[64] One such proposal to change the divorce venue rules would have applied only to divorces involving minor children of the marriage. The Committee agrees that in divorces involving minor children venue should be related to residence so that the courts can make appropriate decisions as to custody and parenting time and support as to the child, having, where appropriate, the involvement of an attorney for the child familiar with the services available where the child resides. However, our Committee believes that all divorce actions should have venue related to residence. Another such proposal by the New York State Bar Standing CPLR Committee, which our Committee was asked to review, would have applied to all matrimonial actions, but that proposal requires venue to be the county of residence of one of the parties, not taking into account at all the residence of the children.

In our prior annual reports, the Matrimonial Practice Advisory and Rules Committee put forth its own proposal to adopt a new CPLR 514, which is an omnibus matrimonial venue proposal which applies to all divorce actions, not just uncontested divorces, as well as actions in Supreme Court for custody and visitation, all applications to modify a Supreme Court order of custody or visitation, all post judgment proceedings, and all matrimonial actions described in DRL § 236(B). The proposal was included as part of the Office of Court Administration's 2017 Legislative Program as OCA 2017-52, and introduced by Senator Bonacic as 2017-18 S. 5736.

In 2018 we modified our proposal to make it even stronger in several major respects related to good cause exceptions. First, in our previous proposal, we required that venue be the residence of one of the parties but allowed courts to take into consideration the residence of a child or children of

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

[64] "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.)).

the marriage through a good cause exception that also allowed courts to consider situations where addresses are unknown or subject to a confidentiality order. In this modified proposal, we provided that venue in matrimonial actions shall be in a county in which either party resides, or if there are minor children of the marriage, in the county where one of the parties or a child or children of the marriage resides. Thus, good cause applications will not be necessary where there are children.

In the modified 2018 proposal, we also addressed concerns expressed by Sanctuary for Families regarding our divorce venue post judgment application rule proposal about when the address of either party or their child(ren) is not a matter of public record or is subject to an existing confidentiality order.[65] The revised proposal provides that, in such cases where confidentiality and safety are paramount concerns, the place of trial designated by plaintiff may be as specified pursuant to CPLR 509. This conforms the legislative proposal to the rule on divorce venue post judgment applications adopted in 2017, which we discussed earlier in this report.[66]

Another change in the modified 2018 proposal was that there is only one good cause exception rather than two. One of the good cause exceptions in our original proposal could be read as allowing sua sponte transfers of venue by judges. Concerns were expressed to us by the New York State Bar Association Family Law Section about the possibility of sua sponte transfers of venue to a county with no nexus to the parties simply because the judges in that county were less busy, when the venue originally designated was proper to begin with. Therefore, our revised 2018 proposal retained only the second good cause exception. Rather than allow courts to transfer venue to another county, a time-consuming process fraught with delays, the second good cause exception, which was retained by our modified 2018 proposal, requires that venue be proper in the first place, but gives the court authority for good cause shown to allow the trial to proceed in the county where it was brought. This provision might be used where neither party to the divorce action or their child(ren) resides in New York State. Such designation of venue would be improper under our proposal which requires that venue be the residence of one of the parties or their child(ren). However, the plaintiff could make a motion to have it remain in the county designated under the good cause exception where, for example, the parties and their child(ren) had recently left the state. The good cause exception might also be useful to a low-income litigant who could only find pro bono or reduced fee representation in a county that was not the residence of the parties or their child(ren).

In addition to the foregoing changes, the revised 2018 proposal was much simpler and easier to understand, but we believe that it continues to accomplish its purpose of eliminating excessive

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[65] See Appendix "G-2" to our 2019 Annual Report to the Chief Administrative Judge available at https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/2019-Matrimonial.pdf

This Appendix contains the comments of Sanctuary for Families regarding our divorce venue post judgment application rule which was adopted in 2017. We are pleased that our divorce venue rule proposal for post judgment enforcement and modification applications has been adopted by the Administrative Board and is now in effect. However, this rule is not applicable to filings of divorces, but only to applications for post judgment relief. These measures, while helpful, do not address the major problem, namely that designations of venue in counties unrelated to residence deny access to justice to litigants on important questions of custody and visitation and support, and drain the limited judicial resources of the courts by encouraging post judgment relief from default judgments.

[66] See 22 NYCRR §202.50 (b)(3)

venue designations in counties unrelated to residence of the parties or their child(ren), whether pursuant to CPLR 509 or, because of the recent changes adopted by chapter 366 of the Laws of 2017, in amendments to CPLR 503(a). This, in turn, will ensure that courts will have available to them in their decision-making important information about children and families that would not be available if the venue were not related to residence.

Under our revised 2018 proposal, delays in transferring venue sua sponte will be avoided. It is only when the court decides not to allow the trial to proceed when a venue transfer will be needed. Thus, the percentage of transfers of venue will be much smaller. Moreover, by having a separate CPLR rule for matrimonial venue, much the way as there is a separate rule for consumer credit in CPLR 513, the Committee's proposal avoids the cumbersome drafting problems entailed in amending sections of the CPLR (such as CPLR 509 and 510) intended to apply to all types of actions. Our proposed CPLR 514 should have no impact on non-matrimonial actions.

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

Our legislative proposal in its current form was introduced by Assemblyman Dinowitz as 2019-20 A.7517.[67] This bill did not find a Senate sponsor in 2019; and the need for the Legislature to focus on the budget and other pandemic related matters delayed its consideration in subsequent years. This legislation would avoid problems of venue designations in distant counties by requiring that venue be related to residence of the parties notwithstanding CPLR 509. It is the Committee's first legislative priority this year. It requires that venue in a divorce action be related to the residence of the parties with exception only for instances where the address of a party is not a matter of public record or is subject to a confidentiality order as suggested by Sanctuary for Families.

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

[67] This bill is available at https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A07517&term=2019&Summary=Y&Memo=Y&Text=Y

Proposal:

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

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

Section 1. Section 509 of the civil practice law and rules, as amended by chapter 773 of the laws of 1965, is amended to read as follows:

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

§2. The civil practice law and rules is amended by adding a new rule 514 to read as follows:

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

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

plaintiff in any action specified in subdivision (a) of this rule may be as specified in section 509 of this article.

(c) In any action specified in subdivision (a) of this rule, the court may, for good cause shown, allow the trial to proceed before it, notwithstanding that venue would not lie pursuant to subdivision (b) of this rule. Good cause applications shall be made by motion or order to show cause.

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

2. Proposal Regarding Mandatory Electronic Filing in Matrimonial Actions

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

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

In 2015, the Legislature enacted CPLR 2111(b)(2)(A), which authorized the Chief Administrative Judge in his or her discretion to mandate the electronic filing of court papers in all cases in Supreme Court with only a limited number of exceptions.[68] One of those exceptions was in matrimonial actions. Since 2015, electronic filing experiments with consensual electronic filing in matrimonial cases in counties such as Westchester have proven very successful, and our Committee has recommended removing those exceptions for matrimonial cases for several years. The prior proposal by the Office of Court Administration, which we supported, not only eliminated the exception from mandatory e-filing for matrimonial actions, but also made further changes in the e-filing statutes to eliminate the present exclusion as to residential foreclosure and consumer debt

[68] The legislation requiring that the Chief Administrator consult with local bar associations and county clerks before eliminating the requirement of consent to electronic filing in any county provides:

"2. In the rules promulgated pursuant to subdivision (a) of this section, the chief administrator may eliminate the requirement of consent to participation in this program in: (A) one or more classes of cases (excluding matrimonial actions as defined by the civil practice law and rules, … (i) Notwithstanding the foregoing, the chief administrator shall not eliminate the requirement of consent in any county until after he or she shall have consulted with members of the organized bar including but not limited to city, state, county and women's bar associations; with institutional legal service providers; with not-for-profit legal service providers; with attorneys assigned pursuant to article eighteen-B of the county law; with unaffiliated attorneys who regularly appear in proceedings that are or have been affected by any program of electronic filing in such county that requires consent or who would be affected by a program of electronic filing in such county should the requirement of consent be eliminated; with any other persons in the county as deemed to be appropriate by the chief administrator; and with the county clerk of such county (where the affected court is the supreme court of a county outside the city of New York), and (ii) only after affording them the opportunity to submit comments with respect thereto, considering any such comments, including but not limited to comments related to unrepresented litigants and, in the instance of any county outside the city of New York, obtaining the agreement thereto of the county clerk thereof. All such comments shall be posted for public review on the office of court administration's website ."(N.Y. CPLR 2111 (McKinney).

actions from mandatory e-filing programs in Supreme Court and reset the current sunset for use of e-filing in criminal and Family Court. Unfortunately, this proposal was not enacted, but the sunset provision was extended.

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

Under this measure, the Chief Administrative Judge would be permitted to institute e- filing – on either a voluntary or mandatory basis – *in any or all* of the State's trial courts and in any class of cases.

For purposes of matrimonial cases in Supreme Court, the relevant sections of the modified and expanded proposal are as follows:

- *Bill section 2.* Amends CPLR 2111(a) to extend the authority to institute e-filing in all of the State's trial court of civil jurisdiction. Advance approval of the local county clerk is still required as to e-filing in Supreme Court and County Court.

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

The importance of mandatory electronic filing in matrimonial actions cannot be overstated, In October, 2018, as a further step in promoting electronic filing in matrimonial cases, Judge Sunshine sent a letter to the matrimonial bench and bar asking for their support in moving forward the instant legislative proposal.[69] The 2018 letter and subsequent letters pointed out the advantages of electronic filing in matrimonial cases, including a streamlined and economical filing process, access to case files, expeditious review of filed papers, enhanced security, easy notifications to parties and easy

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

resubmission of papers, free and fast service of subsequent papers, and for the general community diminished reliance on paper, a greener environment, and public savings through more economical and efficient court operations.

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

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

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

Our Committee strongly supports the modified and expanded legislative proposal put forth in this report as necessary to the fair and efficient processing of matrimonial cases, not only during the covid pandemic, but for the future. This proposal has special significance during the covid pandemic because electronic filing through the NYSCEF system has proven invaluable in expanding litigants'

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

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

ability to file matrimonial actions during this public health emergency. We hope that this legislation will be enacted by the Legislature and signed by the Governor in 2023.

Proposal:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Notwithstanding any other provision of law, the chief administrator of the courts, with the approval of the administrative board of the courts, may promulgate rules authorizing a program in the use of facsimile transmission only in the court of claims and electronic means in the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§19. This act shall take effect immediately.

3. Support for Legislation Increasing Assigned Counsel and Attorney for Child Fees

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

We strongly support as one of our three priorities this year legislation which would increase assigned counsel rates to at least $120 per hour for misdemeanors and to at least $150 per hour in all other matters, including matrimonial cases on issues where such counsel is assigned, with an annual cost of living increase based on inflation determined by the CPI. This CPI increase is an essential feature of any such legislation, inasmuch as the Legislature has not raised the assigned counsel fee rate in 19 years. It is also essential that legislation be enacted to remove the existing caps on total compensation received of $2400 for misdemeanors and $4400 for all other matters including matrimonial cases. Such legislation will not only increase access to justice for the most vulnerable in our society, but will also ensure efficient processing of cases because attorneys will be available on Panels to accept assignments.[72]

The Committee is extremely concerned about the lack of a rate increase since 2004 for attorneys for children and attorneys for adults assigned pursuant to FCA §§ 249 and 262 and pursuant to Judiciary Law § 35 and FCA § 1120. The current rate of $75 per hour with a statutory maximum of $4,400 (absent extraordinary circumstances)[73] was established in 2004 and is woefully inadequate. Compared to fees earned by matrimonial attorneys in the private sector, this rate of compensation discourages many attorneys from joining panels which would require them to accept assignments to represent indigent clients and children on matters involving important issues of custody and visitation and intimate partner violence. We understand it is especially difficult for judges handling matrimonial cases in all parts of the State to make appointments of assigned counsel and attorneys for children because it is difficult to attract new attorneys to serve on panels and there are an increasing number of attorneys leaving the panel or retiring.

Parental representation is an issue in Supreme Court matrimonial actions as well as in Family Court.[74] Judiciary Law 35(8) (L. 2006, c. 538) requires Supreme Court Justices to appoint counsel to represent an indigent party in a divorce action on issues over which the Family Court could have exercised jurisdiction such as custody and visitation, family offense proceedings, paternity, and contempt/willful violation proceedings on behalf of a respondent. This important legislation and funding ensured that non-monied spouses would have the same right to paid representation in Supreme Court that they would have had pursuant to FCA § 262 in Family Court

[72] We note that there is currently a bill introduced in the Legislature that would accomplish these goals. It is 2021-22 A.6013 Magnarelli/ S. 03527 Bailey, Gaughran, available at Bill Search and Legislative Information | New York State Assembly (nyassembly.gov) . We would support that bill or any other similar bill.

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

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

with respect to those issues.

Representation is also an issue in Supreme Court regarding representation of children by attorneys for children where independent legal representation is not available. Judiciary Law 35(7) (L. 1989, c. 571) requires Supreme Court and Surrogate Court Justices and Judges to appoint a Law Guardian (now attorney for the child) to represent a child in an action on issues over which the Family Court would have had jurisdiction and as to which the Family Court could have appointed a Law Guardian (now attorney for the child) pursuant to FCA § 249. This right is paramount to protection of the best interests of children in custody and visitation cases (see *Koppenhoefer v. Koppenhoefer,*159 A.D.2d 113, 558 N.Y.S.2d 596 (1990)).[75]

These concerns are shared by the New York State Bar Association which approved a resolution on June 18, 2018 calling for legislation increasing assigned counsel rates, including rates pursuant to Judiciary Law § 35.[76] These concerns are also shared by the Women's Bar Association of the State of New York, which recently issued a position statement supporting legislation increasing assigned counsel fees (see 2021 – A.6013 / S.3527 | wbasny).

During 2022, a Decision and Order dated July 25, 2022 by Hon. Lisa Headley (Supreme Court of New York County) on Motion for Injunctive Relief by NY County Lawyers Association et al v. the State of New York, the City of New York, New York City Department of Finance, and Sherif Soliman emphasized the importance of increasing assigned counsel rates by granting a motion for an interim preliminary injunction directing defendants in the case to pay assigned counsel $158 per hour retroactively to February 2, 2022, the date the Order to Show Cause was filed. This case was a step forward, but the ruling is not being followed outside New York City, and the final remedy must come from the State Legislature. A second lawsuit has now been filed by the New York State Bar Association mirroring the 2022 suit in the rest of the State. [77]

At the outset of the pandemic, we recognized that the severe budget cuts imposed by the Covid -19 pandemic necessitated postponing action on this recommendation. Now that both covid and the dire budgetary situation has eased, we are therefore hopeful that legislation increasing assigned counsel rates will be enacted in 2023. Such legislation will not only increase access to justice for the most vulnerable in our society, but will also ensure efficient processing of cases because attorneys will be available on Panels to accept assignments.

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

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

[77] See "Assigned counsel pay fight continues with new suit," by Jacob Kaye, *Queens Daily Eagle*, December 1, 2022

VI. Previously Endorsed and Modified Committee Legislative Proposals

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

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

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

Proposal

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

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

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

§211. Pleadings, proof and motions.

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

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

§2. This act shall take effect immediately.

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

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

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

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

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

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

rendering of a court's decision, which, at times could span several months. This lack of clarity might severely prejudice a party who fails to receive such notice. We therefore propose that the first paragraph of the statute be amended to make clear that "[t]he automatic orders shall remain in full force and effect until entry of the judgment of divorce, unless terminated, modified or amended…"

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

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

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

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

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

Proposal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This proposal is a composite proposal that modifies various provisions of the Domestic Relations Law and Family Court Act which presently either completely prohibit or provide that no modification shall reduce or annul arrears of child support or maintenance accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief prior to the accrual of such arrears.[78] Our proposal would clarify that the declaration by the Governor of a state of emergency which resulted in a prohibition on filing such application by the Chief Judge or Chief Administrative Judge during such emergency, shall constitute good cause for failure to make application for such relief and permit the court to grant relief retroactively to the date of declaration of the emergency or to such other subsequent date as the court might deem appropriate. This proposal is intended to provide some relief to the payor or payee who can prove entitlement to relief *(e.g.,* change of circumstances) but was prevented from filing because of the emergency; but there is a limitation of six months for the application to be filed after filing is again permitted by the Administrative Order of the Chief Judge or Chief Administrative Judge. The proposal also makes clear throughout that not only the payor, but also the payee, will be able to apply for relief under the provisions which allow the payee to seek upward modifications of support "nunc pro tunc" based on newly discovered evidence.

The proposal not only clarifies that emergencies declared by the Governor resulting in a prohibition on filing qualify as good cause without any question, but also modifies DRL §236(B)(9)(b) (2)(iii), and FCA §451to remove the absolute prohibitions on the court's modifying child support awards retroactively even for good cause. This removal of the absolute prohibitions conforms with recent case law where courts have aimed at greater flexibility where applications are prevented because of "rare circumstances resulting in grievous injustice"[79]" or "impossibility"[80] such as a public health emergency. As Professor Merrill Sobie comments about such cases with regard to FCA § 451 in the Practice Commentaries:

"The subset of cases at least provides a precedent for limited relief,

[78] Our proposal does not modify the provisions of either DRL §244 or FCA §460 which deal with entry and docketing of judgments where filing issues because of emergencies usually don't apply. By this point in the proceeding, the We understand that FCARC is supportive of our proposal.

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

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

although even an expanded "rare circumstance" or "impossibility" prerequisite is difficult to meet. In the more usual situations, for example where the temporarily unemployed person reduces support payments without seeking a modified court order, the doctrine is of no avail. Presumably, the "rare circumstances" or "impossible" safety net may also be employed when seeking an upward modification, although every case to date has involved a downward modification petition. (Suppose, for example, the custodial parent and the child were seriously injured in an accident, precluding their petitioning for the needed and legally justified child support increase.) Applying the overly rigid rule may harm either party, and an expanded equitable exception is needed to temper the statute's impact."[81]

[81] N.Y. Fam. Ct. Act § 451 (McKinney)

Proposal

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

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

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

(1) Upon application by either party, the court may annul or modify any prior order or judgment made after trial as to maintenance, upon a showing of the payee's inability to be self-supporting or upon a showing of a substantial change in circumstance, including financial hardship or upon actual full or partial retirement of the payor if the retirement results in a substantial change in financial circumstances. Where, after the effective date of this part, an agreement remains in force, no modification of an order or judgment incorporating the terms of said agreement shall be made as to maintenance without a showing of extreme hardship on either party, in which event the judgment or order as modified shall supersede the terms of the prior agreement and judgment for such period of time and under such circumstances as the court determines. The court shall not reduce or annul any arrears of maintenance which have been reduced to final judgment pursuant to section two hundred forty-four of this article. No other arrears of maintenance which have accrued prior to the making of such application shall be subject to modification or annulment unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears and the facts and circumstances constituting good cause are set forth in a written memorandum of decision. Such modification may increase maintenance nunc pro tunc as of the date of application based on newly discovered

evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party and without a written memorandum of decision, constitute good cause for failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of maintenance due shall, except as provided for herein, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. The provisions of this subdivision shall not apply to a separation

agreement made prior to the effective date of this part.

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

(iii) No modification or annulment shall reduce or annul any arrears of child support which have accrued prior to the date of application to annul or modify any prior order or judgment as to child support unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase child support nunc pro tunc as of the date of application based on newly discovered evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party constitute good cause for failure to make application for such relief, in which event such

relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of child support due shall, except as provided for in this subparagraph, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. Any retroactive amount of child support due shall be support arrears/past due support. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an immediate execution for support enforcement as provided for by this chapter, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support.

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

(j) The order shall be effective as of the date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall, except as provided for herein, be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil

practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the courts shall not direct the schedule of repayment of retroactive support. Where such direction is for child support and paternity has been established by a voluntary acknowledgement of paternity as defined in section forty-one hundred thirty-five-b of the public health law, the court shall inquire of the parties whether the acknowledgement has been duly filed, and unless satisfied that it has been so filed shall require the clerk of the court to file such acknowledgement with the appropriate registrar within five business days. Such direction may be made in the final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding. Any order or judgment made as in this section provided may combine in one lump sum any amount payable to the custodial parent under this section with any amount payable to such parent under section two hundred thirty-six of this article. Upon the application of either parent, or of any other person or party having the care, custody and control of such child pursuant to such judgment or order, after such notice to the other party, parties or persons having such care, custody and control and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity

of a void marriage rendered on or after September first, nineteen hundred forty, or any judgment of separation or divorce whenever rendered, amend the judgment by inserting such direction. Subject to the provisions of section two hundred forty-four of this article, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such child support nunc pro tunc as of the date of application based on newly discovered evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party constitute good cause for failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of child support due shall be support arrears/past due support and shall be paid in one lump sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules.

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

1. Except as provided in article five-B of this act, the court has continuing jurisdiction over any support proceeding brought under this article until its judgment is completely satisfied and may modify, set aside or vacate any order issued in the course of the proceeding, provided,

however, that the modification, set aside or vacatur shall not reduce or annul child support or other arrears accrued prior to the making of an application pursuant to this section[. The court shall not reduce or annul any other arrears] unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing payment prior to the accrual of the arrears, in which case the facts and circumstances constituting such good cause shall be set forth in a written memorandum of decision. A modification may increase support payments nunc pro tunc as of the date of the initial application for support based on newly discovered evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without a written memorandum of decision, constitute good cause for either party's failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of support due shall be paid and be enforceable as provided in section four hundred forty of this article. Upon an application to set aside or vacate an order of support, no hearing shall be required unless such application shall be supported by affidavit and other evidentiary material sufficient to establish a prima facie case for the relief requested.

