REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

Matrimonial Commission

Appendices

HON. SONDRA MILLER, *CHAIRPERSON*

FEBRUARY 2006

Hon. Sondra Miller, *Chairperson*
Associate Justice, Appellate Division - 2nd Department

Hon. Damian J. Amodeo
Family Court Judge, Acting JSC
Dutchess County Family Court

Brian Barney, Esq.
Barney & Affronti, LLP

Susan L. Bender, Esq.
Bender Burrows & Rosenthal, LLP

Helene K. Brezinsky, Esq.
Kasowitz Benson Torres &
Friedman, LLP

Hon. Michael V. Coccoma
Otsego County Judge, Acting J.S.C.

Hon. Tandra Dawson
Family Court Judge, NYC
Bronx County Family Court

Eleanor M. DeCoursey, Esq.
Gordon, Tepper & DeCoursey, LLP

Hon. Brian F. DeJoseph
Supreme Court Justice
Onondaga County Supreme Court

Michael Dikman, Esq.
Dikman & Dikman

Hon. Betty Weinberg Ellerin
Associate Justice, Appellate Division
1st Department

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John R. Johnson, CPA
BST Valuation & Litigation
Advisors, LLC

Hon. David F. Jung
Family Court Judge, Acting J.S.C.
Fulton County Family Court

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Allan Mayefsky, Esq.
Sheresky Aronson & Mayefsky, LLP

Karen Dawn McGuire, Esq.
McGuire Condon, PC

Hon. Marion T. McNulty
Supreme Court Justice
Suffolk County Supreme Court

Patrick O'Reilly, Esq.
Lipsitz, Green, Fahringer, Roll,
Salisbury & Cambria, LLP

Carla M. Palumbo, Esq.
Legal Aid Society of Rochester,
NY, Inc.

Hon. Rosemonde Pierre-Louis
Deputy Borough President,
Borough of Manhattan

Sheila Ginsberg Riesel, Esq.
Blank Rome, LLP

Hon. Robert A. Ross
Supreme Court Justice
Nassau County Supreme Court

Laura Russell, Esq.
Sanctuary for Families
The Center for Battered Women's
Legal Services

Hon. Edward O. Spain
Associate Justice, AppellateDivision
3rd Department

Hon. Robert A. Spolzino
Associate Justice, Appellate Division
2nd Department

Hon. Jeffrey Sunshine
Family Court Judge, Acting JSC
Kings County Supreme Court,
Civil Term

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McLaughlin & Stern, LLP

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Law Guardian Director
NYS Appellate Division
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NYS Unified Court System,
Office of Alternative Dispute
Resolution

Wendy E. Deer, Esq., *Counsel*

Matrimonial Commission
Report to the Chief Judge of the State of New York
February 6, 2006

Appendices

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Appendix
A

NOTICE OF PUBLIC HEARINGS

The Matrimonial Commission

The Matrimonial Commission, appointed by Chief Judge Judith S. Kaye in June 2004 to review all aspects of matrimonial litigation and make recommendations for improving how the courts handle such litigation in both Family Court and Supreme Court, will hold four public hearings. The purpose of the public hearings is to receive the views of interested individuals and organizations with regard to ways to reduce cost, delay and trauma to the parties, with particular focus on the following issues:

- **Custody and Visitation**
- **Appointment, Qualifications and Use of Law Guardians, Forensic Experts, Guardians Ad Litem and others**
- **Alternative Dispute Resolution and Mediation**
- **Collaborative Divorce**

Individuals interested in speaking at one of the public hearings must register at least ten days prior to the hearing. Registration forms are available from the Commission directly or on the Commission's website. Forms may be submitted by fax, email or regular mail at the contact information below.

The Commission will make every effort to accommodate all those wishing to speak. Prior to the hearing, registered individuals will be notified of a time frame within which their testimony will be heard. **All comments will be limited to ten minutes.** Written submissions may be made in addition to or in lieu of spoken testimony and may be sent via regular mail or e-mail to the Commission at the contact information below.

The Commission can not take testimony from any individual with a pending matter in the courts of this state. Individuals with pending matters may send general comments and observations on the divorce and attendant legal process in writing to the Commission.

The Commission can not accept any comments, written or spoken, addressing details of individual litigation or complaints about individual judges, attorneys or experts.

THE HEARINGS ARE SCHEDULED AS FOLLOWS:

NEW YORK CITY
Thursday, October 14, 2004
9:00 a.m. - 5:00 p.m.
Benjamin N. Cardozo School of Law
Jacob Burns Moot Court Room
55 Fifth Avenue (at 12th Street)
New York, NY

ALBANY
Thursday, November 4, 2004
9:00 a.m. - 5:00 p.m.
Gov. Nelson A. Rockefeller
Empire State Plaza
Concourse Level - Meeting Room 7
Albany, NY

WHITE PLAINS
Thursday, February 17, 2005
9:00 a.m. - 5:00 p.m.
NYS Judicial Institute
Pace School of Law
78 North Broadway
White Plains, NY

BUFFALO
Thursday, April 21, 2005
9:00 a.m. - 5:00 p.m.
Ceremonial Courtroom
Erie County Courthouse
92 Franklin Street
Buffalo, NY

CONTACT THE COMMISSION AT:

Matrimonial Commission, NYS Office of Court Administration
140 Grand Street, Suite 701, White Plains, NY 10601
TEL: 914-997-1701 OR 914-997-1705 FAX: 212-884-8969
E-MAIL: MatrimonialCommission@courts.state.ny.us.

www.nycourts.gov/ip/matrimonial-commission

REVISED NOTICE OF PUBLIC HEARINGS

REVISED NOTICE • March 2005

The Matrimonial Commission

The Matrimonial Commission, appointed by Chief Judge Judith S. Kaye in June 2004 to review all aspects of matrimonial litigation and make recommendations for improving how the courts handle such litigation in both Family Court and Supreme Court, will continue to hold public hearings through Spring 2005. The purpose of the public hearings is to receive the views of interested individuals and organizations with regard to ways to:

- **Limit Costs**
- **Minimize Delays and**
- **Reduce Trauma to the Parties**

Individuals interested in speaking at one of the public hearings must register at least 14 days prior to the hearing. Registration forms are available from the Commission directly or on the Commission's website. Forms may be submitted by fax, e-mail or regular mail at the contact information below.

The Commission will make every effort to accommodate all those wishing to speak. Prior to the hearing, registered individuals will be notified of a time frame within which their testimony will be heard. **All comments will be limited to ten minutes.** Written submissions may be made in addition to or in lieu of spoken testimony and may be sent via regular mail or e-mail to the Commission at the contact information below.

The Commission can not take testimony from any individual with a pending matter in the courts of this state. Individuals with pending matters may send general comments and observations on the divorce and attendant legal process in writing to the Commission.

The Commission can not accept any comments, written or spoken, addressing details of individual litigation or complaints about individual judges, attorneys or experts.

THE REMAINING HEARINGS ARE SCHEDULED AS FOLLOWS:

BUFFALO

THURSDAY, APRIL 21, 2005 • 9:00 a.m.–6:00 p.m.

Ceremonial Courtroom, Erie County Courthouse, 92 Franklin Street, Buffalo, NY

NEW YORK CITY

MONDAY, MAY 9, 2005 • 1:00 p.m.–8:00 p.m.

New York County Lawyers Association
14 Vesey Street (between Broadway & Church Street), New York, NY

CONTACT THE COMMISSION AT:

MATRIMONIAL COMMISSION

NYS Office of Court Administration
140 Grand Street, Suite 701, White Plains, NY 10601

TEL: 914-997-1701 OR 914-997-1705 FAX: 212-884-8969

E-MAIL: MatrimonialCommission@courts.state.ny.us.

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Appendix
B

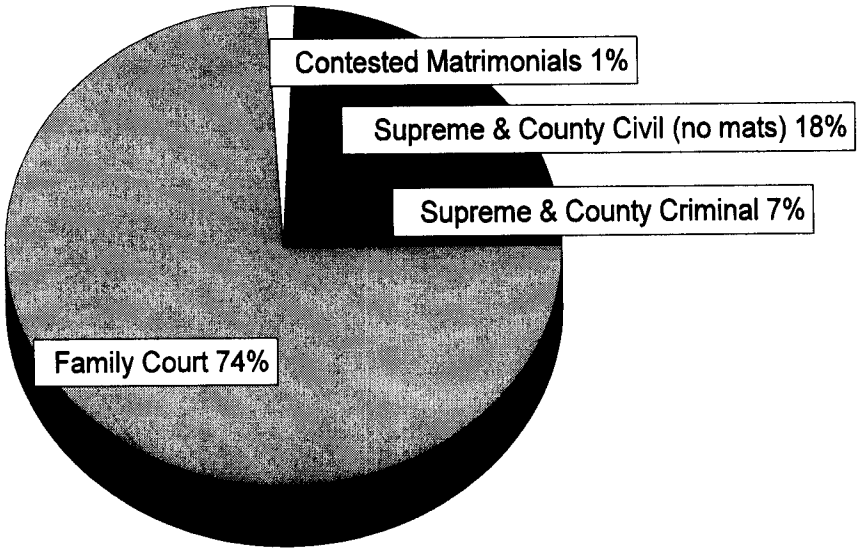
2004 STATEWIDE SUPREME & COUNTY COURT FILINGS

10/6/2005	695,842	Family Court Filings	74%
6/14/05	14,988	Contested Matrimonial	1%
6/14/05	178,675	Total Civil Supreme	
	- 14,988	Contested Matrimonial	
	163,687	Civil Supreme (excluding contested matrimonials)*	
	+ 2,222	Civil County	
	165,909	**TOTAL:** Civil (Supreme and County less contested matrimonials)	18%
6/14/05	63,217	**TOTAL**: Criminal, Supreme & County	7%
* 6/14/05	47,573	Uncontested Matrimonials, Statewide	

2004 TOTAL FAMILY COURT FILINGS

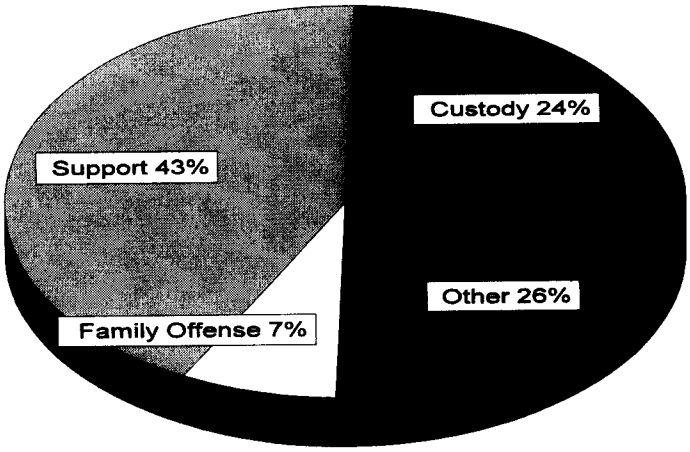
Custody	170,269	24%
Support	296,595	43%
Family Offense	51,512	7%
Other (Includes B,N,D,E,S,A,AC,AS,G,L,K,M,P W/C)	177,466	26%
Total	695,842	100%

2004 Statewide Supreme & County Level Court Filings
939,956



63,217 Filings
165,909 Filings
14,988 Filings
695,842 Filings

2004 Total Family Court Filings
695,842



170,269
296,595
51,512
177,466

Appendix
C

Proposed Educational Program Outline

This course of study for new matrimonial judges should include classroom training in the substantive and procedural law applicable to matrimonial proceedings, as well as the practical difficulties presented when presiding over matrimonial matters. The classroom training should include the following subjects:

1. Non-Financial Issues
    - a. Jurisdiction
    - b. Grounds
    - c. Child Custody and Vistation
        - i. Jurisdiction (UCCJEA)
        - ii. Attorneys for the Child
        - iii. Joint, Shared and Split Custody
        - iv. Best Interest Standard
        - v. Use of Supervisors
        - vi. Relocation Issues
        - vii. Enforcement
        - viii. Modification
2. Financial Issues
    - a. Equitable Distribution
        - i. The Concept of "Property" for Equitable Distribution Purposes
            - (1) Traditional Forms of Property
            - (2) Pensions and Other Deferred Compensation
            - (3) Enhanced Earning Capacity

ii. Definition of Marital Property vs. Separate Property

iii. Valuation

iv. Distribution

b. Spousal Support

i. Determination of Income

ii. Statutory Factors

iii. Relationship to Equitable Distribution

iv. Relationship to Child Support

v. Modification

c. Child Support

i. Determining Custodial Parent

ii. Determination of Income for CSSA Purposes

iii. CSSA Formula

iv. Statutory Factors

v. Extras

vi. Relation to Spousal Support

vii. Modification

3. Matrimonial Procedure

a. Preliminary Conference

i. Issue Determination

ii. Disclosure

iii. Appointments

(1) Neutral Experts

(2) Attorneys for the Child

b. Pendente Lite Relief

i Child Custody and Support

ii. Orders of Protection

iii. Spousal and Child Support

iv. Exclusive Occupancy of the Marital Residence

v. Asset Preservation

c. Incapacitated Litigants

d. Use of Referees

e. Default Judgment

f. Disclosure

g. Calendar practice

h. Trials

i. Trifurcation

ii. Evidence

(1) Hearsay

(2) In Camera Interviews

(3) Expert Testimony

(a) Generally

(b) Financial Experts

(c) Psychological Experts

i. Counsel Fees

j. Judgment

k. Enforcement

i. Custody and Parenting Time

ii. Equitable Distribution

iii. Support

l. Relationship with Family Court

m. Attorney Fee Disputes

i. Charging Liens

ii. Retaining Liens

iii. Arbitration

4. The Matrimonial Litigant

a. Emotional Aspects of Divorce

b. Impact of Domestic violence

c. Parental Alienation

5. Specific Problems

   a. Trying the Matrimonial Case

   b. Dealing with the Difficult Litigant

   c. Children as Witnesses

   d. Conducting the In Camera Interview

   e. Preparing the Equitable Distribution Decision

   f. Offering Support for the Judges - Recognizing the Difficult Stressful Nature of the Job

   g. Child Develop and Family Systems

Appendix
D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

----------x

Plaintiff Index No. _____

-against- Part No.

Defendant.

----------x

PRELIMINARY CONFERENCE STIPULATION/ORDER
CONTESTED MATRIMONIAL

PRESIDING: _____
Justice of the Supreme Court

The parties and counsel have appeared before this Court on _____, 200 at a preliminary conference on this matter held pursuant to 22 NYCRR 202.16.

