Divorce Anniversaries 2014: CSSA, Equitable Distribution and Maintenance

Friday, October 17, 2014
Syracuse

Friday, October 24, 2014
New York City

Friday, October 31, 2014
Albany

Friday, October 31, 2014
Buffalo

Friday, October 31, 2014
Melville, L.I.

CLE Course Materials and 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

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www.nysba.org/2014DivorceAnniversariesECM

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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 AGENDA

8:30-9:00 a.m. REGISTRATION (outside meeting room)

9:00-9:50
I. RECENT DECISIONS, DEVELOPING TRENDS, NEW LEGISLATION

9:50-10:40
II. THE CHILD SUPPORT STANDARDS ACT

A. Over the Cap

B. Variance

C. 2010 Modification Amendments

D. Pendente Lite Applications

E. What is Income? Is Maintenance in the Pro Ratas?

10:40-10:55
BREAK

10:55-12:10 p.m.
III. EQUITABLE DISTRIBUTION

A. Enhanced Earning Percentages

B. Business and Professional Practices Percentages

C. Percentages Generally

D. Practical Tips on What to Seek – Maintenance or Equitable Distribution

12:10-1:00
IV. MAINTENANCE

A. Who Is Getting What and for How Long?

B. Who Gets Lifetime Maintenance?

C. Trends in Double-Dipping (*Grunfeld* and *Keane*)

1:00 p.m. ADJOURNMENT

Program Faculty

Program Planning Committee
(in alphabetical order)

Joan Casilio Adams, Esq.
J. Adams & Associates, PLLC
Williamsville

Rosalia Baiamonte, Esq.
Gassman Baiamonte Betts, PC
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Albany

Local Panels

Syracuse Session: Charles P. Inclima, Esq. (Chair, Moderator and Speaker), Inclima Law Firm, PLLC, Rochester * **Deborah K. Field, Esq.**, Field & Custer P.C., Jamesville * **Hon. Susan Hamlin Nasci**, Support Magistrate, Associate Deputy Chief Support Magistrate for UCMS Training, Onondaga County Family Court, Syracuse * **Bruce J. Wagner, Esq.**, McNamee, Lochner, Titus & Williams, P.C., Albany.

New York City Session: Peter R. Stambleck, Esq. (Co-Chair), Aronson Mayefsky & Sloan, LLP, New York City * **Sophie Jacobi-Parisi, Esq.** (Co-Chair), Mayerson Abramowitz & Kahn, LLP, New York City * **David Aronson, Esq.**, Aronson Mayefsky & Sloan, LLP, New York City * **Hon. Matthew F. Cooper**, New York State Supreme Court Justice, First Judicial District, New York City ***Emily Ruben, Esq.**, Attorney-in-Charge, Brooklyn Neighborhood Office, The Legal Aid Society, Civil Practice, Brooklyn * **Bruce J. Wagner, Esq.**, McNamee, Lochner, Titus & Williams, P.C., Albany.

Albany Session: Bruce J. Wagner, Esq. (Chair, Moderator and Speaker), McNamee, Lochner, Titus & Williams, P.C., Albany * **Hon. Thomas Gordon**, Support Magistrate, Rensselaer County Family Court, Troy * **Jennifer Powers Rutkey, Esq.**, Gordon, Tepper & DeCoursey, LLP, Glenville * **Eric A. Tepper, Esq.**, Gordon, Tepper & DeCoursey, LLP, Glenville.

Buffalo Session: Joan Casilio Adams, Esq. (Chair, Moderator and Speaker), J. Adams & Associates, PLLC, Williamsville * **Hon. John J. Aman**, Deputy Chief Support Magistrate, Erie County Family Court, Buffalo * **Paul A. Vance, Esq.**, Vance Law Firm, Buffalo * **Steven G. Wiseman, Esq.**, HoganWillig, Amherst.

Melville, LI Session: Rosalia Baiamonte, Esq. (Chair and Moderator), Gassman Baiamonte Betts, PC, Garden City * **Hon. Andrew A. Crecca**, New York State Supreme Court Justice, Tenth Judicial District, Central Islip * **Nancy E. Gianakos, Esq.**, Albanese & Albanese LLP, Garden City * **Glenn S. Koopersmith, Esq.**, Law Offices of Glenn Koopersmith, Garden City * **Kenneth J. Weinstein, Esq.**, Kenneth J. Weinstein, P.C., Garden City.

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FALL 2014

Divorce Law Anniversaries

"Recent Decisions, Developing Trends and New Legislation"

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Editor's note: These materials cover the period April 14, 2014 to September 12, 2014.

COURT OF APPEALS NOTES:

(1) On May 2, 2014, the Fourth Department denied reargument and leave to appeal to the Court of Appeals (2014 Westlaw 1767094) in Foti v. Foti, 2014 Westlaw 486832 (4th Dept. Feb. 7, 2014)(Case No. 13-00358), where the husband appealed from an April 2012 Supreme Court Order, which granted the wife's motion for partial summary judgment, determining that various real estate entities and management companies were her separate property. On appeal, the Fourth Department reversed, on the law, agreeing with the husband that Supreme Court erred in granting the motion. The Fourth Department noted that although the wife established that her father gifted the entities to her as separate property, "there is an issue of fact whether defendant thereafter commingled her interests in the entities with marital property," upon the ground that "the parties filed a joint federal tax return in which defendant reported her interest in the entities as tax losses." Citing Mahoney-Buntzman v. Buntzman, 12 NY3d 415, the Appellate Division held that "a party to litigation may not take a position contrary to a position taken in an income tax return."

(2) In People v. Golb, ___NY3d___ (May 13, 2014), the Court of Appeals declared Penal

Law §240.30(1), a subdivision of the aggravated harassment in the second degree statute, unconstitutional, under both the US and NYS Constitutions. The statute stated, at subdivision (1)(a): "[a] person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she . . . communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm." Subdivision (1)(b) imposes criminal responsibility upon one who "causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm." The Court of Appeals held that the statute "is unconstitutionally vague and overbroad," and "conclude[d] that Penal Law §240.30(1) is unconstitutional under both the State and Federal Constitutions." This ruling removes the crimes defined by subdivision (1) [but not by subdivisions (2) through (5)], from the list of family offenses under FCA §812(1).

NEW LEGISLATION IN RESPONSE: See new legislation on above topic at end of these materials.

BRIEFLY NOTED: The "skin in the game" counsel fees case, Sykes v. Sykes, 41 Misc3d 1061 (Sup. Ct. NY Co., Cooper, J., Oct. 10, 2013)[See Spring 2014 materials at page 105] has been decided after a 16 day trial. In Sykes v. Sykes, 43 Misc3d 1220(A) (Sup. Ct. NY Co., Cooper, J., May 2, 2014), Supreme Court began its decision: "This is a sad and difficult divorce case. Sad, because the parties, who had a marriage where they began with little and eventually became very wealthy, still seem to have a reservoir of appreciation, respect and even fondness for each other despite the poor way the defendant-husband ended the marriage and the hardened positions they

were forced to assume in the litigation. Difficult, because of the scope of the litigation, which was literally intercontinental, with a custody battle fought in the French courts and financial issues fought in this court." Among other issues decided, the wife was awarded $2.4 million dollars, which was 30% of an $8 million dollar hedge fund which the husband accrued during the marriage.

I. AGREEMENTS

A. Interpretation – Pension

In Mondshein v. Mondshein, 2014 Westlaw 2198460 (2d Dept. May 29, 2014) (Case Nos. 2012-10083 and 2013-06331), the parties were divorced in December 2000 and the wife appealed from: (1) a September 2012 Supreme Court order, which denied her motion to amend a November 2000 domestic relations order, so as to conform the distribution of her retirement benefits to the parties' March 2000 stipulation; and (2) by permission, from a May 2013 amended domestic relations order, which provided that the husband was to receive one-half of a certain fraction of her maximum monthly retirement allowance. On appeal, the Second Department: (1) reversed the September 2012 order on the law, and granted the wife's motion to amend the November 2000 domestic relations to conform to the said stipulation; and (2) reversed the May 2013 amended domestic relations order, on the law, and remitted to Supreme Court for entry of an appropriate second amended domestic relations order. In this case, the Appellate Division found: (a) that the husband was entitled to receive "50% of the defendant's 'accrued benefits,' multiplied by a fraction, which the parties do not dispute was 11.92/14.30, and which represented the benefits the defendant earned during the marriage," but: (b) "the subject domestic relations order directed that the plaintiff was to receive 50% of that same fraction of the defendant's 'maximum accrued benefits,' without any reference to a limitation based on the

benefits which accrued to the defendant during the marriage." The Second Department held that Supreme Court erred by denying the wife's motion to conform the domestic relations order to the stipulation, and directed remittal "for entry of a second amended domestic relations order which provides that the plaintiff is to receive 50% of the defendant's accrued pension benefits, multiplied by a fraction, the numerator of which shall be the number of months the defendant participated in the plan during the marriage, measured from the date the defendant became a plan participant, to the date of filing of the summons in this action for a divorce, and the denominator of which shall be the defendant's total service from the date of her initial employment with the relevant employer to the date of the filing of the summons in this action for a divorce."

In Jennings v. Brown, 2014 Westlaw 2504548 (Sup. Ct. Seneca Co., Bender, J., May 30, 2014), the parties were divorced by a March 2005 judgment, which incorporated a January 2005 stipulation, which stated: "as far as any pensions, retirements, deferred compensations, 401Ks, all that will be settled by the proper application of Majauskas." The parties were married in February 1986 and the divorce action was commenced in June 2004. The husband worked for a company and contributed to a 401k plan from September 1978 to October 1992, and rolled $75,948 into an IRA in December 2005. The husband's position as to the wife's interest was that a Majauskas coverture fraction should be applied, such that 43% thereof was marital and that the wife's share was 21.5%, or $18,045, plus or minus adjustments for investment results. The wife's position, essentially, is that the "tracing method" (compute separate property and growth thereon should be used, as opposed to the Majauskas fraction, which would have resulted in a distribution to her of over $32,000, but which would not have given the husband credit for the investment gain on his separate property. Supreme Court ruled that it was bound by the stipulation and directed that the IRA transfer order provide for a

distribution pursuant to a Majauskas coverture fraction.

B. Interpretation – Prenuptial – "the" and "such" equals $millions

In Babbio v. Babbio, ___ AD3d ___ (1st Dept. July 17, 2014)(Case No. 12692), the parties' prenuptial agreement provided: "[i]n the event of an Operative Event, Marital Property [as defined elsewhere in the agreement] shall be distributed equally between [the parties] in accordance with the following provisions, except that if the parties have been married for ten (10) years or less and either party is able to identify One Million ($1,000,000) Dollars or more of Separate Property that was used for the acquisition of *the* Marital Property, that party shall first receive the amount of his or her contribution of Separate Property prior to the division of the remaining value of *such* property, if any." "Operative Event" was defined as "the delivery by [either party] to the other of written notification ... of an intention to terminate the marriage." [Editor Note: Emphasis on the words "the" and "such" is mine; keep a close watch on these words as we proceed.] The Appellate Division made the following interpretative rulings on the language of the agreement:

(a) we find that eligibility for a separate property credit upon the distribution of marital property in the event of an "Operative Event" is determined at the time of the "Operative Event" and that the party seeking the credit must have contributed $1 million or more of his or her own separate property directly to the acquisition of the *particular* item of marital property at issue. [Editor Note: Emphasis on "particular" is mine; this relates to the use of the words "the: and "such" above.]

(b) It is implicit in paragraph 6(e) that the length of the parties' marriage is to be calculated as of the date of the Operative Event, and not, as the wife urges, as of the date on which the marital property is distributed. Moreover, the date of the Operative Event provides certainty that the date of distribution does not provide, and it is reasonable to infer that the parties intended that there be certainty with respect to the date their rights to separate property credits (and other rights and obligations) are determined. Support for this construction is also provided by clauses stating that "the Marital Property shall be valued as near as practicable to the time of the Operative Event" and that "the distribution contemplated by this paragraph shall occur as quickly as practicable following the happening of an Operative Event". Since the Operative Event occurred before the parties had been married 10 years, the husband is eligible for separate property credits to the extent he contributed $1 million or more

of separate property to the acquisition of any marital property.

(c) [Editor Note: Here is where the words "the" and "such" come back to haunt or brighten one's day, depending upon your perspective.] We conclude that the wife is correct in regard to the husband's recouping of his separate property; the husband must show that he contributed $1 million or more of separate property to the acquisition of *each item of marital property* to be distributed, rather *than that he contributed $1 million or more in the aggregate*. [Emphasis added] To ascertain the parties' intentions in regard to the operation of the separate property credit, we consider the phrasing of the separate property credit exception, interpreting it with reference to the apparent purpose of [the paragraph] and the general purpose of the entire agreement as a whole (citation omitted). The general purpose of the agreement is to provide a degree of protection to both parties. In the event the marriage lasted less than 10 years, the agreement protects the husband from the absolute loss of large amounts of separate funds he contributed to the marriage, while also protecting the wife from having everything that was purchased for their use as a married couple reclaimed by the husband.

(d) [Editor Note: the Court continues to focus on "the" and "such."] The language of the agreement's exception to the rule of dividing marital property equally provides:

> [I]f the parties have been married for ten (10) years or less and either party is able to identify One Million ($1,000,000) Dollars or more of Separate Property that was used for the acquisition of *the Marital Property*, that party shall first receive the amount of his or her contribution of Separate Property prior to the division of the remaining value of *such property*, if any (emphasis added).
>
> The use of the definite article [Editor Note: meaning, the word "the"] before "Marital Property," and the later reference to "such property," reflect an intent to apply the credit to each piece of marital property as it is being divided, a view supported by the subparagraphs that immediately follow, which specifically contemplate an item-by-item consideration of the marital property for purposes of its division. Moreover, [the agreement] defines "Marital Property," as "all property used jointly by the parties with a cost value of $100,000, or less," but under the aggregation theory the husband would get all the proceeds of every sale, and the wife would lose the benefit of the provision, rendering it meaningless. Indeed, given the husband's enormous wealth and the parties' stated intention to reside in New York, under the aggregation theory, the husband's contribution of more than $1 million to a marital residence alone would meet the threshold, rendering the creation of a threshold provision meaningless.

[Editor note: a reading of the whole case is recommended to get a complete understanding of the effect of the emphasized words upon the interpretation of the agreement and the application of the same to the facts.]

c. Prenuptial – Invalid – Dominican & Spanish Law

In M. v. M., ___Misc3d ___, NY Law Journ. July 25, 2014 (Sup. Ct. N.Y Co., Gesmer,

J., July 3, 2014), the parties entered into a prenuptial agreement in Spain in June 2001, which stated that they were entering into a separate property regime. They were married in the Dominican Republic in December 2002, but the marriage certificate stated that the parties were subject to a "legal community of goods" regime. The wife commenced an action for divorce in July 2012 and the husband raised the agreement as a defense. Supreme Court found that the agreement was invalid under Dominican and Spanish laws, which both provide that a prenuptial agreement is unenforceable if the parties, as was here the case, do not marry within one year of execution. Further, in order to overcome the presumptive community property regime in the Dominican Republic, an agreement must be registered and the alternate regime must be so noted in the marriage certificate, which was not here accomplished. Nor did the parties comply with Spain's civil registry requirements. As to choice of law, the Court rejected the husband's contention that New York law applied, given that the agreement was drafted, negotiated and signed in Spain, where the parties lived and where the husband was a citizen, and to which country the husband returned after the parties separated in mid-2008. Supreme Court further noted that the parties had no ties to New York, until they purchased an apartment, a year after the marriage, and first moved there in June 2004. For an informative article, see Andrew Keshner, "Judge Voids Foreign-Based Marital Agreements," NY Law Journ., July 28, 2014.

II. ATTORNEY AND CLIENT

A. Charging and Other Liens

In Roe v. Roe, 985 NYS2d 335 (3d Dept. May 8, 2014), the former client appealed from a November 2012 Supreme Court order, which partially granted the attorney's motion to impose a charging lien for counsel fees. The client retained the attorney in April 2012 to represent her in a contested matrimonial action, and substituted new counsel in September 2012. The attorney

moved for a charging lien upon any proceeds of the matrimonial action, as well as a retaining lien on the client's file. In opposition, the client submitted only the affidavit of her newly retained counsel, who suggested that the attorney had been discharged for cause and asserted that fee arbitration [22 NYCRR Part 137] was the only remedy. [The fee arbitration program found the case to be outside its jurisdiction, for reasons not stated in the Appellate Division order]. Supreme Court imposed a charging lien in favor of the former attorney, and ordered that "simultaneously with the surrender of the case file," the client tender the full amount of the fees sought ($10,884.14). On appeal, the Third Department affirmed, rejecting the client's contention that Supreme Court erred in failing to conduct a hearing on the issue of discharge for cause. The Appellate Division noted: "Although the determination that an attorney was discharged for cause may be based upon either negligence or misconduct, more than a generalized dissatisfaction with counsel's services is required (citation omitted). *** [T]he client must make 'a prima facie showing of any cause for [the] discharge' in order to trigger a hearing on this issue (citations omitted)." The Third Department found that a hearing was not required, where, as here, the client "tendered only the affidavit of her current attorney, who, in turn, simply suggested — without elaboration — that there may have been grounds to discharge the firm for cause." The Appellate Division explained further: "an attorney who has been discharged without cause may pursue the following cumulative remedies: (1) a charging lien [Judiciary Law §475], (2) a retaining lien, and/or (3) a plenary action in quantum meruit (citations omitted)." The Third Department upheld "Supreme Court's finding that the firm was entitled to an award of $10,884.14 based upon an account stated," because there was nothing in the record that suggests that "plaintiff ever questioned or otherwise objected to any of the invoices at issue — even after the firm brought the underlying application seeking a charging lien — and her retention of those invoices, coupled

with her corresponding silence, was sufficient to establish an account stated." The Court concluded: "To the extent that Supreme Court's order may be read as imposing a de facto retaining lien, such a lien would have been proper as the underlying matrimonial action — although now resolved — remained pending at that time."

In Wasserman v. Wasserman, ___ AD3d ___ (2d Dept. July 30, 2014)(Case No. 2014-00259), the parties were divorced in May 2008, and law firm which represented the wife appealed from a December 2013 Supreme Court order, which denied its motion for a charging lien pursuant to Judiciary Law §475 in the sum of $47,237, for a money judgment for the same sum, which, inclusive of interest, was $69,134, and for an order directing the same sum to be withheld from proceeds of the sale of a residence and paid to the law firm. On appeal, the Second Department modified, on the law, by granting the charging lien in the stated principal sum and granting an order directing payment to the law firm from the sale proceeds, holding that the charging lien had been established. The Appellate Division noted that the law firm was not entitled to a money judgment pursuant to Judiciary Law §475 against a former client, "absent commencement of a plenary action."