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

2. Except as provided in article five-B of this act, any respondent against whom an order of commitment has been issued, if financially unable to comply with any lawful order issued under this article, upon such notice to such parties as the court may direct, may make application to the

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

5. Any respondent may assert his or her financial inability to comply with the directions contained in an order issued under this article or an order or judgment entered in a matrimonial action or in an action for the enforcement in this state of a judgment in a matrimonial action rendered in another state, as a defense in a proceeding instituted against him or her under subdivision one of section four hundred fifty-four of this article or under the judiciary law to punish him or her for failure to comply with such directions. If the court, upon the hearing of such contempt proceeding, is satisfied by competent proof that the respondent is financially unable to comply with such order or judgment, it may, in its discretion, until further order of the court, make

an order modifying such order or judgment and denying the application to punish the respondent for contempt; provided, however, that if an order or judgement for child support issued by another state is before the court solely for enforcement, the court may only modify the order in accordance with article five-B of this act. No such modification shall reduce or annul arrears accrued prior to the making of such application for modification unless the defaulting party shows good cause for failure to make application for relief from the order or judgment directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc as of the date of the application based on newly discovered evidence. Notwithstanding the foregoing, the declaration by the governor of a state of emergency which resulted in issuance by the judiciary of an administrative order which prohibits filing such application during such emergency, shall in itself without further proof from either party constitute good cause for failure to make application for such relief, in which event such relief, provided it is applied for within six months after the date of a subsequent administrative order by the judiciary permitting the filing of such application, may be granted retroactively to the date of declaration of the emergency or to such other subsequent date as the court in its discretion may deem proper. Any retroactive amount of support due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary support which has been paid.

§ 6. This act shall take effect immediately.

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

We resubmit our legislative proposal from our prior reports for a rebuttable presumption on proof of expenses in matrimonial cases pursuant to CPLR rule 4533-c. This measure had special covid related significance because it enables parties to introduce expenses without having the person who performed the service appear, which might be especially difficult during covid.[82] But it continues to have significance even after the covid pandemic has eased since it allows parties in matrimonial actions to introduce evidence of expenses more easily. The proposal would impose a cap of $10,000 on invoices in matrimonial cases, a much more realistic amount than the existing $2,000 cap on invoices in general civil cases pursuant to rule 4533-a. As Vincent Alexander observes in the Practice Commentaries regarding the general rule for all civil cases, "The amount specified in the rule as originally adopted has steadily increased by amendment over time and is long overdue for an upward adjustment." (CPLR 4533-a). The rule we propose for matrimonial actions would also allow invoices for any court ordered expenses, a much broader category than allowed under rule 4533-a and would allow more than one invoice per provider. These differences are designed to make it easier for matrimonial litigants, especially unrepresented litigants, to admit documents into evidence. We propose the new rule as a separate rule for matrimonial cases because in family matters, it is especially frequent and necessary for small expenses to be incurred for children's expenses for several children and other family matters.

This rule, like rule 4533-a, allows a plaintiff to prove the reasonableness and necessity for an itemized bill for services without having to produce the person who provided the invoice, provided that certain formal requirements specified are met.[83]

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

[82] We thank former Special Referee, Marilyn Sugarman, Esq. for bringing this issue to our attention.

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

personal injury actions. Our new rule also uses gender neutral language by speaking of "the affiant's employer" rather than "his employer." Demonstrating the need for our proposal is a recent article in the *New York Law Journal* where the author, Marilyn Sugarman, states:

> "*It is long past time to amend not only the dollar limitation set forth in the statute, but to allow a greater number of invoices from the same provider, particularly if there is testimony and/or other documentary evidence offered to substantiate the claims. A combination of bills or invoices; a credit card statement; canceled check; Venmo or Zelle message; or an email or text message-together with testimony of the party who paid the invoice or bill-should present a sufficient indicia of reliability to prove payment of an expense.*
>
> *Conclusion*
>
> *If New York state is not prepared to adopt a residual hearsay exception that codifies when any hearsay statement should be admissible-after the adverse party is given reasonable notice of the intent to offer the statement-so long as there is a guarantee of trustworthiness (see Fed. R. Evid. 807), there should at least be an amendment to CPLR 4533-a to relax some of the onerous requirements under the Rule. This would benefit practitioners who want to be assured that their evidence will be admitted at trial, rather than trusting that the court will determine that a litigant has provided a sufficient foundation for the admission of bills and invoices into evidence."*[84]

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

Our proposal was not enacted in the previous Legislative sessions. It is our hope that it will be enacted in 2023. This proposal was needed more than ever during covid when filings and appearances in matrimonial actions are more limited and difficult. But it continues to be important even after covid has eased. It is designed to make it easier for matrimonial litigants to admit documents as to their expenses into evidence without having to produce the person who prepared the document, which might be especially difficult during the pandemic.

[84] See Sugarman, Marilyn, "Proof of Expenses: Time for an Amendment to CPLR 4533-a, NYLJ, 11/16/21.

Proposal:

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

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

Section 1: The civil practice law and rules is amended by adding a new rule 4533-c to read as follows:

Rule 4533-c. Rebuttable presumption of expenses in matrimonial actions.

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

(b) Notwithstanding anything to the contrary in rule 4533-a, there shall be a rebuttable presumption that an itemized bill or invoice, receipted or marked paid, for court-ordered obligations, child related expenses, household expenses, goods, services or repairs of an amount not in excess of ten thousand dollars shall be admissible in evidence and represents the reasonable value and necessity of such expenses, goods, services or repairs itemized therein in any action or proceeding set forth in subdivision (a), provided that it is accompanied by a sworn statement by the person, firm or corporation, or an authorized agent or employee thereof, providing such goods or services or making such repairs and charging for the same, stating that (1) it provided the goods or services or made the repairs for which the expenses were incurred in the amount indicated, (2) no part of the payment received therefor will be refunded to the debtor, and (3) the amounts itemized therein are the usual and customary rates charged for such expenses, goods, services or repairs by

the affiant or the affiant's employer; and provided further that a true copy of such itemized bill or invoice together with a notice of intention to introduce such bill or invoice into evidence pursuant to this rule (indicating on its face that any objections must be in writing and set forth the basis for such objection(s)) is served upon the adverse party at least thirty days before the trial. Such presumption may be rebutted at trial only if the adverse party has served on the party submitting the expense and filed with the court a written notice of intention to rebut such bill or invoice setting forth the basis for such objection(s) at least fifteen days prior to trial.

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

5. Proposal on Access to Forensics in Custody Cases [DRL§§ 70, 240; FCA §§ 251, 651]

We again resubmit our proposal on access to forensics in custody cases. The subject of access to forensic reports has been widely discussed among the legal community in the last few years. It is one aspect of the examination of the use of forensic reports in custody cases covered in our White Paper on Forensic Reports in Custody Cases which was attached as Appendix H to our 2021 report.[85] It was also discussed in Recommendation #7 of the Governor's Blue-Ribbon Commission Report on Forensic Custody Evaluations, where the importance of access to such reports was recognized, although Commission members differed on whether physical copies of forensic evaluation reports should be provided to litigants.[86]

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

Before any court rule was adopted, legislation on the subject was introduced (A. 8342-A). Consideration of the proposed rules by the Administrative Board of the Courts was suspended pending possible action on this legislation. A new version of said bill was introduced as A. 290 on January 7, 2015. The Committee's concerns as to A. 8342-A continued to be applicable to the 2015-16 version. The Committee expressed these concerns in our 2016 Annual Report to the Chief Administrative Judge. On January 12, 2017, a 2017-18 version of said bill was introduced as A.1533/S.6300.

As stated in our prior annual reports, we believe that there is a real danger that the dissemination to the public of the reports or copies thereof on the Internet could prove to cause long lasting damage and embarrassment to many, and those concerns must outweigh reasonable restrictions imposed on self-represented litigants. Attorneys and other forensic experts are subject to professional discipline if reports are released, while parties, including self-represented litigants, face only potential contempt charges which are unlikely to result in a meaningful remedy for innocent victims including children whose personal lives are exposed.

In our 2017 Annual Report to the Chief Administrative Judge, our Committee developed a new proposal on access to forensics in custody cases, which we hoped would resolve the differences as to treatment of self-represented litigants by providing access to the report and the complete evaluator's files to the parties including self-represented litigants, attorneys, independent forensic experts hired to assist the attorneys, and the attorney for the child, on terms which respect the due process rights of self-represented and represented litigants, while

[85] Our 2021 Report with Appendices is available at 2021-Matrimonial.pdf (nycourts.gov).

[86] See Governor's Blue-Ribbon Commission Report on Forensic Custody Evaluations , December, 2021, at pages 11-12, available at Microsoft Word - Blue-Ribbon Commission Report FINAL 2022.docx (ny.gov)

providing better protections against unauthorized dissemination than were contained in the original bill. As in A.1533/S.6300, access to the evaluator's file would include access to the entire file related to the proceeding including, but not limited to, all underlying notes, test data, raw test materials, underlying materials provided to or relied upon by the court-ordered evaluator and any records, photographs or other evidence. At the request of the Office of Court Administration, our proposal was introduced as 2017-18 S. 6579. At the same time, Memoranda in opposition to 2017-18 A.1533/S.6300 and in support of 2017-18 S. 6579 were sent to legislators by the Family Law Section of the New York State Bar Association, the Women's Bar Association of the State of New York, the New York City Bar Matrimonial Law Committee and Committee on Children and the Law and the New York Chapter of the Academy of Matrimonial Lawyers.[87]

Also supporting our proposal was the Children's Law Center of Brooklyn. Their Letter to the Editor entitled "Parties Deserve to See Forensic Evaluations," published in the *New York Law Journal* on March 22, 2017, emphasized that our proposal should be viewed as necessary insofar as it affords vital protections to vulnerable children, stating:

> "*Thus, we support the Matrimonial Practice Advisory and Rules Committee recommendation that would give both represented and pro se litigants access to, but not possession of, forensic evaluations. Such an approach would simultaneously afford parents and other parties due process while adequately safeguarding the interests of the children caught in the middle of contentious litigation. This proposal is not simply acceptable, as Mr. Tippins suggests,[88] but necessary to avoid placing vulnerable children at greater risk than they already are as the subjects of a custody or visitation proceeding."*[89]

Our proposal was amended in 2018 as S. 6579-A based upon changes we recommended at the suggestion of the Family Court Advisory and Rules Committee and the New York Public Welfare Association, Inc., whose concerns were addressed in the modified proposal.[90] These changes included revising the definition of "court-ordered evaluators." We also deleted a provision governing the times when the court may read or review the forensic report. We instead adopted a suggestion of the Family Court Advisory and Rules Committee to authorize the Chief Administrative Judge to promulgate rules and regulations authorizing a court, in cases where a party does not raise a legally valid objection thereto, to read or review a forensic report at particular times as the rules shall permit. These changes do not detract from the essential feature of our proposal which provides access to the reports and notes and evaluator's file to attorneys and litigants while ensuring greatly

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

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

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

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

increased protections to prevent confidential information in the report from being disseminated indiscriminately (as compared to A.1533/S.6300 or the current version thereof).

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

During 2019, a significant Second Department Decision supported the view reflected in our forensics proposal that, in the interest of protecting the confidentiality of the information in forensic reports on custody which contain the most sensitive information about the parties' personal lives, it is not error to deny a pro se litigant a copy of a forensic report provided that the pro se litigant has adequate access to the report (see *Raymond v. Raymond ,2019 NY Slip Op. 05546*, 174 A.D.3d 625, 107 N.Y.S.3d 433 (Second Department 2019)). In that case, the Second Department affirmed the lower court's decision granting sole custody to the mother and denied the pro se father's petition for increased access to the child despite the fact that the pro se litigant was not given a copy of the forensic report. The Second Department noted that the pro se litigant had access to the report in that case over an extended period of time during which he could review the report and take notes on it, and that the forensic evaluator testified and was cross-examined at the hearing, and that the report was based on firsthand interviews by the evaluator rather than on hearsay. The recent decision in *Raymond* is at odds with dicta in *Sonbuchner v. Sonbuchner,* 2012 NY Slip op 0493, 96 A.D.3d 566, 947 N.Y.S.2d 80 (First Department 2012*)*.[91] In *Sonbuchner*, despite holding that the failure to provide the pro se litigant with a copy of the forensic report prior to direct testimony of the evaluator was harmless error, the court stated in dicta : "We nonetheless reiterate, as we have previously, that counsel and pro se litigants should be given access to the forensic report under the same conditions (see Matter of Isidro A.-M. v Mirta A., 74 AD3d 673 [2010]). Because defendant's attorney had a copy of the report, the court should have given the report to pro se plaintiff, even if the court set some limits on both parties' use, such as requiring that the report not be copied or requiring that the parties take notes from it while in the courthouse."[92] Our proposal differs from this dicta because it would not give an actual copy of the report to the pro se litigant where the represented party's attorney is given a copy, but it follows suggestions in *Sonbuchner* to set some limits on the parties' use of the report such as requiring that the report not be copied. In a report on 2019-20 A.5621/S.4686 dated May 2019, the Matrimonial Law Committee and the Children and The Law Committee of the New York City Bar Association opposed A.5621/S.4686 and favored our proposal (OCA #27), stating:

> *"The Matrimonial Law and Children and the Law Committees of the New York City Bar Association (the "Committees") write to provide feedback on the proposed legislation which would amend the Family Court Act and the Domestic Relations Law regarding the use of reports from court-appointed forensic evaluators ("forensics") in child custody*

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

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

disputes. The Matrimonial Practice Advisory and Rules Committee of the Office of Court Administration has proposed a similar but not identical bill (OCA 27-2019) …

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

The Committees are pleased that OCA 27-2019 follows our recommendation. A.5621/S.4686, however, presumptively gives represented parties the right to copies of the forensic report. In the age of smartphones and social media, that will make it all too easy for distraught parents to publicize the very personal and embarrassing information that must often be included in forensics' reports.

OCA 27-2019 also provides more extensive mechanisms for ensuring the confidentiality of forensic reports. In particular, attorneys and others who receive access to forensic reports would be required to sign affidavits promising to not disseminate the reports without permission. Such procedures should be included in any legislation enacted on this issue."[93]

In addition to the opposition of the New York City Bar Association Committees quoted above, there was also opposition to this bill by the Women's Bar Association of the State of New York, the Family Law Section of the New York State Bar Association, and the American Academy of Matrimonial Lawyers, New York Chapter.[94]

Aside from the risk of dissemination of private information about children and families, A. 05621 Weinstein S. 4686 Biaggi (reintroduced as 2021-22 A.8110/S.00753) also creates substantial risk for victims of intimate partner violence. As stated by the Women's Bar Association of the State of New York in their 2019 Position Statement in Opposition, a copy of which is contained in Appendix F-3 to this report:

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

The Committee strongly supports the concept that all litigants have the ability to read the reports. It is primarily the method of access that appears to be in dispute. It is our hope that our

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

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

version of the forensics bill or a compromise between our bill and the current version of A. 5621/S.4686 can be enacted in 2023 so that the important issue of forensic reports in custody cases can be addressed,

Proposal:

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

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

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

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

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

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

return the report and the files to the court at the conclusion of the litigation, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; and

(2) The court order appointing said evaluators shall provide to a party's attorney or the attorney for the child the entire file related to the proceeding including but not limited to, all underlying notes, test data, raw test materials, underlying materials provided to or relied upon by the court-ordered evaluator and any records, photographs or other evidence for inspection and photocopying, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; except if an individual is self-represented, the court shall make reasonable accommodations for the self-represented party to review said entire file, including, without limitation, everything that a party's attorney or the attorney for the child is entitled to review as described above, at a court or other location and forward those items to that location for inspection and note taking, but not for photocopying or photographing or scanning; and

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

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

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

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

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

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

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

(iv) at any other time if:

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

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

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

§2. Subdivision 1 of section 240 of the domestic relations law is amended by adding a new paragraph (a-4) to read as follows:

(a-4) Court-ordered forensic evaluations in proceedings involving child custody and visitation. Where a court order is issued for an evaluation or investigation of the parties or a child by a forensic mental health professional in a custody or visitation proceeding (other than by a probation service, a child protective service or any other person authorized by statute), appointed by the court to assist with the determination of child custody or visitation pursuant to this paragraph (hereinafter considered for purposes of this paragraph "court-ordered evaluators"), then for purposes of such court-ordered forensic evaluations and investigations:

(1) The court will determine which party is responsible for payment of the fee of the court-ordered evaluator, or in what proportions payment of the fee of the court-ordered evaluator will be shared between the parties, or otherwise paid on behalf of a party or parties, if applicable. Any report or evaluation prepared by the court-ordered evaluator, to be known as a "forensic report" for the purposes of this paragraph, shall be confidential and kept under seal except that all attorneys and the attorney for the child shall have a right to receive a copy of any such forensic report upon receipt of such a report by the court, provided that they execute an affidavit acknowledging that they will not give a copy of the report or the evaluator's file as provided for under subparagraph two of this paragraph to a party or further disseminate the report or said file, except as otherwise expressly permitted under this paragraph, without the consent of the court, and will return the report and file to the court upon conclusion of the litigation, subject to

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

(2) The court order appointing said evaluator shall provide to a party's attorney or the attorney for the child the entire file related to the proceeding including but not limited to, all underlying notes, test data, raw test materials, underlying materials provided to or relied upon by

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

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

seven hundred fifty or seven hundred fifty-three of the judiciary law as the case may be; and

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

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

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

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

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

(iv) at any other time if:

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

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

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

§3. Subdivision (c) of section 251 of the family court act is relettered to be subdivision (d)

and a new subdivision (c) is added to read as follows:

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

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

(2) The court will determine which party is responsible for payment of the fee of the court-ordered evaluator, or in what proportions payment of the fee of the court-ordered evaluator will be shared between the parties, or otherwise paid on behalf of a party or parties, if applicable. Any report or evaluation prepared by the court-ordered evaluator, to be known as a "forensic report" for the purposes of this subdivision, shall be confidential and kept under seal except that all attorneys and the attorney for the child shall have a right to receive a copy of any such forensic report upon receipt of such a report by the court, provided that they execute an affidavit acknowledging that they will not give a copy of the report or the evaluator's file as provided for under paragraph three of this subdivision to a party or further disseminate the report or said file,

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

(3) The court order appointing said evaluator shall provide to a party's attorney or the

attorney for the child the entire file related to the proceeding including but not limited to, all underlying notes, test data, raw test materials, underlying materials provided to or relied upon by the court-ordered evaluator and any records, photographs or other evidence for inspection and photocopying, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; except if an individual is self-represented, the court shall make reasonable accommodations for the self-represented party to review said entire file, including, without limitation, everything that a party's attorney or the attorney for the child is entitled to review as described above, at a court or other location and forward those items to that location for inspection and note taking, but not for photocopying or photographing or scanning; and

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

may seek counsel fees to enforce or defend said application for contempt pursuant to section seven hundred fifty or seven hundred fifty-three of the judiciary law as the case may be; and

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

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

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

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

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

(iv) at any other time if:

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

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

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

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

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

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

(2) The court will determine which party is responsible for payment of the fee of the court-ordered evaluator, or in what proportions payment of the fee of the court-ordered evaluator will be shared between the parties, or otherwise paid on behalf of a party or parties, if applicable. Any report or evaluation prepared by the court-ordered evaluator, to be known as a "forensic report" for the purposes of this subdivision, shall be confidential and kept under seal except that all attorneys and the attorney for the child shall have a right to receive a copy of any such forensic report upon receipt of such a report by the court; provided that they execute an affidavit acknowledging that they will not give a copy of the report or the evaluator's file as provided for

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

(3) The court order appointing said evaluator shall provide to a party's attorney or the attorney for the child the entire file related to the proceeding including but not limited to, all underlying notes, test data, raw test materials, underlying materials provided to or relied upon by the court-ordered evaluator and any records, photographs or other evidence for inspection and photocopying, subject to the provisions of section three thousand one hundred three of the civil practice law and rules; except if an individual is self-represented, the court shall make reasonable accommodations for the self-represented party to review said entire file, including, without limitation, everything that a party's attorney or the attorney for the child is entitled to review as described above, at a court or other location and forward those items to that location for inspection and note taking, but not for photocopying or photographing or scanning; and

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

a court order or a willful violation of the provisions of this subdivision regarding dissemination of the forensic report or the evaluator's file or of an affidavit executed with respect thereto; and a party may seek counsel fees to enforce or defend said application for contempt pursuant to section seven hundred fifty or seven hundred fifty-three of the judiciary law as the case may be; and

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

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

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

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

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

(iv) at any other time if:

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

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

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

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

provided, however, that effective immediately the chief administrator of the courts, with the approval of the administrative board of the courts, is authorized and directed to promulgate any rules necessary to implement the provisions of this act on or before such effective date.

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

We resubmit our proposal which relates to child support in shared custody situations by proposing a legislative amendment to the Child Support Standards Act to address the situation in *Rubin v. Salla,* 107 A.D.3d 60, 71, 964 N.Y.S.2d 41 (2013).

