

Practical Skills— Basic Matrimonial Practice

9:00 a.m. – 4:00 p.m.

Wednesday, October 16, 2013

Buffalo
Long Island (Melville)

Thursday, October 17, 2013

Westchester (Mt. Kisco)

Friday, October 18, 2013

Syracuse

Monday, October 21, 2013

Albany
New York City **Webcast**

CLE NotePad®

***Complete course materials distributed in electronic format online
in advance of the program.***

Co-sponsored by the Family Law Section and the Committee on Continuing Legal
Education of the New York State Bar Association

This program is offered for education purposes. The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials. Further, the statements made by the faculty during this program do not constitute legal advice.

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Prior to a scheduled program date, all registrants will receive an email message containing a hyperlink that when clicked will provide you with access to the complete course materials in a searchable PDF format which can be downloaded to your computer using the "Save As" option under your "File" tab. **Printing the complete materials is not required for attending the program.** Online materials are updated periodically to reflect last minute submissions from program faculty, guaranteeing that you will always have the latest version of the materials.

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www.nysba.org/2013BasicMatECM

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- You must have Adobe Acrobat on your computer in order to view, save, and/or print the files. If you do not already have this software, you can download a free copy of Adobe Acrobat Reader at this link: **<http://get.adobe.com/reader/>**
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- The bottom half of the form should be filled out and returned to the Registration Staff after the morning session has ended. The top half should be filled out and returned to the Registration Staff at the end of the program. **Please be sure to turn in your form at the appropriate times – we cannot issue your New York MCLE credit without it.** Your MCLE Certificate will be emailed to you a few weeks after the program.
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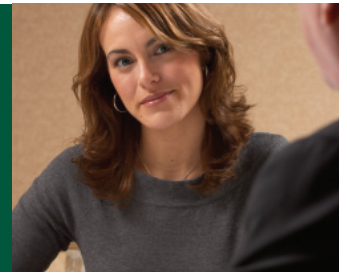
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This program is offered for educational purposes. The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials, including all materials that may have been updated since the books were printed. Further, the statements made by the faculty during this program do not constitute legal advice.

Lawyer Assistance Program 1.800.255.0569



Q. What is LAP?

A. The Lawyer Assistance Program is a program of the New York State Bar Association established to help attorneys, judges, and law students in New York State (NYSBA members and non-members) who are affected by alcoholism, drug abuse, gambling, depression, other mental health issues, or debilitating stress.

Q. What services does LAP provide?

A. Services are **free** and include:

- Early identification of impairment
- Intervention and motivation to seek help
- Assessment, evaluation and development of an appropriate treatment plan
- Referral to community resources, self-help groups, inpatient treatment, outpatient counseling, and rehabilitation services
- Referral to a trained peer assistant – attorneys who have faced their own difficulties and volunteer to assist a struggling colleague by providing support, understanding, guidance, and good listening
- Information and consultation for those (family, firm, and judges) concerned about an attorney
- Training programs on recognizing, preventing, and dealing with addiction, stress, depression, and other mental health issues

Q. Are LAP services confidential?

A. Absolutely, this wouldn't work any other way. In fact your confidentiality is guaranteed and protected under Section 499 of the Judiciary Law. Confidentiality is the hallmark of the program and the reason it has remained viable for almost 20 years.

Judiciary Law Section 499 Lawyer Assistance Committees Chapter 327 of the Laws of 1993

Confidential information privileged. The confidential relations and communications between a member or authorized agent of a lawyer assistance committee sponsored by a state or local bar association and any person, firm or corporation communicating with such a committee, its members or authorized agents shall be deemed to be privileged on the same basis as those provided by law between attorney and client. Such privileges may be waived only by the person, firm or corporation who has furnished information to the committee.

Q. How do I access LAP services?

A. LAP services are accessed voluntarily by calling **800.255.0569** or connecting to our website www.nysba.org/lap

Q. What can I expect when I contact LAP?

A. You can expect to speak to a Lawyer Assistance professional who has extensive experience with the issues and with the lawyer population. You can expect the undivided attention you deserve to share what's on your mind and to explore options for addressing your concerns. You will receive referrals, suggestions, and support. The LAP professional will ask your permission to check in with you in the weeks following your initial call to the LAP office.

Q. Can I expect resolution of my problem?

A. The LAP instills hope through the peer assistant volunteers, many of whom have triumphed over their own significant personal problems. Also there is evidence that appropriate treatment and support is effective in most cases of mental health problems. For example, a combination of medication and therapy effectively treats depression in 85% of the cases.

Personal Inventory

Personal problems such as alcoholism, substance abuse, depression and stress affect one's ability to practice law. Take time to review the following questions and consider whether you or a colleague would benefit from the available Lawyer Assistance Program services. If you answer "yes" to any of these questions, you may need help.

1. Are my associates, clients or family saying that my behavior has changed or that I don't seem myself?
2. Is it difficult for me to maintain a routine and stay on top of responsibilities?
3. Have I experienced memory problems or an inability to concentrate?
4. Am I having difficulty managing emotions such as anger and sadness?
5. Have I missed appointments or appearances or failed to return phone calls?
Am I keeping up with correspondence?
6. Have my sleeping and eating habits changed?
7. Am I experiencing a pattern of relationship problems with significant people in my life (spouse/parent, children, partners/associates)?
8. Does my family have a history of alcoholism, substance abuse or depression?
9. Do I drink or take drugs to deal with my problems?
10. In the last few months, have I had more drinks or drugs than I intended, or felt that I should cut back or quit, but could not?
11. Is gambling making me careless of my financial responsibilities?
12. Do I feel so stressed, burned out and depressed that I have thoughts of suicide?

There Is Hope

CONTACT LAP TODAY FOR FREE CONFIDENTIAL ASSISTANCE AND SUPPORT

The sooner the better!

Patricia Spataro, LAP Director

1.800.255.0569

PROGRAM DESCRIPTION

This full-day practical skills program is designed for the newly admitted attorney or the attorney seeking a fundamental but practical overview of handling a matrimonial matter. The program consists of six major topic areas which shall each be taught through lectures coordinated with the comprehensive materials. At the conclusion of the each lecture, there will be a brief Q&A period, where the experienced matrimonial attorneys will respond to questions from the audience.

AGENDA

8:30-9:00 **REGISTRATION**

9:00-9:50 (1.0 professional practice)

1. MATRIMONIAL ACTIONS

- A. Generally
 - i. DRL §230 Residence Requirements of Parties
 - ii. Jurisdiction
 - (1) *In Rem* jurisdiction
 - (2) *In Personam* jurisdiction
 - (a) CPLR 301 & 302(b)
- B. Filing and Service of Summons
 - i. DRL §211 Filing of summons before service
 - ii. DRL §232 Contents and Form of Summons; Proof of Service
 - (1) "Notice Re: Automatic Orders"
 - (a) DRL § 236(B)(2)(b) and 22 NYCRR 202.16-a
 - iii. Personal Service Requirements CPLR § 308 and DRL §232
- C. Parties
 - i. Co-respondent as party, DRL § 172
- D. Grounds for divorce, separation, annulment and dissolution
 - i. No-fault statute DRL §170(7) grounds
 - (1) Issues: Sufficient pleadings; summary judgment and entitlement to a trial
 - (2) No-fault: Two actions pending
 - ii. Additional grounds for divorce
 - iii. Difference of relief available: divorce and separation actions
 - iv. Form of pleadings
 - (1) Notice of Appearance / Complaint / Answer
 - (2) Certification and Verification Requirements in Matrimonial Actions
 - (a) 22 NYCRR 202.16(e) and DRL § 211
- E. Forms
- F. Local Rules and Practice and Question and answer period

Speakers: **Elizabeth M. DiPirro, Esq.** (Buffalo); **Hon. Hope S. Zimmerman** (Long Island); **John A. Pappalardo, Esq.** (Westchester); **Howard J. Woronov, Esq.** (Syracuse); **Jenifer M. Wharton, Esq.** (Albany); **Sharon T. Hoskins, Esq.** (New York City)

9:50-10:05 **BREAK**

10:05-11:20 (1.5 Ethics)

2. PRACTICE MANAGEMENT, ETHICS AND PROFESSIONALISM

- A. Keeping the client informed
- B. Dealing with the difficult client
- C. Time management
- D. The use of experts, appraisers and evaluators
- E. Cooperation with the courts and with opposing counsel
- F. When co-counsel, a mentor or a referral to experienced counsel is advisable
- G. The statement of client's rights and responsibilities
- H. The retainer agreement
- I. Court rules
- J. Fee disputes and arbitration
- K. Grievances
- L. IOLA & escrow accounts
- M. Question and answer period

Speakers: **Michael S. Simon, Esq.** (Buffalo); **Elena L. Greenberg, Esq.** (Long Island); **Timothy J. Brennan, Esq.** (Westchester); **Julie A. Cerio, Esq.** (Syracuse); **Jennifer Powers Rutkey, Esq.** (Albany); **Margaret M. Donohoe, Esq.** (New York City)

11:20-12:10 (1.0 Skills)

3. DISCOVERY

- A. Demand for financial affidavit
- B. Notice for discovery and inspection
- C. CPLR 3101(h) requiring updated disclosure if material change occurs
- D. Subpoenas to the office
- E. Medical authorizations and HIPAA
- F. Pension and employment benefit authorizations
- G. Depositions and 22 NYCRR Part 221
- H. Interrogatories
- I. Non-party disclosure
- J. Notice to admit
- K. Notice of entry on property
- L. Electronic information disclosure
- M. Trial demands
 - 1. Demand for experts
 - 2. Demand for witnesses
 - 3. Demand for statements; photographs and videotapes
- N. Question and answer period

Speakers: **Rebecca H. Baritot, Esq.** (Buffalo); **Michael C. Daab, Esq.** (Long Island); **Lisa Zeiderman, Esq.** (Westchester); **William R. Bartholomae, Esq.** (Syracuse); **Gerald P. Leary, Jr., Esq.** (Albany); **Peter R. Stambleck, Esq.** (New York City)

12:10-1:15

LUNCH (on your own)

1:15-2:05 (1.0 Skills)

4. MOTIONS AND PRETRIAL INTERVENTION

- A. Temporary support and custody
 - 1. Requirements of 22 NYCRR 202.16
 - 2. Format and facts to cover in the affidavits; exhibits to the motion
 - 3. Related disclosure requirements for expert services [22 NYCRR 202.16(g)]
- B. Temporary attorney fees, expert fees, appraisal fees
 - 1. Requirements of 22 NYCRR 202.16
 - 2. Use of neutral experts and 22 NYCRR 202.18
 - 3. Related disclosure requirements for expert services
- C. Miscellaneous motions:
 - 1. Restraining orders and 22 NYCRR 202.7(e) and (f)
 - 2. Exclusive occupancy
 - 3. Compelling disclosure or preclusion orders
- D. Question and answer period

Speakers: **Richard J. Friedman, Jr., Esq.** (Buffalo); **Rosalia Baiamonte, Esq.** (Long Island); **Erik Kristensen, Esq.** (Westchester); **Peter S. Grenis, Esq.** (Syracuse); **Hon. Gerald W. Connolly** (Albany); **Alan R. Feigenbaum, Esq.** (New York City)

2:05-2:55 (1.0 Professional Practice)

5. INTRODUCTION TO EQUITABLE DISTRIBUTION AND MAINTENANCE

- A. Equitable distribution: The statutory factors [DRL 236(B)(5)(d)]; which ones are most important?
- B. Equitable distribution: not necessarily equal
- C. Maintenance: the statutory factors [DRL 236 (B)(6)(d)]; which ones are most important?
- D. Maintenance: amounts and durations will vary
- E. Question and answer period

Speakers: **Daniel J. Sperrazza, Esq.** (Buffalo); **Jeffrey L. Catterson, Esq.** (Long Island); **Tamara A. Mitchel, Esq.** (Westchester); **Richard B. Alderman, Esq.** (Syracuse); **Hon. Christine M. Clark** (Albany); **Sherri Sharma, Esq.** (New York City)

2:55-3:10 BREAK

3:10-4:00 (1.0 Professional Practice)

6. MATRIMONIAL AGREEMENTS AND THE INTRODUCTION TO THE CHILD SUPPORT STANDARDS ACT (CSSA)

- A. Format, checklists, and language considerations
- B. Presentation and approval by the client, delivery to opposing counsel without prejudice
- C. Formal acknowledgment requirements and stipulations and ratification forms
- D. CSSA requirements
- E. General obligations law 5-311
- F. Fair and reasonable and not unconscionable DRL 236B3
- G. Question and answer period

Speakers: **Katherine J. Bestine, Esq.** (Buffalo); **Nancy E. Gianakos, Esq.** (Long Island); **Dolores Gebhardt, Esq.** (Westchester); **Deborah K. Field, Esq.** (Syracuse); **Hon. Robert J. Meyer, Esq.** (Albany); **Arthur D. Ettinger, Esq.** (New York City)

4:00 ADJOURNMENT

6.5 TOTAL CREDITS (3.0 professional practice; 2.0 skills; 1.5 ethics.) This course has been approved for MCLE credit in New York for all attorneys, including newly admitted (less than 24 months).