B. Disqualification – Reversed

In Sessa v. Parrotta, 116 AD3d 1029 (2d Dept. Apr 30, 2014)(Case No. 2013-03231), the husband appealed from a February 2013 Supreme Court order, which granted the wife's motion to disqualify the husband's counsel. On appeal, the Second Department reversed, on the law, and denied the wife's motion. The basis for the wife's motion was the attorney's previous representation of the wife in the preparation of a last will and testament. The Appellate Division noted that the wife was required to prove: "(1) the existence of a prior attorney-client relationship between the moving party and opposing counsel, (2) that the matters involved in

both representations are substantially related, and (3) that the interests of the present client and former client are materially adverse" (citation omitted). The Court held that the wife "failed to meet her burden of establishing the element of a substantial relationship between the representations. The issues in the present litigation and the subject matter of the prior representation are not substantially related, particularly given that under the parties' prenuptial agreement, the validity of which is not at issue, they waived their rights of equitable distribution (citations omitted). The defendant's conclusory allegations that, in the prior representation, [the law firm] gained access to confidential material substantially related to the present litigation were insufficient to determine the nature of the confidential information allegedly obtained or that there is a reasonable probability that such information would be disclosed during the present litigation (citations omitted)."

III. Child Support

A. CSSA – Income – Most Recent Tax Return

In Matter of Bustamante v. Donawa, ___ AD3d ___ (2d Dept. July 2, 2014) (Case No. 2013-00738), the father appealed from a December 2012 Family Court order, which denied his objections to an August 2012 Support Magistrate order rendered after a hearing and which granted the mother's petition for upward modification of an August 2008 order. On appeal, the Second Department affirmed, rejecting the father's contention that Family Court erred in basing his child support obligation on his 2011 income tax return ($54,342, former job as a Traffic Device Maintainer), as opposed to his current income ($31,756 as an EMT following a voluntary career change. The Appellate Division held: "Under the circumstances of this case, it was appropriate to impute income where, as here, the father voluntarily left his employment (citations omitted). While a parent is entitled to attempt to improve his vocation, his children should not be

expected to subsidize his decision."

B. CSSA – Over $130,000

In Hymowitz v. Hymowitz, ___ AD3d ___ (2d Dept. July 16, 2014)(Case No. 2012-03852), the wife appealed from March 2012 Supreme Court judgment, which, among other things, awarded her child support in the sum of only $147.12 per week, awarded her maintenance for only seven years, determined that the husband's interest in Weinstein & Holtzman, Inc., was his separate property and awarded her sum of only $69,900, representing 15% of the increase in the value of his interest in that business, determined that the husband's 1/3 interest in BSH Park Row, LLC, was his separate property and awarded her the sum of only $184,950, representing her 15% share of the value of that business, and failed to equitably distribute a share of the husband's interest in HGH Family, LLC, by awarding her only 50% of the net profit distributions that the plaintiff receives from HGH Family, LLC, until her 66th birthday, awarded the husband a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage on the marital residence. The Second Department modified, on the law, on the facts, and in the exercise of discretion: by deleting the provision thereof awarding the wife $69,900, representing 15% of the increase in value of the husband 's interest in Weinstein & Holtzman, Inc., and substituting therefor a provision awarding her $116,500, representing 25% of the increase in value of the husband's interest in that business; by deleting the provision thereof awarding the wife $184,950 as her separate property interest in BSH Park Row, LLC, representing 15% of the value of the husband's interest in that business, and substituting therefor a provision determining that the husband's 1/3 interest in BSH Park Row, LLC, is marital property subject to equitable distribution, and awarding the wife $308,250, representing 25% of the value of the husband's

interest in that business; by deleting the provision thereof awarding the wife 50% of the net profit distributions that the husband receives from HGH Family, LLC, until her 66th birthday, and substituting therefor a provision directing that the husband's interest in HGH Family, LLC, is marital property subject to equitable distribution, and awarding the wife distributions from her equitable share of the husband's interest in HGH Family, LLC, retroactive to the date of the commencement of the action, in an amount to be calculated by the Supreme Court, representing 40% of the value of the husband's interest in that business; by deleting the provision thereof awarding the husband a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage on the marital residence during the divorce proceedings, and substituting therefor a provision awarding the husband a credit for 50% of the payments he made to reduce the principal balance of the mortgage on the marital residence during the divorce proceedings; by deleting the provision thereof awarding child support based only upon the first $130,000 of combined parental income, and substituting therefor a provision awarding child support based upon the first $175,000 of combined parental income; by deleting the provision thereof awarding the defendant maintenance in the sum of $6,250 per month, commencing with the 49th month after the signing of the amended judgment and continuing for 36 months thereafter, and substituting therefor a provision awarding her maintenance in the sum of $6,250 per month, commencing with the 49th month from the signing of the amended judgment and continuing until the earliest date of her remarriage, her attainment of age 66, or the death of either party; and remitted to Supreme Court for further proceedings. The parties were married in 1988, and have two children, who are now both over the age of 21. The Second Department found: "Contrary to the defendant's contention, the record supports the Supreme Court's conclusion that the transfer of a 1/3 interest in Weinstein & Holtzman, Inc.

(hereinafter Weinstein & Holtzman), a family-owned hardware store, to the plaintiff from his father and uncle which occurred during the marriage was tantamount to a 'gift from a party other than the spouse' and, thus, was the separate property of the plaintiff not subject to equitable distribution (citation omitted). The determination as to whether the transfer was a gift to the plaintiff depended upon the credibility of the witnesses at trial, and the credibility determinations made by the Supreme Court are supported by the record (citations omitted). However, we find that the Supreme Court should have awarded the defendant a 25% share of the appreciation in the value of the plaintiff's interest in Weinstein & Holtzman (citations omitted). Taking into consideration the circumstances of this case and of the respective parties, we find that an award to the defendant of a 25% share of the appreciation in value of the plaintiff's interest in Weinstein & Holtzman will take into account the defendant's limited involvement in the plaintiff's business, while not ignoring the direct and indirect contributions she made as the primary caretaker of the parties' children, as a homemaker, and as a social companion to the plaintiff, while foregoing her career (citations omitted)." The Court continued: "The Supreme Court improperly classified the plaintiff's 1/3 interest in BSH Park Row, LLC (hereinafter BSH), a holding company whose sole asset is a building located at 29 Park Row in lower Manhattan in which the hardware store is situated, as his separate property not subject to equitable distribution. *** Here, BSH was formed and the building was acquired during the marriage, and the plaintiff failed to meet his burden of tracing the use of claimed separate funds to establish that they were used for the purchase of his portion of the property's acquisition costs. *** Here, the Supreme Court should have awarded the defendant a 25% share of the plaintiff's interest in BSH. *** Further, based on the record and the relative contributions made by the parties throughout the marriage, the defendant should receive a 40% share of the marital interest in HGH. In addition, the defendant

should be awarded distributions from her equitable share of the plaintiff's interest in HGH, retroactive to the date of commencement of the action." As to the mortgage credit, the Appellate Division held that "Supreme Court improvidently exercised its discretion in awarding the plaintiff a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage during the divorce proceedings" and that "plaintiff was entitled to a credit of only 50% of the reduction in mortgage principal." As to maintenance, the Appellate Division found that "Supreme Court should have awarded the defendant maintenance until the earliest of her eligibility for full Social Security benefits at the age of 66, her remarriage, or the death of either party." With respect to the issue of child support, the Court stated: "There was no basis under the circumstances of this case to limit the child support award to the statutory cap of the first $130,000 of combined parental income. In view of the standard of living enjoyed by the parties' children during the marriage, and the earnings and assets of the parties, the child support award should be based upon $175,000 of combined parental income."

C. Educational Expenses – Agreement Silent

In Matter of Kristina P. v. Joseph Q., 2014 Westlaw 2516056 (3d Dept. June 5, 2014)(Case No. 517910), the father appealed from a January 2013 Family Court order, which denied his objections to a Support Magistrate order which directed him to pay 71% of the $5,600 cost (after financial aid) of private school expenses, starting with the 2012-2013 school year. The parties were divorced in 2007 and their incorporated agreement provided for $485 per week in child support to the mother for the 2 children, but was silent as to responsibility for the cost of the children's educational expenses. In October 2011, as a result of difficulties their 11 year old child was experiencing in public school, the parties agreed, in a notarized writing, to enroll the

child in a private Catholic school, on the condition that the mother pay the child's tuition. On appeal, the Third Department affirmed, noting that Family Court has no jurisdiction to enforce a contract, and holding: "Where, as here, the parties' opting-out agreement and divorce judgment are silent with respect to educational expenses, a court may direct a party to pay such expenses where appropriate and as justice requires, 'having regard for the circumstances of the case and of the respective parties and in the best interests of the child' (Family Ct Act § 413 [1] [c] [7]; other citations omitted)." The Appellate Division considered that "the child suffers from a variety of health related issues, including attention deficit hyperactivity disorder and auditory processing disorder" and "in a September 2012 journal entry for one of his classes, the child wrote: 'I was a kid who was bullied, depressed, and underestimated. But I found a light in the darkness, . . . I met awesome friends and the nicest teachers I ever encountered. Thank God I found [my new school];!' In addition, the child's anxiety medication has been decreased since he changed schools and was expected to be further reduced following reevaluation." The Court also noted that the father attended parochial elementary, middle and high schools as a child.

D. Enforcement – Good Faith Payment

In Matter of Aimee E.-H. v. Alexander H., 2014 Westlaw 2521666 (1st Dept. June 5, 2014) (Case No. 12674), the father appealed from an April 2013 Family Court order, which denied his objections to a support magistrate's order, which, in turn, found that he willfully violated a child support order, awarded the mother a money judgment for child support arrears, and directed a good-faith payment of $20,000. On appeal, the First Department affirmed, noting that the father's admission that he failed to pay court-ordered child support constituted prima facie evidence of a willful violation of the support order, which he failed to rebut with competent, credible evidence of his inability to make the required payments. The

Appellate Division held that Support Magistrate providently exercised its discretion in directing a "good-faith payment of $20,000." The citation for the proposition of the good faith payment was to a contempt purge payment case. Here, since the Support Magistrate directed the payment and cannot hold a party in contempt, there appears to be no legal basis for the "good-faith payment."

E. Modification – Incorporated Agreement – Hearing Granted

In Matter of Gadalinska v. Ahmed, ___ AD3d ___ (2d Dept. Sept. 10, 2014)(Case No. 2013-02456, the father appealed from a February 2013 Family Court order which denied his objections to a December 2012 Support Magistrate Order, which, in turn, without a hearing, dismissed his petition for a downward modification of child support. On appeal, the Second Department reversed, on the law, granted the father's objections, and remitted to Family Court. The parties' July 2010 stipulation of settlement, incorporated into a judgment of divorce, provided that the father would pay child support (amount unspecified). The Appellate Division noted that the amendments to Family Court Act §451, effective October 13, 2010, did not apply, and that the father's burden was to show "a substantial and unanticipated change in circumstances since the time he agreed to the support amount (*see* Family Ct Act § 451[2][a]; other citations omitted)." The Second Department held the following allegations to be sufficient to warrant a hearing: the mother's income and resources had significantly increased; the father subsequently became unemployed; and his financial resources had become depleted, which "substantially affected his ability to pay the amount that was agreed to in the stipulation."

IV. Counsel Fees

A. After Trial – Granted

In Cohen v. Cohen, ___ AD3d ___ (1st Dept. 2014)(Case No. 12807), both parties

appealed from a May 2013 Supreme Court Judgment, which, among other things, directed the husband to: pay the wife defendant non-durational maintenance of $26,000 per month; maintain the wife's two $300,000 life insurance policies; and to purchase and maintain a $2.5 million life insurance policy naming the wife as sole beneficiary. The maintenance award was stayed pending appeal and reduced to $10,000 per month during the pendency of the appeal. On appeal, the First Department modified, on the law and the facts, to reduce the amount of non-durational maintenance to $22,500 per month and to reduce the amount of life insurance that the husband is required to purchase to $1,000,000, and otherwise affirmed. As to an appeal from a May 2013 Supreme Court order, which awarded the wife counsel fees in the sum of $175,000, the Appellate Division affirmed. The husband is 79, and is a US citizen. The wife is now 54, and was a citizen of Belgium and France. The parties entered into a June 1999 prenuptial agreement in France, which was upheld on a prior appeal (93 AD3d 506 [1st Dept. 2012]), and which provided that upon marriage, each party's premarital property would remain his or her separate property, that property titled in individual names acquired during the marriage would be the property of the person in whose name it was titled, and that jointly titled property acquired during the marriage would be jointly owned marital property. The parties married on June 14, 1999, and on July 10, 1999, their son was born. As to maintenance, the wife's net worth statement, excluding housing costs, listed monthly expenses of more than $62,000, and the Appellate Division stated: "we find that the award of $26,000 per month in non-durational maintenance is excessive, and should be reduced to $22,500 per month." The First Department noted: "Here, defendant had the primary homemaking and child-raising responsibilities during the marriage. The parties enjoyed a lavish lifestyle, both before and, significantly, after their separation, and plaintiff assumed the role of financial provider, acquiescing in defendant's

financial dependency. Defendant is not going to receive a distributive award, her own assets are limited, and the record does not contain evidence of the amount of income that she will receive from [a] Trust. Defendant also suffers from a mild cognitive impairment that compromises her ability to work, both within and outside of the film industry, and she is incapable of supporting herself at a standard of living approximating the marital standard." The First Department agreed that life insurance was appropriate, but stated: "However, in view of our reduction of the maintenance award, and the high premium costs due to plaintiff's advanced age, the amount of additional insurance that defendant is required to purchase should be reduced from $2.5 million to $1 million." The Appellate Division upheld the $175,000 counsel fee award, "considering the financial positions of the parties and the circumstances of the case, including the unnecessary litigation caused by defendant."

B. Deferral (with expert fees) to Trial Court – Reversed

In Carlin v. Carlin, ___ AD3d ___ (2d Dept. Aug. 27, 2014) (Case No. 2013-00013), the wife appealed, by permission, from a December 2012 Supreme Court order, which referred to the trial court her motion for an award of temporary counsel fees of $307,350 and temporary expert witness fees of $88,246.19. By order entered January 9, 2013, the Second Department granted the wife's motion for a stay of the trial of the action, pending appeal. On appeal, the Appellate Division reversed, on the law, on the facts, and in the exercise of discretion, and granted the wife's motion, to the extent of $307,350 for counsel fees and $67,111.19 for expert fees. The Second Department held: "courts should not defer requests for interim counsel fees to the trial court, and should normally exercise their discretion to grant such a request made by the nonmonied spouse, in the absence of good cause—for example, where the requested fees are unsubstantiated or clearly disproportionate to the amount of legal work required in the case—

articulated by the court in a written decision, " citing Prichep v Prichep, 52 AD3d 61, 65-66 (2d Dept. 2008). The Appellate Division found that "Supreme Court improvidently exercised its discretion in referring the defendant's motion for interim counsel fees to the trial court for determination. The evidence before the Supreme Court revealed a gross disparity in the parties' income, that the defendant is the nonmonied spouse, and that the plaintiff's income in 2010, when he filed a separate tax return, exceeded $27,000,000 (citations omitted). This evidence demonstrated that the defendant lacks the resources to litigate this action. In light of the significant economic disparity between the parties, and based on the documentation submitted by the defendant in support of her motion, the Supreme Court should have awarded her interim counsel fees in the sum of $307,350 *** [and] *** the sum of $67,111.19 to pay for the services of [named experts]."

C. Denied - Request Untimely; Rule Compliance Lacking

In Matter of Silver v. Green, ___ AD3d ___ (2d Dept. July 16, 2014)(Case No. 2013-04559), the father petitioned to modify the visitation provisions of May 2008 stipulation, and appealed from a March 2013 Family Court order which, after a hearing, denied his motion for an award of counsel fees and granted that the mother's cross motion for the same relief, as to her opposition to the father's modification petition. The mother cross-appealed from so much of the same order as granted her cross motion for counsel fees, only to the extent of $40,000, and denied her request for counsel fees for legal services rendered after the completion of the modification proceeding. On appeal, the Second Department modified, on the law and the facts, by denying the mother's counsel fee award for her opposition to the modification of visitation, and otherwise affirmed. Citing DRL 237 ["Applications for the award of fees and expenses may be made at any time or times prior to final judgment"], the Court held: "*** the mother's cross

motion which was for an award of an attorney's fee in connection with her opposition to the petition seeking modification of visitation should have been denied as untimely, since the cross motion was made after a final order of visitation had been entered in the modification proceeding (citations omitted). To the extent that the mother also sought an award of an attorney's fee for services rendered in connection with matters that postdated the issuance of the final order of visitation in the modification proceeding, the Family Court did not improvidently deny that request (citations omitted) The father's motion for an award of an attorney's fee was properly denied, based on his failure to substantially comply with 22 NYCRR 1400.3 (citations omitted)."

V. Custody

A. Forensic Report Stricken

In J.C. v A.C., ___ Misc3d ___, NY Law Journ. May 5, 2014 (Sup. Ct. Nassau Co., Goodstein, J., Apr. 7, 2014), the parties had stipulated to temporary relief, including temporary primary custody of the 3 children to the wife, in May 2013. In the fall of 2013, the husband moved for custody modification. The Court appointed a neutral psychologist, from the approved Second Department list in November 2013, who issued a January 2014 report. The Court held a hearing over the course of 7 days in March 2014. On the father's motion, the Court struck the report, finding, among other things, that the expert failed to address the factors suggested by the Matrimonial Commission, and, further, failed to consult with collateral mental health professionals and failed to request or review documents. The case history included orders of protection, arrests, CPS reports, Family Court findings on sexual abuse, and the wife had suffered a traumatic brain injury. Supreme Court found that the psychologist based her conclusions "upon the self reporting of the parties," and therefore referred the matter to a new evaluator.