The Court has received a copy of:	Date Filed or To Be Filed	
	Plaintiff	Defendant
(1) A sworn statement of net worth as of date of commencement of the action	_____	_____
(2) A signed copy of each party's attorney retainer agreement; and	_____	_____

(3) Counsel for both parties have certified that they have no knowledge that the substance of the statements or allegations of fact (including the Net Worth Statements) submitted by their respective clients is false.

A. Required Information

(1) Attorneys for Plaintiff	Attorneys for Defendant
_____	_____
_____	_____
_____	_____
_____	_____
Phone: _____	_____
Email: _____	_____

(2) Summons: Date filed_____ Date served_____

(3) Date of Marriage _____

(4) Name(s) and Age(s) of Child(ren): _____
_____

(5) The parties represent that this matter is:
Low Conflict (4 months to trial readiness) _____
Moderate Conflict (8 months to trial readiness) _____
High Conflict (12 months or longer to trial readiness) _____
The parties do not agree upon a classification _____
See last page of this order for assistance in making classification.

(6) There is _____ or is not _____an Order of Protection issued against _____ from _____Court. The order is dated and is/is not currently outstanding. Attach copy of order.

(7) The following other orders are outstanding:
Order: Court Issuing: Issue Addressed:

(8) _____ is requesting assistance in safely entering or exiting the courtroom or courthouse.

(9) _____ is requesting a translator in the _____ language.

(10) Premarital, Marital or Separation Agreements:
Is there a written agreement being asserted Yes____ No ____
If asserted, is either party challenging such agreement Yes____ No ____
If unknown presently, any challenge shall be asserted no later than _____.
Nature of the agreement _____
Date of the agreement _____
Are there any other agreements:

B. ALTERNATIVE DISPUTE RESOLUTION

The resolution of divorce related issues through alternative dispute resolution methods such as mediation, collaborative divorce, negotiation, or other non-litigated means is more likely to benefit the parties and the parties' children and lead to compliance. The parties are urged to consider this alternative to the adversary system which the Court process involves.

1. Option to Engage in Informational Session as to Alternative Dispute Resolution
_____ Plaintiff was advised of alternative dispute resolution options.
_____ Defendant was advised of alternative dispute resolution options.
_____ The parties agree to attend an alternative dispute resolution session to determine if alternative dispute resolution is a viable option. This election shall be without prejudice to either party and shall be confidential.

The parties designate _____ as the alternative dispute resolution option to try. The parties shall attend one session no later than _____.
No later than _____, the Court shall be advised as to whether the parties intend to pursue alternative dispute resolution, the issues to be addressed and whether this matter is to be held in abeyance and for how long.

2. Election to Engage in Alternative Dispute Resolution

A. Election to Start Alternative Dispute Resolution Immediately

:Check if applicable:

_____The parties believe that alternative dispute resolution may be a viable option as to the following issues.

Custody _____
Interim relief _____
Parental access _____
Equitable Distribution _____
Child Support _____
Maintenance _____
Legal Fees _____
Expert Fees _____
Other _____

Check the following if applicable:

_____The parties designate _____ to work with them on the above selected items. If the parties need assistance in selecting such alternative dispute resolution providers, they may request the Court to assist them.

_____The parties have entered into a collaborative law agreement with counsel, a copy of which agreement is _____attached or _____shall be provided to the Court within _____ days.

B. Election to Defer Alternative Dispute Resolution

_____The parties believe that alternative dispute resolution may be a viable option after the following interim issues are resolved:

Upon resolution of such issue(s), either party may notify the Court to request a conference to explore whether alternative dispute resolution is a viable option.

C. Election to Suspend Court Procedures during Alternative Dispute Resolution

The parties request _____ do not request _____ that the Court hold this matter in abeyance for _____pending alternative dispute resolution.

3. Rejection of Alternative Dispute Resolution

_____The parties do not believe that alternative dispute resolution is a viable option.

C. GROUNDS FOR DIVORCE:

The parties hereby stipulate, for purposes of trial, as follows:

1. Grounds: The issue of fault is resolved_____ or unresolved_____.

If the issue of grounds is resolved: The parties agree that will proceed on an uncontested basis to obtain a divorce on the grounds of . The essential allegations of the grounds for divorce are:

If the parties agree that fault is resolved and a complaint or responsive pleading has/have not been served, the time to do so is adjourned without date but each party reserves the right to seek such ancillary relief as he or she deems fit. Such pleading and responsive pleading and request for ancillary relief will be deemed asserted as of the date of the preliminary conference. Notwithstanding the above, until an inquest has occurred as to the issue of grounds, to preserve all rights, a party may demand a pleading on grounds for divorce and interpose a responsive pleading and counterclaim with respect to grounds for divorce.

D. Custody:

(a) The issue of custody is resolved _____ or unresolved_____.

ORDERED: If the issues of custody, including parenting time and decision making, is resolved: The parties are to submit a stipulated parenting plan no later than .

(b) Parenting Time: The issue of parenting time is resolved _____or unresolved _____.

ORDERED: If the issue of parenting time is resolved: The parties are to submit a stipulation reflecting the parental access schedule no later than .

(c) The issues relating to decision making are _____ or unresolved_____.

ORDERED: If the issues relating to decision making are resolved: The parties are to submit a stipulation reflecting the decision making agreement no later than .

ORDERED:

(d) As to any issue related to custody, including parenting time and decision making which is unresolved: Each party is to serve and submit a proposed parenting plan no later than .

After receipt of the parenting plans, if the parties do not notify the Court that all issues related custody are resolved, a conference shall be held on _____ at which time the Court shall determine the need for a law guardian/guardian ad litem and/or a forensic evaluation and set a schedule for resolving all issues relating to custody.

Any appointment of a law guardian/guardian ad litem or forensic evaluation shall be by separate order which shall designate the law guardian appointed, the manner of payment, source of funds for payment and each party's responsibility for such payment.

Parent Education

The Court ____has provided information as to parent education.
____has referred the parties to parent education.
____**hereby orders the parties to attend parent education.**
____has taken no action with respect to parent education.

E: STIPULATION:

The parties hereby stipulate, for purposes of trial, as to the following:

1. Maintenance is resolved_____ or unresolved_____

2. Child Support is resolved _____ or unresolved_____

3. Equitable Distribution is resolved_____ or unresolved _____

4. Other Causes of Action

5. Other Ancillary Relief Issues

ANY ISSUES WITH RESPECT TO FAULT, CUSTODY AND FINANCE THAT ARE NOT SPECIFICALLY DESCRIBED HEREIN AS UNRESOLVED MAY NOT BE RAISED IN THE ACTION UNLESS GOOD CAUSE IS SHOWN.

The above is hereby stipulated to by the parties and so ordered by the Court.

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

F. *Pendente Lite Relief*

With respect to *pendente lite* applications, the Court hereby directs or the parties stipulate that:

_____
_____
_____
_____
_____
_____
_____

G. Discovery: The Court Orders the following:

1. **Confidentiality/Non-Disclosure Agreement:**

(a) In the event there is a need for a Confidentiality/Non-Disclosure Agreement prior to disclosure, the party demanding same shall prepare and circulate the proposed agreement amongst the parties involved. If the parties cannot agree as to same, they shall promptly notify the Court. The failure to promptly seek a confidentiality agreement may result in the waiver of same.

(b) anticipates the need for a Confidentiality Agreement as to the following issues: _____
_____
_____
_____

(c) The Confidentiality/Non-Disclosure Agreement shall be provided to opposing counsel by . Within ten days of receipt, opposing counsel shall provide comments. If there are no comments received within ten days, the agreement is deemed accepted and all parties are to sign it and be bound by it. If comments are received and the parties cannot resolve its terms within twenty days of receipt of the comments or it is not signed within twenty days of the later of receipt of comments or delivery of the proposed agreement as to which no comments are received in the specified time period, the Court is to be notified by the party seeking such agreement by letter with copy to opposing counsel.

2. **Preservation of Evidence**

Each party shall maintain all financial records in his or her possession through the date of the entry of a judgment of divorce.

3. **Net Worth Statements**

(1) On or before Plaintiff has filed or will file a net worth statement as of the date of commencement of this action.

(2) On or before Defendant has filed or will file a net worth statement as of the date of commencement of this action.

(3) If there has been a material change in any aspect of the net worth statement from the date of commencement to the date of the signing of the first filed statement of

net worth, such information also shall be provided with the first filed statement of net worth.

(4) Each party shall serve a statement of net worth no later than thirty days prior to trial reflecting the most current information as to all items set forth on the statement of net worth.

4. **Document Production**

(1) No later than forty five days after the date of this Order, the parties are to exchange the following records for the following periods:

Check if need	Time Period	
____	_____	Federal, state and local tax returns, including all schedules, K-1's, 1099's, W-2's and similar data.
____	_____	Credit card statements for all credit cards used by a party.
____	_____	Joint Checking account statements, checks and register
____	_____	Individual Checking account statements, checks and register
____	_____	Brokerage Account statements.
____	_____	Savings account records
____	_____	Other: (specify)_____

Absent any specified time period definition, records are to be produced for the three years prior to the commencement of this action through the present. If a party does not have complete records for the time period, the party shall provide a written authorization to obtain such records directly from the source within five days of presentation. Any costs associated with the use of the authorization shall be _____(check one) paid by _____ or _____ reserved for the Court once the amount is determined.

No later than _____, the parties shall notify the Court of all items to be provided in forty five days which have not been provided. Failure to comply with the scheduled discovery shall result in appropriate sanctions, including the award of legal fees.

(2) No later than , a notice for discovery and inspection shall be served by plaintiff.

No later than , a notice for discovery and inspection shall be served by defendant.

(3) Documents are to be produced on a timely basis pursuant to the CPLR. Failure to comply with scheduled delivery shall result in appropriate sanctions, including the award of legal fees.

5. **Other Discovery**

		Plaintiff	Defendant
(1) Interrogatories	To be served no later than	_____	_____
(2) Party Depositions	To be completed no later than	_____	
Third Party Depositions	To be completed no later than	_____	
(3) Other	_____		

Compliance with discovery demands shall be on a timely basis pursuant to the CPLR. Failure to comply shall result in appropriate sanctions, including the award of legal fees.

6. **Valuation/Financial Experts and Other Experts**

Check if experts are required to value any of the following

(1) Deferred Compensation _____
(2) Retirement assets _____
(3) Business interest _____
(4) Professional practice _____
(5) License/degree _____
(6) Art, antiques, personal property, jewelry _____
(7) Separate property _____
(8) Residential real estate _____
(9) Commercial real estate _____
(10) Stock options, stock plans or other benefit plan _____
(11) Intellectual property _____
(12) Other _____ Identify: _____

(i) The date of valuation shall be _____ for items _____and shall be the date of commencement of this action for items _____. The date of valuation shall be _____ for _____.
_____ for _____.

Neutral Experts:

(ii) The Court shall appoint a neutral expert for items _____ listed above. Appointment of the expert shall be pursuant to a separate order which shall designate the neutral expert, what is to valued, the manner of payment, source of funds for payment and each party's responsibility for such payment.

(iii) The parties may suggest names for the Court to consider appointing. Said names shall be submitted by letter no later than _____.

(iv) The parties are not able to determine whether a neutral expert is necessary. The parties shall notify the Court no later than _____ as to whether any other neutral experts are required.

Experts to be Retained by a Party:

(iv) Each party shall select his/her own expert with respect to items listed above. The expert shall be identified to the other party by letter with their qualifications and retained no later than _____. If a party requires fees to retain an expert and the parties cannot agree upon the source of the funds, an application for fees shall be made no later than _____. Any expert retained by a party must represent to the party hiring such expert that he or she is available to proceed promptly with the valuation.

(vi) Expert reports are to be exchanged by . Absent any date specified, they are to be exchanged sixty days prior to trial. Reply reports are to be exchanged thirty days after service of an expert report.

Additional Experts:

(vii) If a net worth statement has not been served prior to this order or a party cannot identify all assets for valuation or cannot identify all issues for an expert, upon such identification, the party promptly shall notify the other party as to any valuation or other issue as to which an expert is needed. If the parties cannot agree upon a neutral expert or the retention of individual experts, either party may notify the Court for appropriate action. Timely application shall be made to the Court if assistance is necessary to implement valuation or the retention of an expert.

Trial Notice:

(viii) If a party intends that a written report shall substitute at trial for direct testimony, that party shall so advise the other party and the Court at least ten (10) days prior to trial.

(ix) If a party will require technological assistance for trial to be provided by the court or if a party intends to utilize technology that the party will be providing, the party shall so advise the other party and the Court at least ten (10) days prior to trial.

7. **Resolving Order**

In the event that there has not been compliance with discovery, the Court shall hold a conference to determine the status of discovery. A resolving order determining such issues as to which the documents would be relevant shall be entered in the absence of reasonable and prompt compliance with discovery.

H. Appearance by Parties for Conferences

(1) The parties are to appear at all conferences unless their appearance is waived by the Court or is waived by written agreement of the parties and approved by the Court or directed to appear by telephone. .

(2) If a party or his/her attorney knows that the party will not attend a scheduled conference and the appearance has not been waived, the Court, the other party and their attorney is to be notified immediately. Unless otherwise prohibited, if a party cannot reach his or her attorney to notify him/her of the party's inability to attend, he/she shall notify the other party immediately and directly. Under such circumstances, the other party is not required to appear. However, the party who initially gave notice he or she was unable to appear shall be subject to penalties and sanctions for failing to give notice in advance and failing to attend as required.

(3) If a party will suffer a hardship by reason of a Court appearance, the Court is to be notified by the party or his/her attorney. The Court may waive a party's appearance if there is a hardship or permit appearance by telephone. Among other reasons, it shall constitute a hardship if a party must make multiple appearances due to the other parties' non-compliance with a Court order, this preliminary conference order or any agreement of the parties. The Court may order one party but not both parties to appear in such circumstance or similar circumstance.

I. Further Orders:

1. The Court designates this matter as
   _____ Low Conflict
   _____ Moderate Conflict
   _____ High Conflict

2. The Court will hold this matter in abeyance pending alternative dispute resolution until _____.

3. The Court orders **the parties** and **their attorneys** to appear at a compliance conference to be held on _____ at _____.