IMPORTANT NOTICE: PARTIAL CREDIT FOR PROGRAM SEGMENTS NOT ALLOWED. Under the New York State Continuing Legal Education Board Regulations and Guidelines, attendees at CLE programs cannot receive MCLE credit for a program segment unless they are present for the entire segment. Persons who arrive late, depart early, or are absent for any portion of the segment will not receive credit for that segment.

PROGRAM FACULTY

Overall Planning Co-Chairs (in alphabetical order)

- **Joan Casilio Adams, Esq.**, J. Adams & Associates, PLLC, Williamsville, NY
- **Rosalia Baiamonte, Esq.**, Gassman Baiamonte Betts PC, Garden City, NY
- **Henry S. Berman, Esq.**, Berman Frucco Gouz Mitchel & Schub PC, White Plains, NY
- **Martin T. Johnson, Esq.**, Johnson & Cohen, LLP, Pearl River, NY
- **Peter R. Stambleck, Esq.**, Aronson Mayefsky & Sloan LLP, New York, NY
- **Bruce J. Wagner, Esq.**, McNamee, Lochner, Titus & Williams, P.C., Albany, NY

Local Panels (listed in order of appearance)

Wednesday, October 16, 2013

Buffalo

Chair: **Keith I. Kadish, Esq.**, Kadish & Fiordaliso, Buffalo, NY

Panel: **Elizabeth M. DiPirro, Esq.**, Hogan Willig, Amherst, NY | **Michael S. Simon, Esq.**, West Seneca, NY | **Rebecca H. Baritot, Esq.**, Office of Rebecca H. Baritot, Esq., Buffalo, NY | **Richard J. Friedman, Jr., Esq.**, Dennis C. Gaughan Attorneys, Hamburg, NY | **Daniel J. Sperrazza, Esq.**, Buffalo, NY | **Katherine J. Bestine, Esq.**, Cohen & Lombardo, P.C., Buffalo, NY

Wednesday, October 16, 2013

Long Island (Melville)

Chair: **Rosalia Baiamonte, Esq.**, Gassman Baiamonte Betts PC, Garden City, NY

Panel: **Hon. Hope S. Zimmerman**, Supervising Judge, Supreme Court Nassau County Matrimonial Center, Mineola, NY | **Elena L. Greenberg, Esq.**, Fass & Greenberg, LLP, Garden City, NY | **Michael C. Daab, Esq.**, Gassman Baiamonte Betts, PC, Garden City, NY | **Rosalia Baiamonte, Esq.**, Gassman Baiamonte Betts PC, Garden City, NY | **Jeffrey L. Catterson, Esq.**, Galasso, Langione, Catterson & Lofrumento, LLP, Garden City, NY | **Nancy E. Gianakos, Esq.**, Albanese & Albanese LLP, Garden City, NY

Thursday, October 17, 2013

Westchester (Mt. Kisco)

Chair: **Susan G. Yellen, Esq.**, Johnson & Cohen, LLP, Pearl River, NY

Panel: **John A. Pappalardo, Esq.**, Farber, Pappalardo & Carbonari, White Plains, NY | **Timothy J. Brennan, Esq.**, White Plains, NY | **Lisa Zeiderman, Esq.**, Johnson & Cohen LLP, Pearl River, NY | **Erik Kristensen, Esq.**, Bodnar & Milone LLP, White Plains, NY | **Tamara A. Mitchel, Esq.**, Berman Frucco Gouz Mitchel & Schub PC, White Plains, NY | **Dolores Gebhardt, Esq.**, McCarthy Fingar LLP, White Plains, NY

Friday, October 18, 2013

Syracuse

Chair: **Howard J. Woronov, Esq.**, Melvin & Melvin, PLLC, Syracuse, NY

Panel: **Howard J. Woronov, Esq.**, Melvin & Melvin, PLLC, Syracuse, NY | **Julie A. Cerio, Esq.**, Cerio Law Offices, Syracuse, NY | **William R. Bartholomae, Esq.**, Marris & Bartholomae, PC, Syracuse, NY | **Peter S. Grenis, Esq.**, Attorney At Law, Syracuse, NY | **Richard B. Alderman, Esq.**, Alderman & Alderman, Syracuse, NY | **Deborah K. Field, Esq.**, Field & Custer PC, Jamesville, NY

Monday, October 21, 2013

Albany

Chair: Jennifer Powers Rutkey, Esq., Gordon, Tepper & DeCoursey, LLP, Schenectady, NY

Panel: Jenifer M. Wharton, Esq., Gordon, Tepper & DeCoursey, LLP, Schenectady, NY | Jennifer Powers Rutkey, Esq., Gordon, Tepper & DeCoursey, LLP, Schenectady, NY | Gerald P. Leary, Jr., Esq., Balzer & Leary, PLLC, Albany, NY | Hon. Gerald W. Connolly, Acting Justice, Supreme Court, Third Judicial District, Albany County Supreme Court, Albany, NY | Hon. Christine M. Clark, Justice, Supreme Court, Fourth Judicial District, Schenectady County Supreme Court, Schenectady, NY | Hon. Robert J. Meyer, Esq., Support Magistrate, Albany County Family Court, Albany, NY

Monday, October 21, 2013



New York City

Chair: Peter R. Stambleck, Esq., Aronson Mayefsky & Sloan LLP, New York, NY

Panel: Sharon T. Hoskins, Esq., Hoskins, LLP, New York, NY | Margaret M. Donohoe, Esq., Donohoe Talbert LLP, New York, NY | Peter R. Stambleck, Esq., Aronson Mayefsky & Sloan LLP, New York, NY | Alan R. Feigenbaum, Esq., Kasowitz Benson Torres & Friedman LLP, New York, NY | Sherri Sharma, Esq., Aronson Mayefsky & Sloan LLP, New York, NY | Arthur D. Ettinger, Esq., Rottenstreich & Ettinger LLP, New York, NY

PROGRAM LOCATIONS

Wednesday, October 16, 2013 | Buffalo | PC: 0DB72

Holiday Inn Amherst, 1881 Niagara Falls Blvd. | Amherst, NY 14228

Wednesday, October 16, 2013 | Long Island (Melville) | PC: 0DB73

Melville Marriott, 1350 Old Walt Whitman Road | Melville, NY 11747

Thursday, October 17, 2013 | Westchester (Mt. Kisco) | PC: 0DB77

Holiday Inn Mt. Kisco | 1 Holiday Inn Drive | Mt. Kisco, NY 10549

Friday, October 18, 2013 | Syracuse | PC: 0DB76

Sheraton Syracuse University Hotel | 801 University Avenue | Syracuse, NY 13210-0801

Monday, October 21, 2013 | Albany | PC: 0DB71

New York State Nurses Association | 11 Cornell Road | Latham, NY 12110

Monday, October 21, 2013 | New York City | PC: 0DB74



Concierge Conference Center, 780 Third Avenue, New York, NY 10017

Note: Newly admitted attorneys (less than 24 months) must attend the program in person to receive New York MCLE credit.

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October 2013

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1. MATRIMONIAL ACTIONS

MATRIMONIAL ACTIONS 2013 OUTLINE

By:

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- I. GENERALLY- PRELIMINARY CONSIDERATIONS
 - A. DRL §230- Residence Requirements of Parties
 - B. Jurisdiction
 - (1) *In rem* jurisdiction
 - (2) *In Personam* Jurisdiction
 - a. New York Domiciliary
 - b. Non-Domiciliary
 - (3) Consent of the parties
- II. PAPERS, PARTIES AND PROCEDURE
 - A. Filing and Service of Summons
 - (1) DRL section 211 Filing of summons before service
 - (2) DRL Section 232 Contents and Form of Summons: Proof of Service
 - (3) Personal Service Requirements CPLR section 308 and DRL section 232
 - a. Personal Delivery
 - b. Pursuant to Manner Directed by Court- Service by Publication
 - c. Service by Mail
 - d. Electronic Service
 - e. Waiver by the Defendant
 - f. Default Judgments- Failure to Appear
 - B. Filing of summons before service
 - C. Parties
 - (1) Co-Respondent as a Party
 - (2) Special considerations for certain types of parties
 - a. Infants
 - b. Incompetents
 - c. Incapacity

- III. GROUND FOR DIVORCE, SEPARATION, ANNULMENT AND DISSOLUTION/DEFENSES
 - A. Divorce
 - (1) No fault statute DRL section 170 (7) grounds
 - a. Sufficient pleadings; summary judgment and entitlement to a trial
 - b. Can you at least get summary judgment under the no fault statute to dispense with a trial on grounds?
 - c. No-fault: Two actions pending or old action still pending
 - (2) Additional Grounds for a divorce
 - a. Adultery
 - i. Statutory Authority
 - ii. Statutory Definition
 - iii. Single Act Sufficient
 - iv. Criminal Nature
 - v. Act of Adultery During Pendency of Divorce Action
 - b. Cruelty
 - i. Statutory Authority
 - ii. Key Statutory Elements
 - iii. Course of Conduct
 - iv. Long Term vs. Short Term Marriage
 - v. Long Term (“Vintage”) Marriage
 - vi. Exception: Long Term Marriage
 - vii Short Term Marriage
 - viii. Specific Types of Conduct—Cruelty
 - ix. Conduct Which is Insufficient
 - c. Abandonment
 - i. Statutory Authority
 - ii. Core Element
 - iii. Actual Abandonment
 - iv. Lock Out Cases
 - v. Refusal To Relocate
 - vi. Constructive Abandonment
 - vii. Lack of Social Companionship
 - B. Defense Issues Pertaining to Adultery, Cruelty and Abandonment
 - 1. Adultery Defense Issues
 - a. Statutory Authority
 - b. Cases and Practice Tips
 - i. Procurement or Connivance
 - ii. Forgiveness
 - iii. Statute of Limitations
 - iv. Adultery By The Accusing Spouse
 - 2. Cruelty: Statute Of Limitations [DRL 210]:
 - a. Five Years Prior to Date of Commencement
 - b. Continuous Course of Conduct
 - c. Conduct Subsequent to the Commencement
 - d. Cruelty: Lure and Attraction Of a Paramour