B. *In Camera* Examination – Pretrial

In T.E.G. v. G.T.G., 2014 Westlaw 2016587 (Sup. Ct. Monroe Co., Dollinger, J., May 8, 2014), the wife moved for recusal upon the ground that the Court met *in camera* with the children before trial, and also seeks a copy of the transcript of the *in camera* interview. Both the husband's counsel and the attorney for the children opposed the wife's motion. More than 6 weeks before the recusal motion, during a prior conference, the parties traded allegations that the other party was "coaching" the children as to what to say to the attorney for the children regarding their living preferences, and questioned whether the attorney for the children "was accurately summarizing the children's preferences." Supreme Court decided, without objection by any counsel, to hold a "Lincoln" hearing and asked each attorney to offer questions to be posed to the children. However, the day before the scheduled meeting with the children, the wife changed attorneys and asked that the hearing be rescheduled "to give the new attorney time to get familiar with this case and submit [her] own questions to the court." Supreme Court denied the request for adjournment and proceeded with the meeting with children as scheduled. The Court denied the wife's motion for the transcript, based upon confidentiality concerns, and for recusal, finding no basis for a claim of bias or other grounds for disqualification. Supreme Court found that the meeting with the children was not a "Lincoln" hearing, which is held after the proof has closed, but, rather, was "a permissive *in camera* interview" with the children, citing Matter of Rush v. Roscoe, 99 AD3d 1035 (3d Dept. 2012). Supreme Court noted further: "the court should confer with the children if either counsel suggests - as occurred in this case - that the children's court-appointed attorney may not be accurately advocating for the children's preference in both temporary and permanent orders involving residence and visitation," citing Matter of Jessica B. v. Robert B., 104 AD3d 1077 (3d Dept. 2013).

C. Modification – Granted; AFC Substituted Judgment

In Matter of Eastman v. Eastman, ___ AD3d ___ (4th Dept. June 13, 2014)(Case No. 13-01114), the mother appealed from a September 2012 Family Court order, which modified a judgment of divorce and incorporated agreement, by directing that the parties shall have joint legal custody of the subject child, age 7, but that primary residence shall be transferred from the mother to the father. On appeal, the Fourth Department affirmed without costs. The Appellate Division upheld Family Court's finding of changed circumstances, which included the fact that the mother moved several times, including one move three hours away from the father. Even though the mother had moved back near the father at the time of the hearing, the Fourth Department found: "the record supports the court's determination that the mother's various relocations had been made to further her own interests, rather than to benefit the child. There was testimony that the child, who has Down syndrome, would benefit from a stable home environment, which the father could better provide." The Appellate Division found that the mother did not preserve her claim that the Attorney for the Child (AFC) improperly substituted her judgment for that of the child, "because the mother did not move to remove the AFC," and, further found that the child, who was seven years old at the conclusion of the hearing and functioned at a kindergarten level, 'lack[ed] the capacity for knowing, voluntary and considered judgment.'"

D. Modification – Hearing Granted; Corporal Punishment

In Matter of Isler v. Johnson, ___ AD3d ___ (4th Dept. June 20, 2014)(Case No. 13-01636), the mother and the attorney for the children appealed from an August 2013 Family Court order which dismissed, without a hearing, her petition to modify a May 2013 stipulated Family Court order, which, in turn, provided for joint custody of the children with primary

residence to the father. The parties' 2011 judgment of divorce incorporated a written agreement which had provided for custody to the mother and visitation to the father. The mother's petition alleged that the father had used excessive corporal punishment against one of the children and refused to permit visitation as stipulated. On appeal, the Fourth Department reversed, on the law, reinstated the petition and remitted to Family Court. The Appellate Division held that the mother's allegations that the father imposed excessive and inappropriate discipline on the subject children, including corporal punishment, were sufficient to warrant a hearing, as were the mother's allegations that the father had refused to permit her to exercise visitation with the subject children.

E. Modification – Pre-existing circumstances

In Matter of Frisbie v. Stone, ___ AD3d ___ (4th Dept. June 20, 2014) (Case No. 12-02055), the father appealed from an October 2012 Family Court order which terminated his visitation with the child. On appeal, the Fourth Department affirmed, rejecting the father's contention that the mother failed to establish a change of circumstances sufficient to justify modification of the prior custody order, which granted supervised visitation to the father. The Appellate Division found: "Here, the mother established, among other things, that the father allowed a man he met in jail to have sexual intercourse on multiple occasions with his older daughter, who was then 16 years old, in return for drugs. The man in question was convicted of rape in the third degree for having intercourse with the underage girl, and he testified at the custody hearing regarding the father's role in arranging the illegal sexual activity. The mother also established that the father, a two-time convicted felon, smoked crack cocaine in the presence of his older daughter." With regard to the pre-existing circumstance issue, while it was true that the father's conduct occurred *before* the prior custody order was entered, the mother proved that

the father's conduct was not known by her or the court at the time of the stipulated prior order. The Fourth Department concluded "that the mother's newfound awareness of the father's prior conduct constitutes a sufficient change in circumstances to modify the father's visitation rights.

F. Modification – To Father – After Appeal

In Matter of Reyes v. Gill, ___ AD3d ___ (2d Dept. July 16, 2014)(Case No. 2013-09826), the father appealed from an October 203 Family Court order, which, after a hearing, denied his petition to modify a January 2005 order, whereunder the mother had custody of the child, so as to award him sole custody. The Appellate Division stayed the Family Court Order in November 2013, pending hearing and determination of the appeal. On appeal, the Second Department reversed, on the facts and in the exercise of discretion, granted the father's petition and remitted for a determination of the issue of the mother's visitation, pending which, the mother was to have visitation pursuant to a May 2011 temporary order. In reversing, the Appellate Division found: "The Family Court failed to accord sufficient weight to the child's educational performance while in the father's care, as compared to the child's performance while in the mother's care. While in the mother's care, the child missed 67 days of school during the 2010-2011 school year, after which he was not promoted to the next grade. In an order of the Family Court dated May 23, 2011, the father was awarded temporary custody. In the beginning of the 2011-2012 school year, the child was 'well below' grade level in reading, spelling, and mathematics, and he was 'struggling academically.' While in the father's care, commencing during the 2011-2012 school year, the child has regularly attended school, and his academic performance has improved. The Family Court failed to consider the hearing testimony of the child's school teacher for the 2011-2012 school year. The teacher testified that, while the child was in the father's care, he improved from well below grade level to above grade level in

reading, spelling, and mathematics." The Second Department also held that Family Court "failed to accord sufficient weight to the child's need for stability, to the impact that uprooting him from the place he has lived and the school he has attended since May 2011 would have upon his development, and to the child's preference, expressed through his attorney, to remain with the father. Additionally, the Family Court failed to consider that the home environment provided by the father is more suitable for the child than that provided by the mother. (citation omitted). The child has his own bedroom in the father's home, whereas the child would share a one-bedroom apartment with the mother, her boyfriend, and their newborn baby."

G. Modification - to Father – Mother "cannot be trusted" on best interests

In E.V. v. R.V., 44 Misc3d 1210(A) (Sup. Ct. Westchester Co., Colangelo, J., July 2, 2014), the parties were divorced in June 2009, following a trial in Family Court on the issues of custody, which resulted in joint legal custody of their child (born in February 2005), final decision making to the mother, and equally shared physical custody. The Family Court order was incorporated into the judgment of divorce. In September 2010, the mother filed a modification proceeding in Family Court, and a forensic evaluator was appointed in May 2011. The mother then brought a Supreme Court motion for a money judgment for alleged child support arrears and other relief, and the father cross moved to remove the Family Court proceeding to Supreme Court, suspend child support payments, and award him sole legal and physical custody. An August 2011 Supreme Court order, among other things, removed the Family Court proceeding to Supreme Court, and directed a trial on all remaining issues, which began in April 2012 and lasted for 44 days. Supreme Court, in a detailed decision, awarded the father sole legal custody with final decision making authority, subject only to an obligation to advise the mother promptly of such decisions, and further, designated him as the parent with

primary physical custody, while maintaining an equal sharing of physical custody, on a week on, week off basis, while continuing the former vacation and holiday schedule. No summary can do justice to this decision, so a reading is encouraged, but here is a key excerpt from the Court's findings:

> In essence, [mother] cannot be trusted to make [important] decisions dispassionately, with only [the child's] best interests at heart. When left to her own devices, she misused her decision making authority to trot a mentally healthy child to numerous psychological appointments clearly aimed to deprive him of a relationship with his father - - a result that may have, and if allowed to recur, certainly will rob [the child] of his remaining childhood, as [the forensic expert] feared. Nor has she hesitated to either concoct or repeat stories *** of alleged abuse by [the father] -- that she did not believe herself, thereby misleading the health care professionals and the Court alike in order to further her own agenda.

H. Relocation - Granted (to Georgia) on Appeal

In Matter of Doyle v. Debe, ___ AD3d ___ (2d Dept. Aug. 20, 2014)(Case No. 2013-01152), the mother appealed from a December 2012 Family Court order which, after a hearing, denied her petitions for sole physical custody and for permission to relocate to Georgia with the child, and granted the father's petition for sole physical custody. On appeal, the Second Department reversed, on the facts and in the exercise of discretion, granted the mother's petitions for sole physical custody and for permission to relocate to Georgia with the child, denied the father's petition for sole physical custody, and remitted to the Family Court for a hearing to establish an appropriate post-relocation visitation schedule for the father. The parties married in 2002, and the mother relocated to New York from California. The child was born in March 2006. The parties separated in 2007 and the mother returned to California with the child, but they then reconciled, and the mother and the child returned to New York. The parties separated again in May 2008, at which time the child initially lived with the mother, but, in August 2008, the child began living with the father, under disputed circumstances: the mother claimed that the father

was supposed to have the child for a four-day visit but refused to return her, and the father contends that the mother abandoned the child. In September 2008, the mother filed a petition for sole physical custody, alleging that she had a letter from the father in which he stated that the mother could have sole custody. Four days later, the father filed a petition for sole physical custody. In April 2010, the mother moved to Georgia and began living with her then-fiancé, whom she later married. In October 2010, the mother filed a petition to relocate to Georgia with the child, alleging a long history of domestic violence between the parties. The mother's petition also alleged that in Georgia, she would be able to provide housing and amenities for the child, which were superior to those which she or the father could provide in New York. In December 2012, the Family Court held a fact-finding hearing on the petitions, during which a 2008 document, entitled "Separation Agreement," was received into evidence, and which provided: the mother would have sole physical custody of the child; the father would pay child support; and acknowledged that the mother would be relocating with the child. The mother testified that when they divorced in July 2010, a second document, entitled "Custody Agreement" (signed and notarized and also admitted into evidence at the fact-finding hearing), provided: the child would "be in her mother's care during Georgia school year. [The child] will have visits with her father . . . during summer [break] and spring [b]reak and every other Christmas." The mother testified that, since moving to Georgia, she saw the child frequently, including during the summer and over the spring and Christmas breaks. She explained that she had been renting a three-bedroom house in Georgia with her husband, who had family in Georgia, for over two years, and that the child had her own room there. The mother had found a school and chosen a doctor in the area for the child. The court-appointed forensic evaluator testified that the mother was the more appropriate custodial parent and that it would be in the child's best interests to live with the

mother, as she would provide a more stable environment for the child. The Appellate Division found: "Family Court's determination as to custody and relocation were not supported by a sound and substantial basis in the record. The court did not give appropriate weight to the credible evidence before it, including the testimony of the parties and witnesses, one of whom was a forensic evaluator. *** While the father has relatives living in the area, the living conditions provided by the father raise a significant concern since the child shares a bedroom with the grandmother in a one-bedroom apartment and lives with her father and two adult uncles. *** In addition, although this Court recognizes that the child has been residing with the father since 2008, the mother immediately filed a petition for sole physical custody in 2008. Thus, the fact that the child has been residing with the father and not the mother since that time is not a factor which weighs in favor of awarding custody to the father since the amount of time that elapsed between the filing of the mother's petition and the Family Court's determination on the petitions should not be weighed against the mother."

I. Relocation – Granted (to Michigan)

In Ortiz v. Ortiz, ___AD3d ___ (2d Dept. June 11, 2014)(Case No. 2012-11332), the father appealed from a November 2012 Family Court order, which, after a hearing, granted the mother's petition to relocate to Michigan with the parties' child. On appeal, the Second Department affirmed, holding that "Family Court's determination has a sound and substantial basis in the record, and noting that the mother and child "were living in temporary housing provided by their church and that they were at risk of ending up in a shelter" and could no longer afford their former apartment because "they were not receiving any consistent or meaningful support from the father, who had recently been released from incarceration." The Appellate Division further found: "In Michigan, the mother could afford a clean, modern, and spacious

two-bedroom apartment, near public transportation, on her disability benefits alone. She had researched the school district the child would attend and the medical providers he would see, and testified to the assistance of a network of friends who had already demonstrated their willingness to provide her and the child with much needed support and stability. Although the father was no longer incarcerated, he had not been fully exercising his visitation rights and was not intimately involved in the child's daily life. Moreover, although he had obtained employment several months before the instant petition was filed, the father only revealed this employment and began offering meaningful financial support after the mother proposed the move. In any event, the liberal visitation schedule, including extended visits during summer and school vacations, will allow for the continuation of a meaningful relationship between the father and the child." (citations omitted). In addition, the position of the attorney for the child is that relocation is in the child's best interests, and that position, since it is not contradicted by the record, is entitled to some weight (citations omitted).

J. Relocation – Hearing Necessary

In Lauzonis v. Lauzonis, ___ AD3d ___ (4th Dept. Aug 8, 2014)(Case No. 13-02014), the mother appealed from a January 2013 Supreme Court order, which denied her motion to relocate from Lewiston to Grand Island, a distance of 17 miles. On appeal, the Fourth Department modified, on the law, and remitted to Supreme Court. An order of custody and visitation provided that "neither party shall relocate the children out of their current school district without written consent from the other parent or a court order approving of same." The father thereafter cross-moved for sole custody of the children. Supreme Court denied the mother's motion and ordered a hearing on the father's motion for sole custody. The Appellate Division held that Supreme Court "erred in denying her motion without conducting a hearing" to

determine whether the relocation is in the children's best interests. The Fourth Department found: "Here, defendant averred that she was unable to find appropriate, affordable housing or a suitable teaching position in the high-priced Lewiston area (citations omitted). Although plaintiff disputed several of defendant's factual assertions, particularly with respect to the extent of her job search, he did not assert that the proposed move would be detrimental to the children or to his relationship with the children, and he provided no reason for opposing the move, other than defendant's alleged failure to show a change in circumstances (citations omitted). *** [t]here is no indication in the record that plaintiff's access to the children would be significantly affected by the move. (citations omitted). Further, there is no indication in the record that the quality of the education provided by the Grand Island School District is inferior to that of the Lewiston-Porter School District, or that the children's lives would be enhanced educationally by remaining within the Lewiston-Porter School District (citations omitted). Contrary to the further contention of defendant with respect to plaintiff's cross motion, however, we conclude that plaintiff made 'a sufficient evidentiary showing of a change in circumstances to require a hearing on the issue whether the existing custody order should be modified.'"

K. Right of First Refusal

In Matter of Saravia v. Godzieba, ___ AD3d ___ (2d Dept. Aug. 27, 2014), the father appealed from a July 2013 Family Court order, which, after a hearing, granted the mother's cross petition for sole custody of the subject child and awarded him only certain visitation, and denied his petition for sole custody of the subject child. On appeal, the Second Department modified, on the facts and in the exercise of discretion, by adding a provision directing that when one parent is working, that parent, prior to making babysitting arrangements with a nonparent, shall first afford the other parent the opportunity to care for the subject child during such work period.

The child was born in September 2011 and the parties resided together for approximately six months, until the mother moved out with the child. In June 2012, the father filed a petition for sole legal and physical custody, and the mother cross-petitioned for the same relief. The Appellate Division held that "there is a sound and substantial basis in the record to support the Family Court's determination that it was in the best interests of the child to award sole custody to the mother, with visitation to the father (citations omitted). *** Family Court *** found that the mother was better suited to place the child's interests ahead of her own and to foster the child's relationship with the other parent."

L. Sole – Long Separation with *de facto* custody

In Matter of Eison v. Eison, ___ AD3d ___ (2d Dept. July 16, 2014)(Case No. 2013-10801), the father appealed from a November 2013 Family Court order, which, after a hearing, awarded the mother sole legal and physical custody of the children. On appeal, the Second Department affirmed, finding "a sound and substantial basis in the record," given the parties' separation, "for the most part, *** for many years, and during the period of separation, the children have resided with the mother." The Appellate Division noted: "Although there was evidence that the father was a loving parent, the court properly concluded that it was in the children's best interests to remain with their mother (citations omitted). Moreover, the liberal visitation schedule gives the father a meaningful opportunity to maintain a close relationship with the children (citations omitted)."

M. Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) [8 USC 1101(a)(27)(J)] was granted in Matter of Cristal MRM, ___AD3d ___ (2d Dept. June 18, 2014)(Case No. 2013-10647); Matter of Saul AFH v. Ivan LM, ___AD3d ___ (2d Dept. June 18, 2014)(Case No. 2013-10259); Matter of Diaz

v. Munoz, ___ AD3d___ (2d Dept. June 25, 2014)(Case Bo. 2013-08590) and denied in Matter of Mira v. Hernandez, ___ AD3d ___ (2d Dept. June 25, 2014)(Case No. 2013-08906).

N. UCCJEA - Home State (Ecuador)

In BNDA v. MGM, ___ Misc3d ___, NY Law Journ. May 9, 2014 (Sup. Ct. Suffolk Co., Quinn, J. Apr. 3, 2014), the parties were married in December 2000 in Ecuador and have two children. The parties resided as husband and wife in NY from 2000 to 2008. At some point in late 2007 or early 2008, the children and the wife went to live in Ecuador. The children were in Antigua with the husband from July 2011 to April 2012. The wife commenced this action for divorce in July 2012, relying upon the husband's NY residency to satisfy DRL 230. The husband had filed a petition in August 2011, wherein he stated that he had always been domiciled in NY during the married, had a NY driver's license and also owned property in NY. Supreme Court determined that Ecuador was the children's home state. The husband moved to dismiss the wife's divorce action upon the ground that because the Court could not determine the issue of custody, DRL 170(7) could not be satisfied. Supreme Court bifurcated the action, finding that NY was the most convenient forum for equitable distribution and support, while deferring custody to Ecuador. Supreme Court ruled that if custody is not determined in Ecuador before the NY action is concluded, then it would hold the final judgment in abeyance until the custody issues are resolved.