4. The Court orders a Note of Issue to be filed on or before _____. Failure to file a note of issue as directed herein may result in dismissal pursuant to C.P.L.R. 3216.

THE COURT ORDERS THAT THE TRIAL IN THIS MATTER WILL BE HELD ON:
_____ at _____am/pm.

SO ORDERED:

Dated: , New York

_____

INFORMATION SOURCES

The following sources are available for more information on the legal process.

www.nycourts.gov/courthelp/
www.courts.state.ny.us/supctmanh/self-represented.htm
www.nycourts.gov/courts/nyc/family/selfrepresented.shtml
www.nycourts.gov/litigants/divorce/index.shtml
www.courts.state.ny.us/supctmanh/publiclibraries.htm
www.lawhelp.org/ny/

Public Law Library, 80 Centre Street, Room 468, New York,, NY

Classification of Matters:

Low Conflict – Four (4) Months

Factors to consider in determining whether a matter would be considered "Low Conflict":

- Grounds not in dispute.
- Custody and/or Parenting time not in dispute.
- No allegations of domestic violence.
- W-2 wage earners with tax returns filed in the three (3) years prior to the filing of the action or date of the PC.
- No real property or only residential real estate subject to equitable distribution.

Moderate Conflict – Eight (8) Months

Factors to consider in determining whether a matter would be considered "Moderate Conflict":

- Likely that grounds are in dispute.
- Custody unresolved, but forensic involvement unlikely.
- Allegations of domestic violence.
- W-2 wage earners without updated or recently filed tax returns.
- Party(ies) self-employed with less than two (2) employees.
- Commercial as well as residential real estate subject to equitable distribution.

High Conflict – 12 Months

Factors to consider in determining whether a matter would be considered "High Conflict":

- All factors listed for consideration in a "Moderate Conflict" matter.
- Custody unresolved, forensic involvement likely.
- Allegations of domestic violence.
- Business or professional practice evaluation to be completed.
- License(s) must be valued.
- Enhanced earnings valuations to be conducted.
- Discovery of assets requiring non-party depositions.
- Allegations of substantial cash income to one or both parties.
- Substantial separate property claimed by one or both parties.
- Related litigation involving validity of an agreement.
- Litigants regularly returning to court on same or related matter(s).

Appendix
E

COURT OF THE STATE OF NEW YORK
COUNTY OF
----------x

Plaintiff Index No. _____

-against- Part No.

Defendant. Date of Commencement of Action. _____

----------x

STATEMENT OF NET WORTH
(DRL § 236)

(Complete all items, marking "NONE," "INAPPLICABLE" and "UNKNOWN,").

_____, the (Petitioner) (Respondent)(Plaintiff)(Defendant) herein, being duly sworn, deposes and says that the following is an accurate statement as of _____, of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources and statement of assets transferred of whatsoever kind and nature and wherever situated:

I. FAMILY DATA:

(a) Husband's age _____
(b) Wife's age _____
(c) Date married _____
(d) Date (separated)(divorced)_____
(e) Number of dependent children under 21 years _____
(f) Names and ages of children Social Security Numbers

_____ _____
_____ _____
_____
_____ _____

(g) Custody of Children ___Husband ___Wife
(h) Minor children of prior marriage ___Husband ___Wife
(i) (Husband)(Wife)(paying)((receiving) $___ as maintenance and/or $ ___ child support in connection with prior marriage
(j) Custody of children of prior marriage:
Name and Address

_____

(k) Is marital residence occupied by Husband ___ Wife ___ Both ___
(l) Husband's present address

_____

Wife's present address

_____

(m) Husband's occupation _____
Wife's occupation _____

(n) Husband's employer _____

(o) Wife's employer _____

(p) Education, training and skills [Attach additional pages, if needed]
Husband _____
Wife _____

(q) Husband's health _____

(r) Wife's health _____

(s) Children's health _____

II. EXPENSES:

You may elect to list all expenses on a weekly basis or all expenses on a monthly basis, however, you must be consistent. If any items are paid on a monthly basis, divide by 4.3 to obtain weekly payments; if any items are paid on a weekly basis; multiply by 4.3 to obtain monthly payment. Attach additional sheet, if needed. Items included under "Other" should be listed separately with separate dollar amounts.

Expenses listed: [ ] Weekly [ ] Monthly

(a) Housing

1. Rent _____
2. Mortgage and amortization _____
3. Real estate taxes _____
4. Condominium charges _____
5. Cooperative apartment maintenance _____

Total: Housing $ _____

(b) Utilities

1. Fuel oil _____
2. Gas _____
3. Electricity _____
4. Telephone _____
5. Water _____
6. Internet Provider _____
7. Cable / Satellite Provider _____

Total: Utilities $ _____

(c) Food

1. Groceries _____
2. School lunches _____
3. Lunches at work _____
4. Dining out _____
5. Liquor/alcohol _____
6. Home entertainment _____
7. Other _____ _____

Total: Food $ _____

(d) Clothing

1. Husband _____
2. Wife _____
3. Children _____
4. Other _____ _____

Total: Clothing $ _____

(e) Laundry

1. Laundry at home _____

2. Dry cleaning _____
3. Other _____ _____

Total: Laundry $ _____

(f) Insurance
1. Life _____
2. Homeowner's / tenant's _____
3. Fire, theft and liability _____
4. Automotive _____
5. Umbrella policy _____
6. Medical plan _____
7. Dental plan _____
8. Optical plan _____
9. Disability _____
10. Worker's compensation _____
11. Other _____ _____

Total: Insurance $ _____

(g) Unreimbursed medical
1. Medical _____
2. Dental _____
3. Optical _____
4. Pharmaceutical _____
5. Surgical, nursing, hospital _____
6. Other _____ _____

Total: Unreimbursed medical $ _____

(h) Household maintenance
1. Repairs _____
2. Furniture, furnishings, housewares _____
3. Cleaning supplies _____
4. Appliances, including maintenance _____
5. Painting _____
6. Sanitation / carting _____
7. Gardening / landscaping _____
8. Snow removal _____
9. Extermination _____
10. Pool maintenance _____
11. Other _____ _____

Total: Household maintenance $ _____

(i) Household help

1. Babysitter _____
2. Domestic (housekeeper, maid, etc.) _____
3. Other _____ _____

Total: Household help $ _____

(j) Automotive

Year: _____Make: _____Personal [ ] Business [ ]
Year: _____Make: _____Personal [ ] Business [ ]
Year: _____Make: _____Personal [ ] Business [ ]

1. Payments _____
2. Gas and oil _____
3. Repairs _____
4. Car wash _____
5. Registration and license _____
6. Parking and tolls _____
7. Other _____ _____

Total: Automotive $ _____

(k) Educational

1. Nursery / Pre-school _____
2. Primary and secondary _____
3. College _____
4. Post-graduate _____
5. Religious instruction _____
6. School transportation _____
7. School supplies _____
8. Tutoring _____
9. School events _____
10. Other _____ _____

Total: Educational $ _____

(l) Recreational

1. Camp _____
2. Vacations _____
3. Movies _____
4. Theatre, ballet, etc. _____
5. Video rentals _____
6. Music purchases _____
7. Team sports _____
8. Country club / pool club _____
9. Health / Fitness club _____
10. Sporting goods / equipment _____
11. Hobbies _____

12. Music / dance lessons _____
13. Sports lessons _____
14. Gym / Art classes (Gymboree, etc.) _____
15. Birthday parties _____
16. Other _____ _____

(m) Income taxes
1. Federal _____
2. State _____
3. City _____
4. Social Security and Medicare _____

Total: Income taxes $ _____

(n) Miscellaneous
1. Salon Services _____
2. Beauty aids / cosmetics, etc. _____
3. Cigarettes / tobacco _____
4. Books, magazine, newspapers _____
5. Children's allowances _____
6. Gifts _____
7. Charitable contributions _____
8. Religious organization dues _____
9. Union and organization dues _____
10. Commutation and transportation _____
11. Veterinarian / pet expenses _____
12. Child support payments (prior marriage) _____
13. Alimony and maintenance payments (prior marriage) _____
14. Loan payments _____
15. Unreimbursed business expenses _____

Total: Miscellaneous $ _____

(o) Other
1. _____ _____
2. _____ _____
3. _____ _____

Total: Other $ _____

Total Expenses $ _____

III. GROSS INCOME

State source of income and annual amount. Attach additional sheet, if needed.

(a) Salary or wages: (State whether income has changed during the year preceding date of this affidavit. Yes [ ] No [ ] If Yes, set forth name and address of all employers during preceding year and average weekly wage paid by each. Indicate overtime earnings separately. Attach previous year's W-2 or income tax return.)

_____

_____

_____

(b) Weekly deductions

1. Federal tax _____
2. New York State tax _____
3. Local tax _____
4. Social Security _____
5. Medicare _____
6. Other payroll deductions (specify) _____

(c) Social Security number _____

(d) Number and names of dependents claimed

_____

_____

(e) Bonus, commissions, fringe benefits (use of auto, memberships, etc.) _____

(f) Partnership, royalties, sale of assets (income and installment payments) _____

(g) Dividends and interest (state whether taxable or not) _____

(h) Real estate (income only) _____

(i) Trust, profit sharing and annuities (Principal distribution and income) _____

(j) Pension (income only) _____

(k) Awards, prizes, grants (state whether taxable) _____

(l) Bequests, legacies and gifts _____

(m) Income from all other sources (Including alimony, maintenance or child support from prior marriages) _____

(n) Tax preference items:

1. Long term capital gain deduction _____
2. Depreciation, amortization or depletion _____
3. Stock options – excess of fair market value over amount paid _____

(o) If any child or other member of your household is employed, set forth that person's name and annual income

_____ _____

(p) Social Security _____
(q) Disability benefits _____
(r) Public assistance _____
(s) Other _____

Total Income: $ _____

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

(a) Cash Accounts
Cash
1.1 a. Location _____
b. Source of funds _____
c. Amount _____
Total:
Cash $ _____

Checking Accounts
2.1 a. Financial institution _____
b. Account Number _____
c. Title holder _____
d. Date opened _____
e. Source of funds _____
f. Balance $ _____

2.2 a. Financial institution _____
b. Account Number _____
c. Title holder _____
d. Date opened _____
e. Source of funds _____
f. Balance $ _____
Total:
Checking $ _____

Savings Accounts (including individual, join, totten trust, certificates of deposit, treasury notes).
3.1 a. Financial institution _____
b. Account Number _____
c. Title holder _____
d. Type of Account _____
e. Date opened _____
f. Source of funds _____

g. Balance $ _____

3.2 a. Financial institution _____
b. Account Number _____
c. Title holder _____
d. Type of Account _____
e. Date opened _____
f. Source of funds _____
g. Balance $ _____

Total:
Savings $ _____

Security Deposits, earnest money, etc.

4.1 a. Location _____
b. Title owner _____
c. Type of deposit _____
d. Source of funds _____
e. Date of deposit _____
f. Amount $ _____

Total:
Security Deposits $ _____

Other

5.1 a. Location _____
b. Title owner _____
c. Type of deposit _____
d. Source of funds _____
e. Date of deposit _____
f. Amount $ _____

Total:
Other $ _____

TOTAL: Cash Accounts $ _____

(b) Securities

Bonds, notes, mortgages

1.1 a. Description of security _____
b. Title holder _____
c. Location _____
d. Date of acquisition _____
e. Original price / value _____
f. Source of funds to acquire _____
g. Current value $ _____

Total:
Bonds, notes, etc. $ _____

Stocks, mutual funds, options and commodity contracts

2.1 a. Description of security _____
b. Title holder _____
c. Location _____
d. Date of acquisition _____
e. Original price / value _____
f. Source of funds to acquire _____
g. Current value $ _____

2.2 a. Description of security _____
b. Title holder _____
c. Location _____
d. Date of acquisition _____
e. Original price / value _____
f. Source of funds to acquire _____
g. Current value $ _____

2.3 a. Description of security _____
b. Title holder _____
c. Location _____
d. Date of acquisition _____
e. Original price / value _____
f. Source of funds to acquire _____
g. Current value $ _____

Total:
Stocks, options, etc. $ _____

Broker margin accounts

3.1 a. Name and address of broker
_____
b. Title holder _____
c. Date account opened _____
d. Original value of account _____
e. Source of funds _____
f. Current value $ _____

Total:
Margin accounts $ _____

Total Value of Securities $ _____

(c) Loans to others and accounts receivable

1.1 a. Debtor's name and address

_____

b. Original amount of loan or debt $ _____

c. Source of funds from which loan made or origin of debt

_____

d. Date payment(s) due _____

e. Current amount due $ _____

1.2 a. Debtor's name and address

_____

b. Original amount of loan or debt $ _____

c. Source of funds from which loan made or origin of debt

_____

d. Date payment(s) due _____

e. Current amount due $ _____

Total:
Loans and accounts
receivable $ _____

(d) Value of interest in any business

1.1 a. Name and address of business

_____

b. Type of business _____

c. Your capital contribution _____

d. Your percentage of interest_____

e. Date of acquisition _____

f. Original price or value _____

g. Source of funds to acquire _____

h. Method of valuation _____

i. Other relevant information _____

j. Current net worth of business $_____

Total:
Value of business
interest $ _____

(e) Cash surrender value of life insurance

1.1 a. Insurer's name and address

_____

b. Name of insured _____

c. Policy number _____

d. Face amount of policy $ _____

e. Policy owner _____

f. Date of acquisition _____

g. Source of funding to acquire _____
h. Current cash surrender value $ _____
Total:
Value of life insurance $ _____

(f) Vehicles (automobile, boat, plane, truck, camper, etc.)

1.1 a. Description _____
b. Title Owner _____
c. Date of acquisition _____
d. Original price _____
e. Source of funds to acquire _____
f. Amount of current lien unpaid $ _____
g. Current fair market value $ _____

1.2 a. Description _____
b. Title Owner _____
c. Date of acquisition _____
d. Original price _____
e. Source of funds to acquire _____
f. Amount of current lien unpaid $ _____
g. Current fair market value $ _____
Total:
Value of Vehicles $ _____

(g) Real Estate
(Including real property, leaseholds, life estates, etc. at market value – do not deduct any mortgage.)