In that case, the First Department, reversing the lower court's denial of the father's motion for summary judgment dismissing mother's action for child support, held that the father who had primary physical custody of a child in a shared custody arrangement where the time was not equally divided (over 50 % with the custodial parent father) could not be ordered to pay child support to the mother even though he had far greater income. The majority opinion by Justice Richter stated: "The mandatory nature of the statutory language undeniably shows that the Legislature intended for the noncustodial parent to be the payer of child support and the custodial parent to be the recipient. The CSSA provides for no other option and vests the court with no discretion to order payment in the other direction*." (Rubin v. Salla*, 107 A.D.3d 60, 67, 964 N.Y.S.2d 41, 47 (2013). The dissent by Justice Acosta, Presiding Justice of the Appellate Division, First Department, raised issues as to the correctness of this approach as follows:

> "*I respectfully dissent from the dismissal of the mother's cause of action for child support because the majority's rigid application of the statute sacrifices the child's well-being at the altar of an arithmetic formula. It forces the child to bear the economic burden of his parents' decisions, even where, as here, the child, whose father is a millionaire, is in danger of living in poverty, solely to preserve uniformity and predictability in child support awards. I do not believe this result is what the legislature intended in drafting the Child Support Standards Act (CSSA), especially since the CSSA clearly did not envision every possible custodial situation."* (*Rubin v. Salla*, 107 A.D.3d 60, 73-74, 964 N.Y.S.2d 41, 52-53 (2013).

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

In 2021, our proposal was adopted as OCA 2021 #44 and was introduced in the Legislature by Assemblyman Lavine, Chair of the Assembly Judiciary Committee, as A. 7804. We hope it will be enacted in 2023.

Proposal

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

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

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

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

§2. Paragraphs (h) through (l) of subdivision (1-b) of section 240 of the domestic relations

law are renumbered to be paragraphs (i) through (m) and a new paragraph (h)is added in place of former paragraph (h) to read:

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

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

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

Recently enacted into law as chapter 55 of the Laws of 2020 were amendments to the Criminal Procedure Law and the Family Court Act which authorized courts to issue search and seizure orders regarding firearms in connection with orders of protection. Said legislation did not amend the Domestic Relations Law or otherwise address the Supreme Court's statutory authority in a matrimonial action to issue search and seizure orders regarding firearms possessed in violation of an order of protection issued thereunder. Specifically, the Legislature did not add the new search and seizure provisions to sections 240(3)(h) and 252(9) of the Domestic Relations Law, which incorporate by reference the firearms surrender and license suspension and revocation requirements of CPL § 530.14 and Family Court Act §§ 842-a and 846-a. Notwithstanding, in both plenary and consolidated matrimonial proceedings, the Supreme Court retains inherent authority to issue such orders and may do so where necessary and proper to ensure compliance with its order and the safety of protected parties. The Supreme Court has general original jurisdiction in law and equity under the State Constitution even without statutory authorization [95] Despite the case law, a statutory change is in order so as to avoid confusion.

We again propose amendments conforming sections 240(3)(h) and 252(9) of the Domestic Relations Law to the CPL and Family Court Act as amended by chapter 55 of the Laws of 2020. The proposal was adopted as 2021 OCA #45. During 2021, A.7957 was introduced by Assemblyman Lavine based on our proposal. The bill passed the Assembly and was referred to the Senate.

We have this year amended our proposal to mirror the recently enacted provisions of chapter 576 of the Laws of 2022, which amends paragraph (c) of subdivision 1 of Family Court Act §842-a to make the obligation of the court to issue orders for seizure of firearms mandatory, not discretionary, where the respondent or defendant willfully violates an order to surrender weapons, but which allows orders for weapons seizures based upon good cause shown to remain discretionary with the court.

We hope this legislation will be enacted in 2023 so that there will be no confusion on this subject. The Courts have meanwhile adopted a form Seizure Order for Supreme Court based on the Supreme Court's inherent authority.[96]

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

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

Proposal:

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

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

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

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

criminal procedure law, consistent with such rights as said party may derive from this article or the constitution of this state or the United States.

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

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

§3. This act shall take effect immediately.

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

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

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

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

While CPLR 6347 states that **"**no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding," a finding in a proceeding for an extreme risk order of protection would not be binding on a judge determining custody or visitation of a minor child, but merely a relevant and important factor to consider in the best interest of the child. Moreover CPLR 6346 provides that, upon expiration of the extreme risk order of protection, all records shall be sealed; but specifically provides that such records shall be accessible to courts of the Unified Court System, among other necessary parties.[97] This language makes clear that the Legislature intended this information to be available to judges making custody and visitation decisions.

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[97] § 6346 provides:
Expiration of an extreme risk protection order. 1. A protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order...except that such records shall be made available to:
(a) the respondent or the respondent's designated agent;
(b) courts in the unified court system;
(c) police forces and departments having responsibility for enforcement of the general criminal laws of the state;
(d) any state or local officer or agency with responsibility for the issuance of licenses to possess a firearm, rifle or shotgun, when the respondent has made application for such a license; and
(e) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, in relation to an application for employment as a police officer or peace officer;…

Thus, we strongly recommend an amendment of the new statute to specifically require the court to provide a copy of the extreme risk order of protection to the statewide computerized registry so that Judges making decisions on custody and visitation can rely on having access to this information which will help protect children from danger,

Proposal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposal

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately.

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

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

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

DRL § 12 provides:

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

We recommend: (1) the repeal of DRL§ 25 and (2) the repeal of the second paragraph of DRL §12 to eliminate the loophole that would remain even with the repeal of DRL §25.[98] Although unrelated to the issue of requiring a marriage license, we further recommend the revision

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

of the language contained within the first paragraph of DRL § 12 such that the reference to "that they take each other as husband and wife" is changed to "that they take each other as his/her spouse" to conform with both the provisions of New York State and Federal law permitting same sex marriage.

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

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

Moreover, the filing of a license will help avoid litigation in a host of other areas by providing a record of the marriage to address crediting of social security benefits, health insurance coverage, inheritance rights and other marriage-related issues.[99] In many of these cases, such as

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

Ponorovskaya,[100] *Farraj*, [101] and *Hasna*,[102] the court is required to examine the facts and circumstances at great length in order to determine the expectations of the parties as to whether they were legally married. Determining the validity of the marriage often requires lengthy litigation, occurring years after the alleged marriage was entered, when witnesses may no longer be available and can cause severe emotional distress to the parties, children, heirs and others, not to mention the time and expense incurred in proceeding with such court or administrative proceedings. Such litigation consumes judicial resources which could have been better spent determining important questions involved in matrimonial cases, such as custody and visitation, which have immediate consequences in the lives of families and children going through divorce. Moreover, uncertainty over whether a marriage exists can work to the detriment or the advantage of either party and allows manipulation by parties.

Marriage in New York is a civil contract (DRL § 10). We see no impediment to having an absolute requirement that a marriage license be obtained before a marriage can be solemnized in New York. At least twenty-seven states have enacted mandatory marriage license statutes without any claim of infringement on religious freedoms.[103] Moreover, the absolute requirement that a license be obtained will help ensure that the parties recognize the serious commitment they make by entering into a marriage.

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

Proposal:

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

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

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

§12. Marriage; how solemnized.

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

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

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

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

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

[The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called friends or quakers; nor marriages among the people of any other denominations having as such any particular mode of solemnizing marriages; but such marriages must be solemnized in the manner heretofore used and practiced in their respective societies or denominations, and marriages so solemnized shall be as valid as if this article had not been enacted.]

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

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

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

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

The Committee believes that a special rule on discontinuances for matrimonial actions is needed because pleadings are often not served or waived in divorce actions. Parties often do not file pleadings in such cases while they negotiate and may not even be aware of all the ancillary issues until later in the case. With the advent of DRL § 170(7) allowing for no-fault divorce, a party may not even file an answer and counterclaim, believing, erroneously, that it is unnecessary. It is unfair to the court and the other party and to the children to let a party discontinue after considerable resources and effort have been spent on the case. We were gratified at the adoption of our proposal for a revised Preliminary Conference Order form containing a provision requiring the parties to waive a voluntary discontinue once grounds have been resolved.[104] However, this was a stopgap measure and a statutory amendment to the CPLR itself applicable only to matrimonial actions would be most effective.

Rather than rely on a statewide court form which contains a provision waiving voluntary discontinuance, which form may or may not be used uniformly throughout the state,[105]we recommend a statutory amendment to the CPLR applicable only to matrimonial actions which would prohibit a voluntary discontinuance once a notice of appearance is filed or a party has appeared in court, e.g., at the preliminary conference. Like the provision in our revised preliminary conference order form adopted in 2016, discussed earlier in this report, this provision will deny parties the option to discontinue an action in order to litigate another day when they believe their chances will be better, even though they have already spent years in discovery, but will accomplish this without requiring parties to file pleadings which might discourage settlements, and which might result in extensive motion practice and hearings.

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

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

Proposal:

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

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

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

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

§2. This act shall take effect immediately.

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

The Committee proposed last year an amendment to the Child Parent Security Act enacted in 2020 as chapter 56, Laws of 2020. [106] The amendment would ensure that the sealing provisions of the Act are not compromised by rules requiring parties' names in captions in papers. The Child Parent Security Act provides that Court records relating to parentage proceedings shall be sealed with certain exceptions for child support administration by state authorities, but may be available for inspection and copying only by the parties or the child. However, pursuant to both the CPLR and Court Rule, the County Clerk as the Clerk of the Supreme Court or the Surrogate's Court Clerk where the initial petition is filed is required to display the names of parties unless the statute, a court rule or court order specially prohibits.[107] These rules are intended for the typical type of litigation where the parties' interests are adverse to each other and the defendant needs to know the plaintiff's identity in order to defend the case, and where there is no statutory sealing requirement as there is with the Child Parent Security Act.[108] Even then, there are exceptions granted

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[106] The Family Court Advisory and Rules Committee ("FCARC") supports our proposal for an anonymous caption, but has also proposed additional Chapter Amendments to the law incorporated into 2021-22 Lavine A. 7674. Our Committee supports the proposal put forth by the FCARC that the Court may in its discretion require testimony to establish the truthfulness of the statements in a petition for a Judgment pursuant to the statute. We also agree that the Surrogacy Agreement should be required by the statute to be attached to the petition . The Court should not have to ask for it. Even though there is a requirement for an attorney certification of compliance with Part 4, of Article 5-C the Court should have the right to make its own determination of compliance in order to avoid problems in the future.

We are studying the other proposals for other Chapter Amendments in 2021-2022 A6832-b Paulin/ S6386-b Hoylman.

[107] See CPLR 2101 (c) which reads as follows:

> c) Caption. Each paper served or filed shall begin with a caption setting forth the name of the court, the venue, the title of the action, the nature of the paper and the index number of the action if one has been assigned. In a summons, a complaint or a judgment the title shall include the names of all parties, but in all other papers it shall be sufficient to state the name of the first named party on each side with an appropriate indication of any omissions.
> N.Y. C.P.L.R. 2101 (McKinney).

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

> " In accordance with CPLR 2102(c), a County Clerk and a chief clerk of the Supreme Court or County Court, as appropriate, shall refuse to accept for filing papers filed in actions and proceedings only under the following circumstances or as otherwise provided by statute, Chief Administrator's rule or order of the court:…
>
> (ii) The summons, complaint, petition, or judgment sought to be filed with the County Clerk contains an "et al" or otherwise does not contain a full caption;

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

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

depending on the facts of the case. [109] By contrast, in most cases under the Child Parent Security Act, the parties petition the court consensually for a judgment of parentage, and rules as to names of parties in captions are inapplicable.

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

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

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

During 2022, we received a suggestion to limit our proposal to anonymous captions for surnames only in order to make it easier to search records without endangering confidentiality. This proposal is acceptable to us, and we have modified our proposal accordingly in this year's report. We strongly urge adoption of our proposal to ensure confidentiality of highly intimate information, while preserving judicial resources and promoting efficiency.

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[109] See 82 N.Y. Jur. 2d Parties § 5 stating:
"However, a plaintiff may be permitted to proceed anonymously if there are good reasons for doing so and the plaintiff's identification can be made with enough certainty to allow the court to acquire jurisdiction."

Proposal:

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

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

Section 1. Section 581-205 of the family court act is amended to read as follows:

§581-205. Inspection of records.

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

§2. This act shall take effect immediately.

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

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

In our 2022 report, the Committee proposed a chapter amendment to the new law to: 1) enumerate what the court should consider as to the best interest of a companion animal when awarding its possession in a matrimonial proceeding and 2) clarify that the definition of a companion animal does not include service animals since such animals should generally be awarded to the party whom they are trained to assist without consideration of such animals' best interests. The Committee again puts forth this proposal.

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

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

Proposal:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§2. This act shall take effect immediately.

VII. Previously-Endorsed Rule Proposals

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

There is currently much debate about forensic reports. As an Appendix H to our 2021 report, we provided a White Paper on Forensic Reports in Custody Cases to address this important topic, a copy of which we furnished to the Legislature and to the Governor's Counsel. The White Paper is available at 2021-Matrimonial.pdf (nycourts.gov). We have also been studying the report of the Governor's Blue-Ribbon Commission on Forensic Custody Evaluations since it was issued in December, 2021.[110]

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

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

Proposal:

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

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

[110] See Governor's Blue-Ribbon Commission Report on Forensic Custody Evaluations, December 2021, available at Microsoft Word - Blue-Ribbon Commission Report FINAL 2022.docx (ny.gov)

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

1) The statement of understanding shall provide information concerning the evaluator's policies, procedures, and any attendant fees in addition to the hourly rate and cap as set forth in the order of appointment.

2) The statement of understanding shall not contain any material terms that conflict with the provisions of the order of appointment.

3) Upon receipt of the order of appointment, the evaluator shall send the statement of understanding to counsel for the parties and to any self-represented litigants for their review and acknowledgement. The statement of understanding shall be reviewed, signed and returned to the evaluator and the court within 10 business days.

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

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

Proposal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposal

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

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

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

Justices hearing matrimonial cases often conduct bifurcated trials allowing the issues pertaining to custody to be determined before issues pertaining to financial relief. Early resolution of custody is often in the best interests of the children of the marriage. Moreover, financial and custody issues may not easily lend themselves to being tried together. However, if the custody issues are tried first, a significant passage of time, often more than one or two years, may occur between the date of the court's custody decision and the entry of the judgment of divorce. Without entry of a judgment, the custody decision is not subject to appeal.[111] A party who wishes to appeal the custody decision is left without an immediate remedy, to the possible detriment of the children. By the time the judgment of divorce is entered, the facts heard at the custody trial may be stale due to the passage of time. Appellate justices hearing the appeal may feel constrained to send the matter back to the trial court for a new hearing to update the facts.

To remedy this problem, the Committee again recommends adding a new section 202.16(n) to the Uniform Civil Rules for the Supreme Court and the County Court. The rule requires the trial judge in a divorce action where a decision has been reached on custody, but other ancillary issues have not been litigated or resolved, to sever the custody issues resolved from the remaining issues in the case, and to direct entry of judgment thereon, thus allowing immediate appeal, if sought, of the custody issues resolved.[112]

This procedure is authorized under CPLR 5012 which provides:

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

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

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

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

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

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

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

Proposal:

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

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

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

In 2015, the Legislature passed, and the Governor signed into law, as chapter 447 of the laws of 2015, our proposal to amend § 237(a) to clarify and codify on a statewide basis what is implicit in *Prichep v. Prichep* , 52 A.D.3d 61, 858 N.Y.S.2d 667 (2d Dept. 2008), i.e., unrepresented litigants[113] should not be required to file an affidavit detailing fee arrangements when seeking counsel fees. We now propose an amendment to 22 NYCRR **§** 202.16 (k) (3) to mirror the statutory amendment exempting unrepresented litigants from the detailed fee affidavit requirement, and to adopt a new statewide form, *i.e.*, "Unrepresented Litigant Application for Counsel Fees." It consists of an order to show cause together with an affidavit in support. The new form is designed to make it easier for pro se litigants to apply for counsel fees. Without funds to hire counsel to make a formal motion for counsel fees, pro se litigants often do not know where to start in making the application. Compounding the problem is the unwillingness of many attorneys to make a motion on their behalf for counsel fees because of fear of becoming attorney of record in the matter.[114] We believe that unrepresented litigants will benefit by having a form available they can fill out themselves to obtain the fees to hire counsel to prosecute their matters. The Committee thought it prudent to leave out of the form instructions on filing because procedures might differ from county to county. The Committee also provided in the order that the fees be paid directly to an attorney retained by the unrepresented litigant to ensure that the fees would be used for the purpose intended.

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

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

[113] 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.

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

Proposal:

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

(3) No motion for counsel fees and expenses shall be heard unless the moving papers also include the affidavit of the movant's attorney stating the moneys, if any, received on account of such attorney's fee from the movant or any other person on behalf of the movant, the hourly amount charged by the attorney, the amounts paid, or to be paid, to counsel and any experts, and any additional costs, disbursements or expenses, and the moneys such attorney has been promised by, or the agreement made with, the movant or other persons on behalf of the movant, concerning or in payment of the fee. An unrepresented litigant shall not be required to file such an affidavit when making an application for an award of counsel fees and expenses; provided he or she has submitted an affidavit that he or she is unable to afford counsel with supporting proof, including a statement of net worth and if available, W-2 statements and income tax returns for himself or herself. However, the party opposing such motion, if represented by counsel, must still promptly submit such an affidavit as part of the answering papers as still required pursuant to section 237 of the Domestic Relations Law. An affidavit attached to an Order to Show Cause or motion filed by an unrepresented litigant shall comply with this rule if it is substantially in compliance with an Appendix to 22 NYCRR § 202.16 to be promulgated.[115] 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.

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

VIII. Subcommittees

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

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

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

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

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

HARMONIZATION OF A/O 270/20 WITH MATRIMONIAL RULES
Hon. E. Laura Drager (Ret.)
Hon. Jeffrey Goodstein
Hon. Cheryl A. Joseph
Elena Karabatos
Hon. Mary Slisz

LEGISLATION
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Hon. La Tia Martin
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Michael A. Mosberg
Hon. Emily Ruben
Eric A. Tepper
Harriet Weinberger

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Elena Karabatos
Christopher S. Mattingly
Hemalee J. Patel, Reporter
Hon. Jacqueline W. Silbermann
Eric A. Tepper
Bruce J. Wagner

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

SPECIAL SUBCOMMITTEE ON KYRA'S LAW
Hon. Jeffrey Goodstein
Elena Karabatos
Hon. Jeffrey Lebowitz, (Ret.)
Hon. Mary Slisz
Eric A. Tepper

SURROGACY
Kathleen Donelli, Esq.
Hon. Ellen Gesmer
Elena Karabatos, Esq.
Michael A. Mosberg, Esq.
Hon. Jacqueline W. Silbermann

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

IX. 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 2023

Respectfully submitted,
Honorable Jeffrey S. Sunshine, Chair
Alton L. Abramowitz, Esq.
Susan L. Bender, Esq.
Rose Ann C. Branda, Esq.
Honorable Linda Christopher
Kathleen Donelli, Esq.
Honorable Laura E. Drager [Ret.]
Honorable Betty Weinberg Ellerin [Ret.], Hon. Chair
Donna England, Esq.
Steven J. Eisman, Esq. (deceased)
Stephen J. Gassman, Esq.
Honorable Ellen Gesmer
Honorable Jeffrey Goodstein
John J. Grimes, Esq.(deceased)
Natasha Y. Ingram, Esq.
Honorable Cheryl A. Joseph
Elena Karabatos, Esq.
Honorable Jeffrey D. Lebowitz [Ret.]
Honorable La Tia W. Martin
Christopher S. Mattingly, Esq.
Stephen P. McSweeney, Esq.
Faith G. Miller, Esq.
Honorable Sondra Miller [Ret.], Hon. Chair
Michael A. Mosberg, Esq.
Hemalee J. Patel, Esq.
Yesenia Rivera-Sipes, Esq.
Seema Ali Rizzo, Esq.
Hon. Emily Ruben
Honorable Jacqueline W. Silbermann [Ret.]**,** Hon. Chair
Hon. Mary Slisz
Zenith T. Taylor, Esq.
Eric A. Tepper, Esq.
Bruce J. Wagner, Esq.
Harriet Weinberger, Esq.
Susan W. Kaufman, Esq. Counsel

X. Appendices to Report of Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge, January 2023

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

B - Letter from Nancy Barry, Chief of Operations and Justin Barry, Chief of Administration dated September 14, 2022, on Revised Mask Policy

C - Revised Rules Governing Consensual E-Filing in Matrimonial Actions found in Appendix B to Administrative Order 161/21 dated May 25, 2021

C-1 Memorandum dated April 5, 2021 from Nancy Barry re Virtual Evidence Courtrooms in Matrimonial Cases

C-2 Statement of Hon. Jeffrey Sunshine to the Commission to Reimagine the Future of the NYS Courts dated November 7, 2022

C-3 Response of the Committee to the Request for Public Comment on the Proposed Assigned Counsel Eligibility Rule dated July 26, 2022

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

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

E - Description of Committee's Legislative and Rule Proposals Adopted from 2015-2021

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

F-2 - Report by the Matrimonial Law Committee and the Children and the Law Committee of the New York City Bar Association dated May 2019

F-3 - Memoranda of Opposition to 2019-20 A.5621/S.4686 by the Women's Bar Association of the State of New York, the Family Law Section of the New York State Bar Association, and the American Academy of Matrimonial Lawyers, New York Chapter

G - OCA Court Statistics on Divorce Filings Full Year 2011 to 2021

G-1 OCA Court Statistics on Uncontested Divorce Filings of Erie, Monroe, Suffolk, and Westchester Counties from 2014 to 2021

G-2 OCA Court Statistics on Uncontested Divorce Filings in the Five Boroughs of New York City from 2014 to 2021

H- Memorandum from then Presiding Justice A. Gail Prudenti (Ret.) dated March 7, 2008.