O. UCCJEA – Imminent Harm

In Matter of Rodriguez v. Rodriguez, ___AD3d ____ (2d Dept. June 25, 2014)(Case No. 2013-08218), the mother sought to modify a consent April 2011 Florida custody order, pursuant to which the child lived with the father, to grant her sole custody. The mother received temporary physical custody pursuant to a July 30, 2013 Family Court order which expired

August 16, 2013. Family Court issued an August 2, 2013 order which transferred the petition to Florida, but failed to determine whether the child was in imminent risk of harm if he were to be returned to the father while the petition was pending. The Appellate Division issued an order on September 19, 2013, which granted the child's motion to stay enforcement of the August 2, 2013 order, to the extent of directing that temporary physical custody of the child shall remain with the mother pending either hearing and determination of the appeal or a determination of the issue of whether the child is in imminent risk of harm by either Family Court or a court in the State of Florida, whichever occurs first. On the child's appeal, the Second Department reversed, on the law, and remitted to Family Court, and directed that until further order of Family Court, temporary physical custody of the child shall remain with the mother. The mother's petition alleged physical and verbal abuse by the father, and that the father was dealing illegal drugs in the child's presence. The Appellate Division found: "Although the Family Court found that the mother made a prima facie showing for a hearing on the issue of whether the child was in imminent risk of harm if he were to be returned to the father while the petition was pending, the Family Court determined that Florida was the proper venue to make a determination on that issue, and declined to do so itself. ***We note that, since the issuance of the order appealed from, no proceedings have taken place on the petition in the State of Florida." The Court conclude: " Under the circumstances of this case, we agree with the child that the Family Court itself should have held the hearing on the issue of imminent harm and made a determination on that issue (*see* Domestic Relations Law § 76-c; other citations omitted)."

P. UCCJEA vs. Hague Convention

In Matter of Katz v. Katz, 2014 Westlaw 2198516 (2d Dept. May 28, 2014) (Case No. 2013-10750), the father appealed from a December 2012 Family Court Order, which dismissed

his custody petition, without a hearing. On appeal, the Second Department reversed, on the law, reinstated the petition and remitted to Family Court for a hearing and determination. On November 23, 2011, the father filed a petition for custody, stating that the mother took the parties' child on October 2, 2011, from her residence in Bronx County to the Dominican Republic, without his permission. Family Court held the proceeding in abeyance, pending a determination by the Dominican Republic court of the father's Hague Convention request for return of the child to her country of habitual residence. On October 5, 2012, the Dominican Republic Court rejected the father's request, finding that "if the child were returned to the United States she would be exposed to a violation of her fundamental rights due to issues of domestic violence." Family Court found that it was required dismiss the father's petition, based upon the denial of the Hague Convention request. The Appellate Division noted: "A decision under the Convention is not a determination on the merits of any custody issue, but leaves custodial decisions to the courts of the country of habitual residence." Finding that the United States was the child's country of habitual residence under the Hague Convention, and that, at the time the petition was filed, New York was the child's "home state" (DRL §75-a[7]), the Second Department held that the Family Court had jurisdiction to determine the father's petition for custody under DRL §76(a). The Appellate Division concluded: "Moreover, the denial, by the court in the Dominican Republic, of the father's application for a return of the child pursuant to the Convention, did not preempt his custody proceeding (*see In re T.L.B.* , 272 P3d 1148 [Colo App]; *see also* Merril Sobie, Supp Practice Commentaries, McKinney's Cons Laws of N.Y., Book 14, Domestic Relations Law § 75-d)."

Q. Visitation – Modified – Denigration of Custodial Parent; Lack of Communication

In Matter of Weiss v. Rosenthal, ___ AD3d ___ (2d Dept. August 6, 2014)(Case No. 2013-03563), the father appealed from a February 2013 Family Court order, which, after a hearing, granted the mother's petition to modify a July 2011 consent order, so as to change the father's visitation with the subject child. [Ed. note: Neither the sought nor granted change was specified]. On appeal, the Second Department affirmed, finding that "the mother established that the father's unwillingness to communicate appropriately with the mother about the subject child's health and welfare, and the unchecked and persistent denigration of the mother in the child's presence by the paternal grandparents with whom the father resides, and the father's failure to discourage such conduct as well as his participation in such conduct, constituted a change in circumstances warranting a modification of the existing visitation order. The court's determination with respect to custody and visitation depends to a great extent upon its assessment of the credibility of the witnesses and upon the character, temperament, and sincerity of the parents (citations omitted) *** [and its] credibility determinations are entitled to great weight ***. The Family Court properly determined that it was in the child's best interests to change the father's visitation schedule."

R. Visitation - Therapeutic - Denied – Child's Wishes

In Iacono v. Iacono, 2014 Westlaw 2198406 (2d Dept. May 28, 2014) (Case Nos. 2013-09503 and 09504), the mother appealed from an August 2013 Supreme Court order which, after after a hearing, awarded sole custody of the parties' children to the father, and a September 2013 order of the same Court, which reduced her visitation with the parties' son and did not award her visitation with the parties' daughter. On appeal, the Second Department affirmed both orders, finding that it was in the best interests of the children to award sole custody to the father, for reasons which were unspecified. The Appellate Division rejected the mother's contention that

Supreme Court erred by deciding therapeutic supervised visitation with the parties' daughter would not be in her best interests. The Second Department noted that "Supreme Court properly considered the wishes of the child, who was nearly 14 years old at the time of the hearing and mature enough to express her wishes" and "did not improvidently exercise its discretion in denying the mother any visitation with the daughter."

VI. Divorce

A. Abatement of Action and Automatic Orders

In A.V.B v. D.B, 2014 Westlaw 1924366 (Sup. Ct. Westchester Co., Marx, J., April 17, 2014), the parties were married in August 1999 and had two children. The wife commenced the divorce action in September 2012. A March 2013 preliminary conference stipulation and order provided that the grounds for divorce were not an issue and that there was an agreement upon a divorce pursuant to DRL 170(7), after trial or upon submission of an agreement resolving the ancillary issues. The wife died in April 2013. The husband thereafter learned that in February 2013, the wife had changed the beneficiary of her retirement plan and a life insurance policy from the husband as sole beneficiary, to, in the case of the retirement plan, the children as 50% beneficiaries each, and, in the case of the life insurance, the husband as 1% beneficiary, one child as 49% and the other child as 50% beneficiaries. The husband sought an order mandating the retirement plan and the life insurance company to pay all proceeds to him, based upon his claim that the wife had violated the automatic orders arising from DRL 236(B)(2)(b). Supreme Court denied the husband's motion, finding that the divorce action abated upon the wife's death, and rejecting the husband's argument that the granting of a divorce was merely a ministerial act. Therefore, given the abatement, all temporary orders, including the automatic orders, ceased to exist upon the wife's death. Notably, no divorce can be granted pursuant to DRL 170(7) until the

ancillary issues are resolved by the Court or by agreement of the parties; here, the ancillary issues were not resolved.

B. Abatement of Action – Not found

In Cristando v. Lozada, ___ AD3d __ (2d Dept. June 18, 2014)(Case No. 2013-01770) the husband appealed from a January 2013 Supreme Court judgment, rendered upon a December 2012 decision made after a nonjury trial, which: (a) denied his request to abate the action based on the death of the wife; (b) awarded the defendant the sum of $70,986.76 for arrears accrued pursuant to an August 2010 pendente lite child support order; (c) awarded the defendant the sum of $16,372, representing a portion of the proceeds of a refinancing of the now-deceased wife's separate property; (d) awarded the defendant the sum of $8,321, representing the now-deceased wife's share of the cash surrender value of a life insurance policy purchased during the marriage; and (e) directed him to pay the defendant's counsel fees in the sum of $112,097.98. On appeal, the Second Department modified, on the law, on the facts, and in the exercise of discretion, by deleting the provision thereof directing the plaintiff to pay the defendant's counsel fees in the sum of $112,097.98, and substituting therefor a provision directing the plaintiff to pay the defendant's counsel fees in the sum of $84,073.49, and otherwise affirmed. Supreme Court granted the plaintiff a divorce on the ground of constructive abandonment, but withheld entry of a judgment of divorce until the trial on the ancillary issues was completed. After the trial, but before a decision, the wife died. The wife's estate's personal representative was substituted as a defendant in place of the wife. The plaintiff husband requested that the court abate the action due to the wife's death. The Appellate Division held: "Contrary to the plaintiff's contention, the action did not abate upon the death of the wife, since the court had made the final adjudication of divorce before the wife's death, but had not performed the 'mere ministerial act of entering the

final judgment' (*Cornell v Cornell,* 7 NY2d 164, 170). In addition, a cause of action for equitable distribution does not abate upon the death of a spouse." The Court, in modifying counsel fees, stated: "However, the Supreme Court improvidently exercised its discretion in directing the plaintiff to pay 100% of the defendant's counsel fees. A counsel fee award for 75% of the defendant's counsel fees, or $84,073.49, is more appropriate under the circumstances of this case."

C. DRL 230 Residency

In Murjani v. Murjani, ___ Misc3d ___, NY Law Journ. May 5, 2014 (Sup. Ct. N.Y. Co. Drager, J., April 17, 2014), the parties were married in Hong Kong in January 1968. They are citizens of India and hold passports from India. The parties lived in numerous places throughout the marriage, including Hong Kong, New York, London and Mumbai. The husband purchased a co-op in NYC in 1983 and transferred ownership thereof to the wife in 1985. The husband commenced the divorce action in March 2012 based upon the wife's residency in the NYC apartment. The wife commenced an action in India in January 2014, seeking to restrain the husband from proceeding in the NY action. The wife moved for summary judgment dismissing the NY action, upon the ground that the DRL 230 residency requirements were not met. The husband cross moved to restrain the wife from proceeding in the action in India. Supreme Court denied the wife's motion and granted the husband's cross motion, finding that while the parties were not domiciled in NY, the wife spent more days in NY in the 2 years preceding the action than in any other place. The wife's passport lists only her NYC address and she has regular medical appointments in NYC, has bank accounts and safe deposit boxes in NYC, and also stored a significant portion of the parties' art collection in the NYC apartment. While the wife did stay in other places in the 2 years prior to the commencement of the action, there was no

place to which she returned with greater frequency than the NYC apartment.

D. No-fault – Summary Judgment

In Alvarado v. Alvarado, ___Misc3d___ (Sup. Ct. Richmond Co., DiDomenico, J., July 24, 2014), Plaintiff wife commenced an action pursuant to DRL 170(7) and served a Verified Complaint in June 2012, which contained the required sworn statement that the marriage had broken down irretrievably for at least 6 months prior to the commencement of the action. The court entered a preliminary conference order in September 2012, which indicated that the issue of the grounds for divorce was resolved. The wife then moved in October 2013 to discontinue her action for divorce, which motion was granted, upon the condition that the husband be permitted to amend his answer to include a counterclaim for divorce. The wife filed a demand for a jury trial in March 2014, and in April 2014, the husband moved to vacate the jury demand and for summary judgment on the grounds for divorce. The Court granted the husband's motion for summary judgment, but did not expressly grant or deny the motion to vacate the jury demand. [Editor notes: (1) The jury demand could be considered to be moot, or in the alternative, it is encompassed in the court's conclusion: "All issued not decided herein are hereby referred to trial." (2) One wonders how there is subject matter jurisdiction to grant summary judgment, given the emphasized statutory language: "*No judgment of divorce shall be granted* under this subdivision *unless and until the economic issues* of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage *have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce*."]

VII. Equitable Distribution

A. Proportions – Businesses; Reduction of Mortgage Principal

In Hymowitz v. Hymowitz, ___ AD3d ___ (2d Dept. July 16, 2014)(Case No. 2012-03852), the wife appealed from March 2012 Supreme Court judgment, which, among other things, awarded her child support in the sum of only $147.12 per week, awarded her maintenance for only seven years, determined that the husband's interest in Weinstein & Holtzman, Inc., was his separate property and awarded her sum of only $69,900, representing 15% of the increase in the value of his interest in that business, determined that the husband's 1/3 interest in BSH Park Row, LLC, was his separate property and awarded her the sum of only $184,950, representing her 15% share of the value of that business, and failed to equitably distribute a share of the husband's interest in HGH Family, LLC, by awarding her only 50% of the net profit distributions that the plaintiff receives from HGH Family, LLC, until her 66th birthday, awarded the husband a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage on the marital residence. The Second Department modified, on the law, on the facts, and in the exercise of discretion: by deleting the provision thereof awarding the wife $69,900, representing 15% of the increase in value of the husband 's interest in Weinstein & Holtzman, Inc., and substituting therefor a provision awarding her $116,500, representing 25% of the increase in value of the husband's interest in that business; by deleting the provision thereof awarding the wife $184,950 as her separate property interest in BSH Park Row, LLC, representing 15% of the value of the husband's interest in that business, and substituting therefor a provision determining that the husband's 1/3 interest in BSH Park Row, LLC, is marital property subject to equitable distribution, and awarding the wife $308,250, representing 25% of the value of the husband's

interest in that business; by deleting the provision thereof awarding the wife 50% of the net profit distributions that the husband receives from HGH Family, LLC, until her 66th birthday, and substituting therefor a provision directing that the husband's interest in HGH Family, LLC, is marital property subject to equitable distribution, and awarding the wife distributions from her equitable share of the husband's interest in HGH Family, LLC, retroactive to the date of the commencement of the action, in an amount to be calculated by the Supreme Court, representing 40% of the value of the husband's interest in that business; by deleting the provision thereof awarding the husband a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage on the marital residence during the divorce proceedings, and substituting therefor a provision awarding the husband a credit for 50% of the payments he made to reduce the principal balance of the mortgage on the marital residence during the divorce proceedings; by deleting the provision thereof awarding child support based only upon the first $130,000 of combined parental income, and substituting therefor a provision awarding child support based upon the first $175,000 of combined parental income; by deleting the provision thereof awarding the defendant maintenance in the sum of $6,250 per month, commencing with the 49th month after the signing of the amended judgment and continuing for 36 months thereafter, and substituting therefor a provision awarding her maintenance in the sum of $6,250 per month, commencing with the 49th month from the signing of the amended judgment and continuing until the earliest date of her remarriage, her attainment of age 66, or the death of either party; and remitted to Supreme Court for further proceedings. The parties were married in 1988, and have two children, who are now both over the age of 21. The Second Department found: "Contrary to the defendant's contention, the record supports the Supreme Court's conclusion that the transfer of a 1/3 interest in Weinstein & Holtzman, Inc.

(hereinafter Weinstein & Holtzman), a family-owned hardware store, to the plaintiff from his father and uncle which occurred during the marriage was tantamount to a 'gift from a party other than the spouse' and, thus, was the separate property of the plaintiff not subject to equitable distribution (citation omitted). The determination as to whether the transfer was a gift to the plaintiff depended upon the credibility of the witnesses at trial, and the credibility determinations made by the Supreme Court are supported by the record (citations omitted). However, we find that the Supreme Court should have awarded the defendant a 25% share of the appreciation in the value of the plaintiff's interest in Weinstein & Holtzman (citations omitted). Taking into consideration the circumstances of this case and of the respective parties, we find that an award to the defendant of a 25% share of the appreciation in value of the plaintiff's interest in Weinstein & Holtzman will take into account the defendant's limited involvement in the plaintiff's business, while not ignoring the direct and indirect contributions she made as the primary caretaker of the parties' children, as a homemaker, and as a social companion to the plaintiff, while foregoing her career (citations omitted)." The Court continued: "The Supreme Court improperly classified the plaintiff's 1/3 interest in BSH Park Row, LLC (hereinafter BSH), a holding company whose sole asset is a building located at 29 Park Row in lower Manhattan in which the hardware store is situated, as his separate property not subject to equitable distribution. *** Here, BSH was formed and the building was acquired during the marriage, and the plaintiff failed to meet his burden of tracing the use of claimed separate funds to establish that they were used for the purchase of his portion of the property's acquisition costs. *** Here, the Supreme Court should have awarded the defendant a 25% share of the plaintiff's interest in BSH. *** Further, based on the record and the relative contributions made by the parties throughout the marriage, the defendant should receive a 40% share of the marital interest in HGH. In addition, the defendant

should be awarded distributions from her equitable share of the plaintiff's interest in HGH, retroactive to the date of commencement of the action." As to the mortgage credit, the Appellate Division held that "Supreme Court improvidently exercised its discretion in awarding the plaintiff a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage during the divorce proceedings" and that "plaintiff was entitled to a credit of only 50% of the reduction in mortgage principal." As to maintenance, the Appellate Division found that "Supreme Court should have awarded the defendant maintenance until the earliest of her eligibility for full Social Security benefits at the age of 66, her remarriage, or the death of either party." With respect to the issue of child support, the Court stated: "There was no basis under the circumstances of this case to limit the child support award to the statutory cap of the first $130,000 of combined parental income. In view of the standard of living enjoyed by the parties' children during the marriage, and the earnings and assets of the parties, the child support award should be based upon $175,000 of combined parental income."

B. Separate Property – Credit Denied - Commingling

In Myers v. Myers, ___ AD3d ___ (3d Dept. July 10, 2014)(Case No. 517350), the wife commenced an action for divorce in December 2011 and appealed from a June 2013 Supreme Court judgment, which denied her a separate property origination credit in the sum of $165,000, representing the value of her residence acquired in 1994, 6 years prior to the parties' June 2000 marriage. The residence was unencumbered by any debt as of the date of marriage. In 2005, the residence was conveyed into the joint names of the parties, in connection with a mortgage used to consolidate debt, which was about $160,000 at or about the time of commencement of the divorce action. Supreme Court found that the marital residence and its

accompanying debt should be equally divided between the parties. On appeal, the Third Department affirmed, finding: "the wife *** agrees that the residence became marital property subject to equitable distribution upon her transfer of the deed into the parties' joint names in 2005," and "the decision to award a separate property origination credit in such a situation is a determination left to the sound discretion of Supreme Court." The Appellate Division noted that Supreme Court found "the overall picture is of the parties engaging generally in a financial partnership, of which the marital residence, and the loans thereupon, was simply one agreed-upon portion," and that "a review of the record reveals that the funds received from the mortgage, as well as the subsequent refinancing and home equity loan, enabled the wife and the husband to consolidate their debts, go on numerous family vacations, make improvements to the marital residence and, generally, live a lifestyle that may have been above their means. Notably, the wife's individual debt was eliminated by the proceeds of a new, jointly-held debt which, in turn, was primarily paid from the husband's income for a number of years."

c. Separate Property – Summary Judgment Granted

In Jacobi v. Jacobi, ___AD3d ___ (4th Dept. June 13, 2014) (Case No. 13-01875), the husband appealed from a September 2013 Supreme Court order, which denied his motion seeking summary judgment determining that he is entitled to $143,000 as his separate property upon the sale of the marital residence in Indiana and granted that part of the wife's cross motion seeking summary judgment determining that the proceeds of the sale of the marital residence in Indiana are to be divided equally between the parties. On appeal, the Fourth Department reversed, on the law, granted the husband's motion seeking summary judgment determining that the husband is entitled to $143,000 as his separate property upon the sale of the marital residence in Indiana, and denied the wife's cross motion seeking summary judgment determining that the

proceeds of the sale of the marital residence in Indiana are to be divided equally between the parties. The parties were married in New York shortly after they entered into a prenuptial agreement and relocated to Indiana. The wife defendant initiated a divorce action there. During the pendency of the divorce action, the husband commenced a New York action. The prenuptial Agreement states that "distribution of all marital property will not be governed by Section 236 of the New York Domestic Relations Law," but also provides that it "shall be interpreted in accordance with New York law." The Appellate Division noted: "Under New York law, '[i]t is well settled that a spouse is entitled to a credit for his or her contribution toward the purchase of the marital residence, including any contributions that are directly traceable to separate property' . . . , even where, as here, the parties held joint title to the marital residence' (Pelcher v Czebatol, 98 AD3d 1258, 1259). Plaintiff established that he contributed $143,000 to the purchase of the marital residence that was directly traceable to property defined in the Agreement as separate property."