1.1 a. Description _____
b. Title Owner _____
c. Date of acquisition _____
d. Original price _____
e. Source of funds to acquire _____
f. Amount of mortgage / lien unpaid $ _____
g. Estimated current fair market value $ _____

1.2 a. Description _____
b. Title Owner _____
c. Date of acquisition _____
d. Original price _____
e. Source of funds to acquire _____
f. Amount of mortgage / lien unpaid $ _____
g. Estimated current fair market value $ _____

1.3 a. Description _____
b. Title Owner _____
c. Date of acquisition _____
d. Original price _____
e. Source of funds to acquire _____

f. Amount of mortgage / lien unpaid $ _____
g. Estimated current fair market value $ _____

Total:
Value of real estate $ _____

(h) Vested interest in trusts
(Pension, profit sharing, legacies, deferred compensation and others.)

1.1 a. Description of trust _____
b. Location of assets _____
c. Title owner _____
d. Date of acquisition _____
e. Original investment _____
f. Source of funds _____
g. Amount of unpaid liens $ _____
h. Current value $ _____

1.2 a. Description of trust _____
b. Location of assets _____
c. Title owner _____
d. Date of acquisition _____
e. Original investment _____
f. Source of funds _____
g. Amount of unpaid liens $ _____
h. Current value $ _____

Total:
Vested interest in trusts $ _____

(i) Contingent interests
(Stock options, interest subject to life estates, prospective inheritances, etc.)

1.1 a. Description _____
b. Location _____
c. Title owner _____
d. Date of vesting _____
e. Date of acquisition _____
f. Original price / value _____
g. Source of funds _____
h. Method of valuation _____
i. Current value $ _____

Total:
Contingent interests $ _____

(j) Household furnishings

1.1 a. Description _____

b. Location _____

c. Title owner _____

d. Original price _____

e. Source of funds to acquire _____

f. Amount of lien unpaid _____

g. Current value $ _____

Total:
Household furnishings $ _____

(k) Jewelry, art, antiques, precious objects, gold and precious metals
(Only if valued at more than $500)

1.1 a. Description _____

b. Location _____

c. Title owner _____

d. Original price _____

e. Source of funds to acquire _____

f. Amount of lien unpaid _____

g. Current value $ _____

1.2 a. Description _____

b. Location _____

c. Title owner _____

d. Original price _____

e. Source of funds to acquire _____

f. Amount of lien unpaid _____

g. Current value $ _____

Total:
Jewelry, art, etc. $ _____

(l) Other
(For example, tax shelter investments, collections, judgments, causes of action, patents, trademarks, copyrights, and any other asset not hereinabove itemized)

1.1 a. Description _____

b. Location _____

c. Title owner _____

d. Original price _____

e. Source of funds to acquire _____

f. Amount of lien unpaid _____

g. Current value $ _____

1.2 a. Description _____
b. Location _____
c. Title owner _____
d. Original price _____
e. Source of funds to acquire _____
f. Amount of lien unpaid _____
g. Current value $ _____

Total:
Other $ _____

TOTAL ASSETS $ _____

V. LIABILITIES

(a) Accounts payable (including credit card and revolving debt)

1.1 a. Name and address of creditor
_____
b. Debtor _____
c. Amount of original debt $ _____
d. Date of incurring debt _____
e. Purpose _____
f. Monthly or other periodic payment $ _____
g. Amount of current debt $ _____

1.2 a. Name and address of creditor
_____
b. Debtor _____
c. Amount of original debt $ _____
d. Date of incurring debt _____
e. Purpose _____
f. Monthly or other periodic payment $ _____
g. Amount of current debt $ _____

1.3 a. Name and address of creditor
_____
b. Debtor _____
c. Amount of original debt $ _____
d. Date of incurring debt _____
e. Purpose _____
f. Monthly or other periodic payment $ _____
g. Amount of current debt $ _____

1.4 a. Name and address of creditor
_____
b. Debtor _____
c. Amount of original debt $ _____
d. Date of incurring debt _____

e. Purpose _____
f. Monthly or other periodic payment $ _____
g. Amount of current debt $ _____

1.5 a. Name and address of creditor

_____

b. Debtor _____
c. Amount of original debt $ _____
d. Date of incurring debt _____
e. Purpose _____
f. Monthly or other periodic payment $ _____
g. Amount of current debt $ _____

Total:
Accounts payable $ _____

(b) Notes payable

1.1 a. Name and address of note holder

_____

b. Debtor _____
c. Amount of original debt $ _____
d. Date of incurring debt _____
e. Purpose _____
f. Monthly or other periodic payment $ _____
g. Amount of current debt $ _____

1.2 a. Name and address of creditor

_____

b. Debtor _____
c. Amount of original debt $ _____
d. Date of incurring debt _____
e. Purpose _____
f. Monthly or other periodic payment $ _____
g. Amount of current debt $ _____

Total:
Notes payable $ _____

(c) Installment accounts payable
(Security agreements, chattel mortgages)

1.1 a. Name and address of creditor

_____

b. Debtor _____
c. Amount of original debt $ _____
d. Date of incurring debt _____
e. Purpose _____
f. Monthly or other periodic payment $ _____
g. Amount of current debt $ _____

1.2 a. Name and address of creditor

_____

b. Debtor _____

c. Amount of original debt $ _____

d. Date of incurring debt _____

e. Purpose _____

f. Monthly or other periodic payment $ _____

g. Amount of current debt $ _____

Total:
Installment Accounts $ _____

(d) Brokers' margin accounts

1.1 a. Name and address of broker

_____

b. Amount of original debt $ _____

c. Date of incurring debt _____

d. Purpose _____

e. Monthly or other periodic payment $ _____

f. Amount of current debt $ _____

Total:
Brokers' margin accounts $ _____

(e) Mortgages payable on real estate

1.1 a. Name and address of mortgagee

_____

b. Address of property mortgaged

_____

c. Mortgagor(s) _____

d. Original debt $ _____

e. Date of incurring debt _____

f. Monthly or other periodic payment $ _____

g. Maturity date _____

h. Amount of current debt $ _____

1.2 a. Name and address of mortgagee

_____

b. Address of property mortgaged

_____

c. Mortgagor(s) _____

d. Original debt $ _____

e. Date of incurring debt _____

f. Monthly or other periodic payment $ _____

g. Maturity date _____

h. Amount of current debt $ _____

Total:
Mortgages payable $ _____

(f) Taxes payable

1.1 a. Description of tax _____

b. Amount of tax $ _____

c. Date due _____

Total:
Taxes payable $ _____

(g) Loans on life insurance policies

1.1 a. Name and address of insurer

_____

b. Amount of loan $ _____

c. Date incurred _____

d. Purpose _____

e. Name of borrower _____

f. Monthly or other periodic payment $ _____

g. Amount of current debt $ _____

Total:
Life insurance loans $ _____

(h) Other liabilities

1.1 a. Description _____

b. Name and address of creditor

_____

c. Debtor _____

d. Original amount of debt $ _____

e. Date incurred _____

f. Purpose _____

g. Monthly or other periodic payment $ _____

h. Amount of current debt $ _____

1.2 a. Description _____

b. Name and address of creditor

c. Debtor _____

d. Original amount of debt $ _____

e. Date incurred _____

f. Purpose _____

g. Monthly or other periodic payment $ _____

h. Amount of current debt $ _____

Total:
Other liabilities $ _____

TOTAL LIABILITIES $ _____

NET WORTH

TOTAL ASSETS: $ _____

TOTAL LIABILITIES (Minus) $ _____

NET WORTH $ _____

VI. ASSETS TRANSFERRED:

(List all assets transferred in any manner during the preceding three years, or length or the marriage, whichever is shorter [transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth]).

Description of Property	To whom transferred and Relationship to Transferee	Date Of Transfer	Value
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____

VII. SUPPORT REQUIREMENTS:

(a) Deponent is at present (paying)(receiving) $ _____ per (week)(month), and prior to separation (paid) (received) $ _____ per (week)(month) to cover expenses for _____
_____.

These payment are being made (voluntarily)(pursuant to court order or judgment)(pursuant to separation agreement), and there are (no) arrears outstanding (in the sum of $ _____ to date).

(b) Deponent requests for support of each child $ _____ per (week)(month), Total for children $ _____.

(c) Deponent requests for support of self $ _____ per (week)(month).

(d) The day of the (week)(month) on which payment should be made is _____.

VIII. COUNSEL FEE REQUIREMENTS:

(a) Deponent requests for counsel fees and disbursements the sum of $ _____.

(b) Deponent has paid counsel the sum of $ _____ and has agreed with counsel concerning fees as follows:
_____
_____
_____

(c) There is (not) a retainer agreement or written agreement relating to payment of legal fees. (A copy of any such agreement must be annexed.)

IX. ACCOUNTANT AND APPRAISAL FEES REQUIREMENTS

(a) Deponent requests for accountants' fees and disbursements the sum of $ _____ (Include basis for fee, e.g., hourly rate, flat rate.)

(b) Deponent requests for appraisal fees and disbursements the sum of $ _____ (Include basis for fee, e.g., hourly rate, flat rate.)

(c) Deponent requires the services of an accountant for the following reasons: _____
_____
_____

(d) Deponent requires the services of an appraiser for the following reasons: _____
_____
_____

X. Other data concerning the financial circumstances of the parties that should be brought to the attention of the Court are:
_____
_____
_____
_____

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

_____

(Petitioner)	(Respondent)
(Plaintiff)	(Defendant)

Sworn to before me this
____ day of _____, 20__.

_____
Signature of Attorney

_____
Name of Attorney
(Print or Type)

_____
_____
_____
_____
Address of Attorney

_____
Attorney Telephone

_____
Attorney Facsimile

Guide to the Preparation of the Statement of Net Worth

The Net Worth Statement is a very important, sworn statement, required to be filed early in all matrimonial actions. Following these suggestions will save attorneys' time, reduce costs, result in a document, which will best serve its intended purpose and avoid delays.

General Directions

1. All entries on the first Net Worth Statement (expenses, income, assets and liabilities) should reflect the situation on or as close to the DATE OF THE COMMENCEMENT of the matrimonial action as possible.

2. Do not leave blank spaces or categories.
   a. If an item does not apply to you, write in "not applicable" (N/A), "0" or "NONE".
   b. although it should be kept to the bare minimum, if an item is involved in your case, but you do not have the required information, answer; "unknown".

3. If an amount being entered is an estimate or approximation, you should indicate that on the form.

4. If you have a substantial number of items in any category, such as multiple bank accounts, stocks, businesses, mortgages or credit card debts, on the form write: "see annexed list" and prepare and attach a separate page, listing all of the items in that category, **with all required information for each**.

5. In the event your Net Worth Statement is not going to be typed or computer printed by you or your attorney (by far the preferred process) be sure to make the statement **neat** and **legible**.

6. The Rules of the Court require that you attach your attorney's retainer statement to the Net Worth Statement. In addition, the Rules require that prior to the Preliminary Conference, which will be scheduled early in the proceedings, you must supply and exchange all of the papers outlined on the attached list.

DIRECTIONS RELATING TO SECTION I: <u>FAMILY DATA</u>
Fill in the information called for on each line.

DIRECTIONS RELATING TO SECTION I: EXPENSES

1. List all expenses on a MONTHLY basis. If you know the amount on an annual basis, divide by 12 for the monthly amount. If you can best determine an item on a weekly basis, either multiply that number by 4.3, or for even greater accuracy, multiply the weekly figure by 52 and then divide by 12 for the monthly amount.

2. Prepare this section as of the date of the commencement of your matrimonial action.

3. Make sure that for each category you add up all items or components and place the total on the line at the right, entitled Total Housing, Total Utilities, etc.

4. Double check your addition of all those numbers at the right and include the total monthly expense figure at the bottom.

5. Double check the addition.

DIRECTIONS RELATING TO SECTION I: ASSETS

1. Prepare this section as of the date as close as possible to the date of the commencement of your matrimonial action.

2. As stated above, it is acceptable to write in "see annexed list" and to attach a separate page, listing all of the items in that category, with all required information for each.

3. In connection with items that will require appraisals or evaluations:
   a. Attach the most recent, relevant statement, if any.
   b. Write in: "To be evaluated".

4. In connection with the Item "Vested Interests . . . ." be sure to include all types of retirement accounts not listed elsewhere, including pensions, 401k or similar deferred income accounts, IRA's, annuities and trusts.

5. Make sure that for each category you add up all items or components and place the total on the line at the right, entitled Total Checking, Total Savings, etc.

6. Double check your addition of all those numbers at the right and include the total assets figure at the bottom.

DIRECTIONS RELATING TO SECTION V: LIABILITIES

1. Prepare this section as of the date as close as possible to the date of the commencement of your matrimonial action.

2. As stated above, it is acceptable to write in "see annexed list" and to

attach a separate page, listing all of the debts in that category, with all required information for each.

3. Make sure that for each category you add up all items or components and place the total on the line at the right, entitled Total Accounts Payable, Total Mortgages, etc.

4. Double check your addition of all those numbers at the right and include the total liabilities on the line at the bottom, also listing below the "Net Worth": (Total Assets minus Total Liabilities).

DIRECTIONS RELATING TO SECTION VI: ASSETS TRANSFERRED

Follow the directions listed on the form. This section **must** be completed. If there have been no applicable transfers, say "NONE"; do not leave the section blank.

DIRECTIONS RELATING TO SECTION VII: SUPPORT REQUIREMENTS

Follow the directions listed on the form so as to advise the court of the current support being paid and needed, if you making such a request.

DIRECTIONS RELATING TO SECTION VIII: COUNSEL FEE REQUIREMENTS

It is required that you reveal the amount previously paid and agreed to be paid toy our own lawyer, in subdivision (b).

DIRECTIONS RELATING TO SECTION IX: APPRAISAL FEE REQUIREMENTS

Advise the court of what accounting or appraisal services you will need, if any. Advise of the payment arrangements previously made, if any. If none, you m ay say: "To be determined".

EXECUTION

After re-reading the statement, be sure to sign it in the presence of a Notary Public.

Papers to be Supplied and Exchanged Pursuant to Uniform Court Rules § 202.16

1. The Statement of Net Worth.

2. All pay stubs for the current calendar year and the last pay stub for the immediately preceding calendar year.

3. Copies of all filed state and federal income tax returns for the past three years, including, where applicable, both personal returns and those filed on behalf of any partnership or closely held corporation in which you are a partner or shareholder.

4. All W-2 statements, 1099 forms and K-1 forms for any year in the past three years in which you did not file state and federal returns.

5. All statements for the last three years from each financial institution where you have maintained any account in which cash or securities are held. This requires three years of statements from each of your bank and securities accounts.