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

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Appendix A

State of New York
Unified Court System

25 Beaver Street
New York, N.Y. 10004
(212) 428-2100

Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

June 1, 2018

TO: Administrative Judges

FROM: Lawrence K. Marks LM

SUBJECT: Statewide Coordinating Judge for Matrimonial Cases

It is my pleasure to announce the appointment of Hon. Jeffrey S. Sunshine as Statewide Coordinating Judge for Matrimonial Cases. Some of you may recall that a similar position existed some years ago, but was not continued when Hon. Jacqueline Silbermann retired from the bench.

As you know, matrimonial cases are an important, and challenging, component of our civil case inventories. Contested matrimonials often demand extensive resources, judicial and otherwise, and are frequently plagued by delays and other complications. Members of the matrimonial bar, among others, have approached me in recent months to advocate for re-designating an experienced judge who can work with the Administrative Judges, matrimonial part judges and the matrimonial bar to better promote the goals of the Chief Judge's Excellence Initiative.

Judge Sunshine is an ideal candidate to take on this role. He has extensive experience in the matrimonial field, both as a practitioner and as a judge in Kings County Supreme Court. He also chairs our Matrimonial Practice Advisory and Rules Committee, which has recommended numerous administrative rules and other measures that have streamlined and improved matrimonial case adjudication. In his new role, Judge Sunshine will work with all of you to develop protocols and best practice models to expedite the processing of contested cases, revise and streamline the uncontested divorce process, work to promote and expand mediation in divorce actions, act as a liaison between the court system and the matrimonial bar, promote e-filing in matrimonial cases and work with the Judicial Institute on matrimonial judicial education programs. He will

also continue to serve as chair of our Matrimonial Practice Advisory and Rules Committee, and will continue to handle a matrimonial caseload in Kings Supreme Court.

Judge Sunshine will be a valuable resource for all of you in your efforts to successfully manage your matrimonial inventories. He will be reaching out to you in the coming weeks.

cc: Hon. Janet DiFiore
Hon. Michael V. Coccoma
Hon. George J. Silver
Hon. Edwina G. Mendelson

Appendix B

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

TAMIKO A. AMAKER
DEPUTY CHIEF ADMINISTRATIVE JUDGE
FOR MANAGEMENT SUPPORT

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

JUSTIN A. BARRY, ESQ.
CHIEF OF ADMINISTRATION

MEMORANDUM

September 14, 2022

TO: All UCS Judges and Non-Judicial Personnel

FROM: Nancy J. Barry NJB
Justin A. Barry JB

SUBJECT: UCS Revised Mask Policy

Effective September 15, 2022, face masks will no longer be required for any persons, regardless of vaccination status, in a Unified Court System facility, with two exceptions:

- Return from Isolation: Any person, including judges, non-judicial personnel and court visitors, returning from isolation after testing positive for COVID-19 entering a UCS facility must wear a well-fitting, disposable, non-woven mask in all areas and at all times in a UCS facility for 5 calendar days from the end of their isolation; and

- Exposure to Someone with COVID-19: After coming into close contact with someone with COVID-19,[1] all individuals must wear a well-fitting, disposable, non-woven mask at all times around others and in all areas of our courts or facilities for the next 10 calendar days.

Voluntary Masking – Any person may wear a mask in a court facility if they choose. Those individuals who have weakened or compromised immune systems, are at increased risk for severe disease because of age or medical condition or live in the same household as someone with those risk factors, may want to wear a mask in a UCS facility.

As a result of these changes in our Mask Policy, the UCS will discontinue its Orange Card and Green/White Pass programs. No identification cards or passes are required to be displayed to enter and remain in a UCS facility without a mask. Orange cards are UCS property and should not be discarded but stored for safekeeping by the individual judge and employee.

[1] "Close contact" continues to be defined by the CDC as within 6 feet for a cumulative total of 15 minutes within a 24-hour period.

The UCS Mandatory Vaccination Requirement remains in effect and the share point site will remain open for new judges' and new employees' submissions. Orange cards, however, will no longer be issued, and it is no longer necessary for existing judges and non-judicial personnel to upload proof of booster or additional doses received after the primary series of vaccinations.

The Mandatory Testing Policy for judges and non-judicial employees who have been granted, or are awaiting determination on, a medical or religious exemption remains in full effect as well.

The COVID Safety and Operational Protocols have been updated to reflect these changes.

* * *

These protocols are subject to modification based on additional guidance from the CDC and New York State Department of Health.

We continue to extend our appreciation to judges and staff for their cooperation and flexibility as we respond to these improving conditions.

Appendix C

APPENDIX B

Rules Governing the Consensual Electronic Filing
of Matrimonial Actions in Supreme Court

(a) Application

(1) On consent, documents may be filed and served by electronic means in matrimonial actions in the Supreme Court of authorized counties subject to the conditions set forth below. Except as otherwise required by this order/appendix, the provisions of 22 NYCRR § 202.5-b shall apply.

(2) For purposes of this order/appendix:

(i) "Matrimonial actions" shall mean those actions set forth in CPLR § 105(p) and DRL § 236, as well as plenary actions for child support, custody or visitation, an order of protection or an application pursuant to the Child Parent Security Act, wherein:

(A) the action is contested, and addresses issues including, but not limited to, alimony, counsel fees, pendente lite, maintenance, custody and visitation, child support or the equitable distribution of property; or

(B) the action is uncontested; or

(C) the action is a post-judgment application that either (*1*) addresses an underlying matrimonial action that was commenced electronically, or (*2*) is electronically initiated with the purchase of a new index number.

(ii) A "party" or "parties" shall mean the party or parties to the action or counsel thereto (as set forth in 22 NYCRR § 202.5-b(a)(2)(viii)) and the attorney(s) for the minor child(ren).

(3) No paper or document filed by electronic means in a matrimonial action shall be available for public inspection on-line or at any computer terminal in the courthouse or the office of the County Clerk.

(4) Nothing in this section shall be construed to abrogate existing personal service requirements as set forth in the domestic relations law, family court act or civil practice law and rules.

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

(6) Service of the initiating documents in post-judgment applications subject to consensual e-filing must be effectuated in hard copy and accompanied by a notice of electronic filing (for post-judgment matrimonial proceedings). Proof of hard copy service shall be filed by electronic means.

Appendix C-1

NEW YORK STATE
Unified Court System
OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. MCCONNELL, ESQ.
EXECUTIVE DIRECTOR

NANCY J. BARRY, ESQ.
CHIEF OF OPERATIONS

M E M O R A N D U M

April 5, 2021

TO: Hon. George Silver
Hon. Vito C. Caruso

FROM: Nancy Barry NB

RE: Virtual Evidence Courtrooms in Matrimonial Cases

As you may recall, over the past few months a pilot program for submission of virtual evidence before and during virtual trials has been used in selected matrimonial cases in New York, Kings, Westchester, and Ontario counties. This program was designed by our NYSCEF team at the Division of Technology, in close coordination with the Hon. Jeffrey Sunshine, Statewide Coordinating Judge for Matrimonial Cases, and Jeff Carucci, Statewide Coordinator for Electronic Filing.

I am pleased to report that, effective today, the pilot program is being expanded to include all contested matrimonial matters filed through NYSCEF throughout the State. Moreover, the program now includes a Virtual Evidence Courtroom (VEC) module, by which documents can be submitted to the court and parties for trial use through a NYSCEF-based system in both fully remote and hybrid trial settings. Instructions on this new system, including a video recording for court users, can be found at the NYSCEF website at www.nycourts.gov/efile.[1] Although currently a case must be filed through NYSCEF to use this platform, we anticipate that it will be more broadly available in the future for matters that are not electronically filed.

Please distribute this memorandum further as you deem appropriate. Questions on this subject can be directed to Justice Sunshine (jsunshin@nycourts.gov). Questions regarding the NYSCEF-based aspects of the program can be directed to NYSCEF@nycourts.gov. As always, thank you for your kind assistance.

c: Hon. Lawrence K. Marks
Hon. Edwina G. Mendelson
Hon. Jeffrey S. Sunshine
County Clerks
Scott Murphy
Linda Dunlap-Miller
Michelle Smith
Jeffrey Carucci
Susan Kaufman

[1] The instructions may be accessed by selecting the "Virtual Evidence Courtroom" link located under the Help menu at the top right side of the home page.

Appendix C-2

STATE OF NEW YORK
UNIFIED COURT SYSTEM
360 ADAMS STREET
BROOKLYN, NY 11201
(347) 296-1527

LAWRENCE K. MARKS
Chief Administrative Judge

JEFFREY S. SUNSHINE
Statewide Coordinating Judge for Matrimonial Cases

TO: Commission to Reimagine the Future of New York Courts

FROM: Hon. Jeffrey S. Sunshine, JSC, Statewide Coordinating Judge For Matrimonial Cases and Chair, Chief Administrative Judge's Matrimonial Practice Advisory and Rules Committee

DATE: November 7, 2022

RE: Statement Regarding the Technology, Practices and Policies Adopted in Response to The Covid-19 Pandemic in Matrimonial Cases

Commentary New York Law Journal-Covid -19 Parental Behavior

In the earliest days of the pandemic, access to the Court was limited to emergency applications. After I met virtually with the leadership of various Family Law Committees, Statewide Bar Associations, and the Executive Committee of the NY Chapter of the American Academy of Matrimonial Lawyers, the attached article was written and published in the New York Law Journal on March 27, 2020 and was subsequently re-published and quoted by other bar associations and media outlets. The purpose of the article was to address what had been portrayed as an onslaught of parents engaging in self-help without carefully considering the consequences as it relates to future custody determinations.

Emergency Applications

In the weeks after March 2020, emergency applications were heard in Supreme Courts through a variety of combined in-person and virtual proceedings in designated courtrooms. Courthouses developed a combination of a virtual courtroom or access to the Court via live video to enable a Judge to hear applications related to Orders of Protection.

Expansion of E-Filing

Steps were instituted to expand e-filing in matrimonial actions to jurisdictions that already had e-filing in other civil actions where it had not previously been available in matrimonial actions. With the assistance of Jeffrey Carucci, Director of E-filing, together with the assistance of the OCA Division of Technology's E-filing Unit, we were able to expeditiously open e-filing in matrimonial actions to many counties on a consensual basis. In fact, e-filing in matrimonial actions, although still voluntary, is now commonplace. In May of 2020 ten counties added matrimonial e-filing to be followed by an additional six counties in October 2020, with the addition of one other county in 2021. Now 61 of the 62 counties in New York State participate in e-filing in matrimonial actions. For many attorneys and self-represented litigants, e-filing is now the preferred method of gaining access to the Courts.

After the expansion of e-filing in matrimonial cases through NYSCEF, my Office, together with Jeffrey Carucci and his team at the E-Filing Unit, and with assistance from OCA's Division of Technology, developed a pilot virtual evidence courtroom that was operational in the following counties utilizing the existing e-filing system with documents being uploaded to the County Clerk files: Kings County, Richmond County, New York County, Ontario County, and Westchester County.

We have also developed protocols for the safe distribution of forensic reports in custody cases utilizing two factor authentication and utilization of the @secure function of Microsoft 360 rather than e-filing.

Utilizing NYSCEF, attorneys were able to upload proposed exhibits that could be displayed in real time during virtual trials. The success of the virtual pilot programs led to the creation of the Virtual Evidence Courtroom (VEC), where documents marked for identification could be uploaded separately from the records of the County Clerk. Drop down menus were created for Attorneys for the Child(ren) and *in camera* inspections of documents was made possible. As part of the VEC, only Judges and authorized court staff can mark documents into evidence to protect the integrity of the record. Documents utilized for cross-examination can be uploaded in real time.

The virtual pilot programs were initially successful in selected matrimonial cases in the pilot counties. Subsequently, the success of the Virtual Evidence Courtroom can be measured by the eventual extension of their use from matrimonial actions to other civil proceedings. As of today, there have been over 2,616 Virtual Evidence Courtrooms created.

The success of the Virtual Evidence Courtroom with an expansion of document drop-down menus, coupled with the ability to display documents utilizing the Microsoft Teams

application, have made the increasing technological court proceeding of the future a reality for many.

Additionally, the hybrid model has proved successful when using virtual depositions, testimony of experts to avoid travel fees and utilization of virtual proceedings for certain conferences and applications. While the virtual matrimonial model proved successful, when necessary, the benefits and efficiency of an in-court trial is evident. There is also a benefit to in-person preliminary and final compliance conferences, as well as *pendente lite* motions to resolve issues and to allow lawyers to conference with the Court or Law Clerk and then with their clients during an appearance.

Courtroom of the Future Needs

Certainly, challenges remain. Not everyone has the technological capabilities of operating a virtual courtroom. Some Judges as well as attorneys and litigants find the process of the virtual courtroom or the virtual appearance to be challenging. Often waiting for attorneys and litigants whose appearance is often required delays the proceeding. Complicated by the digital divide are litigants who do not have internet access or pay for cell service minutes in advance, and law offices which do not have the band width to conduct consistent streaming with video.

Additionally, the ability to conference multiple cases at the same time, and to conduct breakout sessions has been a challenge in the virtual courtroom. In a virtual courtroom only one case is before the Court, instead of several cases being worked on by the Court and Court staff at the same time. Judges must wait for everyone to join the Teams meeting, and to be able to hear and participate. Moreover, with the increased accessibility of e-mail communications, Chambers staff have been at times overwhelmed with e-mail communications from counsel and self-represented litigants. As a result, Court and Chambers staff charged with setting up virtual appearances, conferences and arranging for return dates find themselves with less time to conference cases, write opinions and conduct legal research.

The transition from Skype to Microsoft Teams provided for a vast improvement in remote virtual appearances. Due to the efforts of Deputy Chief Administrative Judge Edwina Mendelsohn, we were able to have each Teams invite include an 800-telephone number for those who do not have internet access. Similarly, we needed to address and still must address the challenging issues of preventing children from overhearing proceedings, complicated by the inability of many parents to secure childcare due to quarantine requirements or economic hardship related to the expense or availability of childcare. The virtual courtroom not only poses the challenge of children present in the home, but also of improper recording of proceedings, the potential for coaching, and the possibility of future nonparty witnesses hearing the testimony.

The Courtroom of the future should be the model we all strive to achieve. Courtrooms should be equipped with Wi-fi to allow a Court to easily transition from an in-court proceeding

to a virtual proceeding right from the Courtroom without having to go to Chambers. There should be screens on the wall of every Courtroom to conduct such proceedings. Additionally, there should be requirements that counsel have equipment that is up to date and Wi-fi connections that are not routinely compromised. Finally, Courtroom calendars and virtual calendars should be staggered where practicable to avoid overcrowding. This will require a firm commitment from the Bench and Bar to adhere to such schedules.

Mediation

The pandemic related reliance on virtual platforms has greatly benefitted the expansion and accessibility in many instances of presumptive mediation. Under the auspices of Lisa Courtney, the Statewide ADR Coordinator, with implementation through the offices of Hon. Norman St. George Deputy Chief Administrative Judge for Courts outside NYC and Hon. Deborah Kaplan, Deputy Chief Administrative Judge for the Courts inside NYC, court sponsored mediation programs through virtual mediation has become the norm rather than the exception and has given us the opportunity to reach more eligible litigants who might not have used the opportunity to mediate disputes. The hybrid model works and should continue for those who either cannot travel or find the process more convenient, or where local courts and parts of the State do not have a robust roster of mediators. This is not to say that there is not a continued benefit to in-person mediation of eligible matrimonial disputes by both the in-court and the private mediation model.

Legislative Proposals of the Matrimonial Practice Advisory and Rules Committee (the 'Committee") Approved by the Office of Court Administration as Part of the Judiciary's Legislative Program

1. The Committee has over the past few years consistently supported the OCA legislative recommendation to eliminate the consensual requirement of e- filing except in cases involving self-represented litigants who choose not to e-file or attorneys who lack the technological skills or computer equipment to do so.

2. DRL§ 211 currently requires that matrimonial actions be commenced by filing of the summons with notice (or the summons and verified complaint). To permit matrimonial actions to commence during the Covid-19 pandemic despite their classification as non-essential, the Office of Court Administration expanded the NYSCEF system in certain counties and accepted filings by mail in other counties, but legislative change is also needed. The Committee has proposed a legislative amendment which would require commencement of matrimonial actions by service rather than filing of the summons with notice or summons and verified complaint during an emergency declared by the Governor resulting in a prohibition on filing until normal filing is once again permitted. The proposal requires payment of an index number fee or application for poor person relief pursuant to CPLR 1101(d) within 21 days of permission to file by Administrative Order of the Chief Judge or Chief Administrative Judge, and if the poor person's relief is

denied, the index fee must be paid within 120 days of the denial as required by CPRL 1101(d).

3. Establishing the effectiveness of automatic orders during an emergency declared by the Governor which result in a prohibition on filing the summons. The automatic orders statute (DRL § 236 (B)(2)(b)) requires that the automatic orders will become effective upon plaintiff upon filing of the summons. The Committee's proposal modifies the statute to provide that in the event of an emergency declared by the Governor which results in a prohibition on filing the summons, the automatic orders will become effective upon plaintiff upon service of the summons with notice or summons and verified complaint on the defendant.

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

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

COVID-19 and Future Custody Determinations

Parental behavior today can affect judicial decisions in the future: A view from the Statewide Coordinating Judge for Matrimonial Cases

By **Jeffrey Sunshine** | March 27, 2020 at 10:30 AM

At this time of an historic health emergency, strains could appear in an intact relationship, while in a fractured relationship those strains and disputes become problematic quickly.

It is difficult for lawyers to tell clients that barring an absolute emergency they cannot come to court to seek relief. It is difficult for lawyers and judges to fathom that while our Chief Judge has ensured that courts remain open for essential matters, their access to non-essential courtrooms, hearings and motions are severely impacted at least for the time being. Certainly, comprehensive discussions are ongoing by court leadership to provide methodologies for safe remote access during the emergency.

So, what do lawyers tell their clients? What should clients be doing? In many ways it might be helpful for attorneys and clients to know what really is in a judge's mind when determining custody and visitation disputes. To look at it from my eyes and not theirs.

One of the important things I think about in making a custody determination is if this is how this individual is behaving while a case is pending or about to commence, how will they behave when it is over? Simply put, when you behave a certain way and there is a judge in the equation, how will a parent behave when I am no longer involved in their lives? With parents who are not obeying court orders, or where no orders exist are engaging in “self-help”, attorneys may and should remind them that the actions they take today and during this crisis could well be determinative or dipositive at the time of final decision by a judge. The concept is well embodied in New York case law. One of the factors a court must consider in determining custody is which parent is likely to provide access to the other parent.

Those who think that there is a lack of consequences to not conducting themselves appropriately during this crisis are wrong. Jurists agonize over many custody and parenting time decisions. It is one of the most difficult life-impacting decisions a jurist can make. Often the court is presented with two good people, each convinced that their approach is better, unable to compromise or feeling that compromise leads to a sign of weakness. Sometimes the dispute is really about money—not wanting to pay child support; wanting to control how the other party spends support and maintenance or just being convinced that they could do a better job than the other—and, unfortunately, sometimes it’s a power imbalance or domestic violence that defined a relationship.

How they conduct themselves at parenting during a time of a pandemic crisis, one of which we have never before seen, will shape their relationship with each other as divorced parents in the future, the relationship they have with

their children and most importantly the relationship that their children have with them. As adults we are all frightened over the events of the past few weeks and the uncertainty of the future. Through the eyes of a child, their world turned upside down—their school disrupted and social interactions with friends now almost impossible. One of the only things that should and can bring comfort to a child are parents cooperating. Not only is it the best interest of the child—the time-honored standard—it is the best interest in their divorce and their relationship to come. These events will have a lasting impact. For the last generation, it was the Great Depression and World War II; for my generation, it was the assassination of President Kennedy; for my children it was 9/11; and for the generation of children today, it is the events that now surround us. Let them have fond memories of how parents conducted themselves. If parents do not conduct themselves appropriately and sensibly, their children will remember throughout their lives how they acted and so will the judge deciding the case. I listen carefully and remember the children who have spoken to me during the hundreds of in-camera interviews I have done in the past 21 years. I hope over the next few years children will be telling me how positively their parents behaved to make sure they were safe, allowed access by technology if illness or the risks of travel prevented access, and that both of their parents put their differences aside and they did it for me.

If your clients are not listening to you and think they are not accountable for their conduct—might I suggest you send this to them.