3. Abandonment: Consent and Justification

C. Imprisonment as Grounds for Divorce

D. Other “no fault” divorce options

1) Living Separate and Apart for More than One Year Following Execution of a Written Separation Agreement

2) Living Separate and Apart for More than One Year Pursuant To A Judgment or Decree of Separation

E. Difference of relief available; divorce and separation actions

F. Other less common matrimonial actions

1. Annulments/Declaration as to the Nullity of a Marriage

2. Dissolution (Enoch Arden Law)

IV. COURT RULES, CERTIFICATION AND VERIFICATION REQUIREMENTS IN MATRIMONIAL ACTIONS

A. New York Trial Court Rules

i. 22 NYCRR 202.5 – Papers filed in Court

ii. 22 NYCRR 202.6- Request for Judicial Intervention

iii. 22 NYCRR 202.7- Affirmation of Good Faith

iii. 22 NYCRR 202.16 – Matrimonial Action

iv. 22 NYCRR 202.16 (e)

v. 22 NYCRR 130-1.-1a-

vi. 22 NYCRR 202.16a- Automatic Orders

B. Verification Requirements

V. FORMS

- (1) Application for Index Number
- (2) Summons with Notice
- (3) Summons with Notice marked up
- (4) Notice of Appearance
- (5) Limited Notice of Appearance
- (6) Complaint
- (7) Verified Answer
- (8) Verified Answer with Counterclaims
- (9) Verified Reply
- (10) Affidavit of Service
- (11) Admission of Service
- (12) Service by Mail
- (13) Motion for alternate means of service
- (14) Default divorce papers

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

I, [REDACTED], being duly sworn, depose and say: I am the plaintiff in the within action; I have read the foregoing *Summons with Notice and Complaint* and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe it to be true.

[REDACTED SIGNATURE]

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

On the 13 day of August, 2012, before me, the undersigned, a notary public in and for said state, personally appeared [REDACTED], personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signature(s) on the instrument, the individual(s) or the person(s) upon behalf of which the individual(s) acted, executed the instrument.

[REDACTED SIGNATURE]
Notary Public
Notary Public in the State of New York
Qualified in Onondaga Co. No. [REDACTED]
My Commission Expires January 31, 2013

**CLIENT CERTIFICATION
SECTION 130-1.1-A(A)**

I, [REDACTED] HEREBY CERTIFY, under penalty of perjury, that I have carefully read and reviewed the annexed *Summons with Notice and Complaint* and that all information contained in that document is true and accurate in all respects to the best of my knowledge and understanding.

I FURTHER CERTIFY, under penalty of perjury, that neither my attorney, nor anyone acting on my attorney's behalf, was the source of any of the information contained in the annexed document; that I provided all of the information contained in the annexed document to my attorney; and that I understand that my attorney, in executing the Attorney Certification required by 22 NYCRR 202.16(e), is relying entirely upon the information provided by me and upon my certification that all such information is true and accurate.

I FURTHER CERTIFY that the annexed document includes all information which I provided to my attorney which is relevant to such document and that my attorney has not deleted, omitted or excluded any such information.

Dated this 13 day of August, 2012

[REDACTED SIGNATURE]

ATTORNEY CERTIFICATION

[REDACTED], hereby certifies pursuant to Section 130-1.1-a of the rule of the Chief Administrator (22NYCRR), that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper(s) annexed hereto and identified below, or the contentions therein are not frivolous as defined in subsection (c) of Section 130-1.1.

Dated this 13th day of August, 2012

[REDACTED SIGNATURE]

NOTICE TO DEFENDANT

You may have certain rights under the Laws of the State of New York to an equitable division of certain property held individually and jointly by you and your spouse during the term of your marriage; to receive maintenance from your spouse; to receive support for the children of the marriage. These rights may be available to you whether or not a separation agreement has been entered into between you and your spouse. A failure to answer this complaint and to appear in this action may therefore result in a judgment of divorce being obtained against you, and additionally, a waiver of these rights.

NOTICE TO PARTIES TO DIVORCE ACTIONS

All parties to divorce actions are hereby given notice, pursuant to Domestic Relations Law Section 255 (DRL Section 255), that once a Judgment of Divorce is entered, a person may, or may not, be eligible to be covered under his or her spouse's health insurance plan, depending upon the terms of the plan.

Pursuant to DRL Section 255, the parties may be granted a 30-day continuance to afford the parties an opportunity to procure their own health insurance coverage. If you desire such a continuance, you should request a continuance pursuant to DRL Section 255.

If the parties to a divorce action enter into a Stipulation of Settlement, the accompanying Addendum to Stipulation of Settlement should be attached to the Stipulation, or the signed and dated statements required by DRL Section 255 should be included in the body of the Stipulation.

NOTICE OF AUTOMATIC ORDERS

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

2. Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keough accounts or any other pension or retirement account and the parties shall further refrain from applying for or requesting the

payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further Order of the Court.

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

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

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

Part - 130

Signing

Requirement

Effective March 1, 1998, section 130-1.1-a of the Rules of the Chief Administrator (22 NYCRR) requires that all papers served, filed or submitted in most civil cases be signed by an attorney, or, if the party is not represented by an attorney, by the party. Section 130-1.1-a provides:

Signing of Papers

(a) *Signature.* Every pleading, written motion, and other paper, served on another party or filed or submitted to the court shall be signed by an attorney, or by a party if the party is not represented by an attorney, with the name of the attorney or party clearly printed or typed directly below the signature. Absent good cause shown, the court shall strike any unsigned paper if the omission of the signature is not corrected promptly after being called to the attention of the attorney or party.

(b) *Certification.* By signing a paper, an attorney or party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1.

This brochure addresses the most frequently asked questions about the signing requirement. Questions about the requirement also can be answered by calling 1-800-334-6442, a phone line dedicated for this purpose. Inquiries can also be made by E-mail (Part130@courts.state.ny.us). Answers to questions of general interest will also be posted on the Unified Court System's web site at ucs.jpx.com.

Q: What is the significance of this signature?

A: The signature is a certification that to the best of the signer's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper or the contentions therein are not frivolous, as that term is defined in Part 130.

Q: What are the standards for determining if the presentation or contentions are frivolous?

A: Section 130-1.1(c) provides that conduct is frivolous if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

Q: In what type of cases is a signature required?

A: The signing rule applies in all civil cases except for:
1) cases in town and village courts; 2) small claims cases in any court; and 3) Family Court cases arising under Articles 5, 7, 8, or 10 of the Family Court Act.
The signing rule does not apply in any criminal cases.

Q: Is a signature required on papers filed in an appellate court?

A: Yes, except for appeals in those categories of cases excepted above.

Q: What papers must be signed?

A: Rule 130-1.1-a provides that "all pleadings, motions and other papers served, filed or submitted to the court" must be signed. The rule thus applies to papers of all types, including memoranda of law and briefs, motions, affidavits, and discovery demands and responses.

Q: Does the rule apply only to papers that are filed or submitted to the court?

A: No. Signatures also are required on papers served on other parties, even if the papers are not submitted to the court.

Q: What are acceptable methods for signing?

A: The signing requirement can be fulfilled in a number of ways. What is important is that every paper served, filed or submitted be covered by a signature. Four preferred methods of signing papers are:

- Signature on the actual paper, such as on a deposition notice
- Signature on a cover paper, such as a notice of motion, that recites the accompanying papers
- Signature on a separate page that recites the accompanying papers and that is served, filed or submitted with those papers
- Signature on a litigation back that recites the attached papers

Q: Must each paper be signed individually?

A: No. A single signature can "cover" a number of different papers. However, it must be clear that a certification is being made with respect to each paper. For example, a signature on a notice of

Part - 130

Signing

Requirement

Questions
&
Answers



the firm or office, as is typically done in federal practice.

Q: Who must sign?

A: The papers must be signed by an attorney, or if a party is not represented, by the party. Where a party is represented by a firm, the signature can be made by any attorney associated with the firm who has the knowledge required for the certification. It is not required that the attorney who signs be a member of the firm.

Q: What happens if papers are not signed?

A: Section 130-1.1-a (a) requires that, "[a]bsent good cause shown," the court shall strike unsigned papers if the failure to sign is not corrected promptly after being brought to the attention of the attorney or party.

Q: In addition to the Part-130 signature, are attorneys required to sign a certification in matrimonial cases that the attorney has no knowledge that the substance of a submission is false?

A: No. The certification previously required by the Matrimonial Rules [22 NYCRR § 202.16(e)] has been replaced by the Part-130 signing requirement.

Q: Were there any other amendments to Part 130?

A: Yes, effective March 1, 1998, there are a number of other amendments to Part 130. The most significant change is the increase in authorized costs and sanctions for frivolous conduct. Previously, costs and sanctions for frivolous conduct under Part 130 were limited to \$10,000 per case. Now, there is no limit on awards of costs, and sanctions are limited to \$10,000, but the limit applies to each incident of frivolous conduct, not to the entire case.

motion that recites the supporting papers would apply to all papers recited.

Q: Are there other requirements about the form of the signature?

A: The name of the signer must be clearly printed or typed immediately below the signature. It is not necessary to repeat the language of Part 130 or otherwise make an express certification. The signature itself is sufficient.

Q: Can a verification signature also serve as the signature required by Part 130?

A: Yes.

Q: Must the signature be original, or can a signature stamp, autograph machine or other device be used?

A: An original signature is required.

Q: Must each set of papers bear an original signature?

A: No. Only one set of papers must bear an original signature. It is required, however, that each copied set indicate that the original was signed. For example, an attorney could sign the original set of motion papers and file them with the court, and serve a photocopy of the papers, including the signature, on other parties. Alternatively, the signature could be indicated on the copied sets by an "s/", followed by the name of the signer clearly printed or typewritten.

Q: Do the same rules apply to memoranda of law and briefs?

A: Yes. Memoranda of law and briefs must be signed, but only one copy must bear an original signature. The preferred method of signing memoranda of law and briefs is to sign on the Conclusion page, above the attorney's printed name and the name of

2. PRACTICE MANAGEMENT, ETHICS AND PROFESSIONALISM

Practice Management, Ethics and Professionalism

Submitted by Michael S. Simon, Esq.

Perhaps no other topic is relevant to the manner in which we conduct ourselves than this to which I have been assigned. It is an unfortunate commentary that rules of conduct such as basic civility among ourselves must be promulgated. That being said, those rules are a reminder of the responsibility that each lawyer is charged with to uphold the dignity and integrity of the legal system which governs our society.

The Rules of Professional Conduct, 22NYCRR 1200 that became effective April 1, 2009 are primarily modeled after the American Bar Association Model Rules of Professional Conduct. Also relevant are those rules found in 22NYCRR Parts 1210, 1215, 1230 and 1400. The Rules are set forth in these materials as Appendix A.

A very helpful source of guidance when attempting to interpret the rules is the American Bar Association Annotated Model Rules of Professional Conduct. New York State did not officially adopt the Comments; however they are a good source information when attempting to divine the application of a particular rule. Also visit the web sites of the various Appellate Divisions. Ethical resources such as decisions, opinions and forums for seeking advice are found on these.