6. The statements immediately before and after the date of the commencement of the matrimonial action, relating to:

    a. Any life insurance policy having a cash or dividend surrender value;
    b. Any deferred compensation plan or account, including IRA accounts, pensions, profit-sharing plans, Keogh plans, 401k or other retirement plans. (For example, if the action started in June, you need to obtain the statements from the end of May and the end of June, if statements are issued monthly.)

Appendix
F

DRAFT ADR RULE FOR INCLUSION IN PART 202 UNIFORM CIVIL RULES FOR THE SUPREME COURT AND THE COUNTY COURT

(m) **Alternative Dispute Resolution**. Except as otherwise provided in this rule, the court shall have the authority to order parties to an appropriate form of dispute resolution in the following instances:

(1) **Parenting Issues**: Where there are unresolved parenting issues, such as those concerning custody and visitation, the court may order the parties to attempt mediation.

a. Mediation defined: For the purposes of this section, mediation is a confidential informal procedure in which a neutral third person helps parents to communicate and make decisions with each other regarding the best interests of their child(ren).

(2) **Financial Issues**: Where there are unresolved financial issues, the court may order the parties to an early settlement panel.

a. Early Settlement Panel defined: For the purposes of this section, early settlement panel is a confidential, non-binding process in which a neutral third party or panel with special knowledge in the subject matter relating to the dispute listens to abbreviated case presentations and provides an evaluation of likely court outcomes or assessment of strengths and weaknesses of the parties' cases in an effort to encourage settlement. Early settlement panels may also offer case planning guidance and settlement assistance at the parties' request.

(3) **Compliance with Court Orders or Parenting Agreements**: Where either party has not complied with a court order or parenting agreement involving custody or visitation, the court may order the parties to a Parenting Coordinator.

a. Parenting Coordinator defined: A Parenting Coordinator is an impartial person qualified and appointed by the court to educate, supervise and manage high-conflict repetitive litigant parents with chronic, recurring disputes such as visitation conflicts and help parents to adhere to court orders. Parenting Coordinators also may help parents develop conflict management skills and decide disputes.

(4) **Exceptions**: Where the court has received credible evidence of domestic violence, a severe power imbalance between the parties, or child abuse it may not order the parties to mediation.

(5) **Voluntary ADR**: Subject to approval by the court, parties may voluntarily submit any unresolved issues to whichever form of ADR they prefer.

Appendix G

At a Term of the Supreme/Family Court held in and for the County of _____ at the Courthouse located at _____ _____ on the _____ day of _____, 20 ____.

PRESENT:

Hon. _____
Justice/Judge of the Court

----------x

Index/Docket No.

ORDER APPOINTING ATTORNEY FOR THE CHILD(REN)

----------x

Upon all of the prior proceedings in this action/proceeding, it is

1. ORDERED that the following is appointed Attorney for the Child(ren);

Name:_____
Address:_____
_____
_____
Phone/Fax:_____
Email:_____

for the following child(ren) of the parties *(provide name(s) and date(s) of birth of child(ren))*:

_____
_____
_____
_____
_____

2. ORDERED that the Attorney for the Child(ren) shall be compensated by the State of New York pursuant to Judiciary Law §35 and Family Court Act §245.

3. ORDERED that

a. counsel for the parties shall immediately contact the Attorney for the Child(ren) to schedule the interview(s) of the child(ren) with the Attorney for Child(ren) outside the presence of the parties and their counsel;

b. each party, on written consent or on the record of his/her counsel, may schedule interviews with the Attorney for the Child(ren), with or without his/her

counsel present, to discuss all issues relevant to custody and visitation;

c. the parties and counsel shall cooperate with the Attorney for the Child(ren) in providing any documents, papers or information requested, including executing releases permitting the Attorney for the Child(ren) to speak with, or receive information from, any mental health professionals, social service workers or agencies, physicians, schools, clergy, or other persons or entities having material and necessary information regarding the child(ren);

d. the parties shall permit reasonable, private and unhampered access by the children to the Attorney for the Child(ren), including contact in person or by phone, fax, Email or regular mail;

4. ORDERED that the counsel for the parties shall immediately send the Attorney for the Child(ren) copies of all papers in the action/proceeding, including pleadings, motions and prior orders pertaining to the child(ren);

and

5. ORDERED that the parties, counsel and the Attorney for the Child(ren) shall appear for conference in this Part at _____am/pm on _____, 20 .

E N T E R:

_____
Justice/Judge

Attorney for Plaintiff/Petitioner:

Name:_____
Address:_____
_____
_____
Phone/Fax:_____/_____
Email:_____

Attorney for Defendant/Respondent:

Name:_____
Address:_____
_____
_____
Phone/Fax:_____/_____
Email:_____

At a Term of the Supreme/Family Court held in and for the County of _____ at the Courthouse located at _____ _____ on the _____ day of _____, 20 ____.

PRESENT:

Hon. _____
Justice/Judge of the Court

----------x

Index/Docket No.

ACKNOWLEDGMENT OF ORDER OF APPOINTMENT

----------x

On _____, _____, acknowledges
(date) (name)

receipt and acceptance of the Order of Appointment in the Matter of _____

by the Honorable_____ dated_____.

_____

Appendix
H

At a Term of the Supreme/Family Court held in and for the County of _____ at the Courthouse located at _____ _____ on the _____ day of _____, 20 ____.

PRESENT:

Hon. _____
Justice/Judge of the Court

----------x

Index/Docket No.

ORDER APPOINTING PRIVATELY PAID ATTORNEY FOR THE CHILD(REN)

----------x

Upon all of the prior proceedings in this action/proceeding, it is

1. ORDERED that the following is appointed Attorney for the Child(ren);

Name:_____
Address:_____
_____
_____
Phone/Fax:_____
Email:_____

for the following child(ren) of the parties *(provide name(s) and date(s) of birth of child(ren))*:

_____
_____
_____
_____
_____

2. ORDERED that upon receipt of this order and UCS 872 (Notice of Appointment and Certification of Compliance), the Attorney for the Child(ren) shall complete, execute and return UCS 872 to the Fiduciary Clerk:

3. ORDERED that within 10 days of service of a copy of this order of appointment the parties shall pay to the Attorney for the Child(ren) a retainer of $_____ (*enter "None" if a retainer is not authorized*);

4. ORDERED that no less often than every 60 days from the date of this order of appointment the Attorney for the Child(ren) shall send to counsel for the parties bills for compensation and the reimbursement of disbursements;

5. ORDERED that the Attorney for the Child(ren) shall bill at a rate of compensation of $_____ per hour;

6. ORDERED that subject to reallocation at trial the retainer and all subsequent compensation, including reimbursement for disbursements, shall be paid to the Attorney for the Child(ren) by the parties according to the following percentages:

Plaintiff _____% Defendant _____%

7. ORDERED that once the retainer is expended, or where no retainer is authorized, the parties shall pay all bills sent by the Attorney for the Child(ren) within 20 days of the date of the bill;

8. ORDERED that all compensation and reimbursement for disbursements billed by the Attorney for Child(ren) during the pendency of this action/proceeding shall be approved by the Court in the final order of compensation, which shall be settled by the Attorney for the Child(ren), on five days notice, at the conclusion of the Attorney for the Child(ren)'s service in the action/proceeding, or as otherwise directed by the Court;

9. ORDERED that the final order of compensation shall be supported by the Attorney for the Child(ren)'s affirmation of services on a form approved by the Chief Administrator of the Courts;

10. ORDERED that within 10 days of service of a copy of the final order of compensation the Attorney for the Child(ren) shall return to a party any amount paid by that party in excess of his/her share of compensation and reimbursement for disbursement, as approved by the Court in the final order of compensation;

11. ORDERED that

a. counsel for the parties shall immediately contact the Attorney for the Child(ren) to schedule the interview(s) of the child(ren) with the Attorney for Child(ren) outside the presence of the parties and their counsel;

b. each party, on written consent or on the record of his/her counsel, may schedule interviews with the Attorney for the Child(ren), with or without his/her counsel present, to discuss all issues relevant to custody and visitation;

c. the parties and counsel shall cooperate with the Attorney for the Child(ren) in providing any documents, papers or information requested, including executing releases permitting the Attorney for the Child(ren) to speak with, or receive information from, any mental health professionals, social service workers or agencies, physicians, schools, clergy, or other persons or entities having material

and necessary information regarding the child(ren);

d. the parties shall permit reasonable, private and unhampered access by the children to the Attorney for the Child(ren), including contact in person or by phone, fax, Email or regular mail;

12. ORDERED that the counsel for the parties shall immediately send the Attorney for the Child(ren) copies of all papers in the action/proceeding, including pleadings, motions and prior orders pertaining to the child(ren);

13. ORDERED that the parties, counsel and the Attorney for the Child(ren) shall appear for conference in this Part at _____am/pm on _____, 20 .

and

14. The failure to comply with the provisions of this order relating to payment of the fees of the Attorney for the Child(ren) shall be subject to judicial sanction.

E N T E R:

_____
Justice/Judge

Attorney for Plaintiff/Petitioner:

Name:_____
Address:_____
_____
_____
Phone/Fax:_____/_____
Email:_____

Attorney for Defendant/Respondent:

Name:_____
Address:_____
_____
_____
Phone/Fax:_____/_____
Email:_____

Appendix
I

1 of 3 DOCUMENTS

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT REFLECTS ALL CHANGES RECEIVED THROUGH JANUARY 1, 2006 ***

CALIFORNIA RULES OF COURT
TITLE FIVE. Special Rules for Trial Courts
DIVISION Ia. Family Law Rules
CHAPTER 5. Child Custody

Cal Rules of Court R 5.220 (2005)

Rule 5.220. Court-ordered child custody evaluations

(a). [Authority]

This rule of court is adopted under article VI, section 6 of the California Constitution and Family Code sections 211 and 3117.

(b). [Purpose]

Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues. This rule governs both court-connected and private child custody evaluators appointed under Family Code section 3111, Evidence Code section 730, or Code of Civil Procedure section 2032. (Subd (b) as amended effective January 1, 2003.)

(c). [Definitions]

For purposes of this rule:

(1) A "child custody evaluator" is a court-appointed investigator as defined in Family Code section 3110.

(2) The "best interest of the child" is as defined in Family Code section 3011.

(3) A "child custody evaluation" is an expert investigation and analysis of the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues.

(4) A "full evaluation, investigation, or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.

(5) A "partial evaluation, investigation, or assessment" is an examination of the health, safety, welfare, and best interest of the child that is limited by court order in either time or scope.

(6) "Evaluation," "investigation," and "assessment" are synonymous. (Subd (c) as amended effective January 1, 2003.)

(d). [Responsibility for evaluation services]

(1) Each court must:

(A) Adopt local rules within one year of this rule's effective date to:

(i) Implement this rule of court;

(ii) Determine whether a preemptory challenge to a court-appointed evaluator is allowed and when the challenge must be exercised. The rules must specify whether a family court services staff member, other county employee, a mental health professional, or all of them may be challenged;

(iii) Allow evaluators to petition the court to withdraw from a case;

(iv) Provide for acceptance of and response to complaints about an evaluator's performance; and

(v) Address ex parte communications.

(B) Give the evaluator, before the evaluation begins, a copy of the court order that specifies:

(i) The appointment of the evaluator under Evidence Code section 730, Family Code section 3110, or Code of Civil Procedure 2032; and

(ii) The purpose and scope of the evaluation.

(C) Require child custody evaluators to adhere to the requirements of this rule.

(D) Determine and allocate between the parties any fees or costs of the evaluation.

(2) The child custody evaluator must:

(A) Consider the health, safety, welfare, and best interest of the child within the scope and purpose of the evaluation as defined by the court order;

(B) Strive to minimize the potential for psychological trauma to children during the evaluation process; and

(C) Include in the initial meeting with each child an age-appropriate explanation of the evaluation process, including limitations on the confidentiality of the process. (Subd (d) as amended effective January 1, 2003.)

(e). [Scope of evaluations]

All evaluations must include:

(1) A written explanation of the process that clearly describes the:

(A) Purpose of the evaluation;

(B) Procedures used and the time required to gather and assess information, and, if psychological tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(C) Scope and distribution of the evaluation report;

(D) Limitations on the confidentiality of the process; and

(E) Cost and payment responsibility for the evaluation.

(2) Data collection and analysis that are consistent with the requirements of Family Code section 3118; that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process may include but is not limited to:

(A) Reviewing pertinent documents related to custody, including local police records;

(B) Observing parent-child interaction (unless contraindicated to protect the best interest of the child);

(C) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

(i) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;

(ii) History of involvement in caring for the child;

(iii) Methods for working toward resolution of the child custody conflict;

(iv) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and

(v) Psychological and social functioning;

(D) Conducting age-appropriate interviews and observation with the children, both parents, stepparents, step- and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;

(E) Collecting relevant corroborating information or documents as permitted by law; and

(F) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.

(3) A written or oral presentation of findings that is consistent with Family Code section 3111, Family Code section 3118, or Evidence Code section 730. In any presentation of findings, the evaluator must:

(A) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;

(B) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(C) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and

(D) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendations to the court regarding a parenting plan. (Subd (e) as amended effective July 1, 2003; previously amended effective January 1, 2003.)

(f). [Cooperation with professionals in another jurisdiction]

When one party resides in another jurisdiction, the custody evaluator may rely on another qualified neutral professional for assistance in gathering information. In order to ensure a thorough and comparably reliable out-of-jurisdiction evaluation, the evaluator must:

(1) Make a written request that includes, as appropriate:

(A) A copy of all relevant court orders;

(B) An outline of issues to be explored;

(C) A list of the individuals who must or may be contacted;

(D) A description of the necessary structure and setting for interviews;

(E) A statement as to whether a home visit is required;

(F) A request for relevant documents such as police records, school reports, or other document review; and

(G) A request that a written report be returned only to the evaluator and that no copies of the report be distributed to parties or attorneys;

(2) Provide instructions that limit the out-of-jurisdiction report to factual matters and behavioral observations rather than recommendations regarding the overall custody plan; and

(3) Attach and discuss the report provided by the professional in another jurisdiction in the evaluator's final report. (Subd (f) as amended effective January 1, 2003.)

(g). [Requirements for evaluator qualifications, training, continuing education, and experience]

All child custody evaluators must meet the qualifications, training, and continuing education requirements specified in Family Code sections 1815, 1816, and 3111, and rules 5.225 and 5.230. (Subd (g) as amended effective January 1, 2004; previously amended effective July 1, 1999, and January 1, 2003.)