VIII. Family Offense

A. Aggravating Circumstances – Menacing Second

Matter of Margary v. Martinez, ___ AD3d ___ (2d Dept. June 25, 2014)(Case No. 2013-06937, 06938), petitioner appealed from a May 2013 Family Court order of disposition and a 6 month order of protection, which found that respondent committed menacing in the second degree (Penal Law 120.14[1]), by displaying a gun and threatening the petitioner with it, but which order failed to provide stay away provisions and failed to find aggravating circumstances. On appeal, the Second Department (a) modified the order of disposition on the facts, by: (1) deleting the words "six months" and substituting therefor the words "five years," and (2) by adding thereto a decretal paragraph finding that aggravating circumstances exist,

including the use of a dangerous instrument by the respondent against the petitioner, and otherwise affirmed; and (b) modified the order of protection, on the facts and in the exercise of discretion by: (1) deleting the provision thereof directing that the order of protection shall remain in force until and including November 29, 2013, and substituting therefor a provision directing that the order of protection shall remain in effect until and including May 31, 2018 and (2) adding thereto a provision directing the respondent to stay away from the petitioner's home, school, business, and place of employment up to and including May 31, 2018, and otherwise affirmed. At the outset, the Appellate Division noted that even though the order of protection expired November 29, 2013, the petitioner's appeal from the order of protection has not been rendered academic, even though it has expired by its terms, citing Matter of V. C. v H. C., 257 AD2d 27, 32-33. The Second Department stated: "We agree with the petitioner that the Family Court improvidently exercised its discretion in fixing the term of the order of protection at a period of only six months. The record supported a finding of aggravating circumstances, based on the respondent's use of a dangerous instrument against the petitioner, which justified the issuance of an order of protection with a term of up to five years (*see* Family Ct Act §§ 827[a][vii]; 842; Penal Law § 10.00[13]; other citations omitted)." The Court concluded: "Contrary to the respondent's contention, the Family Court properly exercised subject matter jurisdiction over the petitioner's family offense petition despite the fact that most of the alleged acts occurred in Pennsylvania (see Matter of Richardson v Richardson, 80 AD3d 32)."

B. Harassment First and Second Degrees – Dismissed

In Matter of Arnold v. Arnold, ___AD3d___ (2d Dept. July 30, 2014)(Case No. 2013-08160), the petitioner filed a family offense petition against his stepmother, while she and his father were divorcing, alleging harassment in the first and second degrees. The petition stated

that petitioner's "stepmother had told people that he had stolen money and jewelry from her, threatened to ruin his life and career, stated that the divorce was [the petitioner's fault], and called [the petitioner's] former employer to tell 'lies' about him." Family Court, prior to conducting a hearing, entered a July 2013 order which granted the stepmother's motion to dismiss, upon the ground that there was no family relationship between the petitioner and his stepmother, and, further, that the petition failed to state a cause of action. On appeal, the Second Department affirmed, noting that "while the spouses remain married, a stepchild is related by affinity to a stepparent, and the Family Court has jurisdiction over a family offense petition brought by a stepchild against a stepparent," citing Family Court Act §812(1)(a), which defines "members of the same family or household" to include "persons related by consanguinity or affinity." The Appellate Division noted that "affinity is 'the relation that one spouse has to the blood relatives of the other spouse; relationship by marriage' (Black's Law Dictionary 70 [10th ed 2014])." While Family Court erred on the relationship ground, the Second Department held that "Family Court properly concluded that the petition failed to state a cause of action." The Appellate Division concluded: "Even construing the petition liberally and giving it the benefit of every favorable inference, it fails to allege conduct that would constitute the offenses of harassment in the first or second degrees (citations omitted) or aggravated harassment in the second degree in violation of Penal Law §240.30(2). Although the factual allegations in the petition indicate that the stepmother engaged in communications that come within the scope of Penal Law §240.30(1), that statutory provision, which proscribes engaging in communication 'in a manner likely to cause annoyance or alarm,' has been struck down by the Court of Appeals as unconstitutionally vague and overbroad," citing People v Golb, ___ NY3d ___ (May 13, 2014).

C. Reckless Endangerment

In Matter of Walsh v. Desroches, ___AD3d ___ (2d Dept. June 11, 2014)(Case No. 2013-08592), the father appealed from an August 2013 Family Court order, which, after a hearing, found that he had committed the family offense of reckless endangerment in the second degree and directed the issuance of an order of protection in favor of the subject child for a period of one year. On appeal, the Second Department reversed, on the law, dismissed the petition, and vacated the order of protection, noting that the burden of proof is a "fair preponderance of the evidence" and that "[o]nly competent, material and relevant evidence may be admitted in a fact-finding hearing," citing Family Court Act §834). The Court concluded: "Here, the evidence presented in support of the petition, including the mother's testimony regarding a telephone call she received from her friend and the police report, consisted primarily of inadmissible hearsay. The mother, therefore, failed to establish the allegations in the petition by competent evidence."

IX. Life Insurance

A. Failure to Maintain – Enforcement

In Mayer v. Mayer, et al., ___Misc3d___ (Sup. Ct. Orange Co., Onofry, A.J., April 7, 2014), an October 2000 judgment of divorce required the husband to pay child support and college and professional educational expenses of two children, and to maintain $1,000,000 of term life insurance for the benefit of the children, with the wife to be named as trustee on the children's behalf, until his support obligation is fully satisfied. The husband obtained such a policy in June 2002, but the policy lapsed in October 2005 and was converted into 2 new policies totaling $300,000: a $200,000 policy owned by the husband and a $100,000 policy owned by the former wife. The husband was found in contempt in May 2006 for failure to maintain the life

insurance and comply with other obligations, and was found to be in child support arrears in the sum of $74,107. At that time, the husband had over $750,000 in other life insurance available, and was directed to either fulfill his life insurance obligation with a new policy, or change the beneficiaries to name the 2 subject children as sole beneficiaries. In December 2010, the husband changed the beneficiaries of the $200,000 policy to, among other things, 5% each for the two subject children, giving them $10,000 each, while naming his second wife and 4 other children of prior and current marriages, as to the balance. The husband died in March 2011, and complex litigation then ensued, which included the insurance companies, who had been put on notice of the judgment's terms. Supreme Court decided various motions and ordered that the two adult children of the previous marriage be joined as party defendants, and found that the wife was entitled to a constructive trust on all proceeds paid out in life insurance upon the husband's death, subject to ratable apportionment, pending a determination as to the exact amount owed to the wife for any support obligations. Supreme Court found that the wife's equitable interest in the insurance proceeds is superior to those of the designated beneficiaries.

X. Maintenance

A. Cohabitation Clause

In Vega v. Papaleo, ___ AD3d __ (3d Dept. July 10, 2014)(Case No. 517932), the husband appealed from a February 2013 Supreme Court order, which denied his motion to terminate maintenance. On appeal, the Third Department affirmed. The parties were divorced in August 2012 pursuant to a judgment that incorporated a September 2008 MOU. The MOU required the husband to pay maintenance, to terminate upon certain occurrences, including the wife's remarriage or cohabitation with another individual. In October 2012, the husband moved to cease making these payments based upon the wife's alleged cohabitation with her mother and

stepfather. The MOU provided in part that maintenance would terminate if "[the wife] cohabits with an individual for any period in excess of 75 days within any 6-month period of time," but no other definition was provided. The Third Department noted that Supreme Court properly found that the term "cohabit" could not be fairly read to encompass the husband's broad interpretation, so as to include the wife's living with her mother and stepfather. The Appellate Division stated: "Most notably, the parties entered into this agreement following Graev v Graev (11 NY3d 262 [2008]), in which the Court of Appeals carefully reviewed several potential definitions of the term 'cohabitation.' The Court held that neither case law nor dictionary usage provided an authoritative or plain meaning. However, while no single factor — such as residing at the same address, functioning as a single economic unit, or involvement in a romantic or sexual relationship — is determinative, the Court found that a 'common element' in the various dictionary definitions is that they refer to people living together 'in a relationship or manner resembling or suggestive of marriage' (*id.* at 272). There is simply no authoritative definition or customary usage of the term that could include residing with a parent. The husband's assertion that the phrase 'with an individual' informs the term 'cohabits' in such a manner as to omit a requirement of any showing of an intimate or romantic relationship is wholly contrary to the governing precedent, and is unavailing (*see id.* at 271-274). As Supreme Court found, the husband has not alleged that the wife has lived with another individual in any relationship remotely resembling or suggestive of a marital bond, nor has he shown that anything in the MOU reveals an intention to define cohabitation as a shared address in the absence of such a bond." [Editor note: again, if you want your cohabitation clause to be defined as *only* the time period, no matter with whom the payee resides, then that must be so stated and you could consider something like this: "The term 'cohabit,' as used herein, shall not include a requirement that the

payee is holding [himself or herself] out as the spouse of another person. Further, the definition of cohabit under this agreement shall have no meaning over than the aforesaid prescribed time period and shall not include a requirement that the payor prove that the payee had any romantic, personal, sexual or financial relationship of any type or nature with the other adult."]

B. Durational – Affirmed

In Dochter v Dochter, 2014 Westlaw 2504576 (2d Dept. June 4, 2014) (Case No. 2012-07796), both parties appealed from a June 2012 Supreme Court judgment, which, among other things, awarded the wife durational maintenance in the sum of $5,000 per month until the sale of the marital residence upon the high school graduation of the parties' younger son in June 2014, and $6,500 per month thereafter, for a total period of 83½ months. On appeal, the Second Department affirmed, noting that the award affords the wife "an opportunity to become self-supporting, after having been the stay-at-home parent for approximately 15 years of the marriage."

In Myers v. Myers, ___ AD3d ___ (4th Dept. June 13, 2014)(Case No. 13-01285), the husband appealed from a November 2012 Supreme Court judgment, which among other things, directed him to pay maintenance for 10 years (amount and incomes unspecified), under circumstances where the parties were married for 13 years. On appeal, the Fourth Department affirmed the maintenance determination, stating: "we reject defendant's contention that Supreme Court abused its discretion in awarding maintenance for a 10-year period." The Appellate Division noted "there is a 'vast discrepancy' in the incomes of the parties, with plaintiff's sole source of income consisting of Social Security Disability (SSD) payments (citation omitted). During most of the 13-year marriage, plaintiff raised the parties' two children while defendant was the sole wage earner (citation omitted). The parties enjoyed a relatively comfortable

standard of living during the marriage. In setting the duration of maintenance, the court determined that, even if plaintiff were able to find a job, she would never approach her pre-divorce standard of living, while defendant 'clearly can.' Plaintiff testified at trial that she is permanently disabled as a result of bilateral carpal tunnel syndrome and a severed nerve in her left hand. Although plaintiff did not submit medical evidence or testimony concerning her disability, we conclude that the undisputed fact that the Social Security Administration determined that she was disabled as of 2000 and that she continues to receive SSD, coupled with her testimony, is sufficient to support the court's maintenance determination (citation omitted)."

C. Durational – Increased

In Hymowitz v. Hymowitz, ___ AD3d ___ (2d Dept. July 16, 2014)(Case No. 2012-03852), the wife appealed from March 2012 Supreme Court judgment, which, among other things, awarded her child support in the sum of only $147.12 per week, awarded her maintenance for only seven years, determined that the husband's interest in Weinstein & Holtzman, Inc., was his separate property and awarded her sum of only $69,900, representing 15% of the increase in the value of his interest in that business, determined that the husband's 1/3 interest in BSH Park Row, LLC, was his separate property and awarded her the sum of only $184,950, representing her 15% share of the value of that business, and failed to equitably distribute a share of the husband's interest in HGH Family, LLC, by awarding her only 50% of the net profit distributions that the plaintiff receives from HGH Family, LLC, until her 66th birthday, awarded the husband a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage on the marital residence. The Second Department modified, on the law, on the facts, and in the exercise of discretion: by deleting the provision thereof awarding the wife $69,900, representing 15% of the

increase in value of the husband 's interest in Weinstein & Holtzman, Inc., and substituting therefor a provision awarding her $116,500, representing 25% of the increase in value of the husband's interest in that business; by deleting the provision thereof awarding the wife $184,950 as her separate property interest in BSH Park Row, LLC, representing 15% of the value of the husband's interest in that business, and substituting therefor a provision determining that the husband's 1/3 interest in BSH Park Row, LLC, is marital property subject to equitable distribution, and awarding the wife $308,250, representing 25% of the value of the husband's interest in that business; by deleting the provision thereof awarding the wife 50% of the net profit distributions that the husband receives from HGH Family, LLC, until her 66th birthday, and substituting therefor a provision directing that the husband's interest in HGH Family, LLC, is marital property subject to equitable distribution, and awarding the wife distributions from her equitable share of the husband's interest in HGH Family, LLC, retroactive to the date of the commencement of the action, in an amount to be calculated by the Supreme Court, representing 40% of the value of the husband's interest in that business; by deleting the provision thereof awarding the husband a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage on the marital residence during the divorce proceedings, and substituting therefor a provision awarding the husband a credit for 50% of the payments he made to reduce the principal balance of the mortgage on the marital residence during the divorce proceedings; by deleting the provision thereof awarding child support based only upon the first $130,000 of combined parental income, and substituting therefor a provision awarding child support based upon the first $175,000 of combined parental income; by deleting the provision thereof awarding the defendant maintenance in the sum of $6,250 per month, commencing with the 49th month after the signing of the amended judgment

and continuing for 36 months thereafter, and substituting therefor a provision awarding her maintenance in the sum of $6,250 per month, commencing with the 49th month from the signing of the amended judgment and continuing until the earliest date of her remarriage, her attainment of age 66, or the death of either party; and remitted to Supreme Court for further proceedings. The parties were married in 1988, and have two children, who are now both over the age of 21. The Second Department found: "Contrary to the defendant's contention, the record supports the Supreme Court's conclusion that the transfer of a 1/3 interest in Weinstein & Holtzman, Inc. (hereinafter Weinstein & Holtzman), a family-owned hardware store, to the plaintiff from his father and uncle which occurred during the marriage was tantamount to a 'gift from a party other than the spouse' and, thus, was the separate property of the plaintiff not subject to equitable distribution (citation omitted). The determination as to whether the transfer was a gift to the plaintiff depended upon the credibility of the witnesses at trial, and the credibility determinations made by the Supreme Court are supported by the record (citations omitted). However, we find that the Supreme Court should have awarded the defendant a 25% share of the appreciation in the value of the plaintiff's interest in Weinstein & Holtzman (citations omitted). Taking into consideration the circumstances of this case and of the respective parties, we find that an award to the defendant of a 25% share of the appreciation in value of the plaintiff's interest in Weinstein & Holtzman will take into account the defendant's limited involvement in the plaintiff's business, while not ignoring the direct and indirect contributions she made as the primary caretaker of the parties' children, as a homemaker, and as a social companion to the plaintiff, while foregoing her career (citations omitted)." The Court continued: "The Supreme Court improperly classified the plaintiff's 1/3 interest in BSH Park Row, LLC (hereinafter BSH), a holding company whose sole asset is a building located at 29 Park Row in lower Manhattan in which the hardware store is

situated, as his separate property not subject to equitable distribution. *** Here, BSH was formed and the building was acquired during the marriage, and the plaintiff failed to meet his burden of tracing the use of claimed separate funds to establish that they were used for the purchase of his portion of the property's acquisition costs. *** Here, the Supreme Court should have awarded the defendant a 25% share of the plaintiff's interest in BSH. *** Further, based on the record and the relative contributions made by the parties throughout the marriage, the defendant should receive a 40% share of the marital interest in HGH. In addition, the defendant should be awarded distributions from her equitable share of the plaintiff's interest in HGH, retroactive to the date of commencement of the action." As to the mortgage credit, the Appellate Division held that "Supreme Court improvidently exercised its discretion in awarding the plaintiff a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage during the divorce proceedings" and that "plaintiff was entitled to a credit of only 50% of the reduction in mortgage principal." As to maintenance, the Appellate Division found that "Supreme Court should have awarded the defendant maintenance until the earliest of her eligibility for full Social Security benefits at the age of 66, her remarriage, or the death of either party." With respect to the issue of child support, the Court stated: "There was no basis under the circumstances of this case to limit the child support award to the statutory cap of the first $130,000 of combined parental income. In view of the standard of living enjoyed by the parties' children during the marriage, and the earnings and assets of the parties, the child support award should be based upon $175,000 of combined parental income."

D. Non-Durational – Amount Reduced; Life Insurance Reduced

In Cohen v. Cohen, ___ AD3d ___ (1st Dept. 2014)(Case No. 12807), both

parties appealed from a May 2013 Supreme Court Judgment, which, among other things, directed the husband to: pay the wife defendant non-durational maintenance of $26,000 per month; maintain the wife's two $300,000 life insurance policies; and to purchase and maintain a $2.5 million life insurance policy naming the wife as sole beneficiary. The maintenance award was stayed pending appeal and reduced to $10,000 per month during the pendency of the appeal. On appeal, the First Department modified, on the law and the facts, to reduce the amount of non-durational maintenance to $22,500 per month and to reduce the amount of life insurance that the husband is required to purchase to $1,000,000, and otherwise affirmed. As to an appeal from a May 2013 Supreme Court order, which awarded the wife counsel fees in the sum of $175,000, the Appellate Division affirmed. The husband is 79, and is a US citizen. The wife is now 54, and was a citizen of Belgium and France. The parties entered into a June 1999 prenuptial agreement in France, which was upheld on a prior appeal (93 AD3d 506 [1st Dept. 2012]), and which provided that upon marriage, each party's premarital property would remain his or her separate property, that property titled in individual names acquired during the marriage would be the property of the person in whose name it was titled, and that jointly titled property acquired during the marriage would be jointly owned marital property. The parties married on June 14, 1999, and on July 10, 1999, their son was born. As to maintenance, the wife's net worth statement, excluding housing costs, listed monthly expenses of more than $62,000, and the Appellate Division stated: "we find that the award of $26,000 per month in non-durational maintenance is excessive, and should be reduced to $22,500 per month." The First Department noted: "Here, defendant had the primary homemaking and child-raising responsibilities during the marriage. The parties enjoyed a lavish lifestyle, both before and, significantly, after their separation, and plaintiff assumed the role of financial provider, acquiescing in defendant's

financial dependency. Defendant is not going to receive a distributive award, her own assets are limited, and the record does not contain evidence of the amount of income that she will receive from [a] Trust. Defendant also suffers from a mild cognitive impairment that compromises her ability to work, both within and outside of the film industry, and she is incapable of supporting herself at a standard of living approximating the marital standard." The First Department agreed that life insurance was appropriate, but stated: "However, in view of our reduction of the maintenance award, and the high premium costs due to plaintiff's advanced age, the amount of additional insurance that defendant is required to purchase should be reduced from $2.5 million to $1 million." The Appellate Division upheld the $175,000 counsel fee award, "considering the financial positions of the parties and the circumstances of the case, including the unnecessary litigation caused by defendant."