TOPICS:

A. KEEPING THE CLIENT INFORMED

B. DEALING WITH A DIFFICULT CLIENT

C. TIME MANAGEMENT

D. USE OF EXPERTS, APPRAISERS & EVALUATORS

E. COOPERATION WITH THE COURTS & OPPOSING COUNSEL

F. WHEN CO-COUNSEL, A MENTOR OR REFERRAL TO EXPERIENCED COUNSEL IS ADVISABLE.

G. THE STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES:

H. THE RETAINER AGREEMENT

I. COURT RULES:

J. FEE DISPUTES

K. GRIEVIENCES

L. CLIENT FUNDS AND IOLA ACCOUNTS

The Retainer Letter/Agreement that I use is as follows:

RETAINER LETTER/AGREEMENT

Date:

PERSONAL AND CONFIDENTIAL

Re: _____

Dear _____,

I am writing this letter to set forth the understandings reached regarding your desire to retain my services to act as your attorney in connection with your above-referenced Action for Divorce.

With the execution of this agreement, you agree to pay for the services of Michael S. Simon, Esq. as follows:

\$-----.00/hr Court time
\$-----.00/hr out of Court services

Paralegals or other support staff \$---00/hr

The client fully understands that the hourly rates apply to all time expended relative to your matter, (except in the discussion of billing statements) including but not limited to, office conferences, telephone calls, either placed by or placed to the client, or otherwise made or had on your behalf or related to your matter, preparation of and receipt or revision of pleadings, correspondence, including electronic writings such as email, text messaging or otherwise, motions, affidavits or any document in connection with your case, legal research, preparation time, Court time, travel time and any other time expended on your matter.

In order for me to begin my representation of you, you have agreed to pay a retainer of \$_____, together with the sum of \$_____ for costs and disbursements as set forth herein.

I will bill you periodically (at a minimum of every 60 days) for additional work as it is performed. Payment due, if any, will be required within 30 days of submission of the bill.

In the event that bills are not paid within this 30-day period, I reserve the right to cease performing legal services on your behalf. If litigation is then pending, I reserve the right to make application to the Court to be relieved as your attorney.

Please be advised that the time for chargeable services, which my office renders, will be billed in tenths of an hour and is computed by rounding the time for each activity to the highest tenth of an hour. Each letter or electronic communication that I draft will be billed at a minimum .3 hours and every telephone conversation I have or text message I read will be billed at a minimum of .1 hours. These amounts have been arrived at as a result of calculating the time involved in retrieving the file and examining the document or other items to be considered in order to dictate the letter or respond to the call, in addition to the

time required to consider the problem arising from or to be dealt with in the call, text or letter.

In addition, there will be a one time charge of \$60.00 to cover normal costs we incur in working on your case such as routine photocopying, office supplies, local telephone usage and routine postage.

If your case is concluded, whether by settlement (e.g.: a Separation or Settlement Agreement or Stipulation of Settlement) or by Judicial determination, the aforementioned initial retainer shall also be the minimum fee charged to you, that is, there will be no refund of the retainer fee under such circumstances. For example, if I resolve the matter after expenditure of only 1 hour of time, there would be no refund even though the time charges add up to less than the minimum fee.

If the attorney-client relationship is terminated without your matter having been concluded, e.g.: if you and your spouse were to reconcile and the action terminated, or if you were to discharge me as your attorney or I was to withdraw my representation, a fair and reasonable fee would be determined in accordance with legally acceptable standards, including but not limited to the time and labor involved, the novelty and difficulty of the questions involved, the skills requisite to perform the legal services properly, fees customarily charged in the locality for similar legal services, the amount involved and results obtained, my experience, reputation and ability, as well as any other relevant factor.

You understand that all payments made pursuant to this agreement, with the exception of payment specifically towards disbursements are deemed earned when payment is made and are not held in escrow by me.

Should a dispute arise concerning the attorney's fee, you may seek arbitration; I shall provide information concerning fee arbitration in the event of such dispute or upon the client's request, and in accordance with existing rules.

You understand that this agreement does not apply to any appeals or post-judgment actions, proceedings or other services which may be required following the entry of a final Judgment of Divorce or Separation, including but not limited to submission of any Qualified Domestic Relations Order, or any other Order to implement access to any pension, profit sharing, retirement, or deferred compensation account or plan.

You have agreed to pay me all reasonable and necessary fees that have been paid or incurred by me during the course of my representation of you. These fees normally include, but are not limited to: Court costs (e.g., filing fees), certified stenotype reporters, deposition and other transcripts, service of process, long-distance telephone calls, photocopying and travel and related costs. We may ask you to pay for certain items directly. If any particular item is more than two hundred (\$200) dollars, we will use our best efforts to obtain your approval in advance. Bills for these fees will be sent to you, with payment due within 30 days.

From time to time during the course of my representation of you, it may be necessary or desirable to retain the services of appraisers, accountants, actuaries or others having expertise in certain specific areas involved in your matter. Payment of their fees and expenses is your sole responsibility. These fees and expenses are separate and apart from the fees and expenses that are the subject of this retainer agreement.

It is understood that I will diligently and faithfully attempt to pursue and prosecute your matter to the best of my abilities and in your best interest. I, of course, have made no promises, express or implied, as to the eventual outcome of your matrimonial case.

At the conclusion of my representation of you, we may discuss and mutually agree upon additional fees based on any unique difficulties of the case, the character of the services rendered and the results achieved.

There is authority in the law for the payment by either spouse of counsel fees to the attorney for the other spouse.

If your spouse agrees, or is directed by a Court to pay me any legal fees and/or expenses in this matter, these will be applied as a credit against your obligation to pay all charges due me. Provided you have fully paid all charges owed to me, then to the extent of payment received by me from your spouse, I will reimburse you for fees and expenses which you have paid to me. However, you remain personally responsible for this retainer, together with any additional fees and expenses, which may be incurred during the course of my representation of you.

You may terminate this agreement, with or without cause, upon notice to me. Termination will not affect your responsibility to pay for all legal services rendered and expenses incurred.

I will return your file to you immediately upon your payment to me of all amounts due (if any) and upon your written notification to me that you have terminated this agreement. I will be entitled to a security interest in property only upon proper application to the Court upon notice to all parties.

If this letter expresses your understanding of my retainer agreement with you, please sign the original and copy where indicated below and return the original to me in the envelope provided. This letter will constitute not only our retainer agreement, but also my full authorization to act on your behalf as your counsel.

Sincerely,

MICHAEL S. SIMON

I have received and reviewed the above agreement; I understand and agree to all of its terms; and a copy has been received by me for my file.

_____Client

Dated: _____
West Seneca, New York

APPENDIX A

Section 1200.0. Rules of Professional Conduct

Terminology

Rule 1.0: Terminology

Client-lawyer Relationship

Rule 1.1: Competence

Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer

Rule 1.3: Diligence

Rule 1.4: Communication

Rule 1.5: Fees and division of fees

Rule 1.6: Confidentiality of information

Rule 1.7: Conflict of interest: current clients

Rule 1.8: Current clients: specific conflict of interest rules

Rule 1.9: Duties to former clients

Rule 1.10: Imputation of conflicts of interest

Rule 1.11: Special conflicts of interest for former and current government officers and employees

Rule 1.12: Specific conflicts of interest for former judges, arbitrators, mediators or other third-party neutrals

Rule 1.13: Organization as client

Rule 1.14: Client with diminished capacity

Rule 1.15: Preserving identity of funds and property of others; fiduciary responsibility; commingling and misappropriation of client funds or property

Rule 1.16: Declining or terminating representation

Rule 1.17: Sale of law practice

Rule 1.18: Duties to prospective clients

Counselor

Rule 2.1: Advisor

Rule 2.2: [Reserved]

Rule 2.3: Evaluation for use by third persons

Rule 2.4: Lawyer serving as third-party neutral

Advocate

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Rule 3.2: Delay of litigation

Rule 3.3: Conduct before a tribunal

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Rule 3.5: Maintaining and preserving the impartiality of tribunals and jurors

Rule 3.6: Trial publicity

Rule 3.7: Lawyer as witness

Rule 3.8: Special responsibilities of prosecutors and other government lawyers

Rule 3.9: Advocate in non-adjudicative matters

Transactions with Persons Other than Clients

Rule 4.1: Truthfulness in statements to others

Rule 4.2: Communication with person represented by counsel

Rule 4.3: Communicating with unrepresented persons

Rule 4.4: Respect for rights of third persons

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Rule 6.3: Membership in a legal services organization

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Rule 6.5: Participation in limited pro bono legal service programs

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Maintaining the Integrity of the Profession

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Rule 8.2: Judicial officers and candidates

Rule 8.3: Reporting professional misconduct

Rule 8.4: Misconduct

Rule 8.5: Disciplinary authority and choice of law

Terminology

Rule 1.0: Terminology.

THE STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES:

Many of the legal and practical obligations toward a client can be found in the Statement of Client's Rights and Responsibilities. (see below for the model form). **22NYCRR Section 1400.2**, provides:

“An attorney shall provide a prospective client with a statement of client's rights and responsibilities in a form prescribed by the Appellate Divisions, at the initial conference and prior to the signing of a written retainer agreement. If the attorney is not being paid a fee from the client for the work to be performed on the particular case, the attorney may delete from the statement those provisions dealing with fees. The attorney shall obtain a signed acknowledgement of receipt from the client. The statement shall contain the following”:

UNIFIED COURT SYSTEM OF THE STATE OF NEW YORK

STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

“Your attorney is providing you with this document to inform you of what you, as a client, are entitled to by law or by custom. To help prevent any misunderstanding between you and your attorney please read this document carefully.

If you ever have any questions about these rights, or about the way your case is being handled, do not hesitate to ask your attorney. He or she should be readily available to represent your best interests and keep you informed about your case.

An attorney may not refuse to represent you on the basis of race, creed, color, sex, sexual orientation, age, national origin or disability.

You are entitled to an attorney who will be capable of handling your case; show you courtesy and consideration at all times; represent you zealously; and preserve your confidences and secrets that are revealed in the course of the relationship.

You are entitled to a written retainer agreement which must set forth, in plain language, the nature of the relationship and the details of the fee arrangement. At your request, and before you sign the agreement, you are entitled to have your attorney clarify in writing any of its terms, or include additional provisions.

You are entitled to fully understand the proposed rates and retainer fee before you sign a retainer agreement, as in any other contract.

You may refuse to enter into any fee arrangement that you find unsatisfactory.

Your attorney may not request a fee that is contingent on the securing of a divorce or on the amount of money or property that may be obtained.

Your attorney may not request a retainer fee that is nonrefundable. That is, should you discharge your attorney, or should your attorney withdraw from the case, before the retainer is used up, he or she is entitled to be paid commensurate with the work performed on your case and any expenses, but must return the balance of the retainer to you. However, your attorney may enter

into a minimum fee arrangement with you that provides for the payment of a specific amount below which the fee will not fall based upon the handling of the case to its conclusion.

You are entitled to know the approximate number of attorneys and other legal staff members who will be working on your case at any given time and what you will be charged for the services of each.

You are entitled to know in advance how you will be asked to pay legal fees and expenses, and how the retainer, if any, will be spent.

At your request, and after your attorney has had a reasonable opportunity to investigate your case, you are entitled to be given an estimate of approximate future costs of your case, which estimate shall be made in good faith but may be subject to change due to facts and circumstances affecting the case.

You are entitled to receive a written, itemized bill on a regular basis, at least every 60 days.

You are expected to review the itemized bills sent by counsel, and to raise any objections or errors in a timely manner. Time spent in discussion or explanation of bills will not be charged to you.

You are expected to be truthful in all discussions with your attorney, and to provide all relevant information and documentation to enable him or her to competently prepare your case.

You are entitled to be kept informed of the status of your case, and to be provided with copies of correspondence and documents prepared on your behalf or received from the court or your adversary.

You have the right to be present in court at the time that conferences are held.