Jeffrey Sunshine *is a Justice of the Supreme Court and the Statewide Coordinating Judge for Matrimonial Cases.*

Appendix C-3

STATE OF NEW YORK
UNIFIED COURT SYSTEM
360 ADAMS STREET
BROOKLYN, NY 11201
(347) 296-1527

LAWRENCE K. MARKS
Chief Administrative Judge

JEFFREY S. SUNSHINE
Statewide Coordinating Judge for
Matrimonial Cases

TO: Anthony R. Perri, Acting Counsel, Office of Court Administration

FROM: Hon. Jeffrey S. Sunshine, Statewide Coordinating Judge for Matrimonial Cases and Chair, Matrimonial Practice Advisory and Rules Committee

DATE: July 26, 2022

RE: Response of Matrimonial Practice Advisory and Rules Committee to Request for Public Comment dated June 3, 2022 on Proposed New Section 205.19 of the Rules of the Family Court

Thank you for the opportunity to provide Public Comment on the proposal for a new Section 205.19 of the Rules of the Family Court to adopt uniform rules of eligibility for assigned counsel that would apply in all Family Court proceedings and in certain proceedings in Supreme Court pursuant to Section 35(8) of the Judiciary Law.

The Matrimonial Practice Advisory and Rules Committee respectfully requests that a new subsection (g) be added to new Section 205.19 in order to clarify that there will be no impairment of rights of non-monied spouses, former spouses and parents to seek and obtain counsel of their choice pursuant to DRL 237 in matrimonial matters in Supreme Court where Judiciary Law 35(8) is applicable. Our proposal is shown below:

Section 205.19 (additions underlined)

…

g) Nothing in this Section 205.19 shall impair or prevent a party from seeking or obtaining an award of counsel fees and expenses as a non-monied spouse, former spouse or parent for counsel of their choice pursuant to section 237 of the Domestic Relations Law, instead and in place of publicly funded counsel pursuant to section 35(8) of the Judiciary Law.

Please let me know if I may be of further assistance.

cc: Susan Kaufman, Counsel

Appendix D

Bar Association Support for Mandatory E-Filing in Matrimonial Actions

1- Resolution of the Family Law Section of the NYS Bar Association, July 9, 2020

2- News Release of the Women's Bar Association of the State of New York ("WBASNY"), August 28, 2020, available at https://www.wbasny.org/post_news/wbasny-supports-mandatory-e-filing-in-matrimonial-matters/

NEW YORK STATE BAR ASSOCIATION
FAMILY LAW SECTION
Meeting of the Executive Committee, July 9, 2020

RESOLUTION TO SUPPORT E-FILING IN MATRIMONIAL ACTIONS

WHEREAS, electronic filing in all civil matters is a safe alternative to in-person filings in order to mitigate the effects of the COVID-19 outbreak upon the judicial officers, staff, and users of the Unified Court System, and is an efficient, convenient and practical tool to afford the legal community access to courts;

NOW, THEREFORE, IT IS HEREBY RESOLVED,

The Family Law Section of the New York State Bar Association reiterates and reaffirms its continuing support for mandatory e-filing in both contested and uncontested matrimonial actions. Mandatory e-filing provides a safe and easy way to litigate those actions and, with the present exemption for *pro se* litigants and lawyers not having the necessary technology, eliminates the potential to deprive individuals of access to justice.

LEGISLATION

Independent Immigration Courts – 2020

2020 – Court Restructuring

View more »

WBASNY SUPPORTS MANDATORY E-FILING IN MATRIMONIAL MATTERS

(New York, NY, Friday, August 28, 2020) – The Women's Bar Association of the State of New York (WBASNY) supports mandatory electronic filing (e-filing) in both contested and uncontested matrimonial actions throughout the Unified Court System. Mandatory e-filing, with exemptions for *pro se* litigants and lawyers not having the necessary technology, would enable litigants to advance their cases and eliminate potential barriers to access to justice. It would also mitigate the effects of the COVID-19 outbreak on the courts.

Currently, procedural inconsistencies among the different judicial departments and districts throughout the state make it increasingly complicated and cumbersome for attorneys and litigants. For example, it can be difficult to convert a traditional matrimonial case into an e-file case, resulting in delays that may negatively affect clients' cases. The lack of in-person accessibility to the courts during the height of the COVID-19 crisis and the continuing recommendations from the Centers for Disease Control and Prevention to avoid gatherings and to socially distance, impacts numerous issues in matrimonial litigation, including, but not limited to, establishing valuation dates, procuring dates of commencement for the purposes of establishing support, and managing the delicate issue of parenting schedules, which involve the rights of parents and children and their health and safety.

WBASNY considers establishing statewide mandatory e-filing in matrimonial matters to be an important step toward promoting the fair and equal administration of justice.

###

The Women's Bar Association of the State of New York (WBASNY) is the professional membership organization of choice for more than 4,000 attorneys throughout New York State, and the largest statewide women's bar association in the country. For four decades, WBASNY has been a singularly important resource for women lawyers, with professional networking, continuing legal education programming, leadership training, and advocacy

for the rights of women, children, and families. Through involvement with WBASNY's 20 regional chapters and its 40-plus substantive law committees, WBASNY's members collaborate with one another on a variety of issues and perform public and community service, in furtherance of its mission to promote the advancement of the status of women in society and women in the legal profession; to promote the fair and equal administration of justice; and to act as a unified voice for its members with respect to issues of statewide, national and international significance to women generally and women attorneys in particular. WBASNY holds United Nations NGO status with the U.N.'s Department of Public Information, and Special Consultative status in association with the U.N. Economic and Social Council (ECOSOC). WBASNY is also a founding member of the National Conference of Women's Bar Associations.

Appendix D-1

THE
LEGAL AID
SOCIETY

Bronx Neighborhood Office
260 East 161st Street, 8th fl
Bronx, NY 10451
T (718) 991-4758
www.legal-aid.org

September 9, 2020

Honorable Jeffrey Sunshine
Statewide Coordinating Judge for Matrimonial Cases
Kings County Supreme Court
360 Adams St.
Brooklyn, New York 11201

Via email: JSunshin@nycourts.gov

Dear Judge Sunshine:

I am writing as the Director of the Family/Domestic Violence Unit of The Legal Aid Society. The Legal Aid Society handles matrimonial matters in all five boroughs of New York City. We currently have hundreds of contested and uncontested matters pending in all five boroughs.

As such, we fully support mandatory e-filing for matrimonial matters. Currently, each court has a different approach to filing, e-filing and retrieving documents. Though we can enter Manhattan Supreme court to file documents, we must mail them in the Bronx, make appointments in Brooklyn and e-file using EDDS in Queens. Should we seek to convert our cases to e-filed cases, again, each borough varies with its approach. Should our adversary not agree to e-filing, we must make a motion in Queens so a judge can decide the matter. Yet in the Bronx, if both parties do not agree, there will be no e-filing. In Staten Island, thankfully, the policy stating that attorneys could not e-file if they were seeking a fee waiver, has been changed.

The amount of resources we, and the court system, are expending for paper filing is exorbitant. With e-filing, we will be able to electronically file summons, motions, and other documents. We can have judgments uploaded for pick up, without having to determine if we can go the courthouse, must mail the documents or make appointments.

We understand that e-filing when working with pro se litigants can be difficult. We support an opt-in process for cases where both parties are not represented. Pro Se litigants must still be able to go to courthouses to file their documents and should still receive paper copies of documents that have been filed. Though some pro se litigants may choose to opt-in, the majority of pro se litigants we speak to do not have the technology to e-file. This would still allow for an attorney on a case to e-file, but they would have to mail copies of documents to pro se litigants.

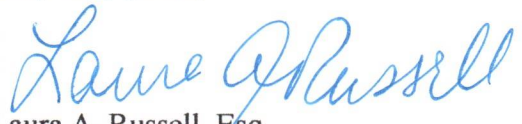
As many of our cases involve survivors of domestic violence, we know that survivors of domestic violence will need to have some confidentiality of their information. Currently, survivors can keep their addresses confidential. We would also ask that before a pro se litigant opts into the e-filing system they are given a notice that their email will be given to the other party, and that they should consider creating a new email just for litigation purposes.

Finally, we know the court system is facing severe budget cuts, but we would ask the e-filing resource center, which is currently overloaded and delayed on their responses, and the e-filing clerks of each borough, who will be assisting pro se litigants, be a priority in any funding necessary for this system to work.

I understand that e-filing has worked in many other practice areas and we are glad it will come to matrimonials. We understand that implementation will be complex, as each court has different filing methods, but we are hopeful that the courts will come together to create a single methodology for e-filing.

I welcome the opportunity to discuss this with you further. Should you have any questions, do not hesitate to call me at (646) 660-4629, or to email me at LARussell@legal-aid.org. Thank you.

Very truly yours,



Laura A. Russell, Esq.
Director,
Family/Domestic Violence Unit

Appendix E

Legislative and Rule Proposals of Matrimonial Practice Advisory and Rules Committee Adopted from 2015 through 2021

2015

Maintenance Guidelines Law and Simplification of Counsel Fee Affidavits for Self-Represented Litigants in 2015

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

The Committee considers the passage of the maintenance guidelines law as one of the most significant accomplishments in the field of matrimonial law since the enactment of no-fault divorce in 2010. Our maintenance guidelines proposal was a compromise reached by a working group[1] with widely divergent positions, brought together by Justice Jeffrey Sunshine, Chair of the Committee, in order to end the divisions within the matrimonial community that had existed over the enactment of post-divorce maintenance guidelines and over whether there should be a continuation of temporary maintenance guidelines enacted in 2010 [L. 2010, c. 371]. It assured the less affluent spouse a minimum amount of maintenance for a reasonable period without overly burdening those maintenance payors who are also paying household expenses or who are also Child Support Payors. The Maintenance Guidelines Law also promoted greater judicial efficiency, by allowing judges the option to justify their decisions about guidelines deviations on the record, rather than having to produce a written decision in every case, as had been required by the previous Temporary Maintenance Guidelines Law (L. 2010, c 371.

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

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

2016

Law Strengthening Enforcement by Contempt in Supreme Court Enacted in 2016

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

The passage of this legislation meant that Supreme Court would finally have relatively the same standard as Family Court regarding applications for contempt. Family Court Act § 454[2] allows Family Court Judges to immediately enforce non-compliance of support obligations with contempt without exhausting other remedies (see New York Court of Appeals decision in *Powers v. Powers*).[3]

Because of this important reform, non-monied spouses awarded child and spousal support have a better chance to receive funds needed to support their families without having to take out loans or sell assets; and non-monied spouses awarded counsel fees have a better chance to hire counsel to represent them early in the case so that they can have their matters fairly heard. The discrimination against the non-monied spouse inherent in the prior version of D.R.L. §245 which allowed monied spouses to obstruct or delay enforcement in Supreme Court of monetary obligations in a divorce was eliminated. The legislation also relieves Family Court overburdened caseloads by removing the incentive to bring enforcement actions in Family Court rather than Supreme Court. In addition, hearings on contempt are shorter and less time consuming, which provides litigants access to relief in a more timely manner.

Revised Matrimonial Form Proposals Adopted in 2016

During 2016 the Chief Administrative Judge adopted a number of our proposals for form revisions with the approval of the Administrative Board of the Courts. The form revision proposals (for a Revised Net Worth Statement and a Revised Preliminary Conference Order) were designed to streamline the efficiency of the matrimonial litigation process by ensuring that financial information about the parties was clearly revealed and available to the parties and the court, and by making sure that contested issues in the action were dealt with in an orderly fashion.

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

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

The Net Worth Statement and Preliminary Conference Order are two of the most important forms required in contested matrimonial litigation. See our 2017 Annual Report at http://www.nycourts.gov/ip/judiciaryslegislative/pdfs/2017-MatrimonialPractice-ADV-Report.pdf for a detailed description of the revisions in the Net Worth Statement and Preliminary Conference Order.[4] One of the noteworthy provisions in the revised Preliminary Conference Order form requires the parties to waive a voluntary discontinue once grounds have been resolved, thereby preventing parties from discontinuing after considerable resources and effort have been spent on the case. The revisions of these widely used forms further the goal of operational excellence. They also further decisional excellence by assuring that issues are dealt with in a timely manner with all the facts required to be disclosed to the court and the other spouse.

Redaction Rule Proposals Adopted in 2016

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

At our suggestion, 22 NYCRR § 202.16(m) was modified by Administrative Order of Chief Administrative Judge Lawrence K. Marks, with the advice and consent of the Administrative Board of the Courts, in June, 2016[5] to limit its application to situations where the court is submitting a decision, order, judgment, or combined decision and order or judgment for publication, while allowing the unpublished version to remain unredacted. The amended rule allowed more flexibility, while retaining the basic protections for which the rule was intended. By making the rule easier to understand and comply with, it would be more widely followed, and

[4] These forms, together with fillable versions thereof, are available on the Divorce Resources website at http://ww2.nycourts.gov/divorce/forms.shtml#Statewide

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

would better achieve the goal of protecting privacy and preventing identify theft and abuse. The rule allows the courts to continue to satisfy their statutory mandate to justify in writing their decisions on important matrimonial issues,[6] while still including in orders and judgments such necessary information as is required by statute for child support enforcement and other purposes. In keeping with the goal of operational excellence of the Chief Judge's Excellence Initiative, the revised rule does not burden courts with redaction responsibilities except when publication is going to take place, and it does not require courts to bifurcate orders or judgments from decisions, an unnecessary waste of judicial effort.

2017:

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

In furtherance of Chief Judge DiFiore's Excellence Initiative, the Committee proposed a new court rule in our 2017 Annual Report imposing a page limitation on pendente lite motion practice in an effort to expedite matrimonial proceedings while a contested divorce is pending. In response to comments received from the Family Law Section of the New York State Bar Association after public comment was sought on the proposed rule,[7] the Committee recommended to the Chief Administrative Judge in April 2017 a modified version of said proposal which was adopted by Administrative Order 99/17 dated May 22, 2017 available at http://www.nycourts.gov/divorce/pdfs/PDF%20B%20AO-99-17-Applications.pdf upon consultation with and approval by the Administrative Board of the Courts, effective July 1, 2017**.**

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

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

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

and affirmations,[8] with a three-inch size limitation on exhibits. However, specific exhibits required by, or necessary in order to comply with, the matrimonial rules or statutes are exempted from the size limitation on exhibits.[9] The rule defers to local practice by providing that nothing therein will prevent a judge or justice of the court or of a Judicial District within which the court sits from having his or her own local part rules to the contrary or in addition to the rule. However, where local practice is silent, the rule provides some basic ground rules to the extent that there is no conflict with the C.P.L.R. or other statute. The provisions of 22 NYCRR § 202.16(k) still apply where applicable.

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

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

On January 18, 2017, public comment on the Committee's proposal for a new court rule applicable to post judgment applications for modification or enforcement of judgments of divorce in Supreme Court was sought on behalf of the Administrative Board of the Courts by Memorandum of OCA Counsel John W. McConnell.[10] The court rule proposed was contained in our 2017 Annual Report. In response to the request for public comment, the Office of Court Administration received comments from Sanctuary for Families dated March 7, 2017 regarding this proposal, which comments were forwarded to the Committee.[11] In response, the Committee modified its proposal and resubmitted it to the Chief Administrative Judge. By Administrative Order dated May 22, 2017, the Chief Administrative Judge, with the approval of the Administrative Board of the Courts, adopted the new rule effective August 1, 2017.

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

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

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

[11] See Comments of Sanctuary for Families dated March 7, 2017 attached as Appendix "A" to our 2018 report available at

The rule adds a new paragraph (3) to 22 NYCRR § 202.50(b) which prescribes new language required to be contained in judgments of divorce, both contested and uncontested.[12] The rule is designed to cure aspects of the problematic venue rules under the C.P.L.R. as they relate to post judgment relief in matrimonial actions, thus allowing quicker and more effective resolutions of matrimonial disputes in furtherance of the Excellence Initiative.

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

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

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

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[12] 22 NYCRR § 202.50(b) already delineated language requirements for proposed judgments in matrimonial actions. The first part of the rule requires that the Supreme Court specify in the judgment of divorce that it shall retain jurisdiction for enforcement of the settlement agreement or for enforcement or modification of the judgment, provided that such jurisdiction shall be concurrent with the Family Court to hear certain applications to enforce the settlement agreement with regard to maintenance, support, custody, or visitation. Similar language is already required in the forms approved under subdivisions 1 and 2 of 22 NYCRR § 202.50(b). However, the language in the rule is broader than enforcement of settlement agreements alone and supersedes said language to the extent of any inconsistency. The second part of the rule requires that the judgment contain an order as to venue related to residence for post judgment enforcement or modification applications in Supreme Court.

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

On August 1, 2017, the effective date of the rule, a revised form of UD-11 Judgment of Divorce was posted on the Divorce Resources website at http://www.nycourts.gov/divorce/forms_instructions/ud-11.pdf. This revised form, which was adopted by Administrative Order 138/17 of the Chief Administrative Judge, contained the provisions required by the new rule, providing some relief to the overburdened counties and litigants. See Memorandum from Ronald Younkins, OCA Executive Director, dated July 20, 2017 attaching Administrative Order and New Rule on Divorce Venue Post Judgment Enforcement and Modification (22 NYCRR 202.50(b)(3)), attached as Appendix "B" to our 2018 report available at http://www.nycourts.gov/ip/judiciaryslegislative/pdfs/2018-MatrimonialPractice-ADV-Report.pdf

Ultimately, we hope that our omnibus statutory proposal for a new divorce venue proposal applicable to matrimonial actions will be enacted so that the burden on certain counties of plaintiffs' inappropriate designation of venue in the initial divorce action will cease. See our omnibus statutory special matrimonial venue proposal for a new C.P.L.R. 514 set forth later in this report.

2018:

New Rule as to Judgments in Matrimonial Actions; Forms (to include Instructions Addressing Transfer of Title to a Marital Home) Adopted in 2018

At the request of and in consultation with the Office of Policy and Planning, the Committee proposed an amendment to subparagraphs (2) and (4) of 22 NYCRR 202.50(b) as to the form of judgments required in matrimonial actions, after having been alerted by the Office of Policy and Planning that some defendants in residential mortgage foreclosure cases have been unable to apply for loan modifications because of title issues arising from their divorce. When parties are involved in a divorce action, it is often agreed that one spouse may remain in the marital home. Where a foreclosure action has also been brought, or is brought after the divorce judgment is signed, the spouse seeking to remain in the home cannot proceed with the loan modification if the deed is titled in the name of both spouses. The purpose of this proposed rule was to alert self-represented and represented litigants to the additional documents required for transfer of the marital residence, especially where there is a pending foreclosure action. With this amendment, parties will be alerted as part of the judgment that separate documents related to the transfer of a residence must be signed and filed, thereby allowing the spouse residing in the marital property to obtain clear title to the marital home and apply for a mortgage loan modification if a foreclosure action is commenced. Additionally, if the property is never transferred to a spouse, either when both spouses are granted the property, or it is agreed that they will maintain joint ownership post-divorce, and thereafter a foreclosure action is commenced, the non-titled spouse may never receive notice of the foreclosure action once commenced. Unfortunately, many litigants believe mistakenly that the provisions for transfer of a residence contained in an agreement, decision or judgment complete the transfer and they do not realize that a deed or other transfer documents must be executed and filed for this to be accomplished

The modified rule was adopted by Administrative Order A/O/191/18 dated May 21, 2018, which also adopted a revised Uncontested Divorce Judgement of Divorce (Form UD-11) and

Revised Uncontested Divorce Instructions in compliance with amendments to 22 NYCRR 202.50(b)(2) and new 22 NYCRR 202.50(b)(4) regarding the required form of judgments of divorce.[1] The modified rule allows the Supreme Court, in a post judgment matrimonial action, to enforce the specific requirement of the transfer of the property contained in the new decretal paragraph required in the Judgment of Divorce. The addition to the Uncontested Divorce Instructions now alerts litigants that separate documents must be executed to transfer the residence.

Amended Rule as to Form of Decretal Clause Concerning Settlement Agreements in Judgments of Divorce Adopted in 2018

In 2018, an amendment to 22 NYCRR 202.50(b) (3) concerning the form of required decretal clauses in judgments of divorce[2] was adopted to make clear whether a Settlement Agreement referenced in the judgment has actually been entered into between the parties in each case. This rule amendment was adopted by Administrative Order 269/18 of the Chief Administrative Judge, and a further revised form of UD-11 Judgment of Divorce was posted on the Divorce Resources website on September 30, 2018 at http://ww2.nycourts.gov/divorce/divorce_withchildrenunder21.shtml. The rule allows a thirty-day grace period for papers submitted using the prior form of judgment.

Adoption of Revised and Updated Statement of Client's Rights and Responsibilities for Representation with Fee Pursuant to 22 NYCRR 1400.2 adopted in 2018

During 2018, our Committee's proposal[3] for the Appellate Divisions to adopt a revision to the Statement of Client's Rights and Responsibilities required pursuant to 22 NYCRR 1400.2 was circulated for public comment by Memorandum from OCA Counsel John W. McConnell dated June 22, 2018 available at https://www.nycourts.gov/LegacyPDFS/RULES/comments/PDF/MatrimonialStatementClientsRightsResponsibilities.pdf. The Family Law Section of the New York State Bar Association submitted a memorandum of support available at http://ww2.nycourts.gov/sites/default/files/document/files/2018-11/PC-ClientsRightsResponsibilities.pdf

After the public comment period expired, the proposal was approved by the Administrative Board, and was adopted by the Appellate Divisions effective February 15, 2019. It is available on the Divorce Resources website at https://ww2.nycourts.gov/divorce/part1400.shtml.