XI. Paternity

A. DNA Test Allowed; Estoppel Denied

In Matter of Felix M. v. Leonarda R.C., ___ AD3d ___ (2d Dept. June 18, 2014)(Case No. 2013-07612), the child was born in November 2004 and petitioner executed an acknowledgement of paternity in April 2005. In 2007, the mother told Petitioner he was not the father, leading to Petitioner's commencement of a proceeding in 2013, pursuant to Family Court Act § 516-a, to vacate an acknowledgment of paternity. The petitioner appeals from a June 2013 Family Court, which, after a hearing, denied the petition on the ground that the petitioner was equitably estopped from challenging paternity. On appeal, the Second Department reversed, on the law, on the facts, and in the exercise of discretion, and remitted to Family Court, for further proceedings. The Appellate Division held: "Here, the Family Court improvidently exercised its discretion in concluding that the petitioner was estopped from denying his paternity of the child

(*see* Family Ct Act § 418[a]). The hearing evidence demonstrated that the petitioner did not have a parent-child relationship since the child was approximately three years old at the time when the petitioner learned from the mother that he was not the child's father and the parties separated. The mother testified that the child did not know the petitioner as his father and that the two had not seen each other in years. There was no evidence that the child would suffer irreparable loss of status, destruction of her family image, or other harm to her physical or emotional well-being if this proceeding were permitted to go forward (citation omitted). Under the particular circumstances of this case, we cannot conclude that the ordering of genetic marker or DNA testing for the determination of the child's paternity would be contrary to the best interests of the child," citing Family Ct Act §516-a[b][ii].

XII. Pendente Lite

A. Child Support, Temporary Maintenance Guidelines, Counsel & Expert Fees

In Vistocco v. Jardine, 116 AD3d 842 (2d Dept. April 16, 2014), the husband appealed from a November 2012 Supreme Court order, which awarded the wife $3,000 per week for temporary child support, directed him to pay the mortgage and taxes on the marital residence and the wife's car insurance, and awarded $12,500 in interim counsel fees and $3,500 in expert fees. On appeal, the Second Department affirmed. The parties married in 1995 and have 3 unemancipated children. The Appellate Division rejected the husband's argument, that Supreme Court erred in awarding $3,000 per week in temporary child support, because the CSSA amount, applying the $136,000 cap, would have been $3,286 per month, finding: (a) he failed to establish exigent circumstances to justify a downward modification of the pendente lite award of child support; and (b) Supreme Court was not required to calculate the temporary child support obligation pursuant to the CSSA. With regard to the directive requiring the husband to pay, in

addition to spousal maintenance, the mortgage and taxes on the marital residence and the wife's car insurance, the Second Department noted: "The formula to determine temporary spousal maintenance that is outlined in Domestic Relations Law §236(B) (5-a) (c) is intended to cover all of a payee spouse's basic living expenses, including housing costs, the costs of food and clothing, and other usual expenses (see Khaira v Khaira, 93 AD3d 194 [2012]). However, it may be appropriate to direct payment by the monied spouse of the mortgage and taxes on the marital residence and other expenses of the nonmonied spouse under certain circumstances (*see id.*). Here, in light of the evidence that the plaintiff's income exceeded $500,000 and the gross disparity between the plaintiff's income and the defendant's income, the Supreme Court properly awarded additional support in the form of a directive to the plaintiff to pay the mortgage and taxes on the marital residence (*see* Domestic Relations Law § 236 [B] [5-a] [c] [2] [a] [ii]), as well as the defendant's car insurance." With respect to counsel fees, the Appellate Division found the award to be proper, for, among other reasons, that the wife was nonmonied spouse, and and as to expert fees, the Court found there was a sufficient basis, given the accountant's affidavit which, explained the services and estimated cost involved.

B. Counsel Fees - Forced Home Equity Loan or Art Sale as Source

In Murjani v. Murjani, ___ Misc3d ___, NY Law Journ. May 5, 2014 (Sup. Ct. N.Y. Co. Drager, J., April 17, 2014), the marital property included art insured for $10 million, owned by a company in the wife's name, and a residence purchased in 1983 for $1.4 million, now unencumbered by any mortgage. Supreme Court directed: "The Wife shall immediately use as collateral for a loan or sell a portion of the art in New York or shall obtain a Home Equity Line of Credit on the New York Residence sufficient to obtain funds in the amount of $750,000. These funds shall be held in escrow by [the husband's attorneys who] *** may draw additional

attorney fees owed to them to be used solely in this matrimonial action, with an accounting provided to the Wife's counsel each time money is drawn. The $750,000 shall be obtained within 90 days of this Decision and Order without notice of entry. Whether the Husband or Wife shall bear responsibility for these fees will be determined at trial." However, by Order entered August 7, 2014, upon the wife's motion during the pendency of her appeal, the First Department "ordered that the motion is granted to the extent of staying that portion of the order requiring defendant to obtain $750,000 for interim attorney's fees, and otherwise denied.

XIII. Procedure

A. Objections to Support Magistrate Order

In Matter of Bray v. Bray, 2014 Westlaw 2516662 (3d Dept. June 5, 2014)(Case No. 516418), the father appealed from a February 2013 Family Court order, which denied his objection to a Support Magistrate Order, which, following a hearing, granted child support for the parties' 3 children. The Support Magistrate: disbelieved the father's testimony; determined that the proof did not permit a reasonable estimate of his income; stated what the statutory child support amount would be on $100,000 of imputed income; and then determined an amount of support based on the needs of the children. The father's objection specifically contended that the Support Magistrate erred in imputing $100,000 of income to him. The father argued on appeal that Family Court erred in basing the child support award on the children's needs, as the record contained sufficient evidence of his income. The Third Department affirmed, noting: "The father did not preserve his current argument for our review, as he did not include it as a specific objection to Family Court from the Support Magistrate's findings (citations omitted). Accordingly, we affirm without addressing the merits of his argument."

B. Personal Jurisdiction Objection Denied

In Pun v. Pun, ___ AD3d ___ (1st Dept. July 3, 2014)(Case No. 12944), the defendant appealed from a June 2013 Supreme Court order which denied his motion to dismiss the complaint for lack of personal jurisdiction. On appeal, the First Department affirmed, noting: "In this action for divorce, defendant husband waived the defense of lack of personal jurisdiction by failing to move to dismiss the complaint on that ground within 60 days after serving his answer (see CPLR 3211[a][8], [e]; Wiebusch v Bethany Mem. Reform Church, 9 AD3d 315 [1st Dept 2004])."

C. Sanctions – Frivolous Appeal

In Waldorf v. Waldorf, ___ AD3d ___ (2d Dept. May 28, 2014) (Case No. 2012-09772), the wife appealed from a portion of an August 2012 Supreme Court order which stated that the husband should be given an opportunity to rebut the presumption that deposits of separate property he made into the parties' joint accounts transmuted into marital property. On appeal, the Second Department dismissed the wife's appeal, because the challenged statement was dicta, and "no appeal lies from dicta." Further, on the Court's own motion, counsel for the respective parties were directed to show cause why an order should or should not be made and entered imposing such sanctions and costs, if any, against the wife and/or her counsel pursuant to 22 NYCRR 130-1.1(c). The Appellate Division stated: "*** since it is well settled that a spouse has a right to rebut the presumption that property is marital, and considering the defendant's extended discovery requests in this case, this appeal may constitute frivolous litigation and sanctions may be warranted."

XIV. Same Sex Marriage & Relationships

A. Artificial Insemination

In Wendy G-M. v. Erin G-M., 985 NYS2d 845 (Sup. Ct. Monroe Co., Dollinger, J., May 7, 2014), the parties entered into a same sex marriage in Connecticut (prior to New York's Marriage Equality Act), and decided in October 2011 to conceive a child through artificial insemination. The birth-mother authorized the physician to perform artificial insemination on her and the consent form, signed by both parties, states in part "We declare that any child or children born as a result of a pregnancy following artificial insemination shall be accepted as the legal issue of our marriage." The issue, as framed by the Court, is: "The court must now determine whether the spouse who did not give birth to the child (the non-biological spouse), is a parent of the child under New York's longstanding presumption that a married couple are both parents of a child born during their marriage." The child only lived in the same household with both parties for one week before they established separate households. The birth mother commenced the divorce action in December 2013, less than 3 months after the child's birth. The birth mother would not permit her spouse to visit with the child, leading to the motion before the Court. The consent form was not acknowledged, as required by DRL 73(2): "The aforesaid written consent shall be executed and acknowledged by both the husband and wife and the physician who performs the technique shall certify that he had rendered the service." On the issue of lack of acknowledgment, the Court found that the formality requirement was for the benefit of the child, and not the parties, and reasoned that substantial compliance with the statute was possible and not prohibited by law in this context. Supreme Court noted that the Court of Appeals decision in Debra H. v. Janice R., 14 NY3d 576 (2010), "opens the door for New York to recognize a partner, in a civil union, as a parent of a child born by AID during the civil union. The only remaining question for this court is whether to recognize a spouse, in a marriage, as a presumed parent of a child born by AID during the marriage." The Court reasoned further: "In

this court's view, the Court of Appeals would not mandate that compliance with DRL § 73 is the only means for a married, non-biological spouse to acquire parental status for a child born by artificial insemination of their spouse. A contrary finding would make a child's parentage for their entire life depend on a notary public being present when the parties signed the consent. The absence of the notary alone, would then deny the non-biological spouse one of the primary benefits of marriage." The Court concluded: "The pervasive and powerful common law presumptions that link both spouses in a marriage to a child born of the marriage - the presumption of legitimacy within a marriage and the presumption of a spouse's consent to artificial insemination - apply to this couple. This court holds that the non-biological spouse is a parent of this child under the common law of New York as much as the birth-mother."

XV. Legislative & Court Rule Items

A. Family Offense – Stalking – Use of GPS Device

Penal Law §120.45, Stalking in the Fourth Degree, was amended, ***effective October 21, 2014***, by defining "following," for purposes of subdivision (2) of the statute, to "INCLUDE THE UNAUTHORIZED TRACKING OF SUCH PERSON'S MOVEMENTS OR LOCATION THROUGH THE USE OF A GLOBAL POSITIONING SYSTEM OR OTHER DEVICE." (A7720B/ S4187C). Laws of 2014, Chapter 184.

B. Harassment 2d Degree Statute

A complete redraft of Penal Law §240.30 (A10128/S7869) which, among other things, removes the "annoy or alarm" language from subdivision (1) and substitutes "with intent to harass another person," was enacted, ***effective July 23, 2014***. Laws of 2014, Chapter 188.

C. Mileage Fees - NYC

CPLR §8012(d) was replaced, **effective January 17, 2014**, to increase a sheriff's mileage

fee for services, for travel wholly within NYC, from $25 to $30 for one year, and then, **effective January 17, 2015**, to $35.

D. Rules of Professional Conduct – Specialty Identification

By joint order of the Appellate Divisions dated November 26, 2013, and **effective January 1, 2014**, 22 NYCRR Part 1200, Rule 7.4(c)(1) and (c)(2) were amended, and new subdivision (c)(3) was added, so that the same now read as follows:

> (c) A lawyer may state that the lawyer has been recognized or certified as a specialist only as follows:
> (1) A lawyer who is certified as a specialist in a particular area of law or law practice by a private organization approved for that purpose by the American Bar Association may state the fact of certification if, in conjunction therewith, the certifying organization is identified and the following statement is prominently made: "This certification is not granted by any governmental authority."
> (2) A lawyer who is certified as a specialist in a particular area of law or law practice by the authority having jurisdiction over specialization under the laws of another state or territory may state the fact of certification if, in conjunction therewith, the certifying state or territory is identified and the following statement is prominently made: "This certification is not granted by any governmental authority within the State of New York."
> (3) A statement is prominently made if:
> (i) when written, it is clearly legible and capable of being read by the average person, and is at least two font sizes larger than the largest text used to state the fact of certification; and
> (ii) when spoken, it is intelligible to the average person, and is at a cadence no faster, and a level of audibility no lower, than the cadence and level of audibility used to state the fact of certification.

Dated: September 17, 2014
At: Albany, New York

THE CHILD SUPPORT STANDARDS ACT

by

HON. THOMAS GORDON

Support Magistrate
Rensselaer County Family Court
Troy

1. What is Income? Is Maintenance in the Pro Ratas?

FCA § 413(1)(b)(5), DRL § 240(1-b)(b)(5).

a. Income is the "gross (total) income as should have been or should be reported in the most recent federal income tax return."

i. The Family Court Act does not prohibit "reliance upon partial information from a tax year not yet completed." Kellogg v Kellogg, 300 A.D.2d 996 (4th Dept., 2002); Culhane v. Holt, 28 A.D.3d 251 (1st Dept., 2006); Lynn v. Kroenung, 97 A.D.3d 822 (2nd Dept., 2012); Armstrong v. Armstrong, 72 A.D.3d 1409 (3rd Dept., 2010)

ii. Where a party provides credible evidence that the overtime would not be available in the current tax year, it is proper to base an obligation on the base pay only. Taraskas v. Rizzuto, 38 A.D.3d 910 (2nd Dept., 2007); Kellogg v. Kellogg, 300 A.D.2d 996 (4th Dept., 2002)

b. To the extent not already included on the income tax return:

i. Investment income reduced by sums expended in connection with such investment

Cassara v. Cassara, 1 A.D.3d 817 (3rd Dept., 2003) (Rental property); Mullen v. Just, 288 A.D.2d 476 (2nd Dept., 2001) (Investment property)

ii. Voluntarily deferred income

Contributions to retirement accounts are income for child support purposes. Cerami v. Cerami 44 A.D.3d 815 (2 Dept., 2007); Ballard v. Davis, 259 A.D.2d 881 (3rd Dept., 1999)

iii. Workers' compensation

iv. Disability benefits

v. Unemployment insurance benefits

vi. Social Security benefits

The receipt of Social Security Disability Benefits by the custodial parent on behalf of the child is not income to the custodial parent nor does it reduce the non-custodial parent's obligation. Graby v. Graby, 87 N.Y.2d 605 (1996); McDonald v. McDonald, 112 A.D.3d 1105 (3rd Dept., 2013)

vii. Veterans benefits

viii. Pensions and retirement benefits

ix. Fellowships and stipends

x. Annuity payments;

c. The Court may impute income from the following:

i. Non-income producing assets

Income can be imputed non income-producing assets when a parent maintains finances in a form that limits the income they produce. Marlinski v. Marlinski, 111 A.D.3d 1268 (4th Dept. 2013); Cupkova-Myers v. Myers, 63 A.D.3d 1268 (3rd Dept., 2009)

ii. Meals, lodging, memberships, automobiles or other perquisites that are provided as

part of compensation for employment to the extent that such perquisites constitute expenditures for personal use, or which expenditures directly or indirectly confer personal economic benefits

Basic Allowances for Housing (BAH) and Subsistence (BAS) available to members of the armed forces are income. Massey v. Evans, 68 A.D.3d 79 4th Dept., 2009)

iii. Fringe benefits provided as part of compensation for employment

Employer-provided automobile insurance, gas and oil payments, vehicle maintenance and repair costs, and personal expense allowance are income. Skinner v. Skinner, 241 A.D.2d 544 (2nd Dept., 1997)

iv. Money, goods, or services provided by relatives and friends

Court should impute to father money he receives from his family for the children's college expenses that were not loans that he was obligated to repay. Kiernan v. Martin 108 A.D.3d 767 2nd Dept., 2013)

Financial support from family should be imputed to non-custodial parent. Rohme v. Burns, 92 A.D.3d 946 (2nd Dept. 2012)

v. An amount imputed as income based upon the parent's former resources or income, if the court determines that a parent has reduced resources or income in order to reduce or avoid the parent's obligation for child support;

A court can impute an ability to pay support that exceeds the amount that would have been fixed based upon current income even in the absence of a finding that the respondent intentionally reduced his or her income to avoid a child support obligation. Lutsic v. Lutsic, 245 A.D.2d 637 (3d Dept. 1997).

The court was justified in not imputing to non-custodial parent income from her prior employment where there was no evidence that she was terminated from that employment for cause. The court properly used her income from her most recent employment. Smith v. Smith, 116 A.D.3d 1139 (3rd Dept., 2014)

Where the non-custodial parent's expenses, as outlined in his statement of net worth, exceeded his claimed income by more than $100,000 the Court should have imputed an additional $100,000 in income to him. Turco v. Turco, 117 A.D.3d 719 (2nd Dept., 2014).

It is appropriate to impute prior income where father voluntarily left his employment to "improve his vocation" The "children should not be expected to subsidize his decision." Bustamante v. Donawa, 987 N.Y.S.2d 889 (2nd Dept., 2014)

vi. The following self-employment deductions:

(1) Depreciation deduction greater than that calculated on a straight-line basis

Where the court determines that there is a deduction in excess of that calculated on a straight-line basis, the court must calculate the straight line depreciation and add only the difference to income. Grosso v Grosso, 90 A.D.3d 1672 (4th Dept., 2011)

(2) Entertainment and travel allowances to the extent that they reduce personal expenditures.