You are entitled to make the ultimate decision on the objectives to be pursued in your case, and to make the final decision regarding the settlement of your case.

Your attorney's written retainer agreement must specify under what circumstances he or she might seek to withdraw as your attorney for nonpayment of legal fees. If an action or proceeding is pending, the court may give your attorney a "charging lien," which entitles your attorney to payment for services already rendered at the end of the case out of the proceeds of the final order or judgment.

You are under no legal obligation to sign a confession of judgment or promissory note, or to agree to a lien or mortgage on your home to cover legal fees. Your attorney's written retainer agreement must specify whether, and under what circumstances, such security may be requested. In no event may such security interest be obtained by your attorney without prior court approval and notice to your adversary. An attorney's security interest in the marital residence cannot be foreclosed against you.

You are entitled to have your attorney's best efforts exerted on your behalf, but no particular results can be guaranteed.

If you entrust money with an attorney for an escrow deposit in your case, the attorney must safeguard the escrow in a special bank account. You are entitled to a written escrow agreement, a written receipt, and a complete record concerning the escrow. When the terms of the escrow

agreement have been performed, the attorney must promptly make payment of the escrow to all persons who are entitled to it.

In the event of a fee dispute, you may have the right to seek arbitration. Your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.”

Receipt Acknowledged:

_____ Attorney's signature

_____ Client's signature

_____ Date Form 1400.2-1(1/95)

UNIFIED COURT SYSTEM OF THE STATE OF NEW YORK

STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

(To be used only when representation is without fee):

Your attorney is providing you with this document to inform you of what you, as a client, are entitled to by law or by custom. To help prevent any misunderstanding between you and your attorney please read this document carefully.

If you ever have any questions about these rights, or about the way your case is being handled, do not hesitate to ask your attorney. He or she should be readily available to represent your best interests and keep you informed about your case.

An attorney may not refuse to represent you on the basis of race, creed, color, sex, sexual orientation, age, national origin or disability.

You are entitled to an attorney who will be capable of handling your case; show you courtesy and consideration at all times; represent you zealously; and preserve your confidences and secrets that are revealed in the course of the relationship.

You are expected to be truthful in all discussions with your attorney, and to provide all relevant information and documentation to enable him or her to competently prepare your case.

You are entitled to be kept informed of the status of your case, and to be provided with copies of correspondence and documents prepared on your behalf or received from the court or your adversary.

You have the right to be present in court at the time that conferences are held.

You are entitled to make the ultimate decision on the objectives to be pursued in your case, and to make the final decision regarding the settlement of your case.

You are entitled to have your attorney's best efforts exerted on your behalf, but no particular results can be guaranteed.

If you entrust money with an attorney for an escrow deposit in your case, the attorney must safeguard the escrow in a special bank account. You are entitled to a written escrow agreement, a written receipt, and a complete record concerning the escrow. When the terms of the escrow agreement have been performed, the attorney must promptly make payment of the escrow to all persons who are entitled to it.

Receipt Acknowledged:

_____ Attorney's signature

_____ Client's signature

_____ Date Form 1400.2-2 (12/94)

3. DISCOVERY

Topic 3 - Discovery

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MOTIONS AND PRE-TRIAL INTERVENTION IN MATRIMONIAL ACTIONS

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INTRODUCTION TO EQUITABLE DISTRIBUTION AND MAINTENANCE

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A. Equitable Distribution: The statutory factors

[DRL 236 (B)(5)(d)]; which ones are most important?

THE STATUTORY FACTORS AND WHICH ONES ARE THE MOST IMPORTANT: DRL 236 (B) (5) (d):

5. Disposition of property in certain matrimonial actions.

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;
- (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 court shall expressly find to be just and proper.

B. Equitable Distribution: Not necessarily equal

The distribution of property under the statute is given to the sound discretion of the trial Court. It is quite clear that equitable does not mean equal. However, the case law that has subsequently developed clearly expresses in marriages of long duration that there should be equal distribution of assets.

C. Maintenance: The statutory factors [DRL 236 (B)

(6)(d)]; which ones are most important?

STATUTORY FACTORS AND WHICH ONES ARE MOST IMPORTANT: DRL 236 (B) (6)

(a):

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
- (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

D. Maintenance: Amounts and durations will vary

1. OPEN ENDED AWARDS: The Court cannot make an open ended award in terms of the amount that is to be paid. The Court cannot direct the payor spouse to pay the mortgage payments, taxes, insurance, utilities, rent, moving expenses and this should be avoided

2. AMOUNT OF AWARD: STANDARD OF LIVING, NEEDS OF THE RECIPIENT SPOUSE AND THE ABILITY OF THE PAYOR SPOUSE TO MAKE SUPPORT PAYMENTS: Unlike child support there is no statutory formula that can be followed or applied by the Court. The Court in determining the amount of maintenance, in addition to the statutory factors, must look to the pre-separation standard of living of the parties,

the needs of both parties and the ability of the other spouse to meet the reasonable needs of the person in need of maintenance

3. DURATION OF AWARDS: DURATIONAL VERSUS NON-DURATIONAL: The reason for imposing a time limitation upon a maintenance award usually to give the supported spouse a reasonable period of time in order to learn or update work skills and to enter the work force with a view to being self-supporting.

UPDATE

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E.D.: Not Necessarily Equal:

In Elias vs. Elias, 101 A.D.3d 938 (2d Dep't. 12/19/12), the Court affirmed a Supreme Court award to the Wife of 25% of the value of the husband's interest in the business, "taking into account the plaintiff's minimal direct and indirect involvement in the defendant's company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed the defendant to focus on his business".

Separate Property Appreciation: Transmutation:

In Johnson vs. Johnson, 99 A.D.3d 765 (2d Dep't. 10/10/12), although the marital residence was the wife's separate property, the record established "that the appreciation in the value was attributable to the joint effort of the parties".

Formica vs. Formica, 101 A.D.3d 805 (2d Dep't. 12/12/12), the wife failed to sustain the burden of demonstrating how her contributions resulted in the increase in value of the marital residence.

Maintenance:

Interesting 4th Department case: Perry vs. Perry, 101 A.D.3d 1762 (12/28/12): A.D. increased duration of maintenance on appeal, saying it was to provide an economically deprived spouse with an opportunity to achieve independence. The Court even stated that at the conclusion of the term (10 years), the wife could apply to modify the Judgment to continue maintenance if she does not become self-supporting.

6. MATRIMONIAL AGREEMENTS AND THE INTRODUCTION TO THE CHILD SUPPORT STANDARDS ACT (CSSA)

MATRIMONIAL AGREEMENTS AND
AN INTRODUCTION TO THE
CHILD SUPPORT STANDARDS ACT
(CSSA)

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Christian v. Christian: The Court of Appeals' View of Marital Agreements
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Alumni Mentor, Albany Law School, 2003 to present

Albany Law School, Alumni Association, 2000 to 2010

Member, Capital District Women's Bar Association

Member, New York State Bar Association

Member, Schenectady County Bar Association

JUDGES OF THE TRIAL COURTS

Hon. Gerald William Connolly

Albany County Building
112 State Street, Room 1350
Albany, NY 12207
(518) 285-8592

Judicial Offices

Acting Justice, Supreme Court, Third Judicial District, Appointed by Chief Administrative Judge Jonathan Lippman, 2006 to Present

Judge, Court of Claims, Appointed by Governor George Pataki, 2006 to 2014

Other Professional Experience

Admission to the Bar

NYS, Appellate Division, First Department, 1987

Education

J.D., Fordham University

PROFILE – MICHAEL C. DAAB, ESQ.

Michael Daab is currently ‘Of Counsel’ to the matrimonial firm Gassman Baiamonte Betts, PC. Prior to that, he was a partner at the matrimonial firm of Potruch & Daab, LLC. He is a graduate of Columbia University (BA, *cum laude*, 1994) and Hofstra University School of Law (1997). He has practiced exclusively in the fields of Matrimonial and Family Law for over 15 years. In that time, he has litigated divorce and family law matters from inception through trial and has developed an extensive background in appellate practice as well.

Mr. Daab has lectured before the New York Family Law American Inn of Court, of which he is a Barrister member, and is a panel member of Nassau County Matrimonial Supreme Court Mediation Program. He is also a member of the Family Law Section of the New York State Bar Association and of the Matrimonial Committee of the Nassau County Bar Association.

Elizabeth M. DiPirro

Hogan Willig
2410 North Forest Road
Suite 301
Amherst, NY 14068

Professional Experience

Mrs. DiPirro understands and appreciates the significant emotional and financial turmoil that people may experience during a break-up of their relationship and families. Over the course of her tenure as a matrimonial/family law practitioner, she has strived to assist her clients in resolving these highly sensitive and important matters in a way which minimizes anxiety and hopefully, enables them to move forward as positively as possible.

Mrs. DiPirro is also certified in the areas of mediation and Collaborative Law.

Education

J.D., 1988, State University of New York at Buffalo Law School
B.S., 1985, LeMoyne College

Admissions to Practice

New York State, 1989
U.S. District Court, Western District of New York

Professional Associations & Memberships

American Academy of Matrimonial Lawyers, Member 2012
Bar Association of Erie County, Member
- Matrimonial & Family Law Committee, Member
- Practice & Procedure in Family Court Committee, Member
Bar Association of Erie County, Certified for Mediation
Judicial Hearing Officer for Buffalo City Court Small Claims Arbitration Program
New York State Bar Association - Family Law Section, Member
Western New York Collaborative Law Professionals, Ltd., Member
Women's Bar Association of the State of New York - Western New York Chapter, Member

MARGARET M. DONOHOE

Donohoe Talbert LLP

New York City

Margaret Donohoe brings her clients a strong intellect, broad experience and a willingness to give frank advice, tempered by sensitivity and a sense of humor. Ms. Donohoe has been practicing exclusively in the field of matrimonial and family law for thirteen years, and has been recognized by Super Lawyers Magazine as one of the top family law attorneys in New York. She has lectured on family law subjects to the New York State Bar Association and the New York City Bar Association.

Ms. Donohoe is one of the few matrimonial attorneys in New York with an Ivy League education, experience in an elite federal clerkship, and training at a top commercial litigation firm. Ms. Donohoe graduated magna cum laude from Yale University in 1992, with a B.A. in English, and from Yale Law School in 1995, where she was chairperson of the Barrister's Union. After law school, Ms. Donohoe clerked for the Honorable John C. Lifland, in the United States District Court for the District of New Jersey. She then spent three years engaged in complex commercial and securities litigation at Covington & Burling (and its predecessor). As a result of her federal clerkship and early litigation experience, Ms. Donohoe entered the arena of matrimonial law with an understanding of complex commercial issues, and a thorough grounding in complex, civil litigation. Ms. Donohoe was previously a partner in the family law department of Kasowitz Benson Torres & Friedman, LLP.

Ms. Donohoe was drawn to family law by her desire to work with individual clients. She recognizes that family law matters are of vital importance, affecting every aspect of her clients' lives. Ms. Donohoe approaches each case as a unique problem solving exercise. Whenever possible, Ms. Donohoe attempts to find an agreed solution. She is able to achieve settlements in the vast majority of her cases. If litigation is the best course to achieve a client's goals, then Ms. Donohoe brings to bear a wealth of experience, agile strategy and unrelenting dedication.

Clients of note:

Ms. Donohoe represented the First Lady of the City of New York, Donna Hanover, in her highly publicized divorce from former mayor, Rudolph Giuliani. On appeal, she successfully defended the trial court's decision to bar Mayor Giuliani's paramour from the Mayor's official residence, Gracie Mansion. *See Anonymous v. Anonymous*, 286 A.D.2d 656, 734 N.Y.S.2d 115 (1st Dep't 2001).