(h). [Ethics]

In performing an evaluation, the child custody evaluator must:

(1) Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

(2) Protect the confidentiality of the parties and children in collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

(3) Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;

(4) Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;

(5) Strive to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist;

(6) Operate within the limits of the evaluator's training and experience and disclose any limitations or bias that would affect the evaluator's ability to conduct the evaluation;

(7) Not pressure children to state a custodial preference;

(8) Inform the parties of the evaluator's reporting requirements, including, but not limited to, suspected child abuse and neglect and threats to harm one's self or another person;

(9) Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;

(10) Disclose to the court, parties, attorney for a party, and attorney for the child conflicts of interest or dual relationships; and not accept any appointment except by court order or the parties' stipulation; and

(11) Be sensitive to the socioeconomic, gender, race, ethnicity, cultural values, religious, family structures, and developmental characteristics of the parties. (Subd (h) as amended effective January 1, 2003.)

(i). [Cost-effective procedures for cross-examination of evaluators]

Each local court must develop procedures for expeditious and cost-effective cross-examination of evaluators, including, but not limited to, consideration of the following:

(1) Videoconferences;

(2) Telephone conferences;

(3) Audio or video examination; and

(4) Scheduling of appearances. (Subd (i) as amended effective January 1, 2003.)

HISTORY:
Rule 5.220 as amended effective January 1, 2004; adopted as rule 1257.3 effective January 1, 1999; previously amended effective July 1, 1999, and July 1, 2003; amended and renumbered effective January 1, 2003.

NOTES:
Historical Derivation:
Former rule 1257, as adopted effective January 1, 1993, amended effective January 1, 1994.Official Comment:

DRAFTER'S NOTES
1999-- Rule 1257 is repealed and new rule 1257.3 [now rule 5.220] is adopted to comply with statutory requirements that the Judicial Council develop standards for full and partial court-ordered child custody evaluations, investigations, and assessments.
July 1, 1999-- Technical amendments to rule 1257.3 correct drafting errors.Collateral References:
Cal. Forms Pl. & Pr. (Matthew Bender), Ch. 220, "Dissolution of Marriage and Related Proceedings".
Rutter, Cal Prac Guide, Family Law § § 7:240 et seq.

Notes of Decisions:

Because children have a right to the society and companionship of their siblings and the existence of a disability does not permit a court to presume detriment, a trial court abused its discretion by separating two brothers, one of whom had been diagnosed as autistic, where the record did not

support the father's claim that separation was beneficial to the undiagnosed child's development; no psychological evaluation or other evidence was presented concerning the children's development or the potential effects of separation, and no custody evaluation was ordered pursuant to Fam C § 3110, Cal. R. Ct. 5.220. In re Marriage of Heath (2004, Cal App 2nd Dist) 2004 Cal App LEXIS 1535.

2 of 3 DOCUMENTS

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*** THIS DOCUMENT REFLECTS ALL CHANGES RECEIVED THROUGH JANUARY 1, 2006 ***

CALIFORNIA RULES OF COURT
TITLE FIVE. Special Rules for Trial Courts
DIVISION Ia. Family Law Rules
CHAPTER 5. Child Custody

Cal Rules of Court R 5.225 (2005)

Rule 5.225. Education, training, and experience standards for court-appointed child custody investigators and evaluators

(a). [Authority]

This rule is adopted under article VI, section 6 of the California Constitution and Family Code sections 211 and 3110.5.

(b). [Purpose]

As required by Family Code section 3110.5, this rule establishes education, experience, and training requirements for child custody evaluators who are appointed only under Family Code section 3111, Evidence Code section 730, or Code of Civil Procedure section 2032. Additional training requirements for these child custody evaluators are contained in rule 5.230.

(c). [Definitions]

For purposes of this rule:

(1) A "child custody evaluator" is a court-appointed investigator as defined in Family Code section 3110.

(2) A "child custody evaluation" is an expert investigation and analysis of the health, safety, welfare, and best interest of a child with regard to disputed custody and visitation issues.

(3) A "full evaluation, investigation, or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.

(4) A "partial evaluation, investigation, or assessment" is an examination of the health, safety, welfare, and best interest of the child that is limited by court order in either time or scope.

(5) The terms "evaluation," "investigation," and "assessment" are synonymous.

(6) "Best interest of the child" is described in Family Code section 3011.

(d). [Requirements for evaluators' qualifications: education, training, and experience]

Persons appointed as child custody evaluators must:

(1) Complete a total of 40 hours of initial education and training as described in subdivision (e) .

(2) Comply with the training requirements described in rule 5.230;

(3) Fulfill the experience requirements described in (f); and

(4) Meet the continuing education, training, and experience requirements described in (h). (Subd (d) amended effective January 1, 2005.)

(e). [Education and training requirements]

Only education and training acquired after January 1, 2000, from providers described in (m) meets the requirements of this rule. Serving as the instructor in a course meeting the requirements described in (m) in one or more of the subjects listed in paragraphs (1) through (21) below can be substituted for completion of the requisite number of hours specified in (d) on an hour-per-hour basis, but each subject taught may be counted only once. The hours required by this rule must include, but are not limited to, all of the following subjects:

(1) The psychological and developmental needs of children, especially as those needs relate to decisions about child custody and visitation;

(2) Family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships;

(3) The effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and interparental conflict on the psychological and developmental needs of children and adults;

(4) The assessment of child sexual abuse issues required by Family Code section 3110.5(b)(2)(A)-(F) and Family Code section 3118; local procedures for handling child sexual abuse cases; and the effect that court procedures may have on the evaluation process when there are allegations of child sexual abuse;

(5) The significance of culture and religion in the lives of the parties;

(6) Safety issues that may arise during the evaluation process and their potential effects on all participants in the evaluation;

(7) When and how to interview or assess adults, infants, and children; gather information from collateral sources; collect and assess relevant data; and recognize the limits of data sources' reliability and validity;

(8) The importance of addressing issues such as general mental health, medication use, and learning or physical disabilities;

(9) The importance of staying current with relevant literature and research;

(10) How to apply comparable interview, assessment, and testing procedures that meet generally accepted clinical, forensic, scientific, diagnostic, or medical standards to all parties;

(11) When to consult with or involve additional experts or other appropriate persons;

(12) How to inform each adult party of the purpose, nature, and method of the evaluation;

(13) How to assess parenting capacity and construct effective parenting plans;

(14) Ethical requirements associated with the child custody evaluator's professional license and rule 5.220;

(15) The legal context within which child custody and visitation issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator;

(16) The importance of understanding relevant distinctions among the roles of evaluator, mediator, and therapist;

(17) How to write reports and recommendations, where appropriate;

(18) Mandatory reporting requirements and limitations on confidentiality;

(19) How to prepare for and give court testimony;

(20) How to maintain professional neutrality and objectivity when conducting child custody evaluations;

(21) The importance of assessing the health, safety, welfare, and best interest of the child or children involved in the proceedings. (Subd (e) amended effective January 1, 2005.)

(f). [Experience requirements]

Persons appointed as child custody evaluators must satisfy initial experience requirements by:

(1) Completing or supervising three court-appointed partial or full child custody evaluations including a written or an oral report between January 1, 2000, and July 1, 2003; or

(2) Conducting six child custody evaluations in consultation with another professional who meets the education, experience, and training requirements of this rule.

(g). [Court-connected evaluators]

A court-connected evaluator who does not meet the education and training requirements in (d) and (e) may conduct child custody evaluations:

(1) If he or she has completed 20 of the 40 hours of initial education and training required by (d);

(2) If he or she completes the additional 20 hours of education and training required by (d) within 12 months of beginning practice as a child custody evaluator;

(3) If he or she complies with the experience requirements in (f); and

(4) If, during the period in which the evaluator does not meet the requirements of the rule, he or she is supervised by a court-connected evaluator who has complied with the education, training, and experience requirements of this rule. (Subd (g) adopted effective January 1, 2005.)

(h). [Continuing education and training]

After completing the initial 40 hours of training, persons appointed as child custody evaluators must annually complete 8 hours of update training covering subjects described in (e) . This requirement is in addition to the annual 4 hours of domestic violence update training described in rule 5.230. (Subd (h) amended and relettered effective January 1, 2005; adopted as subd (g) effective January 1, 2002.)

(i). [Ongoing clinical consultation]

When conducting evaluations, persons appointed as child custody evaluators should, where appropriate, seek guidance from professionals who meet the requirements of this rule. (Subd (i) amended and relettered effective January 1, 2005; adopted as subd (h) effective January 1, 2002.) (Former Subd (i) repealed effective January 1, 2005; adopted effective January 1, 2002.)

(j). [Appointment criteria]

(1) On or after January 1, 2005, persons appointed as child custody evaluators must meet the criteria set forth in Family Code section 3110.5(c)(1)-(5).

(2) If there are no child custody evaluators available locally who meet the criteria of Family Code section 3110.5(c)(1)-(5), the parties may, under Family Code section 3110.5(d), stipulate to an individual who does not meet the criteria described in Family Code section 3110.5(c)(1)-(5), subject to approval by the court. Any evaluator chosen must, at a minimum, have complied with the education, training, and experience requirements in (d), (e), and (f). (Subd (j) adopted effective January 1, 2005.) (Former Subd (j) repealed effective January 1, 2005; adopted effective January 1, 2002.)

(k). [Responsibility of the courts]

Each court:

(1) Must develop local court rules that:

(A) Provide for acceptance of and response to complaints about an evaluator's performance, and

(B) Establish a process for informing the public about how to find qualified evaluators in that jurisdiction;

(2) Must use the Judicial Council form *Order Appointing Child Custody Evaluator* (FL-327) to appoint a private child custody evaluator or a court-connected evaluation service. Form FL-327 may be supplemented with local court forms;

(3) Must provide the Judicial Council with a copy of any local court forms used to implement this rule; and,

(4) As feasible and appropriate, may confer with education and training providers to develop and deliver curricula of comparable quality and relevance to child custody evaluations for both court-connected and private child custody evaluators. (Subd (k) amended and relettered effective January 1, 2005; adopted as subd *(l)* effective January 1, 2002.) (Former Subd (k) repealed effective January 1, 2005; adopted effective January 1, 2002.)

(l). [Child custody evaluator]

A person appointed as a child custody evaluator must:

(1) Submit to the court a declaration indicating compliance with all applicable education, training, and experience requirements:

(A) Court-connected child custody evaluators practicing as of January 1 of the given year must submit Judicial Council form Declaration of Court-Connected Child Custody Evaluator Regarding Qualifications (FL-325) to the local family court services office or administrator by January 30 of that year. Court-connected evaluators beginning practice after January 1 must file form FL-325

before any work on the first child custody evaluation has begun and by January 30 of every year thereafter; and

(B) Private child custody evaluators must complete Judicial Council form Declaration of Private Child Custody Evaluator Regarding Qualifications (FL-326) and file it with the clerk's office no later than 10 days after notification of each appointment and before any work on each child custody evaluation has begun;

(2) At the beginning of the child custody evaluation, inform each adult party of the purpose, nature, and method of the evaluation, and provide information about the evaluator's education, experience, and training;

(3) Use interview, assessment, and testing procedures that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards;

(4) Have a license in good standing if licensed at the time of appointment, except as described in Family Code section 3110.5(d);

(5) Be knowledgeable about relevant resources and service providers; and

(6) Prior to undertaking the evaluation or at the first practical moment, inform the court, counsel, and parties of possible or actual multiple roles or conflicts of interest. (Subd *(l)* amended and relettered effective January 1, 2005; adopted as subd (m) effective January 1, 2002.)

(m). [Education and training providers]

"Eligible providers" includes the Administrative Office of the Courts and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups . Eligible providers must:

(1) Ensure that the training instructors or consultants delivering the training and education programs either meet the requirements of this rule or are experts in the subject matter;

(2) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;

(3) Emphasize the importance of focusing child custody evaluations on the health, safety, welfare, and best interest of the child;

(4) Develop a procedure to verify that participants complete the education and training program;

(5) Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider; and

(5) Meet the approval requirements described in (n). (Subd (m) amended and relettered effective January 1, 2005; adopted as subd (n) effective January 1, 2002.)

(n). [Eligible training]

Effective July 1, 2003, eligible education and training programs must be approved by the Administrative Office of the Courts. Education and training courses that were taken between January 1, 2000, and July 1, 2003, may be applied toward the requirements of this rule if they addressed the subjects listed in (e) and were either certified for continuing education credit by a professional provider group or offered as part of a related postgraduate degree or licensing program. (Subd (n) amended and relettered effective January 1, 2005; adopted as subd (o) effective January 1, 2002.)

HISTORY:
Rule 5.225 amended effective January 1, 2005; adopted as rule 1257.4 effective January 1, 2002; renumbered effective January 1, 2003.

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT REFLECTS ALL CHANGES RECEIVED THROUGH JANUARY 1, 2006 ***

CALIFORNIA RULES OF COURT
TITLE FIVE. Special Rules for Trial Courts
DIVISION Ia. Family Law Rules
CHAPTER 5. Child Custody

Cal Rules of Court R 5.230 (2005)

Rule 5.230. Domestic violence training standards for court-appointed child custody investigators and evaluators

(a). [Authority]

This rule of court is adopted under article VI, section 6 of the California Constitution and Family Code sections 211 and 3111(d) and (e).

(b). [Purpose]

Consistent with Family Code sections 3020 and 3111, the purposes of this rule are to require domestic violence training for all court-appointed persons who evaluate or investigate child custody

matters and to ensure that this training reflects current research and consensus about best practices for conducting child custody evaluations by prescribing standards that training in domestic violence must meet. Effective January 1, 1998, no person may be a court-appointed investigator under Family Code section 3111(d) or Evidence Code section 730 unless the person has completed domestic violence training described here and in Family Code section 1816. (Subd (b) as amended effective January 1, 2003.)

(c). [Definitions]

For purposes of this rule, "court-appointed investigator" is considered to be synonymous with "court-appointed evaluator" as defined in Family Code section 3110.