Court should not have added back entertainment expenses claimed by father where mother failed to demonstrate that the expenses were personal in nature. Grosso v Grosso, 90 A.D.3d 1672 (4th Dept., 2011)

d. Deductions from income

i. Unreimbursed business expenses

The Court properly refused to deduct unreimbursed business expenses as the father failed to submit evidence sufficient to support his claim regarding those expenses. Castillo v. Castillo 302 A.D.2d 458 (2nd Dept., 2003)

ii. Alimony or maintenance paid to a non-party spouse;

iii. Alimony or maintenance paid to the party spouse provided that the order provides for a specific adjustment of child support upon the termination of the alimony or maintenance obligation;

(1) The Appellate Divisions are split on whether a payor is entitled to a deduction from income if the agreement/order does not provide for an increase when maintenance terminates. The 1st and 4th Depts have held that the payor is not entitled to a reduction. Schmitt v. Schmitt, 107 A.D.3d 1529 (4th Dept., 2013); Jarrell v. Jarrell, 276 A.D.2d 353 (1st Dept., 2000). The 2nd and 3rd Depts have held that the payor is entitled to the deduction. Nichols v. Nichols, 19 AD3d 775 (3rd Dept., 2005); Lee v. Lee, 79 A.D.3d 473 (2nd Dept.2005). But see Alecca v. Alecca, 111 A.D.3d 1127 (3rd Dept., 2013) (Where maintenance outlasts child support, deduction of maintenance from income for child support purposes is not required)

(2) The Appellate Divisions are also split on whether maintenance is income to the payee-spouse. The 1st and 3rd Depts have held that the maintenance is income to the payee. Hughes v. Hughes, 79 A.D.3d 473 (1st Dept., 2010); Nichols v. Nichols, 19 AD3d 775 (3rd Dept., 2005). The 2nd and 4th Depts have held that the maintenance is not income unless and until it is included in the prior year's tax return. Lee v. Lee, 79 A.D.3d 473 (2nd Dept.2005); Huber v Huber, 229 A.D.2d 904 (4th Sept., 1996).

iv. Child support paid to other children;

Where father had a prior order but was currently residing with payee of the support, the prior obligation should not be deducted from income. Ranallo v. Ranallo, 301 A.D.2d 605 (2nd Dept., 2003); Mary V.B. v. James X.S., 226 A.D.2d 714 (2nd Dept., 1996).

v. Public Assistance;

vi. Supplemental Security Income (SSI);

vii. NYC or Yonkers tax;

viii. FICA (7.65% on all earned income up to $117,000 (2014) plus 1.45% of earned income above $117,000)

e. Distributive awards, even when based upon enhanced earning capacity resulting from a professional license obtained during the marriage, are not deducted from the payor's income or added to the payee's income. Holterman v. Holterman, 3 N.Y.3d 1 (2004).

2. Over the Cap

The "three step process"

a. Determine the combined parental income

b. Multiply the combined parental income up to the $141,000 cap by the child support percentages and determine each parent's pro rata share

i. Effective January 31, 2016, and every two years thereafter, the "$141,000 cap" will increase based upon changes in the Consumer Price Index. SSL § 111-i(2).

ii. Cap History:

September 15, 1989 - January 30, 2010	$80,000
January 31, 2010 - January 30, 2012	$130,000
January 31, 2012 - January 30, 2014	$136,000
January 31, 2014 -	$141,000

iii. The cap in effect at time of commencement of proceeding or action applies throughout. Beroza v Hendler, 109 A.D.3d 498 (2nd Dept., 2013); Parsick v Rubio, 103 A.D.3d 898 (2nd Dept. 2013); Ryan v. Ryan; 110 A.D.3d 1176 (3rd Dept., 2013)

c. Determine the amount of additional support for the income exceeding $141,000 by applying the factors listed in section FCA § 413(1)(f) or DRL § 240(1-b)(f) (the "f factors") and/or the child support percentage.

i. Cassano v. Cassano, 85 N.Y.2d 649 (1995).

ii. The needs of the children should be taken into consideration when making an award on the income above the Cap. Erin C. v. Peter H. , 66 A.D.3d 451 (1st Dept. 2009); Matter of Brim v Combs, 25 A.D.3d 691 (2nd Dept., 2006); Bean v. Bean, 53 A.D.3d 718 (3rd Dept. 2008). But see Parsick v Rubio, 103 A.D.3d 898 (2nd Dept. 2013).

Selected Recent Cases

Beroza v Hendler, 109 A.D.3d 498 (2nd Dept., 2013);

> "[I]n considering the relevant paragraph (f) factors, including the affluent lifestyle which the children undisputedly enjoyed during the parties' marriage, commensurate with the parties' education and net combined annual parental income of $736,414, we find that $400,000 is an appropriate cap to the parties' combined annual parental income for purposes of calculating the plaintiff's support obligation pursuant to the statutory percentage."

Parsick v Rubio, 103 A.D.3d 898 (2nd Dept. 2013);

> "If a child's lifestyle may be maintained by the amount awarded in the temporary support order, a similar award may be made as the final order, and more of the income over the "cap" ($130,000) may be considered to achieve that level of support The appellate court found that the children's needs would be met, and their lifestyle maintained, with an award based upon applying the child support percentage to the first $260,000 of combined parental income ($1,025 per week)."

Marcklinger v Liebert, 88 A.D.3d 1114 (3rd Dept., 2011);

> "[A]lthough petitioner faults respondent for not submitting evidence of the child's needs, application of the CSSA "creates a rebuttable presumption that the guidelines contained therein will yield the correct amount of child support" and, if petitioner believed that his presumptive pro rata share was unjust or inappropriate, it was his burden to establish such."

Ripka v. Ripka, 77 A.D.3d 1384 (4th Dept., 2010);

> Contrary to plaintiff's contention, the court was not required to explain the reasons for its discretionary application of the $80,000 cap . . ., particularly in light of its finding that defendant's pro rata share of child support was appropriate and plaintiff's failure to contend that the amount of child support awarded was insufficient."

3. Variance

a. Percentages must be used unless the court finds that the order would be unjust or inappropriate. FCA § 413(1)(f), DRL § 240(1-b)(f). The court must review the following factors in making such a determination:

i. The financial resources of the custodial and non-custodial parent, and those of the child;

> Deviation granted. Kelly v. Kelly, 90 A.D.3d 1295 (3rd Dept. 2011)
>
> Distributive awards may be considered. Holterman v Holterman, 3 N.Y.3d 1 (2004)
>
> Orders of less than $25 monthly may be made in the case of low-income parents. Broome County Dept. of Social Services v. Meaghan XX., 111 A.D.3d 1174 (3rd Dept., 2013)

ii. The physical and emotional health of the child and his/her special needs and aptitudes;

iii. The standard of living the child would have enjoyed had the marriage or household not been dissolved.

iv. The tax consequences to the parties;

> Smith v. Smith 116 A.D.3d 1139 (3rd Dept., 2014)

v. Non-monetary contributions the parents will make toward the well-being of the child;

vi. The educational needs of either parent.

vii. A determination that the gross income of one parent is substantially less than that of the other;

Smith v. Smith 116 A.D.3d 1139 (3rd Dept., 2014)

viii. The needs of other children of the non-custodial parent whose support has not been deducted from income, provided that the resources available to support such children are less than the resources available to support the subject children.

Smith v. Smith 116 A.D.3d 1139 (3rd Dept., 2014).

In reaching the threshold determination of whether this section applies, the non-custodial parent's resources should not be considered. The comparison is between the other resources available to the children that the non-custodial parent is supporting and the resources available to the children that the custodial parent is supporting. Gardner v Maddine, 112 A.D.3d 926 (2nd Dept., 2013); Hudgins v Blair, 74 A.D.3d 1199 (2nd Dept., 2010)

ix. Extraordinary expenses incurred in visitation;

Costs of providing suitable housing, clothing and food for children during custodial periods do not qualify as extraordinary expenses so as to justify a deviation. Ryan v. Ryan, 110 A.D.3d 1176 (3rd Dept., 2013).

Where the lower-earning parent has the child for fewer overnights than the higher-earning parent, the factor cannot be used to require the higher-earning parent to pay support to the lower-earning parent. Rubin v. Della Salla, 107 A.D.3d 60 (1st Dept.,2013)

x. Any other factor the court deems relevant.

b. Recent decisions:

. Variance granted based on difference in income, custodial parent's tax benefits, and extended visiting time.

Gardner v. Maddine; 112 A.D.3d 926 (2nd Dept., 2013).

Ryan v. Ryan, 110 A.D.3d 1176 (3rd Dept., 2013).

Rubin v. Della Salla, 107 A.D.3d 60 (1st Dept.,2013).

4. 2010 Modification Amendments

a. The"Low Income Support Obligation and Performance Improvement Act" (L.2010, c. 182) amended FCA § 451 and DRL § 236-B(9) to add new subdivisions which spell out with specificity the burdens for modifying a support obligation.

i. a "court may modify an order of child support, *including an order incorporating without merging an agreement or stipulation of the parties,* upon a showing of a substantial change in circumstances."

ii. "Incarceration shall not be a bar to finding a substantial change in circumstances provided such incarceration is not the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment."

(1) This section specifically overrules Knights v. Knights, 71 N.Y.2d 865 (1988), at least insofar as it precludes modification based on incarceration.

(2) One Family Court has held that this section does not apply to initial support determinations, but only to modifications. Commissioner of Social Services ex rel. Donna M.W. v. Jessica M.D., 31 Misc.3d 490 (Fam.Ct., Franklin Cty, 2011).

iii. Three years have passed since the order was entered, last modified or adjusted

iv. There has been a change in *either* party's gross income by 15% or more since the order was entered, last modified, or adjusted. In the event of a reduction in income, the reduction must be involuntary and must be accompanied by diligent attempts to find suitable employment.

(1) The parties may opt out of either or both of these two grounds.

b. Pursuant to the enabling legislation, the changes took effect 90 days after enactment (October 13, 2010). They apply to orders *entered* on or after the effective date of October 13. Where an order incorporates an unmerged agreement, then these sections only apply only if the unmerged agreement was executed on or after October 13, 2010.

i. In other words, the prior case law – the leading cases are Boden v. Boden, 42 N.Y.2d 210 (1977) and Brescia v. Fitts; 56 N.Y.2d 132 (1982) – still applies to agreements entered into prior to October 13, 2010. See, Overbaugh v. Schettini, 103 A.D.3d 972 (3rd Dept., 2013) (The higher burden applies even when the pre 10/13/10 agreement only incorporated, without modifying, a Family Court order); Dimaio v. Dimaio, 111 A.D.3d 933 (2nd Dept., 2013).

ii. Where the underlying order predated 10/13/10, incarceration is not a basis to modify the order. Baltes v. Smith, 111 A.D.3d 1072 (3rd Dept., 2013).

5. Pendente Lite Applications

a. Courts considering applications for pendente lite child support are not required to apply the CSSA. Vistocco v Jardine, 116 A.D.3d 842 (2nd Dept., 2014).

b. "However, under some circumstances, particularly where sufficient economic data is available, an award of temporary child support that deviates from the level that would result if the provisions of the CSSA were applied may constitute an improvident exercise of discretion, absent the existence of an adequate reason for the deviation." Davydova v Sasonov, 109 A.D.3d 955 (2nd Dept., 2013); Rubin v Della Salla, 78 A.D.3d 504 (1st Dept., 2010)

c. A portion of the payments made toward maintaining the marital residence should offset the award of retroactive support. Hymowitz v. Hymowitz, 119 A.D.3d 736 (2nd Dept., 2014).

d. The court which makes the pendente lite order must determine the arrears due under the

order. The Family Court later hearing the case is not the appropriate forum to determine the payments due under the temporary order made by the Supreme Court. Fixman v Fixman, 102 A.D.3d 783 (2nd Dept. 2013).

The Maintenance Deduction

"alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to an existing court order or contained in the order to be entered by the court, or pursuant to a validly executed written agreement, provided the order or agreement provides for a specific adjustment, in accordance with this subdivision, in the amount of child support payable upon the termination of alimony or maintenance to such spouse . . ."

- Husband's CSSA income is $200,000
- Wife has no income
- Parties have 2 children
- Supreme Court is inclined not to make an order of child support which automatically adjusts the support when spousal maintenance ends

How do these rules affect child support computations in the four departments?

I. INCOME

1. Plaintiff	$200,000.00	TO START OVER ----------> CLEAR FORM
2. Defendant	$0.00	

Income Over 543K

3. Plaintiff	$0.00
4. Defendant	$0.00

II. CALCULATIONS

Income (up to $543,000):

5. Plaintiff	$200,000.00	
6. Defendant	$0.00	

Basic Calculation:

7. Calculation A	$60,000.00	30% of Payor's Income minus 20% of Payee's Income
8. Calculation B	$80,000.00	40% of Combined Income minus Payee's Income
9. Guideline Amount	$60,000.00	The Guideline Amount is the Lesser of Line 7 and Line 8; or zero if Line 8 is less than or equal to 0

Low Income Calculation (If Applicable):

10. Payor Income minus Guideline Amount	$140,000.00	
11. Low Income Award	$0.00	Where the guideline amount would reduce the payer's income below the self-support reserve (15,512); the award is the payor's income minus the self-support reserve. If Line 11 equals zero, there is no adjustment for low income.

III. AWARD

PAYOR:	Plaintiff
12. Annual Amount	$60,000.00
13. Monthly Payment	$5,000.00
14. Bi-Weekly Payment	$2,307.69
15. Weekly Payment	$1,153.85

4th Dept		
H	$200,000	100%
W	$0	0%
Comb.	$200,000	
25% of $141,000		$35,250
H's Share (100%)		$35,250
25% of $59,000		$14,750
H's Share (100%)		$14,750
Full Boat		$50,000

3rd Dept		
H	$140,000	70%
W	$60,000	30%
Comb.	$200,000	
25% of $141,000		$35,250
H's Share (70%)		$24,675
25% of $59,000		$14,750
H's Share (70%)		$10,325
Full Boat		$35,000

1st Dept		
H	$200,000	77%
W	$60,000	23%
Comb.	$260,000	
25% of $141,000		$35,250
H's Share (77%)		$27,115
25% of $119,000		$29,750
H's Share (77%)		$22,885
Full Boat		$50,000

2nd Dept		
H	$140,000	100%
W	$0	0%
Comb.	$140,000	
25% of $140,000		$35,000
H's Share (100%)		$35,000
Full Boat		$35,000

Fall 2014 Family Law CLE:
Divorce Anniversaries
October 24, 2014

The Weight of Contributions to the Marriage in Equitable Distribution

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Summary of Equitable Distribution Cases 2007-2014:

- ◇ Percentages/Contributions
- ◇ Spreadsheet on Overall Distribution of Marital Assets*

*The attached materials reflect the hard work and insight of our associate, Daniel Lipschutz, Esq.
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Equitable Distribution Cases 2007-2012: Percentages/Contributions

I. Overall Division of Marital Assets

EQUAL

R. M., v. C. M., NYLJ, Pg.36, Vol. 251, No. 74, (Westchester Co. Sup. Ct. 4/18/14)
The parties were married on December 18, 2007 after a courtship lasting a mere 17 days. The marriage lasted 5 years and the parties had 2 children. The Court distributed the limited marital property 50/50, based upon the "the statutory factors, and the equities of the parties' circumstances."

HUSBAND
50%

Morille-Hinds v Hinds, 42 Misc. 3d 1230(A) (Queens Co. Sup. Ct. 2014)
W, 54, a microbiologist and monied spouse, and H, 54, a handyman contractor, were married on August 28, 1993. The parties lived a shared economic partnership consisting of W working at her full time employment as a microbiologist and H taking care of the marital home, caring for the parties' child, finding and fixing real property for investment. He was a "fixer upper" involved with searching for buildings and renovating them for resale on the real estate market. The martial residence and all real property were acquired during the marriage. The properties were renovated and resold on the market by H. The marital residence was converted by H from a one level ranch home into a three level bungalow home with a rental unit. Marital residence and investment properties in St. Lucia WI equitably distributed 50/50; the bank and retirement accounts 50/50.

WIFE
Nil

R.B. v. M.S., 2014 N.Y. Misc. LEXIS 2167 (N.Y. Co. Sup. Ct 2014)
6 year marriage; one child born in 2005. The parties executed a prenuptial agreement prior to their marriage. The Sup. Ct. modified the Special Referee's report eliminating the award the W of 40% of property classified as marital. The Court found that the parties kept their financial assets separate to such an extent that the only marital property consisted of personalty, including certain furniture, jewelry, furnishings and items of Brioni clothing given to the Husband by the Wife. Given the prenuptial agreement, the Court did not address circumstances related to the equitable distribution factors.

EQUAL

Alleva v Alleva, 112 A.D.3d 567 (2d Dep't 2013)
The Supreme Court providently exercised its discretion in equally allocating responsibility for marital debt, including certain credit card debt incurred during the pendency of this action and dividing equally the proceeds of the sale of the marital home. The decision does not specify the length of the marriage, during which the parties' had two children.

EQUAL

Kessler v. Kessler, 111 A.D.3d 895 (2d Dep't2013)
Contrary to the defendant's contention, under the circumstances of this case, an award of 50% of the parties' marital property to each of them

constitutes an equitable distribution of that property. Further, the Supreme Court providently exercised its discretion in denying the defendant a credit for $20,000 of marital funds used to pay a premarital debt of the plaintiff.

WIFE
50%

Alecca v. Alecca,111 A.D.3d 1127 (3d Dep't 2013)
14 year marriage with two children (born in 1999 and 2004). The Court equitably distributed the assets 50/50, including ordering H to pay W $91,750, representing half of the stipulated value of the marital residence, $10,000, representing half of a 401(k) account, and $8,500, representing half of a joint bank account. Supreme Court also ordered H to pay the W half of the amount in a deferred compensation account. There was no discussion of the relevant factors forming the basis of the equal distribution award.

WIFE
50%

Gilliam v Gilliam, 109 A.D.3d 871 (2d Dep't 2013)
19 year marriage; two children; in light of the length of the parties' marriage, the parties' respective roles in the marriage, the vast disparity in the parties' incomes, and the wife's age, health, education, and work history, 50% of the parties' marital assets.

WIFE
25% of EEC
50% of other assets

Hogle v Hogle, 40 Misc. 3d 1220(A) (Columbia Co. Sup. Ct. 2013)
The parties, who were both in their late-50s, were married for almost 32\ years. They had two emanciapted children. W was the primary homemaker and generated income through her "Longaberger" basket business. Her efforts as a homemaker were found to be as significant as H's contributions as the primary wage earner. Shortly after the parties were married, H enrolled in law school full time and earned his law degree in 1982. While H worked part-time and in the summer during law school, W provided the primary family support. The parties financed H's law school education through student loans which were eventually paid with marital funds. W awarded 25% of the EEC attributable to the H's law degree and asssociated license. With respect to W "Longaberger" basket business, the Court found that the business was not appropriately valued and directed the W to turn over 150 baskets. With respect to the remainder of the assets, "[g]iven the long term of this marriage, and the respective contributions of the parties to the marriage..." the Court awarded the remainder of the assets essentially 50/50.