ARTHUR D. ETTINGER, Esq.

Rottenstreich & Ettinger LLP
New York City

Arthur has extensive experience representing and advising clients in all aspects of matrimonial and family law, including negotiating and drafting pre and post nuptial agreements and separation agreements and litigating child custody and complex economic issues throughout New York State.

Arthur began his law career as an associate at Zeichner Ellman & Krause, a medium sized full service firm that focuses its representation of financial institutions, including creditors' rights and bankruptcy issues. In 1999, Arthur left the Zeichner firm and joined a prominent boutique matrimonial litigation firm and has focused his practice exclusively in the area of matrimonial and family law ever since. Prior to forming Rottenstreich & Ettinger LLP, Arthur was senior counsel at Cohen Lans LLP, one of the most highly regarded matrimonial firms in the country founded by the partners of the former matrimonial department of the firm Morrison Cohen Singer & Weinstein LLP.

Arthur received his undergraduate degree from the University of Vermont and his law degree from New York Law School, where he served as Executive Editor of the *Journal of International and Comparative Law*.

Arthur currently serves on the Matrimonial Law Committee of the New York City Bar Association, is a member of the Practice Management Subcommittee of the Family Law Section of the New York State Bar Association and lectures on matrimonial and family law issues. Arthur is a member of the New York and New Jersey State Bars, and is admitted to practice in the Southern and Eastern Districts of New York.

Arthur currently resides in Manhattan.

KASOWITZ

KASOWITZ BENSON TORRES & FRIEDMAN LLP



Alan R. Feigenbaum

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Alan's practice focuses on disputes involving divorce, equitable distribution, custody, visitation, child and spousal support, and other areas of family and matrimonial practice before New York trial and appellate courts. He represents individuals in the negotiation and drafting of pre-marital and post-marital agreements, including separation agreements. Alan also has extensive experience in patent law and general commercial litigation.

RELATED INFORMATION

PRACTICE AREAS

Matrimonial and Family Law

EDUCATION

- Benjamin N. Cardozo School of Law (J.D., 2003)
- Tulane University (B.A., 2000)

BAR ADMISSIONS

- New York, 2004

COURT ADMISSIONS

- U.S. District Court, Eastern District of New York, 2004
- U.S. District Court, Southern District of New York, 2004
- U.S. Court of Appeals, Federal Circuit, 2004

R.J. FRIEDMAN, ESQ.

R.J. Friedman is an attorney at DENNIS C. GAUGHAN ATTORNEYS in Hamburg, New York. His practice is focused primarily on matrimonial and family law, criminal law, and real estate, and also includes estate planning and civil litigation.

R.J. is an alumnus of Saint Francis High School and graduated with honors from Providence College in Providence, Rhode Island. He is a 2007 graduate of University at Buffalo Law School. R.J. worked as a law clerk at DENNIS C. GAUGHAN ATTORNEYS seven years, through college and law school, before he was admitted to practice in New York in 2008. He was admitted to the US District Court for the Western District of New York and the US Bankruptcy Court in 2011.

R.J. is a member of the New York State Bar Association, and is active on the Family Court Practice and Procedure Committee and Matrimonial Law Committee for the Erie County Bar Association. RJ sits on the Board of Directors of the Saint Francis High School Alumni Association, and is a former board member of the University at Buffalo Law School Alumni Association GOLD Group. He resides with his wife and daughter in West Seneca, New York.

DOLORES GEBHARDT, ESQ.

DOLORES GEBHARDT, ESQ. is a partner at McCarthy Fingar LLP in White Plains, New York (www.mccarthyfingar.com). Her practice is concentrated in matrimonial and family law and civil appeals.

Ms. Gebhardt received a BS degree from Cornell University in 1981 and a JD degree from Hofstra Law School in 1984.

She is a member of the NYSBA Committee on Courts of Appellate Jurisdiction and a member of the Section on Family Law.

Ms. Gebhardt is a Director of the Women's Bar Association of the State of New York (WBASNY) and a co-chair of WBASNY's Matrimonial Law Committee.

Ms. Gebhardt is a past president of the Westchester Women's Bar Association (WWBA). She currently serves the WWBA as co-chair of its Matrimonial Law and Programs Committees. Previously, she served as WWBA Vice President, Treasurer, Chair of its Annual Dinner, and was a member of the Judicial Screening Committee.

Ms. Gebhardt is a Director and the Treasurer of the White Plains Bar Association, and a member of the American Bar Association, the Westchester County Bar Association's Family Law Section and the Bar Association of the City of New York.

Ms. Gebhardt is an adjunct professor at Hofstra Law School, where she has taught Collaborative Family Law since 2010.

Ms. Gebhardt was recently named a 2013 New York-Metro Super Lawyer.

Ms. Gebhardt is an active member of the New York Association of Collaborative Professionals (www.collaborativelawny.com), a practice group of lawyers, mental health professionals and financial professionals dedicated to collaborative divorce.

NANCY E. GIANAKOS, ESQ.
PARTNER

Ms. Gianakos concentrates her practice exclusively in family and matrimonial matters, litigating in the New York metropolitan area. She brings years of negotiating experience to her practice from a diverse legal background:

- municipal work on environmental issues
- as counsel to the former maritime firm of Chalos & Brown (NYC) in the Exxon-Valdez litigation
- advisor to a private commodities fund, CT insurance brokerage firm and NY commercial real estate firm

Admissions/Licenses

Western New England University,
School of Law, J.D. (1981),
Admitted: Connecticut State Bar (1981),
New Jersey State Bar (1992), New York State Bar (1993) and
the U.S. Supreme Court (1999), U.S. Court of Federal Claims (1999),
U.S. Court of Appeals for the Federal Circuit (1999),
U.S. Court of Appeals for the Armed Forces (1999),
U.S. District Courts for the E. District of New York (1999) and
District of Connecticut J.D. (1981).

Lecturer

Ms. Gianakos frequently lectures to civic organizations, for the Nassau County Bar Association Academy of Law, Queens County Bar Association, and the American Family Law Inns of Court.

Memberships and Associations

Family Law Committee, the New York State Bar Association; Matrimonial Committee, Nassau County Bar Association; the American Family Law Inns of Court; and former member of the International Association and New York Association of Collaborative Professionals.

Former Chair of the Publications Committee Nassau County Bar Association; Editor, *Nassau Lawyer* (2009-2011), and currently the Matrimonial Focus Editor of the *Nassau Lawyer*.

She serves on the Board of Directors of the Nassau County Bar Association and Advisory Board of the Academy of Law, former Board of Director for Foundation Grow, and Mediator for the Matrimonial Alternative Dispute Resolution Program (Nassau County).

Narrative Biography for Elena L. Greenberg, Esq.

Elena L. Greenberg, Esq., is a partner in the Garden City law firm of Fass & Greenberg, LLP. Ms. Greenberg has concentrated her practice in practices matrimonial and family law for the past 31 years. She is a certified divorce mediator, and has written articles in the New York Law Journal, Nassau Lawyer, New York State Bar Association Family Law Section. She is a member of the Nassau County Bar Association Matrimonial Committee, New York State Bar Association Family Law Section, New York State Women's Bar Association, and served as Past Chair of the Nassau County Bar Association Technology and Practice Management Committee. She is has been selected as a Super Lawyer by Thompson Reuters for the New York Metropolitan Area, and has been honored to serve as a Master and Secretary/Treasurer of the New York State American Family Law Inns of Court. Ms. Greenberg has lectured in matrimonial and family law for the New York State Bar Association, the Nassau County Bar Association, and at Foundation for Accounting Education events. Ms. Greenberg can be reached by email at Egreenberg@fglaw.net.

PETER SIMON GRENIS, ESQ.

Peter Simon Grenis, Esq., is a 1993 graduate of Albany Law School. He is a proud member of the New York State Bar Association, and is pleased and honored to serve as the Chair for the Practical Skills CLE on behalf of the Family Law Section. Mr. Grenis began practicing law in Syracuse, New York in 1993, working as an Associate for a small personal injury firm, which he tolerated for a mere two years, leaving that position voluntarily in August, 1995. In or around September, 1995, Mr. Grenis preliminarily pursued the path of self-employment, and then formally rented his first office, in March, 1996. He practices law in that same office, to date, having specialized in Matrimonial and Family Law litigation as of in or around 1999, to present. Mr. Grenis presently focuses his practice representing litigants in Matrimonial and Family Law matters in Supreme and Family Courts in upstate New York, predominantly in Onondaga County but also working in Oswego, Madison, Oneida and Cortland Counties. From time to time, Mr. Grenis will also handle an Appeal for a client in the area of Domestic Relations and Family Law.

Mr. Grenis is a firm believer in the collegiality of the practice of law, particularly in the area of Domestic Relations, and encourages any colleague with a question or practice dilemma in this area to feel free to contact him at any time to discuss the same.

Sharon T. Hoskins, Esq. has practiced matrimonial and family law since 1999. She recently formed the law firm HOSKINS LLP, located in New York City, which focuses on matrimonial and family law, and divorce mediation. Her work includes: the negotiation of marital settlement agreements; separation agreements; prenuptial agreements; child custody disputes; child support proceedings; enforcement and modification actions; and the negotiation and litigation of contested matrimonial matters involving substantial marital estates with complex equitable distribution issues as well as issues of spousal maintenance, valuation of assets including businesses and licenses, and enhanced earning capacity. She previously worked with the matrimonial law groups at Katsky Korins, LLP, Herman, Sloan, Robarge & Sullivan, LLP and Flemming, Zulack and Williamson LLP. Ms. Hoskins currently serves on the Executive Committee of the Family Law Section of the New York State Bar Association, where she is a delegate to the House of Delegates and Chair of the Diversity Committee. She is also a member of the Matrimonial Practice Advisory Committee. Ms. Hoskins formerly served on the Executive Board of the Young Lawyers' Section of the New York State Bar Association and recently completed two appointed terms on the Matrimonial Law Committee of the New York City Bar Association. She has presented at the Judicial Institute and several Continuing Legal Education Seminars on matrimonial law and ethics topics. Ms. Hoskins earned her B.A. from Dartmouth College and her J.D. from New York University School of Law.

Keith I. Kadish, Esq.

Kadish & Fiordaliso, Buffalo, NY

Mr. Kadish was born and raised in Western New York. He graduated from Williamsville North High School, received his B.S. from Fredonia State College and obtained his Juris Doctorate from Case Western Reserve University in 1985.

Mr. Kadish was admitted to practice law in New York State in 1986 and is distinguished as a Fellow of the American Academy of Matrimonial Lawyers. He is a member of the New York State Bar Association, where he belongs to its Matrimonial and Family Committee, the Erie County Bar Association, where he belongs to the Matrimonial Committee and the Erie County Family Court Practice and Procedure Committee. Mr. Kadish also teaches an undergraduate Family Law course at the State University of New York at Buffalo.

Mr. Kadish practices in the areas of family law including the areas of divorce, property distribution, custody and support.

Contact Mr. Kadish at kkadish@kf-attys.com or call directly at 1-716-634-6111 ext. 202.