The revision updates the document which was originally adopted in 1994 and last amended in 1995 and provides clarifications of the rights and responsibilities based on actual experience of members of our Committee who are practicing matrimonial attorneys and judges familiar with matrimonial litigation as it is practiced today. Without detracting from the information provided in the prior form, the revisions will reduce the number of attorney client disputes by clarifying matters that are not clear in the prior form. Adoption of the revised form will improve satisfaction of both litigants and

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[1] See Administrative Order 191/18 available at https://www.nycourts.gov/LegacyPDFS/divorce/pdfs/AO-re-Matrimonial-J-Rule.pdf

[2] The form of required decretal clauses in judgments of divorce had previously been amended in 2017 in connection with our Committee's divorce venue rule proposal for post judgment enforcement and modification applications [22 NYCRR § 202.50(b)(3)]. However, the language as to Settlement Agreements merely required the date of the Settlement Agreement to be inserted, without clarifying whether a Settlement Agreement exists if no date is filled in. This language had been in the form of judgment for many years.

[3] The members of the Special Subcommittee on Revision of Client's Rights and Responsibilities were Hon. Jeffrey Sunshine, Chair of the Committee, Hon. Sondra Miller (Ret.), Hon. Jeffrey Lebowitz (Ret.), Hon. Hope Zimmerman, Susan Bender, Esq., and Kathleen Donelli, Esq., Susan Kaufman, Counsel to the Committee, served as Counsel, and Matthew Schwartz, then Assistant Law Clerk to Judge Sunshine, served as Reporter.

attorneys with the matrimonial litigation process. It will also improve court operational efficiency and further the Excellence Initiative by reducing delays caused by attorney withdrawal or substitution of counsel as well as the volume of malpractice and fee dispute litigation.

See Memorandum from Susan W. Kaufman to John W. McConnell for a detailed analysis of the changes in the revised form attached as Appendix D to our 2019 Annual Report to the Chief Administrative Judge which is available at https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/2019-Matrimonial.pdf.

2019

Our Committee's proposal for amendment of the biennial adjustment of the "Income Cap" in the Maintenance Guidelines Law (A.07518/ S. 5515) was signed by the Governor on 11/20/19 as c. 523, L. 2019. We proposed this measure so that the date of adjustment of the maintenance guidelines income cap would coincide with the date of adjustment of the CSSA income cap on March 1st every other year.[4] This proposal will allow the courts to adjust the income caps under the Maintenance Guidelines Law and the Child Support Standards Act simultaneously. It will prevent confusion of the public, counsel, and the court as to which cap has been increased, thereby reducing litigation delays and increasing access to justice. It will also avoid unnecessary court system expenses in revising court forms and calculators to reflect the cap increases twice within a two-month period, on January 31st and again on March1 st every other year. Although this measure seems ministerial in nature, its enactment will further the goals of both operational and decisional excellence.

Following the adoption of the revised Client's Rights and Responsibilities for representation with fee which was adopted by Joint Order of the Appellate Divisions at the end of 2018 upon the recommendation of our Committee to the Chief Administrative Judge, the Committee recommended a second Joint Order further revising 22 NYCRR 1400.2 to conform the version of the Client's Rights and Responsibilities in domestic relations matters when representation is without fee to the version where the attorney is being paid a fee. Both versions are available at https://ww2.nycourts.gov/divorce/part1400.shtml. The version for representation with fee, which was effective February 15, 2019, focuses on reducing the number of attorney client disputes by clarifying matters that are not clear in the existing form, not only as to the attorney client relationship, but also to what is often the subject of the greatest contention between attorneys and litigants in the matrimonial litigation process where the attorney is being paid a fee, namely, retainer agreements and attorney's fees. Like the version for representation with fee, the version for representation without fee is much clearer regarding responsibilities of both attorneys and litigants, but omits provisions concerning fees and retainer agreements. The Proposal was adopted by Joint Order of the Presiding Justices of the Appellate Divisions on April 16, 2019 effective June 1, 2019. Memoranda of Counsel outlining the provisions of both versions is attached as Appendix "E" to our 2020 report to the Chief Administrative Judge available at https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/Matrimonial-MPARCReport2020.pd

In 2019, the Consensual Divorce Pilot Project was also approved by the Administrative Board.

2020:

In October, 2020 two Committee proposals designed to make the processing of matrimonial cases more efficient and fairer for self-represented litigants during the pandemic were posted for public comment by the Administrative Board with comments requested by November 30, 2020 at

[4] An identical proposal (which was coupled with a proposal put forth by the Family Court Advisory and Rules Committee authorizing temporary spousal support in connection with temporary orders of protection) which we also supported was also signed by the Governor as c. 335, L. 2019.

http://ww2.nycourts.gov/rules/comments/index.shtml. The proposals were approved in final form by the Administrative Board at a meeting in December 2020, and were adopted by Administrative Order of the Chief Administrative Judge by A/O/ 31/21.

The first proposal amended the rule on motions for counsel fees and expenses in contested cases (22 NYCRR § 202.16 (k)) to cover costs of e-filing for self-represented litigants. Frequently, self-represented parties that desire to e-file are unable to have computer access or afford internet accessibility. This amendment will further the legislative intent of leveling the playing field in matrimonial litigation underlying DRL§237. The amendment makes clear that a self-represented litigant lacking the ability to e-file themselves could pay someone to e-file for them (or assist them) and make a motion to have the monied spouse pay for the costs either before the consent or pendente lite or later. Under the proposal, if the self-represented party did not wish to use e-filing, he or she could still file by paper as permitted under the current statute and court rules. This measure will both increase access to justice and encourage greater use of e-filing.

The second proposal amended 22 NYCRR § 202.16-b to expand the page limitations rule for pendente lite applications that has been in effect since 2017 as to all forms of written applications, including post-judgment applications in contested Supreme Court matrimonial actions. During and subsequent to the covid emergency, there will be numerous applications for relief, not only because of unresolved pending matters, but also because of the increased volume of new applications. Adoption of this rule will reduce the volume of the submissions and the duplication of efforts, thereby increasing court efficiency.

Appendix F-1

Excerpt from 2018 Report of the Matrimonial Practice Advisory and Rule Committee to the Chief Administrative Judge regarding Key Provisions of Modified Proposal on Forensics in Custody Cases in Response to Suggestions from the theChief Administrative Judge's Family Court Advisory and Rules Committee and the New York Public Welfare Association, Inc.

Access to the Forensic Report and Files

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

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

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

Definition of Court-Ordered Evaluators

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

[28] See note 18, *supra.*

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

The Remedy of Contempt

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

Admissibility of Forensic Reports into Evidence

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

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

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

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

Review of the Report in Advance of a Trial or Hearing

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

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

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

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

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

Self-Represented Litigants

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

In addition, we note that there are other circumstances where attorneys and self-represented litigants are treated differently in the judicial process and these instances do not constitute due process violations. These differences in treatment range from how litigants enter a courthouse, to the screening that they must undergo, to the requirements as to attorneys being escrow agents while self-represented litigants are not. In certain instances, judicial discretion allows self-represented litigants greater leeway than represented litigants, such as the ability to testify in the narrative or to introduce an exhibit without formality. The Committee believes that reasonable advantages afforded to self-represented litigants along with reasonable restrictions imposed upon self-represented litigants are, to some extent, unavoidable consequences of the fact that self-represented litigants are not trained and licensed members of the bar.

Summary

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

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

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

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

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

Appendix F-2

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

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

A.5621 **M. of A. Weinstein**
S.4686 **Sen. Biaggi**

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

THIS BILL IS OPPOSED

The Matrimonial Law and Children and the Law Committees of the New York City Bar Association (the "Committees") write to provide feedback on the proposed legislation which would amend the Family Court Act and the Domestic Relations Law regarding the use of reports from court-appointed forensic evaluators ("forensics") in child custody disputes. The Matrimonial Practice Advisory and Rules Committee of the Office of Court Administration has proposed a similar but not identical bill (OCA 27-2019).[1]

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

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

[1] See "Report of the Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge of the Courts of the State of New York," Jan. 2019 at 34, https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/2019-Matrimonial.pdf ("Previously-Endorsed Legislative Proposal #3).

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

REASONS FOR SUPPORTING OCA 27-2019

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

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

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

The Committees are pleased that OCA 27-2019 follows our recommendation. A.5621/S.4686, however, presumptively gives represented parties the right to copies of the forensic report. In the age of smartphones and social media, that will make it all too easy for distraught parents to publicize the very personal and embarrassing information that must often be included in forensics' reports.

OCA 27-2019 also provides more extensive mechanisms for ensuring the confidentiality of forensic reports. In particular, attorneys and others who receive access to forensic reports would be required to sign affidavits promising to not disseminate the reports without permission. Such procedures should be included in any legislation enacted on this issue.

Another difference between OCA 27-2019 and A.5621/S.4686 is that OCA 27-2019 limits judges' ability to read a forensic report before the parties have presented an agreement on child custody for judicial approval or before a trial or hearing has commenced. A.5621/S.4686 includes no such restrictions. The Committees believe that restrictions on when judges can read forensic reports are unnecessary and potentially harmful. Judges appropriately seek to avoid contested trials or hearings on custody disputes. In order to bring the parties to a compromise on such matters, judges need to read the forensic report. And if there is to be a trial or hearing, the judge should be able to prepare for it by reviewing the forensic report in advance.

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

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

SUGGESTED CHANGES TO OCA 27-2019

The Committees recommend some small changes to OCA 27-2019. First, the bill should clarify that an attorney for the child has the sole discretion to decide whether or not to show the forensic report to the minor child, without giving the child a copy. Both OCA 27-2019 and A.5621/S.4686 appropriately guarantee the attorney for the child access to the report and notes. Such access is necessary for those attorneys to perform their role effectively. Access also forces attorneys for the children to decide how much they will show or tell their clients -- the minor children. Exposing parents' secrets and their unvarnished opinions to children in that way could be very damaging, depending on what exactly is in the report and the child's level of maturity. If, however, a child wants to see a report about him/herself and his/her parents, and the attorney for the child has access to that report, it is difficult for the attorney for the child to refuse to share the report with his or her client. Refusing to share information with the child, although it is in the child's long-term interest, could damage the attorney / client relationship of trust. The statute should allow the attorney for the child to weigh those competing interests and make a final decision. Such a provision would treat attorneys for the children the same as attorneys for adult parties, who can disclose the contents of the report to their clients but cannot provide copies to them.

We also recommend minor changes to the language regarding retained experts.[5] OCA 27-2019 appropriately allows experts who have been retained to assist counsel to review independent forensics' reports and notes. However, the bill provides that such access will be "[u]pon application" to the court. The problem is that applications to the court must generally be on notice to all parties. If one side wishes to use an expert to review the forensics' report and advise counsel about it, the application will disclose that expert's name. The contemplated procedure will therefore impinge on the traditional right of counsel to consult with non-testifying experts in total confidence. Currently, most judges will allow another expert to access a forensic report after the retaining attorney presents that expert informally in the judges' chambers. Any legislation on forensic reports should clarify that such an ex parte procedure suffices as an "application" with regard to a non-testifying expert.[6]

The Committees also recommend the language in OCA 27-2019 be clarified to allow self-represented litigants to review forensic reports at a courthouse "or other location." We recognize that in rural counties of the State, courthouses may be inconveniently located. We are not sure, however, where else any measures could be effectively taken to prevent a self-represented litigant from copying the report.

We appreciate the effort that the Matrimonial Practice Advisory and Rules Committee put into keeping material in forensic reports from being disseminated as part of other documents, which must be shared with the parties. In particular, OCA 27-2019 prohibits litigants from quoting forensics' reports in any "motions, pleadings or other documents." We doubt, however, that the effort will succeed. Counsel will still be allowed to quote forensic reports in hearings or

[5] This language also appears in A.5621/S.4686.

[6] OCA 27-2019 refers to such experts retained by counsel or parties as "independent licensed forensic evaluators." That term could be misleading, because there is no particular "license" such experts might have. We recommend that "person retained to assist counsel," as in A.5621/S.4686, or another general term be used instead.

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

Finally, OCA 27-2019 requires that reports be returned to the court upon conclusion of the litigation. We suggest that this provision be modified so that the attorneys be permitted to maintain the document in their files, confidentially, for use in any appeals or subsequent, related litigation.

CONCLUSION

In sum, the Committees recommend that the Legislature give further consideration to the enactment of OCA 27-2019, with the minor changes discussed above, rather than A.5621/S.4686. The Committees remain happy to work with OCA and the Legislature on the topic further.

Children and the Law Committee
Sara Hiltzik, Chair

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

Reissued May 2019

Appendix F-3

Appendix F-3 to 2021 Report of Matrimonial Practice Advisory and Rules Committee to Chief Administrative Judge

Memoranda of Opposition to 2019-20 A.5621/S.4686 by:

1- Women's Bar Association of the State of New York
2- Family Law Section of the New York State Bar Association
3- American Academy of Matrimonial Lawyers, New York Chapter

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2019 – A.5621 / S.4686

Position Statement – 2019

A.5621 (Weinstein) / S.4686 (Biaggi)

Oppose

WBASNY strongly opposes those portions of A.5621/S-4686 that provide for release of forensic reports, notes and raw data to the parties, including pro se litigants. We are particularly concerned about the great potential for the irreparable harm that will result from intentional or unintentional dissemination of the contents of forensic reports, notes and raw data to the parties' children and the public. Contempt is not enough of a deterrent and will have no impact on this irreparable harm to parents and children resulting from the release of such information via the Internet and/or social media. In addition, this will create a very real potential for editing and falsifying the evaluation. A contempt proceeding, if any, will only add to the cost and delay of custody litigation which is not in the best interest of children and their families.

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

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

It is not a violation of due process to have pro se litigants and parties read the report in court or an attorney's office. This is still significant access to the report. There has been a history of extreme caution in protecting the report. The forensic reports have always been part of a court record that is sealed

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LEGISLATION

2019 – A.2477-B / S.5343

2019 – A.3876 / S.2992

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and not available to the public. This Bill could result in public disclosure of those sealed court files without a court Order. Since a pro se litigant has a right to defend or put forth the report, then he/she has a right to view it – but that should be done with safeguards recognizing that both parties and pro se litigants can sometimes lose sight of their children's interests in favor of their own and use the report in wholly unintended and inappropriate ways, including posting on the Internet.

We firmly believe that the Bill should require counsel and retained experts who receive forensic reports and files to execute confidentiality agreements acceptable to the Court. This is the practice in many courts and should be a uniform rule throughout New York State.

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

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

Custody determinations are made to promote the best interests of children. There is no argument as to due process since the restriction is only as to the actual possession of a physical copy of the forensic report and raw data. In all circumstances, there should not be a restriction to the access and review of the forensic report and raw data under court or attorney supervision. Accordingly, all court procedures and rights should be fashioned so as not to interfere with achieving a result that is in the best interests of children in New York State.

New York State Bar Association

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

March 19, 2019

REPORT NO. 1
PREPARED BY FAMILY LAW SECTION COMMITTEE ON LEGISLATION

A05621

Sponsored by: M. of A. Weinstein, Seawright, Taylor
Multi-sponsored by: M. of A. Braunstein, Cook, Glick, & Jaffee

Effective Date: The ninetieth day after the bill becomes a law.

A BILL to amend Domestic Relations Law §70 and §240, as follows (the "Bill"): 1) to provide that all parties, their counsel and the attorney for the child shall have a right to a copy of the court-ordered forensic report and a copy of the forensic evaluator's file in child custody cases, subject to the issuance of a protective order pursuant to Section 3103 of the Civil Practice Law and Rules ("CPLR"); and 2) upon application to the court, any person retained to assist counsel or any party shall be provided with a copy of the forensic report, again subject to the issuance of a protective order; and 3) to amend §251(c) and (d) and §651 of the Family Court Act to provide that Sections 3101 and 3103 of the CPLR apply to pre-trial discovery of court-ordered forensic reports in child custody cases.

RULE & SECTION OF LAW REFERRED TO: DRL §70 and §240; FCA §251 and §651.

THE FAMILY LAW SECTION OPPOSES THIS BILL

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

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

Our issues with the Bill are summarized below:

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

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

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

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

Based upon the foregoing the Family Law Section OPPOSES this legislation as drafted.

Chair of the Section: Eric A. Tepper, Esq.

AMERICAN ACADEMY

AAML

OF MATRIMONIAL LAWYERS

NY CHAPTER

http://ny.aaml.org

americanacademyny@gmail.com

April 18, 2019

A. 5621

By: M. of A. Weinstein
Assembly Committee: Judiciary
Effective Date: 90th day after it shall have become a law

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

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

The New York Chapter of the American Academy of Matrimonial Lawyers opposes this legislation and supports the memorandum in opposition prepared by the Family Law Section of the New York State Bar Association dated March 19, 2019.

Ronnie Schindel
President
American Academy of Matrimonial Lawyers
New York Chapter

Appendix G

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: 2011 vs 2012

Location	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	Full Year 2011 (01/03/2011 - 01/01/2012)		Full Year 2012 (01/02/2012 - 12/30/2012)		2011 vs 2012		Full Year 2011 (01/03/2011 - 01/01/2012)		Full Year 2012 (01/02/2012 - 12/30/2012)		2011 vs 2012	
	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed	Filed	Disposed	Filed	Disposed	% Change Filed	% Change Disposed
TOTAL STATE	**50,312**	**47,379**	**46,201**	**49,804**	**-8%**	**5%**	**14,538**	**14,736**	**13,652**	**15,115**	-6%	3%
NYC	27,687	24,094	24,465	26,362	-12%	9%	3,426	3,213	3,379	3,161	-1%	-2%
NEW YORK	14,352	14,143	13,519	13,413	-6%	-5%	995	1,140	911	1,023	-8%	-10%
BRONX	2,647	2,620	3,356	3,485	27%	33%	434	260	741	290	71%	12%
KINGS	5,267	2,646	3,379	5,358	-36%	102%	797	760	628	737	-21%	-3%
QUEENS	4,818	4,403	3,662	3,328	-24%	-24%	819	736	722	736	-12%	0%
RICHMOND	603	282	549	778	-9%	176%	381	317	377	375	-1%	18%
Outside NYC	22,625	23,285	21,736	23,442	-4%	1%	11,112	11,523	10,273	11,954	-8%	4%
ALBANY	677	671	644	664	-5%	-1%	232	319	174	338	-25%	6%
ALLEGANY	135	123	120	137	-11%	11%	46	33	42	46	-9%	39%
BROOME	381	442	416	434	9%	-2%	166	231	196	178	18%	-23%
CATTARAUGUS	199	186	193	204	-3%	10%	60	83	64	84	7%	1%
CAYUGA	151	181	174	186	15%	3%	75	89	65	90	-13%	1%
CHAUTAUQUA	401	384	383	394	-4%	3%	160	119	137	162	-14%	36%
CHEMUNG	230	214	215	208	-7%	-3%	66	67	70	54	6%	-19%
CHENANGO	163	155	145	133	-11%	-14%	44	56	55	51	25%	-9%
CLINTON	255	266	281	287	10%	8%	91	78	69	96	-24%	23%
COLUMBIA	88	142	86	124	-2%	-13%	57	47	43	31	-25%	-34%
CORTLAND	175	176	149	135	-15%	-23%	32	35	24	39	-25%	11%
DELAWARE	92	61	101	99	10%	62%	27	24	28	30	4%	25%
DUTCHESS	670	677	658	691	-2%	2%	341	329	295	382	-13%	16%
ERIE	1,476	1,634	1,446	1,745	-2%	7%	1,159	1,287	1,118	1,191	-4%	-7%
ESSEX	95	113	88	100	-7%	-12%	32	27	29	40	-9%	48%
FRANKLIN	144	127	120	122	-17%	-4%	36	55	24	77	-33%	40%
FULTON	163	180	161	187	-1%	4%	51	89	66	83	29%	-7%
GENESEE	133	150	143	159	8%	6%	51	67	69	81	35%	21%
GREENE	131	98	111	105	-15%	7%	56	57	29	46	-48%	-19%
HAMILTON	0	0	0	0	0%	0%	0	0	0	0	0%	0%
HERKIMER	112	117	94	122	-16%	4%	66	75	44	57	-33%	-24%
JEFFERSON	537	651	558	615	4%	-6%	85	131	106	122	25%	-7%
LEWIS	81	78	71	72	-12%	-8%	18	15	25	14	39%	-7%
LIVINGSTON	166	186	148	157	-11%	-16%	50	49	44	56	-12%	14%
MADISON	152	135	142	111	-7%	-18%	79	47	63	61	-20%	30%
MONROE	1,294	1,542	1,370	1,512	6%	-2%	655	891	645	898	-2%	1%
MONTGOMERY	129	130	106	136	-18%	5%	42	44	34	33	-19%	-25%
NASSAU	1,826	1,850	1,822	1,681	0%	-9%	1,208	1,067	1,097	1,038	-9%	-3%
NIAGARA	349	340	366	358	5%	5%	270	253	262	303	-3%	20%
ONEIDA	452	393	439	350	-3%	-11%	282	292	269	308	-5%	5%
ONONDAGA	1,014	1,380	972	1,368	-4%	-1%	615	549	606	561	-1%	2%
ONTARIO	211	273	208	248	-1%	-9%	148	114	103	135	-30%	18%
ORANGE	741	743	755	814	2%	10%	391	363	367	422	-6%	16%
ORLEANS	85	136	48	107	-44%	-21%	34	34	31	41	-9%	21%
OSWEGO	273	273	262	258	-4%	-5%	181	171	153	176	-15%	3%
OTSEGO	134	120	135	134	1%	12%	62	51	46	34	-26%	-33%
PUTNAM	147	144	160	167	9%	16%	97	95	112	90	15%	-5%
RENSSELAER	371	387	303	377	-18%	-3%	151	191	122	211	-19%	10%
ROCKLAND	424	417	373	459	-12%	10%	238	325	269	372	13%	14%
ST LAWRENCE	334	322	276	291	-17%	-10%	87	73	100	96	15%	32%
SARATOGA	687	624	621	688	-10%	10%	295	236	233	299	-21%	27%
SCHENECTADY	438	400	396	415	-10%	4%	132	91	116	106	-12%	16%
SCHOHARIE	83	68	68	82	-18%	21%	29	23	41	33	41%	43%
SCHUYLER	53	54	44	43	-17%	-20%	9	22	14	18	56%	-18%
SENECA	43	67	51	69	19%	3%	36	36	30	43	-17%	19%
STEUBEN	215	279	198	264	-8%	-5%	79	78	64	78	-19%	0%
SUFFOLK	2,589	2,506	2,456	2,760	-5%	10%	1,630	1,768	1,368	1,912	-16%	8%
SULLIVAN	174	183	188	203	8%	11%	51	63	43	75	-16%	19%
TIOGA	166	209	176	136	6%	-35%	46	51	44	52	-4%	2%
TOMPKINS	277	247	218	212	-21%	-14%	56	58	69	54	23%	-7%
ULSTER	515	394	381	406	-26%	3%	180	143	149	139	-17%	-3%
WARREN	221	218	232	238	5%	9%	77	71	62	70	-19%	-1%
WASHINGTON	194	185	184	216	-5%	17%	58	54	59	69	2%	28%
WAYNE	175	181	181	209	3%	15%	76	103	84	98	11%	-5%
WESTCHESTER	2,031	1,894	1,958	1,903	-4%	0%	728	720	742	699	2%	-3%
WYOMING	135	135	104	90	-23%	-33%	59	50	40	44	-32%	-12%
YATES	38	44	38	57	0%	30%	30	34	20	38	-33%	12%