(d). [Mandatory training]

Persons appointed as child custody investigators under Family Code section 3110 or Evidence Code section 730, and persons who are professional staff or trainees in a child custody or visitation evaluation or investigation, must complete basic training in domestic violence issues as described in Family Code section 1816 and, in addition:

(1) *(Advanced training)* Sixteen hours of advanced training must be completed within a 12-month period. The training must include the following:

(A) Twelve hours of instruction, as approved by the Administrative Office of the Courts, in:

(i) The appropriate structuring of the child custody evaluation process, including, but not limited to: maximizing safety for clients, evaluators, and court personnel; maintaining objectivity; providing and gathering balanced information from both parties and controlling for bias; providing for separate sessions at separate times (as specified in Family Code section 3113); and considering the impact of the evaluation report and recommendations with particular attention to the dynamics of domestic violence;

(ii) The relevant sections of local, state, and federal law or rules;

(iii) The range, availability, and applicability of domestic violence resources available to victims, including, but not limited to, battered women's shelters, specialized counseling, drug and alcohol counseling, legal advocacy, job training, parenting classes, battered immigrant victims, and welfare exceptions for domestic violence victims;

(iv) The range, availability, and applicability of domestic violence intervention available to perpetrators, including, but not limited to, arrest, incarceration, probation, applicable Penal Code sections (including Penal Code section 1203.097, which describes certified treatment programs for batterers), drug and alcohol counseling, legal advocacy, job training, and parenting classes; and

(v) The unique issues in family and psychological assessment in domestic violence cases, including the following concepts:

a. The effects of exposure to domestic violence and psychological trauma on children; the relationship between child physical abuse, child sexual abuse, and domestic violence; the differential family dynamics related to parent-child attachments in families with domestic violence; intergenerational transmission of familial violence; and manifestations of post-traumatic stress disorders in children;

b. The nature and extent of domestic violence, and the relationship of gender, class, race, culture, and sexual orientation to domestic violence;

c. Current legal, psychosocial, public policy, and mental health research related to the dynamics of family violence, the impact of victimization, the psychology of perpetration, and the dynamics of power and control in battering relationships;

d. The assessment of family history based on the type, severity, and frequency of violence;

e. The impact on parenting abilities of being a victim or perpetrator of domestic violence;

f. The uses and limitations of psychological testing and psychiatric diagnosis in assessing parenting abilities in domestic violence cases;

g. The influence of alcohol and drug use and abuse on the incidence of domestic violence;

h. Understanding the dynamics of high-conflict relationships and abuser/victim relationships;

i. The importance of, and procedures for, obtaining collateral information from probation departments, children's protective services, police incident reports, restraining order pleadings, medical records, schools, and other relevant sources;

j. Accepted methods for structuring safe and enforceable child custody and parenting plans that assure the health, safety, welfare, and best interest of the child, and safeguards for the parties; and

k. The importance of discouraging participants in child custody matters from blaming victims of domestic violence for the violence and from minimizing allegations of domestic violence, child abuse, or abuse against any family member.

(B) Four hours of community resource networking intended to acquaint the evaluator with domestic violence resources in the geographical communities where the families being evaluated may reside.

(2) *(Annual update training)* Four hours of update training are required each year after the year in which the advanced training is completed. These four hours must consist of instruction focused on, but not limited to, an update of changes or modifications in local court practices, case law, and state and federal legislation related to domestic violence, and an update of current social science research and theory, particularly in regard to the impact on children of exposure to domestic violence. (Subd (d) amended effective January 1, 2005; previously amended effective January 1, 2002, January 1, 2003, and January 1, 2004.)

(e). [Education and training providers]

Only education and training acquired from eligible providers meets the requirements of this rule. "Eligible providers" includes the Administrative Office of the Courts and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

(1) Eligible providers must:

(A) Ensure that the training instructors or consultants delivering the education and training programs either meet the requirements of this rule or are experts in the subject matter;

(B) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;

(C) Emphasize the importance of focusing child custody evaluations on the health, safety, welfare, and best interest of the child;

(D) Develop a procedure to verify that participants complete the education and training program; and

(E) Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider.

(2) Effective July 1, 2005, all education and training programs must be approved by the Administrative Office of the Courts. (Subd (e) amended effective January 1, 2005.)

(f). [Local court rules]

Each local court may adopt rules regarding the procedures by which child custody evaluators who have completed the training in domestic violence as mandated by this rule will notify the local court. In the absence of such a local rule of court, child custody evaluators must attach copies of their certificates of completion of the initial 12 hours of advanced instruction and of the most recent annual 4-hour update training in domestic violence to each child custody evaluation report. (Subd (f) relettered effective January 1, 2005; adopted as subd (g) effective January 1, 1999; amended effective January 1, 2003, and January 1, 2004.) (Former subd (f) repealed effective January 1, 2005; adopted effective January 1, 1999; amended effective January 1, 2003, and January 1, 2004.)

(g). [Previous training accepted]

Persons attending training programs offered after January 1, 1996, that meet all of the requirements set forth in subdivision (d)(1)(A) of this rule, are deemed to have met the minimum standards set forth in subdivision (d)(1)(A) of this rule, but must still meet the minimum standards listed in subdivisions (d)(1)(B) and (d)(2) of this rule. (Subd (g) relettered effective January 1, 2005; adopted as subd (h) effective January 1, 1999.)

HISTORY:

Rule 5.230 amended effective January 1, 2005; adopted as rule 1257.7 effective January 1, 1999; previously amended effective January 1, 2002; amended and renumbered effective January 1, 2003; amended effective January 1, 2004.

Appendix
J

At a Term of the Supreme/Family Court held in and for the County of _____ at the Courthouse located at _____ _____ on the _____ day of _____, 20 ____.

P R E S E N T:

Hon. _____
Justice/Judge of the Court

----------x

Index/Docket No.

ORDER APPOINTING MENTAL HEALTH PROFESSIONAL

----------x

IT IS HEREBY ORDERED , that _____, whose office is located at _____ and whose telephone number is _____, is hereby appointed to conduct a forensic evaluation in the above-captioned case and is to examine the following persons:

NAME	**RELATIONSHIP**
_____	_____
_____	_____
_____	_____
_____	_____

and to interview any extended family members or persons affiliated with either party's household, if deemed relevant, and to submit a report to the court ***within 90 days from the date of this Order*** addressing the following special issues:

_____ physical custody/parenting time
_____ decision making
_____ domestic violence
_____ substance abuse
_____ other (specify): _____
_____ mental illness
_____ relocation
_____ interference with parental rights
_____ grandparent visitation

and to appear and testify if so directed by the court and it is further

ORDERED, that upon the request of the evaluator, absent an order limiting such disclosure, the parties shall provide releases such that the evaluator may speak with any healthcare professional, therapist, or school personnel and procure any other records, reports, or material, relevant to the parties or child(ren) that the evaluator believes will be of assistance in conducting the evaluation; and it is further

ORDERED, that the appointed mental health professional is not to delegate components of the evaluation to any individual without prior approval of the court; and it is further

ORDERED, that counsel to the parties shall provide copies of any and all documents, papers or other materials requested by the evaluator and shall simultaneously furnish those materials to opposing counsel and counsel for the child(ren) (if any); and it is further

ORDERED, that neither party's counsel, nor the counsel for the child(ren), shall have any contact with the evaluator, except with regard to scheduling, payment issues and in exchanging of documents as provided above; and it is further

ORDERED, that if the evaluator determines that exigent circumstances exist requiring court intervention, the evaluator shall also notify counsel for the parties and the counsel for the child(ren); and it is further

ORDERED, that the evaluator shall include in his/her report a list of all documents and persons consulted; and it is further

ORDERED, that the report shall be submitted to the court, the counsel for the parties, and counsel for the child(ren). The report shall be shown to the parties. However, copies shall not be provided to the parties absent court order; and it is further

ORDERED, upon receipt of a discovery request pursuant to Article 31 of the Civil Practice Law and Rules after submission to the court and counsel of the evaluator's report, the evaluator shall make available to the court and counsel for all parties, including counsel for the child(ren), a copy of all underlying data and notes utilized in preparation of the final report, subject to further order of the court prohibiting or regulating the manner of the disclosure of these materials; and it is further

ORDERED, the evaluator ☐ shall ☐ shall not make a recommendation to the court as to which parent ultimately should have custody of the child(ren) and further☐ shall ☐ shall not make a recommendation as to the other specific issues to be addressed in the evaluation; and it is further

ORDERED, that the parties are to contact the evaluator within one week from the date of this Order to commence the evaluation. In addition, the evaluator's retainer shall be paid within ten (10) business days of the date of this Order; and it is further

<u>One</u> (1) of the following:

I. [For Use In Private Pay Cases]

ORDERED, that the court having made appropriate inquiry into the financial status of the parties, the plaintiff/petitioner shall pay _____ % of the evaluator's fees, and the defendant/respondent shall pay _____ % of the evaluator's fees, including an initial retainer in the sum of $ _____,subject to reallocation at trial; and it is further

ORDERED, that the cap on the forensic evaluation ordered is not to exceed a rate of $ _____ per hour, to a maximum of $ _____ . However, if the evaluator anticipates that the cost of the evaluation and report (not including testimony) is likely to exceed the cap set by the court, then he/she shall make a supplemental request on notice for additional compensation prior to the expenditure of time, subject to reallocation at trial; and it is further

ORDERED, that no less often than every sixty days from the date of this order of appointment, the mental health professional shall send to counsel for the parties, including counsel for the child(ren) (if any), detailed bills of services rendered.

If the evaluator requires the parties to enter into a written retainer agreement, the agreement shall not contain any material terms that conflict with the provisions of this order.

The failure to comply with the provisions of this order relating to payment of the fees of the mental health professional shall be subject to judicial sanction.

II. [For Use When All Parties are Indigent]

ORDERED, that the court having made appropriate inquiry into the financial status of the parties, and being satisfied that the litigants are financially unable to pay the costs of the forensic services provided for herein, compensation for said forensic evaluations, and any court appearances in connection therewith, shall be paid proportionately to the ratio of adults seen and evaluated (Article 18-B, Section 722-C of the County Law) and the children seen and evaluated (Section 35 of the Judiciary Law), at a rate not to exceed $____ per hour to a maximum amount of $_____.

In this case, the court is directing that a total of _____ adults be evaluated and a total of _____ children be evaluated, and therefore payment shall be ____% pursuant to the County Law (adults) and ____ % pursuant to the Judiciary Law (children). The institutional office representing the child is directed to bear ____ % of the costs of the forensic evaluation provided for herein.

A finding of extraordinary circumstances has been made by the Court to warrant compensation to the forensic evaluator in excess of the statutory maximum ($1,000).

ORDERED, that no less often than every sixty days from the date of this order of appointment, the mental health professional shall send to counsel for the parties, including counsel for the child(ren) (if any), an itemization of services rendered.

However, if the evaluator anticipates that the cost of the evaluation and report (not including testimony) is likely to exceed the cap set by the court, then he/she shall make a supplemental request on notice to the court for additional compensation prior to the expenditure of time.

III. [For Use In Mixed Indigent/Private Pay Cases]

ORDERED, that the court having made appropriate inquiry into the financial status of the parties and the court having determined that _____, one (1) of the parties, is financially unable to pay his/her proportionate share of the costs of the forensic services provided for herein; it is further

ORDERED, said litigant's proportionate share shall be paid pursuant to Article 18-B, Section 722-C, of the County Law. (Include if applicable): [Having found that the moneyed party is not able to bear the full cost of having the child/children seen and evaluated; it is ORDERED, that the cost of the child's/children's evaluation(s) shall be paid pursuant to Section 35 of the Judiciary Law]

(Alternatively: if the child/children are represented by an institutional provider)

[The institutional office representing the child is directed to bear the proportionate share as specified below.]

ORDERED, that the cap on the forensic evaluation ordered is not to exceed a rate of $ _____ per hour, to a maximum of $ _____ . In this case, the court is directing that a total of _____ adults be evaluated and a total of _____ children be evaluated, and therefore payment shall be _____ % to the litigant; _____ % to the institutional provider; _____ % pursuant to County Law and
_____ % pursuant to Judiciary Law, subject to reallocation at trial; it is further

ORDERED, that no less often than every sixty days from the date of this order of appointment, the mental health professional shall send to counsel for the parties detailed bills of services rendered.

If the evaluator anticipates that the cost of the evaluation and report (not including testimony) is likely to exceed the cap set by the court or the statutory maximum, then he/she shall make a supplemental request on notice for additional compensation prior to the expenditure of time. Only upon a written showing of extraordinary circumstances will compensation be awarded in excess of the statutory maximum.

The failure to comply with the provisions of this order relating to payment of the fees of the mental health professional shall be subject to judicial sanction.

E N T E R:

_____

Justice/Judge

Appendix
K

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

FILED AND ENTERED ON _____ 2005
_____
COUNTY CLERK

_____,

Plaintiff,

- against -

Index No.: _____

_____,

Defendant.

----------X

ORDER APPOINTING FINANCIAL EVALUATOR/EXPERT CONTESTED MATRIMONIAL

HON. _____
Justice of the Supreme Court

THE PARTIES having placed in issue in this contested matrimonial action the value of the assets identified below, as well as the need for other expert financial services as may be outlined below and

IT APPEARING TO THE COURT that a neutral evaluation of the value of such asset(s) and/or other expert financial services will be of assistance to the Court in resolving and determining the financial issues in this action, it is hereby

ORDERED that _____ be appointed as the financial evaluator/expert with respect to this action, and it is further

ORDERED that the financial evaluator/expert shall conduct any evaluation that may be the object of this order in accordance with the following provisions:

Scope of Appointment. The financial evaluator/expert shall be responsible for establishing, in accordance with generally accepted principles of valuation, the value, as of the date established below, of the asset(s) identified below and/or will perform any other expert financial services outlined below in accordance with applicable professional standards. As to an

evaluation of the assets outlined below, either party may move within 30 days of the date of this order to establish a different valuation date(s). The moving party will give notice of such motion to the financial evaluator/expert. If neither party so moves, the valuation date will be fixed as provided in this order. This order is without prejudice to consideration of other assets to be valued, if undisclosed assets are discovered during the evaluation process or through discovery. In the event the financial evaluator/expert discovers any asset not contemplated by this order, the financial evaluator/expert shall notify counsel for both parties forthwith and, on the basis of such notice, either party may make application to the Court to extend the scope of this order.

Assets to be Valued

Asset Description	Valuation Date

Other Expert Financial Services

_____

_____

_____

_____

_____

_____

Retainer Agreement. The financial evaluator/expert may require that either or both parties execute a retainer agreement or other document setting forth the terms upon which the financial evaluator/expert is retained. The terms set forth in that document shall not differ materially from the terms of this order. Any party requested by the financial evaluator/expert to execute such a document shall do so within seven days of the request.