Erik Kristensen, Associate

Bodnard & Milone LLP
White Plains

Erik Kristensen graduated from Brooklyn Law School in 1996 and was admitted to the New York bar in 1997. He has represented matrimonial litigants in the counties of Westchester, New York, Bronx, Richmond, Kings and Queens, in both the Supreme and Family Court, and in the Appellate Divisions of the First and Second Departments. He is a member of the Family Law Sections of the New York State and Westchester County Bar Associations and has lectured for the New York State Bar Association. In the course of his representation of matrimonial litigants, Mr. Kristensen has successfully prosecuted, or opposed, appeals in the Appellate Division, Second Department, resulting in the following holdings in which the positions he advanced were adopted:

Boster-Burton v. Burton, 73 A.D.3d 671, 900 N.Y.S.2d 375 (2nd Dept., 2010), wherein the Appellate Division determined that, with regard to equitable distribution of a non-transferable membership in a country club, "the Supreme Court providently exercised its discretion and achieved equity between the parties by awarding the plaintiff a distributive award equal to the cost of a 'house membership.'"

Szekely v. Szekely, 73 A.D.3d 1158, 902 N.Y.S.2d 129 (2nd Dept., 2010), wherein the Appellate Division reversed the denial by the trial court of a request for counsel fees to which the movant was entitled pursuant to the default provision in the parties' settlement agreement.

Milone v. Milone, 51 A.D.3d 643, 857 N.Y.S.2d 673 (2nd Dept., 2008), wherein the Appellate Division reversed the direction by the trial court that the mother ought comply with the visitation provisions of a Judgment of Divorce, holding that "[t]he Supreme Court should have denied that branch of the defendant's motion which was to direct the plaintiff to comply with [the] visitation provisions [of the Judgment of Divorce]. It might be appropriate to direct a custodial parent to comply with such visitation provisions when that parent is interfering with the noncustodial parent's visitation rights. Here, however, the defendant failed to offer any evidence showing, or even tending to show, that the plaintiff was 'estrang[ing] the children from' him. In fact, the evidence actually shows that the plaintiff was encouraging the children to have a relationship with the defendant. Accordingly, there was no need to direct the plaintiff to comply with the visitation provisions in question since the evidence demonstrated that she was already doing so."

Gross v. Gross, 15 A.D.3d 442, 789 N.Y.S.2d 447 (2nd Dept., 2005), wherein the Appellate Division affirmed the trial court, holding that "[a]bsent a showing of an unanticipated and unreasonable change in circumstances, the support provisions of the agreement should not be disturbed."

Mr. Kristensen is a member of the Ethics Committee for the Village of Pleasantville.

Gerald Leary Esq

Balzer & Leary, PLLC, Albany

Gerald P. Leary was raised in Albany, New York. Mr. Leary graduated from Fordham University in 1986 with a Bachelor of Science Degree, with a concentration in accounting, and he was licensed as a Certified Public Accountant by the State of New York in 1988. Prior to attending Law School, Mr. Leary was employed in New York City by one of the "Big Eight" International Public Accounting Firms, and eventually accepted a position with KeyCorp Mortgage Corporation as Vice President in charge of Accounting Operations until he enrolled in Albany Law School.

Mr. Leary is a graduate of Albany Law School (*cum laude*). While attending Albany Law School, Mr. Leary was inducted into the Justinian Society, Albany Law School's academic honor society, and he was one of ten students in his class to be inducted into the National Order of Barristers for his accomplishments in the moot court program at Albany Law School. From 1996 through 1999, Mr. Leary served as a Member of the Board of Trustees at Albany Law School.

Mr. Leary limits his practice to the areas of Matrimonial and Family Law. Mr. Leary has extensive experience in the negotiation and preparation of Marital Settlement Agreements, Prenuptial Agreements, Domestic Relations Orders, and in litigating complex divorce actions. Mr. Leary also has extensive experience litigating support and custody matters in family courts throughout the Capital District.

Mr. Leary is currently a Member of the New York State Bar Association and Albany County Bar Association, and he has lectured at Continuing Legal Education Programs offered in upstate New York on Family Law topics and the negotiation and drafting of Prenuptial Agreements. In 2011, Mr. Leary was appointed by the Supreme Court Appellate Division Third Judicial Department as a Member of the Committee on Character and Fitness for the Third Judicial District. Mr. Leary is a Level 3 Certified USA Hockey coach and he coaches youth hockey at the Bethlehem Youth Hockey Association where he also serves on the Association's Board of Directors.

Hon. Robert J. Meyer, Esq.
Support Magistrate
Albany County Family Court
Albany

Bob Meyer is a 1981 graduate of Albany Law School, admitted to practice in 1982. From 1982 until his appointment as a Support Magistrate in 2004, he was in private practice with a concentration on matrimonial law, criminal defense and real estate transactions. He has served as a Support Magistrate in Albany, Rensselaer and Columbia County since June of 2004. In 2010, Mr. Meyer was a participant in the quadrennial review of New York State Child Support Guidelines."

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Tamara A. Mitchel

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Tamara A. Mitchel practices in all aspects of matrimonial and family law. She graduated *cum laude* from Harvard Law School, after receiving her B.A. *magna cum laude* from Harvard College, where she was elected a member of Phi Beta Kappa. She also graduated from the Family Law Trial Advocacy Institute of the American Bar Association, Family Law Section.



Ms. Mitchel is a partner at Berman Frucco Gouz Mitchel & Schub p.c., having worked at the firm since 2002. She has represented clients in negotiating and drafting agreements and litigating complex financial, child custody, domestic violence, and post-divorce enforcement matters. She previously worked at the Pace Women's Justice Center, where she was one of the original supervising attorneys of the Family Court Legal Program, in which she represented, and taught law students to represent, hundreds of domestic violence victims in order of protection, custody and support proceedings in the Westchester County Family Courts. Ms. Mitchel previously worked as an associate in matrimonial and family law for a sole practitioner and local court judge in Westchester County, and as an associate in litigation at a large general practice law firm in New York City.

Ms. Mitchel is the Editor-in-Chief of the Domestic Law Review, published by the Westchester County Bar Association Domestic Relations and Family Law Section. She serves by appointment on the Executive Committee and also as 2nd Vice Chair of that Section. Ms. Mitchel serves by appointment on the Executive Committee and Committee on Legislation of the New York State Bar Association Family Law Section. Ms. Mitchel is also a member of the New York Association of Collaborative Professionals and the International Academy of Collaborative Professionals, certified to practice collaborative law. Ms. Mitchel is a member of the Association of Family and Conciliation Courts. She is admitted to practice law in the State of New York.

Ms. Mitchel frequently lectures for and chairs Continuing Legal Education programs for attorneys on many different topics in matrimonial and family law. Among the organizations for which she lectures are the New York State Bar Association, Pace University School of Law Center for Continuing Legal Education, the Westchester Women's Bar Association, the Ninth Judicial District Committee to Promote Gender Fairness in the Courts, and the Pace Women's Justice Center Survivor's Law Project/Moderate Means Panel. She has also frequently lectured on topics in matrimonial and family law to financial organizations and community service providers such as Citigroup's Women & Co. and the Family Law Lecture Series of the Westchester Division of the Pace Women's Justice Center. Ms. Mitchel has authored numerous accredited continuing legal education materials on various topics in matrimonial and family law, co-authored a law review article on the constitutional rights of domestic violence victims, and wrote an in-service police training manual on domestic violence published by Westchester County. Ms. Mitchel has also recently appeared on television and radio, as well as authored a newspaper article, on various topics in divorce law.

John A. Pappalardo



Farber, Pappalardo & Carbonari

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White Plains, NY 10601

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212-752-3396

914-595-4998

Fax:

914-761-0747

- Bar admissions: 1986, Massachusetts; 1987, New York; 1989, New Jersey, U.S. District Court, Southern and Eastern Districts of New York, U.S. District Court, District of New Jersey and U.S. Supreme Court.
- Professional memberships: New York State Bar Association, and Domestic Relations subsection; Westchester County Bar Association, and Domestic Relations subsection; Westchester County Civil Arbitration Panel; United States Bankruptcy Court Mediation Panel; Academy of Family Mediators; American Arbitration Association; New York State Council on Divorce Mediation; American Bar Association, and Alternative Dispute Resolution subsection; Paralegal Advisory Committee at Berkeley College; New York State Law Guardian Panel, New York State Certified in marital collaboration; a referral attorney for the National Center for Missing and Exploited Children; recently inducted into the prestigious International Academy of Matrimonial Lawyers Association.\

Areas of Practice

- Matrimonial law, domestic relations, family court, commercial law, construction law, international law, arbitration and mediation law

Jennifer Powers Rutkey, Esq.

Gordon, Tepper & DeCoursey, LLP
Glenville, NY 12302
(518) 399-5400
jrutkey@gtdlaw.com



Jennifer Powers Rutkey is a partner in our family law, custody, matrimonial, and divorce law firm and was born in Schenectady, New York. Ms. Rutkey graduated from Union College in 1992 with a B.S. degree, with honors, and from Albany Law School in 1995 with a Juris Doctor degree, cum laude. As one of our valued attorneys, Ms. Rutkey is admitted to the New York Bar and is a member of the New York State Bar Association Family Law Section and Schenectady County Bar Association. Since 2009, Ms. Rutkey has served on the Executive Committee of the New York State Bar Association Family Law Section as the district delegate from the Fourth Judicial District. She serves on the Schenectady County Bar Association's Matrimonial Committee. In 2002, she was named "Young Lawyer of the Year" by the Schenectady County Bar Association. Ms. Rutkey has lectured on divorce, custody, and family law for numerous continuing legal education programs sponsored by the New York State Bar Association Family Law Section, throughout the Capital District and New York State. Ms. Rutkey has also lectured to Supreme Court and Family Court confidential court attorneys at a training program sponsored by the New York State Office of Court Administration. She has also lectured at a continuing legal education program for the Fourth Judicial District Federated Bar Association. She has also lectured to the Schenectady County Legal Professionals and to the Schenectady County Bar Association. In addition to handling divorce, family law, custody, support matters, trials and appeals, Ms. Rutkey also represents both biological and adoptive parents in New York adoptions, interstate adoptions and international adoptions.

Contact Ms. Rutkey or another of our family law, divorce, and custody attorneys in the Albany, Schenectady and Saratoga region for a confidential consultation.

**Sherri Sharma**

Phone: 212.521.3560
Email: sharma@amsllp.com

Sherri represents individuals in all aspects of matrimonial law, including equitable distribution of assets, custody, spousal support, child support and pre-nuptial and post-nuptial agreements. She understands that each case and each client is different, and takes pride in helping her clients achieve their particular goals.

Sherri graduated from Yale University summa cum laude and was a member of Phi Beta Kappa. She received her law degree from Columbia University Law School in 2003.

Sherri began her legal career at Patterson Belknap Webb & Tyler LLP where she practiced trusts and estates law. While there, she gained invaluable experience developing wealth transfer plans for high net worth individuals and families. She joined the firm in February 2007 and has been exclusively practicing matrimonial law since then.

Sherri was named a 2013 NY Metro Rising Star by New York Super Lawyers. She has lectured at various professional seminars on the topic of Equitable Distribution and Maintenance, including to the New York State Bar Association.

Sherri and her husband, Matthew, live in Manhattan with their two children.

ADMITTED

New York, 2004

EDUCATION

Columbia University School of Law, J.D., 2003

Yale University, B.A., 1998

Michael S. Simon Biographical Form

Name: Michael S. Simon
Address: 5266 Seneca Street
West Seneca, New York 14224

Phone: 716-674-4443
Fax: 716-674-4214
E-mail lawsimon123@gmail.com

Areas of Practice: Matrimonial and Family Law

Description of Practice: My practice encompasses all areas of matrimonial and family law litigation including custody, visitation, support, equitable distribution, post divorce enforcement and modification proceedings, anti-nuptial agreements, separation agreements, relocation proceedings and grandparent/sibling visitation proceedings.

Courts Admitted/Date: New York State February 17, 1984, United States of America-Western District of New York-April 9, 1984, United States Bankruptcy Court-April 10, 1984.