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

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

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

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

NEW YORK STATE UNIFIED COURT SYSTEM

SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED - TWO YEAR COMPARISON

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

NEW YORK STATE UNIFIED COURT SYSTEM

SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED - TWO YEAR COMPARISON

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

6/ 20/ 2017

NEW YORK STATE UNIFIED COURT SYSTEM

SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED - TWO YEAR COMPARISON

	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	2016		2017		2016 vs 2017		2016		2017		2016 vs 2017	
Location	Filed	Disposed	Filed	Disposed	% Chg Filed	% Chg Disp	Filed	Disposed	Filed	Disposed	% Chg Filed	% Chg Disp
TOTAL STATE	**45,150**	**48,282**	**42,857**	**46,054**	**-5%**	**-5%**	**12,090**	**14,480**	**11,335**	**13,795**	**-6%**	**-5%**
NYC	**24,327**	**25,910**	**23,208**	**24,476**	**-5%**	**-6%**	**3,295**	**3,507**	**3,307**	**3,309**	**0%**	**-6%**
NEW YORK	11,340	12,995	10,382	10,440	-8%	-20%	823	902	753	979	-9%	9%
BRONX	4,382	3,918	4,365	4,915	0%	25%	724	526	739	551	2%	5%
KINGS	3,983	4,074	3,550	4,247	-11%	4%	687	899	669	632	-3%	-30%
QUEENS	4,013	4,209	4,352	4,351	8%	3%	774	834	804	803	4%	-4%
RICHMOND	609	714	559	523	-8%	-27%	287	346	342	344	19%	-1%
Outside NYC	**20,823**	**22,372**	**19,649**	**21,578**	**-6%**	**-4%**	**8,795**	**10,973**	**8,028**	**10,486**	**-9%**	**-4%**
ALBANY	579	590	570	618	-2%	5%	166	285	160	297	-4%	4%
ALLEGANY	83	89	71	72	-14%	-19%	34	42	25	39	-26%	-7%
BROOME	549	372	376	366	-32%	-2%	167	159	180	169	8%	6%
CATTARAUGUS	166	140	129	161	-22%	15%	52	40	42	47	-19%	18%
CAYUGA	127	170	124	138	-2%	-19%	45	108	48	76	7%	-30%
CHAUTAUQUA	274	295	241	225	-12%	-24%	82	88	87	85	6%	-3%
CHEMUNG	251	248	194	190	-23%	-23%	50	57	49	51	-2%	-11%
CHENANGO	121	126	105	110	-13%	-13%	48	45	32	59	-33%	31%
CLINTON	207	237	207	235	0%	-1%	67	78	71	86	6%	10%
COLUMBIA	142	131	139	145	-2%	11%	39	32	32	64	-18%	100%
CORTLAND	320	303	598	591	87%	95%	30	26	27	33	-10%	27%
DELAWARE	94	108	72	114	-23%	6%	30	55	31	44	3%	-20%
DUTCHESS	601	608	598	608	0%	0%	272	256	191	257	-30%	0%
ERIE	1,762	2,173	1,350	1,862	-23%	-14%	830	830	720	935	-13%	13%
ESSEX	82	105	64	66	-22%	-37%	19	21	30	21	58%	0%
FRANKLIN	85	77	88	99	4%	29%	45	57	28	71	-38%	25%
FULTON	138	138	160	130	16%	-6%	52	76	38	77	-27%	1%
GENESEE	111	128	126	117	14%	-9%	40	53	52	54	30%	2%
GREENE	101	113	78	97	-23%	-14%	21	39	36	33	71%	-15%
HERKIMER	63	66	76	90	21%	36%	61	47	45	76	-26%	62%
JEFFERSON	413	411	371	450	-10%	9%	126	141	121	196	-4%	39%
LEWIS	46	54	50	53	9%	-2%	9	37	12	28	33%	-24%
LIVINGSTON	136	134	145	145	7%	8%	49	66	24	52	-51%	-21%
MADISON	132	157	86	92	-35%	-41%	67	70	52	71	-22%	1%
MONROE	1,339	1,335	1,285	1,332	-4%	0%	614	801	485	569	-21%	-29%
MONTGOMERY	107	124	98	82	-8%	-34%	27	46	29	36	7%	-22%
NASSAU	1,818	1,719	1,695	2,424	-7%	41%	1,063	1,124	936	1,200	-12%	7%
NIAGARA	318	275	267	308	-16%	12%	208	274	185	216	-11%	-21%
ONEIDA	384	295	297	287	-23%	-3%	232	286	196	256	-16%	-10%
ONONDAGA	773	1,126	771	1,187	0%	5%	495	450	535	442	8%	-2%
ONTARIO	458	478	386	417	-16%	-13%	78	147	64	109	-18%	-26%
ORANGE	549	672	584	639	6%	-5%	293	396	267	356	-9%	-10%
ORLEANS	61	79	77	77	26%	-3%	19	20	22	24	16%	20%
OSWEGO	205	192	237	206	16%	7%	122	122	118	129	-3%	6%
OTSEGO	119	122	104	95	-13%	-22%	26	39	36	33	38%	-15%
PUTNAM	128	120	132	150	3%	25%	90	138	85	82	-6%	-41%
RENSSELAER	307	344	295	299	-4%	-13%	91	139	104	156	14%	12%
ROCKLAND	374	472	312	473	-17%	0%	164	269	170	223	4%	-17%
SARATOGA	524	545	526	496	0%	-9%	225	348	177	292	-21%	-16%
SCHENECTADY	357	432	342	268	-4%	-38%	103	196	117	148	14%	-24%
SCHOHARIE	51	39	49	60	-4%	54%	22	21	18	21	-18%	0%
SCHUYLER	49	69	45	41	-8%	-41%	8	16	12	9	50%	-44%
SENECA	50	71	30	42	-40%	-41%	24	43	19	18	-21%	-58%
ST LAWRENCE	219	238	230	249	5%	5%	78	92	106	148	36%	61%
STEUBEN	215	266	200	252	-7%	-5%	57	79	48	80	-16%	1%
SUFFOLK	2,396	2,883	2,272	1,872	-5%	-35%	1,237	1,868	1,167	1,704	-6%	-9%
SULLIVAN	135	174	153	181	13%	4%	46	70	32	83	-30%	19%
TIOGA	103	117	109	111	6%	-5%	34	45	23	30	-32%	-33%
TOMPKINS	205	178	188	182	-8%	2%	50	58	36	38	-28%	-34%
ULSTER	363	374	347	347	-4%	-7%	139	162	131	194	-6%	20%
WARREN	192	191	180	200	-6%	5%	54	58	50	63	-7%	9%
WASHINGTON	174	253	138	150	-21%	-41%	42	95	38	63	-10%	-34%
WAYNE	136	132	107	120	-21%	-9%	72	76	55	59	-24%	-22%
WESTCHESTER	2,004	1,958	2,062	2,123	3%	8%	637	721	598	737	-6%	2%
WYOMING	99	83	86	107	-13%	29%	31	46	32	36	3%	-22%
YATES	28	43	27	27	-4%	-37%	13	20	4	11	-69%	-45%

NEW YORK STATE UNIFIED COURT SYSTEM

SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED - TWO YEAR COMPARISON

	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	2017		2018		2017 vs 2018		2017		2018		2017 vs 2018	
Location	Filed	Disposed	Filed	Disposed	Filed % Chg	Disp % Chg	Filed	Disposed	Filed	Disposed	Filed % Chg	Disp % Chg
TOTAL STATE	**42,857**	**46,054**	**43,847**	**47,788**	**2%**	**4%**	**11,335**	**13,796**	**11,553**	**13,926**	**2%**	**1%**
NYC	**23,208**	**24,476**	**23,789**	**24,772**	**3%**	**1%**	**3,307**	**3,309**	**3,402**	**3,479**	**3%**	**5%**
BRONX	4,365	4,915	4,276	5,053	-2%	3%	739	551	760	489	3%	-11%
KINGS	3,550	4,247	4,652	4,365	31%	3%	669	632	758	873	13%	38%
NEW YORK	10,382	10,440	9,448	9,871	-9%	-5%	753	979	763	932	1%	-5%
QUEENS	4,352	4,351	4,856	4,915	12%	13%	804	803	838	863	4%	7%
RICHMOND	559	523	557	568	0%	9%	342	344	283	322	-17%	-6%
Outside NYC	**19,649**	**21,578**	**20,058**	**23,016**	**2%**	**7%**	**8,028**	**10,487**	**8,151**	**10,447**	**2%**	**0%**
ALBANY	570	618	555	607	-3%	-2%	160	297	186	315	16%	6%
ALLEGANY	71	72	104	103	46%	43%	25	39	26	37	4%	-5%
BROOME	376	366	344	337	-9%	-8%	180	169	159	180	-12%	7%
CATTARAUGUS	129	161	159	180	23%	12%	42	47	36	52	-14%	11%
CAYUGA	124	138	105	138	-15%	0%	48	76	43	72	-10%	-5%
CHAUTAUQUA	241	225	287	275	19%	22%	87	85	80	89	-8%	5%
CHEMUNG	194	190	189	189	-3%	-1%	49	51	53	58	8%	14%
CHENANGO	105	110	98	112	-7%	2%	32	59	19	45	-41%	-24%
CLINTON	207	235	190	188	-8%	-20%	71	86	53	65	-25%	-24%
COLUMBIA	139	145	151	143	9%	-1%	32	64	44	45	38%	-30%
CORTLAND	598	591	777	743	30%	26%	27	33	23	33	-15%	0%
DELAWARE	72	114	80	67	11%	-41%	31	44	35	58	13%	32%
DUTCHESS	598	608	598	624	0%	3%	191	257	221	299	16%	16%
ERIE	1,350	1,862	1,638	2,063	21%	11%	720	935	833	1,112	16%	19%
ESSEX	64	66	71	56	11%	-15%	30	21	14	25	-53%	19%
FRANKLIN	88	99	104	85	18%	-14%	28	71	26	64	-7%	-10%
FULTON	160	130	123	123	-23%	-5%	38	77	47	61	24%	-21%
GENESEE	126	117	118	130	-6%	11%	52	54	42	66	-19%	22%
GREENE	78	97	91	86	17%	-11%	36	33	31	36	-14%	9%
HERKIMER	76	90	62	93	-18%	3%	45	76	31	47	-31%	-38%
JEFFERSON	371	450	362	374	-2%	-17%	121	196	126	156	4%	-20%
LEWIS	50	53	61	86	22%	62%	12	28	14	23	17%	-18%
LIVINGSTON	145	145	147	216	1%	49%	24	52	37	32	54%	-38%
MADISON	86	92	114	82	33%	-11%	52	71	49	66	-6%	-7%
MONROE	1,285	1,332	1,226	1,300	-5%	-2%	485	569	459	548	-5%	-4%
MONTGOMERY	98	82	101	92	3%	12%	29	36	28	36	-3%	0%
NASSAU	1,695	2,424	1,749	1,845	3%	-24%	936	1,200	968	1,266	3%	6%
NIAGARA	267	308	229	258	-14%	-16%	185	216	183	198	-1%	-8%
ONEIDA	297	287	346	333	16%	16%	196	256	219	230	12%	-10%
ONONDAGA	771	1,187	844	1,344	9%	13%	535	442	536	582	0%	32%
ONTARIO	386	417	336	357	-13%	-14%	64	109	74	101	16%	-7%
ORANGE	584	639	605	677	4%	6%	267	356	311	350	16%	-2%
ORLEANS	77	77	77	76	0%	-1%	22	24	27	25	23%	4%
OSWEGO	237	206	202	187	-15%	-9%	118	129	95	89	-19%	-31%
OTSEGO	104	95	105	87	1%	-8%	36	33	34	43	-6%	30%
PUTNAM	132	150	123	137	-7%	-9%	85	82	65	73	-24%	-11%
RENSSELAER	295	299	288	306	-2%	2%	104	156	105	121	1%	-22%
ROCKLAND	312	473	278	476	-11%	1%	170	223	159	226	-6%	1%
SARATOGA	526	496	506	487	-4%	-2%	177	292	179	270	1%	-8%
SCHENECTADY	342	268	316	311	-8%	16%	117	148	107	120	-9%	-19%
SCHOHARIE	49	60	69	55	41%	-8%	18	21	11	29		38%
SCHUYLER	45	41	38	40	-16%	-2%	12	9	9	14	-25%	56%
SENECA	30	42	53	59	77%	40%	19	18	17	25	-11%	39%
ST LAWRENCE	230	249	253	275	10%	10%	106	148	81	105	-24%	-29%
STEUBEN	200	252	201	212	1%	-16%	48	80	35	56	-27%	-30%
SUFFOLK	2,272	1,872	2,273	3,489	0%	86%	1,167	1,704	1,132	1,617	-3%	-5%
SULLIVAN	153	181	147	165	-4%	-9%	32	83	42	72	31%	-13%
TIOGA	109	111	89	80	-18%	-28%	23	30	32	35	39%	17%
TOMPKINS	188	182	203	168	8%	-8%	36	38	28	48	-22%	26%
ULSTER	347	347	330	304	-5%	-12%	131	195	144	139	10%	-29%
WARREN	180	200	190	196	6%	-2%	50	63	47	65	-6%	3%
WASHINGTON	138	150	161	163	17%	9%	38	63	33	46	-13%	-27%
WAYNE	107	120	120	149	12%	24%	55	59	72	65	31%	10%
WESTCHESTER	2,062	2,123	1,982	2,191	-4%	3%	598	737	636	761	6%	3%
WYOMING	86	107	63	62	-27%	-42%	32	36	40	36	25%	0%
YATES	27	27	27	35	0%	30%	4	11	15	20	275%	82%

10/9/2019

NEW YORK STATE UNIFIED COURT SYSTEM, DIVISION OF TECHNOLOGY AND THE OFFICE OF COURT RESEARCH 1/16/2020

SUPREME CIVIL MATRIMONIAL CASES FILED AND DISPOSED

	UNCONTESTED MATRIMONIALS						CONTESTED MATRIMONIALS					
	Full Year 2018		Full Year 2019		2018 vs 2019		Full Year 2018		Full Year 2019		2018 vs 2019	
Location	Filed	Disposed	Filed	Disposed	F% Chg	D% Chg	Filed	Disposed	Filed	Disposed	F% Chg	D% Chg
TOTAL STATE	**43,844**	**47,756**	**44,531**	**48,328**	**2%**	**1%**	**11,527**	**13,577**	**11,179**	**14,136**	**-3%**	**4%**
NYC	**23,789**	**24,772**	**23,815**	**24,450**	**0%**	**-1%**	**3,402**	**3,479**	**3,193**	**3,500**	**-6%**	**1%**
Bronx	4,276	5,053	4,461	5,530	4%	9%	760	489	795	625	5%	28%
Kings	4,652	4,365	4,800	4,484	3%	3%	758	873	682	771	-10%	-12%
New York	9,448	9,871	9,134	8,850	-3%	-10%	763	932	743	940	-3%	1%
Queens	4,856	4,915	4,818	4,865	-1%	-1%	838	863	709	862	-15%	0%
Richmond	557	568	602	721	8%	27%	283	322	264	302	-7%	-6%
Outside NYC	**20,055**	**22,984**	**20,716**	**23,878**	**3%**	**4%**	**8,125**	**10,098**	**7,986**	**10,636**	**-2%**	**5%**
Albany	555	607	590	622	6%	2%	186	315	179	245	-4%	-22%
Allegany	104	103	93	99	-11%	-4%	26	37	19	36	-27%	-3%
Broome	344	337	295	333	-14%	-1%	159	180	131	267	-18%	48%
Cattaraugus	159	180	161	167	1%	-7%	36	52	52	59	44%	13%
Cayuga	105	138	141	191	34%	38%	43	72	57	134	33%	86%
Chautauqua	287	275	275	232	-4%	-16%	80	89	66	69	-18%	-22%
Chemung	189	189	186	181	-2%	-4%	53	58	55	60	4%	3%
Chenango	98	112	152	179	55%	60%	19	45	32	64	68%	42%
Clinton	190	188	216	168	14%	-11%	53	65	77	79	45%	22%
Columbia	151	143	120	114	-21%	-20%	44	45	33	33	-25%	-27%
Cortland	777	743	856	879	10%	18%	23	33	25	43	9%	30%
Delaware	80	67	75	89	-6%	33%	35	58	20	55	-43%	-5%
Dutchess	598	624	540	561	-10%	-10%	221	299	209	291	-5%	-3%
Erie	1,638	2,052	1,491	2,084	-9%	2%	826	924	782	1,118	-5%	21%
Essex	71	56	69	66	-3%	18%	14	25	21	22	50%	-12%
Franklin	104	85	113	113	9%	33%	26	64	28	62	8%	-3%
Fulton	123	123	151	142	23%	15%	47	61	39	79	-17%	30%
Genesee	118	130	95	123	-19%	-5%	42	66	44	93	5%	41%
Greene	91	86	87	98	-4%	14%	31	36	34	37	10%	3%
Herkimer	62	93	44	83	-29%	-11%	31	47	29	54	-6%	15%
Jefferson	362	374	449	524	24%	40%	126	156	110	194	-13%	24%
Lewis	61	86	39	56	-36%	-35%	14	23	14	25	0%	9%
Livingston	147	216	123	122	-16%	-44%	37	32	35	43	-5%	34%
Madison	114	82	120	86	5%	5%	49	66	54	34	10%	-48%
Monroe	1,220	1,291	1,385	1,778	14%	38%	453	524	424	760	-6%	45%
Montgomery	101	92	106	95	5%	3%	28	36	23	36	-18%	0%
Nassau	1,749	1,845	2,099	1,820	20%	-1%	968	1,266	959	1,110	-1%	-12%
Niagara	229	258	273	296	19%	15%	183	198	174	289	-5%	46%
Oneida	346	333	428	352	24%	6%	219	230	185	221	-16%	-4%
Onondaga	844	1,344	752	1,264	-11%	-6%	536	582	585	550	9%	-5%
Ontario	336	357	281	331	-16%	-7%	74	101	90	111	22%	10%
Orange	605	677	610	846	1%	25%	311	350	257	317	-17%	-9%
Orleans	77	76	88	88	14%	16%	27	25	26	24	-4%	-4%
Oswego	202	187	189	178	-6%	-5%	95	89	117	98	23%	10%
Otsego	105	87	93	92	-11%	6%	34	43	33	37	-3%	-14%
Putnam	123	137	144	207	17%	51%	65	73	74	92	14%	26%
Rensselaer	289	305	294	398	2%	30%	105	121	110	164	5%	36%
Rockland	278	476	352	456	27%	-4%	159	226	194	214	22%	-5%
Saratoga	506	487	501	515	-1%	6%	179	270	176	205	-2%	-24%
Schenectady	316	311	341	298	8%	-4%	107	120	91	157	-15%	31%
Schoharie	69	55	36	71	-48%	29%	11	29	19	27		-7%
Schuyler	38	40	45	32	18%	-20%	9	14	4	6	-56%	-57%
Seneca	53	59	44	44	-17%	-25%	17	25	17	29	0%	16%
St. Lawrence	253	275	218	243	-14%	-12%	81	105	93	88	15%	-16%
Steuben	201	212	210	225	4%	6%	35	56	47	32	34%	-43%
Suffolk	2,273	3,489	2,255	2,952	-1%	-15%	1,132	1,617	1,154	1,440	2%	-11%
Sullivan	147	165	148	158	1%	-4%	42	72	39	38	-7%	-47%
Tioga	89	80	112	101	26%	26%	32	35	24	33	-25%	-6%
Tompkins	203	168	207	142	2%	-15%	28	48	35	37	25%	-23%
Ulster	330	304	366	338	11%	11%	144	139	165	164	15%	18%
Warren	190	196	142	168	-25%	-14%	47	65	48	64	2%	-2%
Washington	161	163	164	175	2%	7%	33	46	50	56	52%	22%
Wayne	120	149	125	139	4%	-7%	72	65	33	66	-54%	2%
Westchester	1,984	2,180	2,111	2,635	6%	21%	623	624	557	932	-11%	49%
Wyoming	63	62	82	78	30%	26%	40	36	31	29	-23%	-19%
Yates	27	35	34	51	26%	46%	15	20	7	14	-53%	-30%