Financial Evaluator's/Expert's Fee. The financial evaluator's/expert's fee will be determined on the basis of the hourly rates set forth in the retainer agreement of the financial evaluator/expert, said rates to be the rates which are comparable to others of similar expertise and experience, and customarily charged by the financial evaluator/expert. The financial evaluator/expert will be paid for all time spent in connection with the services directed by this order, including, but not limited to, due diligence, research, travel, attendance at depositions, court conferences, meetings, trial preparation and trial testimony. The financial evaluator/expert shall also be reimbursed for any disbursements incurred in performing the services outlined

herein as well as all travel costs including mileage reimbursement at the current federal rate for travel by automobile.

Payment of Financial Evaluator's/Expert's Fee. An initial retainer payment in the amount set forth below shall be made to the financial evaluator/expert no later than ten days from the date of this order. The initial payment to the financial evaluator/expert and all subsequent payments shall be made by the parties in the proportions set forth below. This allocation of the financial evaluator's/expert's fee between the parties may be modified by the Court and is without prejudice to a subsequent determination as to the ultimate responsibility for such payment, which determination shall await the result of trial. The financial evaluator/expert shall submit itemized billing statements to the parties through counsel not less than every 60 days, setting forth the services rendered by the financial evaluator/expert and the charges therefore. The initial payment to the financial evaluator/expert shall be applied to these charges as they are incurred. Upon the exhaustion of the initial payment, the parties shall pay the stated charges within 20 days of receipt of the statement, without prejudice to the parties' right to bring before the Court for determination issues regarding such billing. If any payment to the financial evaluator/expert is not made as required herein, the financial evaluator/expert shall immediately notify the Court and the Court will take such action as may be appropriate, including, but not limited to, precluding the party from introducing any evidence at trial in support of claims or defenses related to any assets being valued by the financial evaluator/expert or the subject(s) of any other expert services covered by this order. The financial evaluator/expert may not withhold delivery of the final report on the ground that an outstanding invoice has not been satisfied. The financial evaluator/expert shall have standing to make application to the court for relief if payments of fees are overdue and for enforcement of the court's order(s) requiring payment of such fees.

Expert Fees

Retainer Deposit	$_____
Responsibility - Retainer	
Plaintiff	_____%
Defendant	_____%
Responsibility - Fees Above Retainer	
Plaintiff	_____%
Defendant	_____%

Partners and Associates. The financial evaluator/expert may be assisted by business partners and associates, but the appointed financial evaluator/expert shall remain solely responsible for the ultimate quality and timing of the work product, and be the sole individual

authorized to sign any report and to testify at trial, unless authorized by the Court in advance of the trial.

Additional Evaluators. The financial evaluator/expert shall have no independent authority to retain the services of additional expert(s). However, on notice to counsel, the evaluator may request that the Court authorize the retention of additional expert(s). The request shall set forth the reason for and the necessity of the request, the nature of the specialty services to be provided by the additional expert(s) and an estimate of any additional cost that will be incurred if such additional expert(s) is retained.

Production of Information and Documents. Within 20 days of receipt of the initial payment, the financial evaluator/expert shall make a written request, on notice to all counsel, for any information or documents the financial evaluator/expert deems necessary to conduct the engagement(s). Any party to whom such a request is directed shall provide a full response to the financial evaluator/expert within 30 days thereafter. A copy of each response shall be provided contemporaneously to adverse counsel. In the event that the financial evaluator/expert requires further information or documents, the financial evaluator/expert shall similarly make such request in writing, on notice to all counsel, and any party to whom such a further request by the financial evaluator/expert is made shall similarly provide a full response to the request within 30 days thereafter, with a copy to adverse counsel. In the event that any party objects to a request for information or documents made by the financial evaluator/expert, the party shall so advise the Court by letter within ten days of the financial evaluator's/expert's request, on notice to counsel. In the event that any party fails to provide a complete response to a request from the financial evaluator/expert within the time provided for herein, the financial evaluator/expert shall so advise the Court by letter, on notice to counsel.

Production of Documents by Non-Parties. In the event that the financial evaluator/expert requires documents from any non-party, the party in whose name the asset being evaluated is held shall request such documents from the non-party within 10 days of the request by the financial evaluator/expert. If the non-party does not provide the requested documents within 20 days of the party's request, the party's attorney shall issue a subpoena for the production of such documents. *A pro se* litigant shall request that the Court issue such a subpoena.

Site Inspections. The financial evaluator/expert may, in the financial evaluator's/expert's reasonable discretion, perform a site visit and conduct interviews of key personnel of any business or professional practice on or before the deadline for the production of documents. No party shall have the right to object to any such inspection or interviews.

Attendance at Depositions and Court Conferences. The financial evaluator/expert may, at the financial evaluator/expert's discretion or at the request of a party, attend depositions or court conferences where it is reasonably anticipated that subject matter will touch upon issues relevant to the scope of the financial evaluator's/expert's appointment. The financial evaluator/expert may not pose questions directly to a witness during a deposition, but may advise counsel for either party as to relevant questions that may be asked.

Notice to the Financial Evaluator/Expert. Counsel for the parties will notify the financial evaluator/expert, as soon as practical after the scheduling, of any deposition dates, court conference dates, trial testimony dates or any other dates that require the attendance of the financial evaluator/expert. If any scheduling conflicts arise, respective counsel will attempt to resolve the conflict with the financial evaluator/expert. In the event of an unresolved conflict, counsel will notify the Court who will resolve the conflict. Counsel will immediately notify the financial evaluator/expert in writing or by electronic facsimile of any settlement of the matter. The parties will be responsible for any fees or disbursements incurred by the financial evaluator/expert up to his/her receipt of said notification.

Co-operation with the Financial Evaluator/Expert. The parties and counsel are under an affirmative obligation to cooperate fully with the financial evaluator/expert. Any willful failure by a party and/or counsel to cooperate in full with the financial evaluator/expert may result in the imposition of any remedy provided for in the CPLR or the rules of the Court, including precluding the party from introducing evidence at trial in support of claims or defenses related to the valuation or equitable distribution of the asset(s) that are the subject of this order or the subject(s) of any other expert financial services covered by this order.

Communication with the Financial Evaluator/Expert. The financial evaluator/expert shall provide all counsel and the Court with copies of any correspondence transmitted to any counsel or the Court. No *ex parte* communications shall be permitted and all communications between the financial evaluator/expert and a party or counsel shall be either by conference call in which all parties are represented or in writing, with copies to all counsel. The prohibition against *ex-parte communications* may be modified or waived only by written stipulation between the parties, a copy of which will be sent to the financial evaluator/expert and a copy filed with the Court.

Report of the Financial Evaluator/Expert. The financial evaluator/expert shall prepare a report that shall be served upon all counsel and filed with the Court within 45 days from receipt of all of the documentation and information that has been requested. Upon the consent of the parties, the financial evaluator/expert may prepare a draft report, which shall be served upon counsel within 30 days from receipt of all of the documentation and information that has been

requested. If a draft report is prepared, the final report shall be prepared and served upon counsel and filed with the Court within 30 days of service of the draft report. The financial evaluator's/expert's report, and the draft report, if any, shall be in writing, under oath and otherwise in accordance with the requirements of 22 NYCRR §202.16(g). The final report shall be based upon the personal knowledge and experience of the financial evaluator/expert and/or such documents and/or information as has been provided to or developed by the financial evaluator/expert and are normally used by experts in the field to value the asset(s) in issue. The report should be comprehensive and provide reasonable detail on the subject matter on which the expert is expected to testify, the substance of the facts and opinions on which the expert is expected to testify, the qualifications of the expert, and the documents and reference sources upon which the expert opinion is based. The financial evaluator's/expert's report may not be used for any purpose other than the valuation for which it has been directed and is not to be exchanged as a thing of value.

Trial. Unless otherwise ordered by the Court, the financial evaluator's/expert's report shall be admitted as evidence in chief, without the necessity for independent foundation testimony or evidence, pursuant to 22 NYCRR §202.16(g). If a party wishes to cross-examine the financial valuator, notification must be sent in writing to the Court and the financial evaluator/expert not less than 30 days in advance of the first scheduled trial date of the matter, unless otherwise ordered by the Court. If any party wishes to admit the valuation report as evidence through the process of direct examination, the party must notify the Court and the financial evaluator/expert in writing. If testimony by the financial evaluator/expert is required, the expert may not refuse to appear on the ground that an outstanding invoice for fees has not been satisfied. The financial evaluator/expert shall have standing to make application to the court for relief if payments of fees are overdue and for enforcement of the court's order(s) requiring payment of such fees.

Confidentiality. It is anticipated that the parties or non-parties will provide certain Confidential Information, as such term is defined below, to the financial evaluator/expert.

As used herein, "Confidential Information" shall mean any information, whether written or oral that is furnished by the parties or non-parties to financial evaluator/expert or its representatives. Confidential Information includes, but is not limited to (i) any financial, operational, technical and other information relating to the management and operations of the subject company(ies) or professional practice(s), (ii) any analyses, compilations, studies or other documents or records that are based upon any of the foregoing information and (iii) the terms of any agreement or proposed agreement between the subject company(ies) or professional practice(s) and any third party. "Representatives" of a party means that party's employees, officers, directors, principals, members, financial advisors, legal counsel and auditors, provided in each case such persons have

a need to know such information and will use such information only for the purpose of rendering the Services.

In consideration of the disclosure of Confidential Information, the financial evaluator/expert agrees that the Confidential Information, regardless of the manner in which it is furnished, will be treated confidentially and will not be disclosed to anyone in any manner whatsoever, including by means of photocopy or reproduction, without the other party's prior written consent, except as provided in Paragraphs 3 and 4 below.

The financial evaluator/expert may disclose the Confidential Information without prior written consent to the extent such information (a) is already in possession of the public or becomes available to the public other than through its own actions in violation of this Agreement; (b) is acquired independently from a third party not known to it to be bound by an obligation to treat such information confidentially; or (c) is required to be disclosed under applicable law or by any legal, judicial or regulatory process or by a governmental order, decree, regulation or rule (provided that the financial evaluator/expert shall give the parties written notice prior to such disclosure.

All reasonable means will be undertaken to protect the confidentiality regarding the materials and information provided. The financial evaluator/expert will take all reasonable steps to control access to the information only to those members of our staff. Any original documents received during the course of this engagement will be returned in tact, upon request, at the conclusion of the case. However, the financial evaluator/expert will maintain copies of those records as part of his/her workfiles. Alternatively, upon request, counsel may take possession of the confidential information at the conclusion of the case, but must maintain the records in tact for a period of 5 years thereafter and provide the financial evaluator/expert with reasonable access to the documents in the event he/she is called upon to defend any professional opinion that may be rendered in connection with this matter.

The financial evaluator/expert shall be entitled to disclose the Confidential Information to its Representatives, the Parties, their representatives, or the Court and its representatives, for the purposes set forth herein.

So Ordered this ___ day of _____, 200__

_____

Appendix
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Legislative Committee

PROPOSED REVISION TO DRL § 236B

Section 1. Subdivision 5 of Part B of Section 236 of the domestic relations law, as added by chapter 281 of the laws of 1980, is amended to read as follows:

5. Disposition of property in certain matrimonial actions. a. Except where the parties have provided in an agreement for the disposition of their property pursuant to subdivision three of this part, the court, in an action wherein all or part of the relief granted is divorce, or the dissolution, annulment or declaration of the nullity of a marriage, and in proceedings to obtain a distribution of marital property following a foreign judgment of divorce, shall determine the respective rights of the parties in their separate or marital property, and shall provide for the disposition thereof in the final judgment.

b. Separate property shall remain such.

c. Marital property shall be distributed equitably between the parties, considering the circumstances of the case and the respective parties.

d. In determining an equitable disposition of property under paragraph c, the court shall consider:

(1) the income and property of each party at the time of marriage, and at the time of the commencement of the action;

(2) the duration of the marriage and the age and health of both parties;

(3) the need of a custodial parent to occupy or own the marital residence and to use or own its household effects;

(4) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;

(5) any award of maintenance under subdivision six of this part;

(6) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party. <u>The court shall not consider as marital property subject to distribution the value of a spouse's enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement. However, in arriving at an equitable division of marital property, the court shall consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse</u>.;

(7) the liquid or non-liquid character of all marital property;

(8) the probable future financial circumstances of each party;

(9) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party;

(10) the tax consequences to each party;

(11) the wasteful dissipation of assets by either spouse;

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

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

e. In any action in which the court shall determine that an equitable distribution is appropriate but would be impractical or burdensome or where the distribution of an interest in a business, corporation or profession would be contrary to law, the court in lieu of such equitable distribution shall make a distributive award in order to achieve equity between the parties. The court, in its discretion, also may make a distributive award to supplement, facilitate or effectuate a distribution of marital property.

f. In addition to the disposition of property as set forth above, the court may make such order regarding the use and occupancy of the marital home and its household effects as provided in section two hundred thirty-four of this chapter, without regard to the form of ownership of such property.

g. In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

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

Section 2. Subdivision 6 of part B of Section 236 of the domestic relations law, as added by chapter 281 of the laws of 1980, is amended to read as follows:

6. Maintenance. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action the court may order temporary maintenance or maintenance in such amount as justice requires, having regard for the standard of living of the parties established during the marriage, whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs and whether the other

party has sufficient property or income to provide for the reasonable needs of the other and the circumstances of the case and of the respective parties. Such order shall be effective as of the date of the application therefor, and any retroactive amount of maintenance due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary maintenance which has been paid. In determining the amount and duration of maintenance the court shall consider:

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

(2) the duration of the marriage and the age and health of both parties;

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

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

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

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

(7) the tax consequences to each party;

(8) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party, and in considering the contributions to the career or career potential of the other party, the court shall, where appropriate, award maintenance which is payable for a period of time subsequent to the remarriage of the party receiving the maintenance;

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

(10) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration; and

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

b. In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

c. The court may award permanent maintenance, but an award of maintenance shall terminate upon the death of either party or upon the recipient's valid or invalid marriage, unless specifically provided by the court in an order rendered pursuant to paragraph (b)(8) of subdivision 6 of section two hundred thirty-six of this part that the maintenance shall continue beyond such remarriage, or upon modification

pursuant to paragraph (b) of subdivision nine of section two hundred thirty-six of this part or section two hundred forty-eight of this chapter.

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