Education: Juris Doctor- State University of New York at Buffalo Law School – 1983
Bachelor Arts- The Canisius College of Buffalo – 1981
High School- Calasanctius Preparatory School - 1977

Memberships: American Bar Association, New York State Bar Association, Erie County Bar Association, member of each Bar Association's Family Law related divisions/sections.

Presentations: Speaker and participant at Erie Law Institute Seminar/Mock Trial regarding Child Support proceedings, lecturer at Erie Institute of Law CLE seminar "How to Get It, How to Use It; Elements of Discovery in Family Court and Matrimonial Court Practice", April 2007; lecturer New York State Bar Association CLE Program "Practical Skills Family Court Practice" Spring 2006, lecturer New York State Bar Association CLE Program "Practical Skills- Basic Matrimonial Practice" Fall 2006 and Fall 2007; Fall 2010, 2011, 2012, lecturer National Business Institute – Advanced Matrimonial Practice 2012, Erie Institute of Law- Trial Evidence "What They Didn't Teach You in Law School" April 2013.

Publications: Authored numerous articles on Matrimonial & Family Law for The Daily Record and Erie County Bar Association Bulletin.

Daniel J. Sperrazza, Esq. Buffalo

Daniel Sperrazza, one of the most experienced and respected **divorce attorneys in Buffalo** and founder of Daniel J. Sperrazza, Esq. Attorney at Law, is ready to provide existing and new clients with personable, excellent family law services. If you or a loved one requires the skills of an experienced divorce attorney, contact Daniel J. Sperrazza, Esq. Attorney at Law, today.

In my professional career as a divorce attorney in Buffalo, I have assisted many clients and achieved numerous successful outcomes. I am a divorce attorney and trained mediator, and I have spoken at seminars on family law on the advantages of collaborative divorce and mediation. I have taken an active role in several legal organizations, holding offices in the Western New York Collaborative Law Professionals Organization, where I served as president in 2009. The accomplishments I am most proud of as a **Buffalo divorce attorney** are the amicable resolutions I have reached for my clients through collaborative divorce law and mediation.

Please read more about my experience and education as a Buffalo divorce attorney below, then [contact the firm](#) to speak with me about how I can help you with your case.

Admitted to bar

New York, 1984

Education

State University of New York at Buffalo

- **J.D., 1983**
- **B.A., *cum laude*, 1980**

Member

Erie County Bar Association

- **Member, Matrimonial & Family Law Committee, 2000–2010**
- **Member, Commercial Law & Bankruptcy Committee, 1991–2010**

Commercial Law League of America

Western New York Collaborative Law Professionals

- **President, 2009**
- **Vice President, 2008**
- **Director, 2006–2007**

Peter R. Stambleck, Esq.

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27th Floor
New York, NY 10017

Peter earned his B.S. in finance and accounting from Indiana University and his Juris Doctor from Brooklyn Law School. He is admitted to the New York, New Jersey and Connecticut State Bars. He is also a Certified Public Accountant.

Since Peter's graduation from law school he has concentrated his practice in the area of matrimonial and family law exclusively. Peter has considerable experience advising clients in all aspects of matrimonial and family law, including pre and post nuptial agreements, custody and access, divorce negotiation and litigation, equitable distribution, and spousal and child support issues.

Peter lives in Westchester County with his wife, Stacey, a publishing executive, and their two daughters.

ADMITTED

New York, 2004
New Jersey, 2004
Connecticut, 2005
United States Supreme Court, 2007

EDUCATION

Brooklyn Law School, JD., 2003
Indiana University, B.S., 1998

LECTURES

Bridging the Gap: Consultation with the Client and Moving the Matrimonial Case Through the System, New York State Bar Association, Summer 2010.

Moderator: Interview Skills 101: How to Bridge the Gap from Law School to the Start of Your Career, New York State Bar Association, Winter 2011

Moderator: Mining Individual, Corporate, & Partnership Tax Returns, American Bar Association, Summer 2011

PUBLICATIONS

Understanding New York's O'Brien Decision and its Progeny (with Allan E. Mayefsky), Valuing Professional Practices and Licenses, Third Edition, Aspen Publishers (2010)

Jenifer M. Wharton, Esq.

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Jenifer M. Wharton is a partner in our family law, custody, matrimonial and divorce law firm and was born in Schenectady, New York. Ms. Wharton graduated from the State University of New York at Albany with a B.A. degree in 1991 and from Albany Law School with a Juris Doctor degree in 1994. Ms. Wharton is admitted to the New York Bar and the U.S. District Court for the Northern District of New York. Ms. Wharton is a member of the New York State Bar Association Family Law Section and the Schenectady County Bar Association and presently is Vice President of the association. Ms. Wharton has lectured on matrimonial, family and divorce law for continuing legal education programs sponsored by the New York State Bar Association Family Law Section and also the Schenectady County Bar Association. She has been an attorney advisor for the Schenectady County Bar Association mock trial program, has been a judge for the Albany Law School family law moot court competition and taught trial techniques for mock trial participants. Ms. Wharton serves on the Board of Directors of Family and Child Services of Schenectady, Inc. Ms. Wharton is a member of the International Academy of Collaborative Professionals. She is also a member of the Collaborative Divorce Association of the Capital District. In addition to handling all divorce, matrimonial and family law cases, and in addition to trial work, Ms. Wharton is also trained in handling Collaborative Divorce cases.

Contact Ms. Wharton or another of our family law, divorce, and custody attorneys in the Albany, Schenectady, and Saratoga region for a confidential consultation.

Howard J. Woronov

Melvin & Melvin, PLLC, Syracuse, NY

Mr. Woronov, a Member of the firm since 1989, has been a practicing attorney for over forty-five years. He is a fellow of the prestigious American Academy of Matrimonial Lawyers and manager of the New York Chapter. He is also a member of the Executive Committee of the Family Law Section of the New York State Bar Association. He practices exclusively in the area of Family Law, including custody, support, pre-nuptial and separation agreements, divorce, and divorce taxation.

He has written and lectured extensively in the area of Family Law, both to attorney and lay audiences.

His interests include professional discipline, and he has served on the 5th District Attorney Grievance Committee and currently serves on the State Bar Committee on Professional Discipline.

Mr. Woronov has been named to the Best Lawyers in America from 2008 to 2011. He was also named an Upstate Superlawyer for Family Law from 2007 to 2011.

Susan G. Yellen, Esq., Johnson & Cohen, LLP, Pearl River, NY

Susan is a member of the firm Johnson & Cohen, LLP. She was admitted to practice law in the State of New York in 1991. She is also a member of the Maryland (1987) and District of Columbia (1988) Bar Associations. Her practice is devoted exclusively to matrimonial and family law.

Susan is a member of the New York State Bar Association, Family Law Section as well as the Rockland County Bar Association, Family Law Section and Rockland County Women's Bar Association, where she is an Officer and executive board member and holds the position of Recording Secretary. She is also a former member of the judicial screening committee. Susan is a member of and the treasurer for the Association of Collaborative Lawyers Rockland-Westchester. She has authored and co-authored articles and has also spoken at CLE lectures for the New York State Bar Association.

Bar Admissions

- Maryland, 1987
- New York, 1991
- District of Columbia, 1988

Education

- **Catholic University of America, Columbus School of Law, Washington, District of Columbia**
 - J.D. - 1987
 - Honors: American Jurisprudence Award Juvenile Law 1986
- **Catholic University of America, Washington, District of Columbia**
 - Masters - 1986
 - Major: Social Work
- **American University, Washington, District of Columbia**
 - B.A. - 1983
 - Honors: Dean's List
 - Major: Psychology

Lisa Zeiderman

Johnson & Dohen LLP
Pearl River

Lisa Zeiderman practices in all areas of matrimonial and family law. Lisa is a high energy, zealous and relentless advocate. She strategically and creatively crafts each case from the time of the first consultation to its resolution, in order to achieve the client's ultimate goals.

While educating the client in the process, so that he/she can obtain realistic goals, Lisa works hand in hand with the client to reach the best possible result. Lisa takes a sincere interest in each individual client never losing touch with the human side of this process making their life changing event as painless as possible.

Lisa, once divorced herself, is married with an 18 year old daughter. She is a member of the Legislation Committee of the New York Bar Association and is a member of the New York Women's Bar Association. Lisa has lectured for the New York State Bar Association, the New York Women's Bar Association and the JCC located in New York, New York. She has published articles in the New York Law Journal and the Family Law Review.

Bar Admissions

New York, 2005
Connecticut, 2004

Education**Fordham University School of Law, New York, New York**

- o J.D. - 2004
- o Honors: Dean's List

Fordham University

- o B.A. (*Summa Cum Laude*) - 2001
- o Honors: Dean's List
- o Major: Religious Studies

Published Works

"Cleanup the Prenup", (Co-Author with Amy L. Reiss, Esq.), New York Law Journal, Volume 233-No 28, February, 2005

"Utilizing the *Lis Pendens* in Matrimonial Actions", (Co-Author with Scott E. Mollen), New York Law Journal, Volume 238-No 13, July, 2007

"Snooping: What's Legal, What's Illegal", (Co-Author with Amy L. Reiss, Esq.), Family Law Review, 2009

Classes/Seminars

Equitable Distribution & Maintenance, New York State Bar Association, 2008, 2009, 2010

Boundaries of Electronic Snooping, New York Women's Bar, 2010 - Present

Title Divorce In Challenging Times: Legal and Economic Considerations, Jewish Community Center (JCC) New York, 2010 – Present

Professional Associations and Memberships

New York Women's Bar Association, Member, 2005 - Present

New York State Bar Association, Member of Legislation Committee, 2000 – Present

Past Employment Positions

Amy L. Reiss, Esq., Associate, 2004 - 2005

Self Employed, Fashion Industry

Hon. Hope Schwartz Zimmerman

Nassau County Matrimonial Center
400 County Seat Drive
Mineola, NY 11501
(516) 493-3440

Judicial Offices

Supervising Judge, Nassau County Matrimonial Parts, Appointed by Chief Administrative Judge Ann Pfau, 2011 to Present

Supervising Judge, Nassau County Family Court, Appointed by Chief Administrative Judge Ann Pfau, 2009 to 2011

Judge, Family Court, Nassau County, Elected, 2005 to 2014

Other Professional Experience

Hon. Elaine Jackson Stack, Nassau County Supreme Court, Principal Law Secretary, 2000 to 2004

Private Practice, Attorney, 1987 to 1999

Admission to the Bar

NYS, Appellate Division, Second Department, 1987

Education

JD, Hofstra University School of Law, 1986

MA, New York University, 1970

BA, Rhode Island College, 1968

Publications

Attorney Fees and Client Issues, The Annual Survey of Matrimonial Law, 1998

The Torah and the U.S. Constitution, Shofar Magazine, 1985

Women Work for Social Change, Children Today, 1978

Professional & Civic Activities

Member, Law Guardian Advisor Committee 10th Judicial District, 1997 to present

Member, N.Y. Fam Law Inns of Ct., 1996 to present

Chair, Nassau County Bar Association Women in Courts Committee, 1995 to 1997

President, Nassau County Women's Bar Association, 1994 to 1995

Co-Chair, National Association of Mothers' Center, 2000 to 2001

Board of Directors, National Association of Mothers' Centers, 1999 to present

Board of Directors, Soroptimist Int'l of Nassau County, 1999 to present

Member, Nassau County Bar Association Academy of Law, Ad. Bd., 2001 to present

Member, Nassau County Bar Association, 1987 to present

Member, Nassau County Women's Bar Association, 1987 to present