NYS Unified Court System, Division of Technology and Court Research
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Matrimonial Cases Filed and Disposed

Location		CONTESTED MATRIMONIALS						UNCONTESTED MATRIMONIALS					
		Filed			Disposed			Filed			Disposed		
		2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change
Statewide		**11,241**	**8,390**	**-25%**	**12,732**	**7,381**	**-42%**	**44,522**	**33,354**	**-25%**	**46,865**	**31,131**	**-34%**
NYC	**Total**	**3,201**	**2,083**	**-35%**	**3,522**	**1,492**	**-58%**	**23,821**	**16,129**	**-32%**	**24,850**	**13,695**	**-45%**
	Bronx	795	425	-47%	626	174	-72%	4,467	3,939	-12%	5,547	3,125	-44%
	Kings	684	494	-28%	783	323	-59%	4,800	2,781	-42%	4,533	2,122	-53%
	New York	747	472	-37%	944	487	-48%	9,134	6,306	-31%	9,155	5,455	-40%
	Queens	711	503	-29%	864	324	-63%	4,817	2,689	-44%	4,892	2,562	-48%
	Richmond	264	189	-28%	305	184	-40%	603	414	-31%	723	431	-40%
ONYC	**Total**	**8,040**	**6,307**	**-22%**	**9,210**	**5,889**	**-36%**	**20,701**	**17,225**	**-17%**	**22,015**	**17,436**	**-21%**
	Albany	179	127	-29%	245	152	-38%	590	478	-19%	622	576	-7%
	Allegany	19	21	11%	36	10	-72%	93	85	-9%	99	73	-26%
	Broome	133	114	-14%	216	92	-57%	281	277	-1%	288	328	14%
	Cattaraugus	52	36	-31%	59	30	-49%	161	125	-22%	167	96	-43%
	Cayuga	57	40	-30%	56	53	-5%	141	129	-9%	176	129	-27%
	Chautauqua	66	59	-11%	69	46	-33%	275	193	-30%	232	189	-19%
	Chemung	56	40	-29%	58	52	-10%	187	172	-8%	180	153	-15%
	Chenango	32	24	-25%	64	22	-66%	152	92	-39%	179	113	-37%
	Clinton	77	47	-39%	79	60	-24%	216	166	-23%	168	181	8%
	Columbia	33	12	-64%	33	21	-36%	120	122	2%	114	120	5%
	Cortland	25	24	-4%	43	29	-33%	856	536	-37%	879	548	-38%
	Delaware	20	18	-10%	55	33	-40%	75	54	-28%	89	70	-21%
	Dutchess	209	201	-4%	291	144	-51%	540	516	-4%	561	534	-5%
	Erie	791	677	-14%	783	506	-35%	1,487	1,441	-3%	1,660	1,434	-14%
	Essex	20	13	-35%	19	18	-5%	70	63	-10%	67	75	12%
	Franklin	28	22	-21%	62	26	-58%	113	62	-45%	113	72	-36%
	Fulton	39	32	-18%	79	42	-47%	151	125	-17%	142	127	-11%
	Genesee	44	29	-34%	93	53	-43%	95	87	-8%	123	103	-16%
	Greene	34	14	-59%	37	33	-11%	87	81	-7%	98	81	-17%
	Herkimer	29	23	-21%	54	43	-20%	44	56	27%	83	75	-10%
	Jefferson	113	79	-30%	153	91	-41%	456	525	15%	489	587	20%
	Lewis	14	16	14%	25	17	-32%	39	31	-21%	56	37	-34%
	Livingston	35	14	-60%	34	32	-6%	123	130	6%	117	100	-15%
	Madison	54	37	-31%	34	71	109%	120	100	-17%	86	70	-19%
	Monroe	434	364	-16%	451	371	-18%	1,379	1,164	-16%	1,481	1,236	-17%
	Montgomery	23	24	4%	36	24	-33%	106	74	-30%	95	83	-13%
	Nassau	959	736	-23%	1,116	479	-57%	2,100	1,401	-33%	1,825	1,555	-15%
	Niagara	173	133	-23%	220	151	-31%	273	230	-16%	283	238	-16%
	Oneida	185	156	-16%	221	124	-44%	428	300	-30%	352	258	-27%
	Onondaga	594	490	-18%	491	464	-5%	746	571	-23%	1,022	675	-34%
	Ontario	91	74	-19%	102	86	-16%	283	289	2%	297	268	-10%
	Orange	257	232	-10%	265	193	-27%	611	536	-12%	659	622	-6%
	Orleans	26	14	-46%	24	14	-42%	88	71	-19%	88	74	-16%
	Oswego	117	79	-32%	98	85	-13%	189	153	-19%	178	119	-33%
	Otsego	33	25	-24%	34	26	-24%	93	97	4%	86	96	12%

Location		CONTESTED MATRIMONIALS						UNCONTESTED MATRIMONIALS					
		Filed			Disposed			Filed			Disposed		
		2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change	2019 YTD T13	2020 YTD T13	% Change
ONYC	Putnam	74	66	-11%	73	54	-26%	145	109	-25%	158	122	-23%
	Rensselaer	110	89	-19%	124	81	-35%	298	255	-14%	312	264	-15%
	Rockland	196	137	-30%	182	110	-40%	351	405	15%	423	395	-7%
	Saratoga	176	138	-22%	205	152	-26%	501	462	-8%	515	464	-10%
	Schenectady	91	69	-24%	157	76	-52%	341	258	-24%	298	268	-10%
	Schoharie	20	17	-15%	24	20	-17%	36	33	-8%	71	29	-59%
	Schuyler	4	8	100%	6	5	-17%	45	47	4%	32	33	3%
	Seneca	17	11	-35%	19	16	-16%	44	48	9%	34	50	47%
	St. Lawrence	93	63	-32%	87	68	-22%	218	225	3%	245	204	-17%
	Steuben	47	32	-32%	32	43	34%	210	138	-34%	225	108	-52%
	Suffolk	1,158	799	-31%	1,443	877	-39%	2,257	1,808	-20%	2,955	1,487	-50%
	Sullivan	39	38	-3%	37	39	5%	148	137	-7%	157	158	1%
	Tioga	24	29	21%	33	24	-27%	112	81	-28%	101	75	-26%
	Tompkins	35	26	-26%	37	29	-22%	207	146	-29%	142	193	36%
	Ulster	165	105	-36%	164	106	-35%	366	278	-24%	338	250	-26%
	Warren	48	42	-13%	53	39	-26%	142	141	-1%	152	151	-1%
	Washington	50	33	-34%	56	61	9%	164	134	-18%	175	137	-22%
	Wayne	33	52	58%	66	34	-48%	125	105	-16%	139	94	-32%
	Westchester	571	475	-17%	634	333	-47%	2,107	1,792	-15%	2,260	1,781	-21%
	Wyoming	31	21	-32%	29	17	-41%	82	61	-26%	78	51	-35%
	Yates	7	11	57%	14	12	-14%	34	30	-12%	51	27	-47%

NYS Unified Court System, Division of Technology and Court Research
Superior Civil
Matrimonial Cases Filed and Disposed

Location		Contested Matrimonials						Uncontested Matrimonials					
		Filed			Disposed			Filed			Disposed		
		2020 YTD T13	2021 YTD T13	% Change	2020 YTD T13	2021 YTD T13	% Change	2020 YTD T13	2021 YTD T13	% Change	2020 YTD T13	2021 YTD T13	% Change
Statewide		**8,475**	**10,519**	**24%**	**7,499**	**9,579**	**28%**	**34,765**	**40,552**	**17%**	**31,659**	**38,690**	**22%**
NYC	**Total**	**2,140**	**2,792**	**30%**	**1,553**	**2,136**	**38%**	**17,559**	**19,696**	**12%**	**14,557**	**17,084**	**17%**
	Bronx	430	482	12%	179	434	142%	3,966	5,996	51%	3,424	5,646	65%
	Kings	495	702	42%	340	509	50%	2,940	4,555	55%	2,155	2,537	18%
	New York	485	638	32%	511	484	-5%	7,485	4,123	-45%	5,965	4,821	-19%
	Queens	541	742	37%	337	513	52%	2,754	4,457	62%	2,573	3,778	47%
	Richmond	189	228	21%	186	196	5%	414	565	36%	440	302	-31%
ONYC	**Total**	**6,335**	**7,727**	**22%**	**5,946**	**7,443**	**25%**	**17,206**	**20,856**	**21%**	**17,102**	**21,606**	**26%**
	Albany	127	159	25%	152	191	26%	478	625	31%	576	834	45%
	Allegany	21	37	76%	10	34	240%	85	92	8%	73	103	41%
	Broome	114	113	-1%	94	139	48%	274	335	22%	323	286	-11%
	Cattaraugus	36	56	56%	30	48	60%	125	177	42%	96	198	106%
	Cayuga	40	39	-3%	53	43	-19%	130	140	8%	122	154	26%
	Chautauqua	59	74	25%	46	81	76%	193	166	-14%	189	190	1%
	Chemung	40	31	-23%	52	56	8%	171	190	11%	153	200	31%
	Chenango	24	29	21%	22	36	64%	92	113	23%	113	109	-4%
	Clinton	47	40	-15%	60	55	-8%	166	196	18%	181	187	3%
	Columbia	12	29	142%	21	16	-24%	122	115	-6%	120	113	-6%
	Cortland	24	29	21%	29	25	-14%	536	179	-67%	548	255	-53%
	Delaware	18	19	6%	33	42	27%	54	68	26%	70	78	11%
	Dutchess	203	214	5%	150	207	38%	522	574	10%	512	643	26%
	Erie	681	705	4%	513	747	46%	1,436	1,715	19%	1,359	1,903	40%
	Essex	14	15	7%	18	15	-17%	63	82	30%	74	102	38%
	Franklin	22	16	-27%	26	21	-19%	62	100	61%	72	90	25%
	Fulton	32	37	16%	42	68	62%	125	158	26%	127	161	27%
	Genesee	29	28	-3%	53	28	-47%	87	112	29%	103	119	16%
	Greene	14	36	157%	33	27	-18%	81	92	14%	81	86	6%
	Herkimer	23	27	17%	43	48	12%	56	76	36%	75	34	-55%
	Jefferson	79	115	46%	89	98	10%	532	1,041	96%	577	1,050	82%
	Lewis	16	7	-56%	17	24	41%	31	27	-13%	37	34	-8%
	Livingston	14	38	171%	32	29	-9%	129	151	17%	99	176	78%
	Madison	37	50	35%	71	43	-39%	100	177	77%	70	144	106%
	Monroe	367	441	20%	377	435	15%	1,147	1,363	19%	1,188	1,495	26%
	Montgomery	24	25	4%	24	38	58%	74	78	5%	83	84	1%
	Nassau	736	972	32%	495	771	56%	1,402	1,551	11%	1,557	1,644	6%
	Niagara	133	183	38%	149	251	68%	230	309	34%	231	358	55%
	Oneida	156	173	11%	124	174	40%	300	359	20%	258	402	56%
	Onondaga	488	536	10%	464	505	9%	571	771	35%	636	800	26%
	Ontario	75	64	-15%	86	57	-34%	289	310	7%	262	347	32%
	Orange	234	276	18%	198	236	19%	533	671	26%	584	715	22%
	Orleans	14	16	14%	14	22	57%	71	39	-45%	74	87	18%
	Oswego	79	99	25%	85	47	-45%	153	166	8%	119	175	47%
	Otsego	25	30	20%	26	30	15%	97	106	9%	104	102	-2%

Location		Contested Matrimonials						Uncontested Matrimonials					
		Filed			Disposed			Filed			Disposed		
		2020 YTD T13	2021 YTD T13	% Change	2020 YTD T13	2021 YTD T13	% Change	2020 YTD T13	2021 YTD T13	% Change	2020 YTD T13	2021 YTD T13	% Change
ONYC	Putnam	66	78	18%	54	70	30%	109	170	56%	116	181	56%
	Rensselaer	89	78	-12%	81	85	5%	257	315	23%	256	310	21%
	Rockland	137	153	12%	111	183	65%	405	496	22%	377	533	41%
	Saratoga	138	167	21%	152	157	3%	462	499	8%	464	486	5%
	Schenectady	69	88	28%	76	96	26%	258	322	25%	268	310	16%
	Schoharie	18	25	39%	21	19	-10%	32	64	100%	25	52	108%
	Schuyler	8	11	38%	5	11	120%	47	45	-4%	33	39	18%
	Seneca	12	18	50%	15	17	13%	47	55	17%	51	55	8%
	St. Lawrence	63	68	8%	68	89	31%	225	180	-20%	204	176	-14%
	Steuben	32	39	22%	43	38	-12%	138	180	30%	108	117	8%
	Suffolk	806	1,174	46%	895	1,027	15%	1,809	2,350	30%	1,491	2,037	37%
	Sullivan	38	30	-21%	40	38	-5%	139	154	11%	154	122	-21%
	Tioga	29	33	14%	24	33	38%	81	91	12%	75	91	21%
	Tompkins	26	40	54%	29	35	21%	146	176	21%	193	181	-6%
	Ulster	106	155	46%	106	129	22%	277	371	34%	249	389	56%
	Warren	42	49	17%	38	37	-3%	141	198	40%	145	162	12%
	Washington	33	41	24%	61	54	-11%	134	153	14%	137	168	23%
	Wayne	52	53	2%	34	64	88%	105	157	50%	94	165	76%
	Westchester	482	620	29%	332	526	58%	1,786	2,344	31%	1,745	2,463	41%
	Wyoming	21	37	76%	17	29	71%	61	74	21%	51	67	31%
	Yates	11	12	9%	13	19	46%	30	38	27%	20	44	120%

Appendix G-1

Appendix G-1 to Report of Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge for 2023

Court Statistics on Uncontested Divorce Filings in Erie, Monroe, Nassau, Suffolk, and Westchester from 2014 -2021

In 2014, Erie County, where Buffalo is located, had 2,130 uncontested divorce filings, and Monroe County, where Rochester is located, had 1,281 uncontested divorce filings. Similarly, uncontested divorce filings for 2014 for Nassau County were 1,633, for Suffolk County were 2,423, and for Westchester County were 1,978 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2013 and 2014 contained in Appendix "G"). In 2015, Erie County had 1,909 uncontested divorce filings, and Monroe County had 1,367 uncontested divorce filings. Similarly, uncontested divorce filings for 2015 for Nassau County were 2,014, for Suffolk County were 2,366, and for Westchester County were 2,097 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2014 and 2015 contained in Appendix "G"). In 2016, Erie County had 1,762 uncontested divorce filings, and Monroe County had 1,339 uncontested divorce filings. Similarly, uncontested divorce filings for 2016 for Nassau County were 1,818, for Suffolk County were 2,396, and for Westchester County were 2,004 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2015 and 2016 contained in Appendix "G"). In 2017, Erie County had 1,350 uncontested divorce filings, and Monroe County had 1,285 uncontested divorce filings. Similarly, uncontested divorce filings for 2017 for Nassau County were 1,695, for Suffolk County were 2,272, and for Westchester County were 2,062 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2016 and 2017 contained in Appendix "G"). In 2018, Erie County had 1,638 uncontested divorce filings, and Monroe County had 1,226 uncontested divorce filings. Similarly, uncontested divorce filings for 2018 for Nassau County were 1,749, for Suffolk County were 2,273, and for Westchester County were 1,982 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2017 and 2018 contained in Appendix "G"). In 2019, Erie County had 1,491 uncontested divorce filings, and Monroe County had 1,385 uncontested divorce filings. Similarly, uncontested divorce filings for 2019 for Nassau County were 2,099, for Suffolk County were 2,255, and for Westchester County were 2,111 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2018 and 2019 contained in Appendix "G"). In 2020, Erie County had 1441 uncontested divorce filings, and Monroe County had 1164 uncontested divorce filings. Similarly, uncontested divorce filings for 2020 for Nassau County were 1401, for Suffolk County were 1808, and for Westchester County were 1792 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2019 and 2020 contained in Appendix "G"). In 2021, Erie County had 1715 uncontested divorce filings, and Monroe County had 1363 uncontested divorce filings. Similarly, uncontested divorce filings for 2021 for Nassau County were 1551, for Suffolk County were 2350, and for Westchester County were 2344 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2020 and 2021 contained in Appendix "G"). Statistics for the full year 2022 are not available yet.

Appendix G-2 to Report of Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge for 2023

Court Statistics on Uncontested Divorce Filings in the Five Boroughs of New York City from 2014 -2021

In 2014 Uncontested divorce filings for the Bronx were 3,914, for Kings were 4,331, for New York were 13,662, for Queens were 3,556, and for Richmond were 527 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2013 and 2014 contained in Appendix "G"). In 2015, Uncontested divorce filings for the Bronx were 3,845, for Kings were 4,389, for New York were 12,799, for Queens were 4,719, and for Richmond were 543 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2014 and 2015 contained in Appendix "G"). In 2016, Uncontested divorce filings for the Bronx were 4,382, for Kings were 3,983, for New York were 11,340, for Queens were 4,013, and for Richmond were 609 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2015 and 2016 contained in Appendix "G"). In 2017, Uncontested divorce filings for the Bronx were 4,365, for Kings were 3,550, for New York were 10,282, for Queens were 4352, and for Richmond were 559 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2016 and 2017 contained in Appendix "G"). In 2018, uncontested divorce filings for the Bronx were 4276, for Kings were 4,652, for New York were 9,448, for Queens were 4,856, and for Richmond were 557 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2017 and 2018 contained in Appendix "G). In 2019, uncontested divorce filings for the Bronx were 4,461, for Kings were 4,800, for New York were 9134, for Queens were 4,818, and for Richmond were 602 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2018 and 2019 contained in Appendix "G). In 2020, uncontested divorce filings for the Bronx were 3939, for Kings were 2,781, for New York were 6306, for Queens were 2,689, and for Richmond were 414 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2019 and 2020 contained in Appendix "G). In 2021, uncontested divorce filings for the Bronx were 5996, for Kings were 4,555, for New York were 4123, for Queens were 4,457, and for Richmond were 565 (*see* OCA Supreme Court Civil Matrimonials Filed and Disposed Comparison Report 2020 and 2021 contained in Appendix "G). Statistics for the full year 2022 are not available yet.

Appendix H

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

M E M O R A N D U M

To: All Administrative Judges

From: Presiding Justice A. Gail Prudenti

Date: March 7, 2008

Re: Custody orders in matrimonial actions

The purpose of this memorandum is to bring to your attention a recurrent problem concerning certain orders that are being issued in matrimonial actions. It appears that a number of Justices in the matrimonial parts are conducting bifurcated trials to allow the issues of custody and/or visitation to be determined before those of equitable distribution and/or grounds for matrimonial relief. Courts are issuing *orders* that purport to finally determine the issues of custody and visitation. Making an order in these circumstances is not proper procedurally and such orders present appealability problems that I wish to bring to your attention.

Generally, an order decides a motion (CPLR 2219) and not the issues raised by the pleadings. When an action is tried by a court without a jury, its determination with respect to disputed issues of fact that are raised by the pleadings is to be made in a decision, not an order (*see*, CPLR 4213). An interlocutory or final judgment is then issued on the decision (*see*, CPLR 5011). As stated by CPLR 5011 "[a] judgment is the determination of the rights of the parties in an action or special proceeding and may be either interlocutory or final. A judgment shall refer to, and state the result of, the verdict or decision."

Where the Supreme Court holds a trial on the issues of custody and/or visitation separately from the trial on the issues of equitable distribution and/or grounds for matrimonial relief, it should render a decision and not an order at the end of the trial. The entry of a custody and/or visitation "order" following a trial of those issues does not comply with the CPLR. Even if such an order were proper, an appeal therefrom would require leave of either the Justice who made it or of the Appellate Division. CPLR 5701(a)(2) states: "[a]n appeal may be taken to the appellate division as of right in an action originating in the Supreme Court . . . from an order . . . where the motion it decided was made upon notice". The custody and/or visitation orders that are being issued after a trial are not appealable as of right as they do not decide a motion made upon notice.

The appropriate course for the Supreme Court after a bifurcated trial limited to the issues of custody and/or visitation is to render a decision and to direct the parties to settle or submit an interlocutory judgment concerning those issues. Such an interlocutory judgment is appealable as of right (*see* CPLR 5011; 5012; 5701[a][1]).

Appendix I

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

PRESENT: HON. _____
Justice of the Supreme Court

----------X

_____
[*Fill in Name*] Plaintiff,

-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]