WIFE
EQUAL

Halley-Boyce v. Boyce, 108 A.D.3d 503 (2d Dep't 2013)
W was awarded 50% of the proceeds from the sale of real property because it was purchased during the marriage. Appellate Division reversed the award to the W sole legal title to a property in Queens, "[u]nder the circumstances of this case, the defendant is entitled to 50% of the value of that real property as his equitable share." No discussion of the duration of the marriage or the number of children, although child support was awarded to the W.

WIFE ?	**Musacchio v. Musacchio, 107 A.D.3d 1326 (3d Dep't2013)** W was awarded a distributive award of $143,000, which was slightly modified on appeal (increased to $148,000). The Court did not specify the percentage of distribution of the various assets. 29 year marriage with three unemancipated children. Elements of the decision showed that the W had been out of the work force for a number of years, had sacrificed her own career development and made substantial noneconomic contributions to the household and the award was appropriate "considering that 'marital property is distributed in light of the needs and circumstances of the parties'."
EQUAL	**Wei Jiang Sun v Yong Jian Li, 43 Misc. 3d 1205(A) (Queens Co. Sup. Ct. 2014)** The Parties (both Chinese) were married for 13 years and had two children. Both worked in the laundry business, which W was involved in prior to the marriage. During marriage H and W began acquiring laundromats and accumulated significant sums that were kept at different financial institutions, hidden in the business and in their home. Court held that W was the primary person responsible for the financial paper work and H took care of fixing the machines. In addition to the businesses, H and W owned two rental real properties located in Pennsylvania, which were titled in their individual names, and several investment accounts. The Court found that the parties did not present evidence on most of the property and denied equitable distribution as to those items (mostly bank accounts and various laundry businesses). The Court noted that the parties were married for 13 years, were both employed during the marriage, but "each party denies having full financial control over the marital businesses." The Court held that they were joint enterprises.
WIFE 50%	**Safi v. Safi, 94 A.D.3d 737 (2d Dep't 2012)** 25 year marriage. W worked at H's business and contributed directly and indirectly to the marriage as a spouse and mother. Award of 50 percent of the marital property to W affirmed.
EQUAL	**Caracciolo v. Chodkowski, 90 A.D.3d 801 (2d Dep't 2011)** 3 yr childless marriage. Both parties had premarital property that was either improved during the marriage or the debt service reduced. An award of 50 percent of the value of the marital property, including the appreciation of a pre-marital home in Roslyn and a pre-marital property in Montauk.

WIFE 50%	**Roberto v. Roberto, 90 A.D.3d 1373 (3d Dep't 2011)** 28 yr marriage with 1 child. Both parties in their late 40s; each had been employed full time after the birth of their child and they shared child care responsibility by working different shifts. W consistently earned approximately 20k-30k but was fired twice during the marriage and obtained insurance broker's license; H had window and door installation business ("KJR"). W left insurance business and worked from home on KJR bookkeeping. The Court held that "[w]hile it is undisputed that H performed much of the physical labor in connection with the construction of the marital residence, the evidence also demonstrated that W provided substantial assistance in a variety of ways." The Court found that W made significant contributions to KJR and that the marriage "was a true economic partnership."
WIFE 50%	**Keil v. Keil, 85 A.D.3d 1233 (3d Dep't 2011)** Given the length of the marriage (26 yr, childless) and the contributions of each of the parties to the marriage and to the family business holdings, Supreme Court generally distributed the marital property on a 50/50 basis including a "pool" company. Keeping in mind W's economic contributions towards the purchase of half of a farm, as well as her economic and noneconomic contributions towards improving the property, which H confirmed, 50% of the farm was marital property, of which W is entitled to one half and 50% of the appraised value of the business.
HUSBAND HYBRID Gifts from W's parents Considered	**Popowich v. Korman, 73 A.D.3d 515 (1st Dep't 2010)** 16 yr marriage; H awarded 15% of W's pre-marital brokerage account, which was commingled and transmuted into marital property, with over $1 million, where the appreciation of the securities was due to passive economic forces, the substantial gifts during the marriage to W from her parents, the substantial sums from the account advanced directly to H's business and the evidence that, W "not only was the financial engine of this marriage, but ... was also the primary caretaker of the parties' son"; W awarded 40% of H's business. Decision mentions that H was awarded 30% of other marital assets, which were not specified in the decision.
WIFE 60%	**Kelly v Kelly, 69 A.D.3d 577 (2d Dep't 2010)** W awarded 60% of marital assets; there was ample evidence of cruel and inhumane treatment, which included verbal and physical abuse of W. Award of 60% of the marital assets took into account the property held by each party at commencement of action, the length of the marriage, the limited maintenance award and the husband's more recent work experience and greater earning potential. Court did not specifically relate percentage to H's bad acts.
HUSBAND	**Glassberg v. Glassberg, 2009 N.Y. Misc. LEXIS 2436 (N.Y. Sup. Ct. 2009)**

35% Lazy H Case. W did it all.	During the marriage W provided a substantial share of the financial and day-to-day support in maintaining the household, including working full time, being the primary care giver for the parties' son, and providing for the consistent and reliable income flow the family enjoyed. While H provided some support toward these efforts, the Court found it was "limited, sporadic, unreliable and inconsistent." The Court further found that H contributed sporadically and thus, infrequently to the expenses required for the upkeep of the marital residence, certainly after the first several years of the marriage, (and thus throughout the majority of the marriage). As such the Court, distributed the proceeds of sale of marital residence 65/35 to W, plus W receives $75,000 in separate property credits and reimbursement of *pendente lite* arrears.
WIFE 50%	**Steinberg v. Steinberg, 59 A.D.3d 702 (2d Dep't 2009)** Supreme Court providently exercised its discretion in dividing the marital assets [including a business asset] equally between the parties. "When both spouses equally contribute to a marriage of long duration (23 years), as here, the division of marital property should be as equal as possible."
WIFE 50% of Appr. of Mar. Res.; 100% of W's EEC; 0% of Liquid Assets	**Li v. Li, 2009 N.Y. Misc. LEXIS 2444 (Sup. Ct. Queens Co. 2009)** A deed conveying commercial real estate to W and H was executed by the H. The Court found that this created the W's marital interest in the property and made it joint property. H's claim that his execution and delivery of the deed were coerced by W contradicted his other version of events. The value of the property as of the date of trial was stipulated to be $500,000. The appreciation of $125,000 between conveyance as aforesaid and trial date constituted distributable marital property. There was no basis to award either of the parties less than a full 50 percent of the appreciation. The Court believed H and disbelieved W regarding her claim of a separate property contribution of $ 50,000. The court found that the husband owed the wife $62,500. There was no evidence that W's earning capacity had been or would be enhanced by her obtaining secretarial and accounting credentials in an evening school. The Court rejected both expert opinions as the W was not qualified to do anything more than she actually did professionally in China. As to the parties' bank accounts, the Court held that the parties had effectuated their own version of equitable distribution by elaborate schemes conceived and carried out one against the other, manipulation, retaliation, and out-and-out self-help and awarded each party their own accounts.
50%/50% (sort of) Maintenance used to equalize ED	**HA v. HA, 2008 N.Y. Misc. LEXIS 4573 (Sup. Ct. Kings Co. 2008)** Long term marriage (nearly 36 yrs before separating). Parties, who both worked during the marriage, were in their late 50s with two emancipated children. Court held that both parties made contributions to the operation of their home and the proceeds of any sale shall be shared equally, subject

to the various adjustment caused by the monies owed by one party to the other. The apportionment of the parties' pensions was to have been made pursuant to the *Majauskis* formula, 50/50. The Court found that the best way to divide the bank accounts, deferred compensation, IRAs, etc., was to allow each party to keep what they had in their own accounts, and also recognized that although H may end up with more than 50%, he had to pay maintenance.

WIFE
>50%

A house for a business case.

Groesbeck v. Groesbeck, 51 A.D.3d 722 (2d Dep't 2008)

Supreme Court providently exercised its discretion when distributing more than 50% of the marital property (including H's home improvement contracting business) to W. W awarded title to the marital residence where she was residing at the time of trial with the parties' young children, while directing that the H retain his interest in his home improvement contracting business. Although the net equity in the marital residence exceeded the appraised value of H's interest in his business, "equitable distribution does not necessarily mean equal distribution."

WIFE
50% Business
50% Residence

Unclear if H penalized for having tried to cheat W.

Blay v. Blay, 51 A.D.3d 1189 (3d Dep't 2008)

13 yr marriage with 3 children. Date of marriage: June 1992. In 1978, H and his brother established a partnership which performed landscaping and snow removal services. The brothers each held a 50% interest in the partnership. In 1989, H and his brother purchased a 16-acre parcel of real estate. H renovated the house on the property. The house, although owned by business, became the marital residence and was further improved during the marriage through the addition of a basement bedroom and laundry room, new flooring and remodeling in the kitchen, installation of a hot tub and erection of an outdoor deck, presumably with marital funds. Also during the marriage, a karate studio was built on the property, from which the parties taught karate classes. As H was a half owner of the partnership, the mortgage was deemed paid with marital funds. The Court properly awarded W half the value of H's one-half interest in the property, after deducting the non-marital percentage attributable to mortgage payments made prior to the marriage. W awarded one half of H's 50% ownership of business as well. Court noted that H and his brother tried to deprive W of share in business by secretively reorganizing the business and transferring title out of H's name.

WIFE
10% Prof. P.
50% Accts.

Schwalb v. Schwalb, 50 A.D.3d 1206 (3d Dep't 2008)

12 yr childless marriage. H was licensed to practice medicine in 1990 and certified to practice internal medicine in 1991. W obtained a Master's degree in fine arts in 1991. Award to W of only 10% of value of H's interest in partnership was not abuse of discretion; where W had little to do with acquisition, maintenance or increase in value of property owned

by partnership. Court properly valued partnership as of date of commencement of matrimonial action based on its classification as an active asset, rather than a passive one. W was entitled to one half of funds in parties' joint account; H failed to demonstrate that account was established for convenience only; marital expenses were paid from the account and both parties deposited their earnings into the account. Court held that the limited record indicated that, while H may not have been completely happy with W's employment decisions, he acquiesced in those decisions. Furthermore, W established proof of her noneconomic contributions to the acquisition of marital property, generally, 50/50 distribution of parties' accounts.

WIFE
55% Overall

Considered "W's limited earnings prospects"

Costa v. Costa, 46 A.D.3d 495 (1st Dep't 2007)
The award to W of title to the marital residence and its furnishings was appropriate given her need for a home as the custodial parent of the parties' two minor children, the availability to H of other residences and his use of marital assets to purchase a Massapequa Park condominium. However, H should have been awarded a 100% interest in the condominium. W is entitled to a total of $515,381.57 from the remaining non-residence assets, which include the individual retirement accounts of both spouses set forth in the order. This 55-45 distribution is equitable under the circumstances, taking into consideration W's contributions to the success of the husband's career and her limited earnings prospects.

WIFE
33%

Moldofsky v. Moldofsky, 43 A.D.3d 1011 (2d Dep't 2007)
19 yr marriage. The decision does not discuss the parties' respective contributions, but W awarded equitable distribution share of "one-third" of the marital assets, including H's pension.

HUSBAND
25%

Arrigo v. Arrigo, 38 A.D.3d 807 (2d Dep't 2007)
Award of 25% of marital assets to H, where the parties' marriage was of relatively short duration, both parties were relatively young and healthy, and there are no children of the marriage. H's financial contributions to the marriage were minimal.

II. Division of Business Interests

WIFE
25%

Hymowitz v. Hymowitz, 2014 N.Y. App. Div. LEXIS 5233 (2d Dep't 2014)
Parties were married for 20 years and had two emancipated children. Taking into consideration the circumstances of this case and of the respective parties, the Court found that the award to the W of a 25% share of the appreciation in value of the H's interest in Weinstein & Holtzman, a family owned hardware store, took into account the W's limited involvement in the H's business, while not ignoring the direct and indirect contributions she made as the primary caretaker of the parties' children, as a homemaker, and as a social companion to the plaintiff, while foregoing her career. The W also received 25% of the H's interest in BSH Park Row, LLC (hereinafter BSH), a holding company whose sole asset was the building located at 29 Park Row in lower Manhattan in which the hardware store was situated.

WIFE
50%

Turco v. Turco, 117 A.D.3d 719 (2d Dep't 2014)
Parties were married 15 years and had two children. Court awarded W 50% of the marital portion of the H's ownership interest in his commercial bakery business. No discussion of the relevant considerations that supported the App. Div. affirmance of the Supreme Court's award. The decision noted that the parties had led comfortable lifestyles.

WIFE
30%

Sykes v. Sykes, 43 Misc. 3d 1220(A) (N.Y. Sup. Ct.2014)
14 year marriage with one child. H was very successful financer, who owned hedge fund and was earning $10 million per year, and the W was unemployed outside the home for pay. Because of W's assumption of the duties related to running the couple's household and caring for their child, H was free to devote his time and attention to his business responsibilities. The Court found that because of W's emotional support as a spouse and a confidante, H "was aided not only in coping with the "vicissitudes of life outside the home," but in making the decisions to change from one financial firm to another and then finally to go out on his own and start GS Gamma." W's contributions, which were strictly indirect and, though significant, "were not extraordinary, do not entitle her to the fifty percent she seeks." W received 30% percent of H's interest in GS Gamma.

WIFE
35%

Alexander v. Alexander, 116 A.D.3d 472 (1st Dep't 2014)
The Court properly exercised its discretion in determining that the W was entitled to 35% of the value of the H's corporate stock shares. The court properly considered the length of the marriage (nearly 25 years), the contribution by the W in running the household and raising their two sons throughout the marriage, and the fact that most of the increase in corporate revenues, which resulted in the increased share price, occurred in the same year as the commencement of this action; no discussion of children

WIFE 50%	**Domino v. Domino, 115 A.D.3d 906 (2d Dep't 2014)** App. Div. affirmed the award of 50% of the parties' marital property, including the H's ambulette business and certain real property. The ambulette business and the real property constituted property acquired by the Parties during the marriage. The Sup. Ct. properly considered the value of these assets in determining the W's equitable share of marital property, notwithstanding the fact that the H was able to transfer title to these assets to a third party, the parties' son, during the pendency of this action.
WIFE 30%	**V.M. v N.M., 43 Misc. 3d 1204(A) (Albany Co. Sup. Ct. 2014)** 12 year marriage with two young children. The parties were in their late 30s. Prior to their marriage, H had been trained in his family's diamond business in India. Prior to the marriage the H incorporated Clear Light, a business involving the importing and wholesale distribution of diamonds. For her part, W was employed at Merrill Lynch at the time of the marriage and then became engaged in non-profit management work. During marriage W obtained an MBA from Duke University and a Gemological Institute of America (GIA) certification. W was actively engaged in both non-profit work and work at Clear Light until the parties first child was born in 2008. At that time, by mutual agreement, W became the primary caretaker for the family while reducing her work activities. Court held that this was a marriage of long duration and both parties made significant contributions to the marriage. Court awarded to W a 30% interest in Clear Light.
EQUAL	**Wei Jiang Sun v Yong Jian Li, 43 Misc. 3d 1205(A) (Queens Co. Sup. Ct. 2014)** The Parties (Chinese) were married for 13 years and had two children. Both parties worked in the laundry business, which W was involved in pre-marriage. During the parties' marriage they acquired a number of laundromats and accumulated significant sums that were kept at different financial institutions, hidden in the business and in their home. W was the primary person responsible for the financial paper work. H took care of fixing the machines. In addition to the businesses, W and H owned two rental real properties located in Pennsylvania, which were titled in their individual names, and several investment accounts. W engaged in a series of covert actions that started during the marriage. The Court found that the parties did not present evidence on most of the marital property and denied equitable distribution as to those items (mostly bank accounts and various laundry business). The Court noted that the parties were married for 13 years, were both employed during the marriage, but "each party denies having full financial control over the marital businesses." The Court held that they were joint enterprises.

WIFE 20%	**Gordon v Gordon, 113 A.D.3d 654 (2d Dep't 2014)** The trial court providently exercised its discretion in awarding W 20% of the H's interest in Floral Management Realty Corporation. The award of 20% "takes into account the W's minimal direct and indirect involvement in the H's company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed the H to focus on his business". No discussion of the length of the marriage.
WIFE 50%	**Finch-Kaiser v. Kaiser, 104 A.D.3d 906 (2d Dep't 2013)** W awarded 50% of the value of H's real estate development company, Pro K Builders, Inc., based on a commencement date valuation. No discussion of the duration of the marriage or the parties' respective contribution. H choose to argue that the Sup. Ct. judge prejudged the case, that argument was rejected.
WIFE 33%	**Benabu v Rienzo, 104 A.D.3d 714 (2d Dep't 2013)** Sup. Ct. providently exercised its discretion in awarding W one-third of the appreciation of the H's business interests in the subject real estate holding companies from the date of the marriage. However, the court incorrectly calculated the W's distributive share of the holding company that owned the property located at 279 Malcolm X Boulevard in Brooklyn. Correction of the court's arithmetical error results in the W's one-third share of the H's interest in this asset as $5,555.56, not $22,222. No discussion of the duration of the marriage, the existence of children or the factors forming the basis for the lower Ct's decision.
WIFE 25%	**Elias v. Elias, 957 N.Y.S.2d 231 (2d Dep't 2012)** W awarded 25% of the value of H's interest in Ben Elias Industries. Appellate Division upheld 25% award as taking "into account [W]'s minimal direct and indirect involvement in [H]'s company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed [H] to focus on his business." Long duration marriage with two children.
WIFE 30%	**Shah v. Shah, 954 N.Y.S.2d 129 (2d Dep't 2012)** H and a partner started the business (Hi-Tech) during the marriage, which was purportedly transferred by H to his partner shortly before commencement for no consideration. Court affirmed award of 30% to W. No discussion of the duration of marriage or the parties' respective contributions.
WIFE 30%	**Golden v. Golden, 98 A.D.3d 647 (2d Dep't 2012)** W awarded 30% of appreciation in H's premarital business (type of business not specified); 10 yr marriage with 2 children, ages 12 and 13, at time of commencement. W was stay at home mother. Appellate Division

upheld 30% award as being "due in part to the indirect contributions or efforts of the other spouse as homemaker and parent."

WIFE
15%

D'Ambra v D'Ambra, 94 A.D.3d 1532 (4d Dep't 2012)
The decision did not specify the length of marriage but the parties had 2 children. W was awarded 15% of value of H's business, given that W only made indirect contributions.

WIFE
50%

Nicodemus v Nicodemus, 98 A.D.3d 605 (2d Dep't 2012)
The Supreme Court improvidently awarded W only 30% of the marital property consisting of among other things an automobile restoration business finding "that an equal distribution of that marital property would be the more equitable disposition" given "the long duration of the marriage, the contribution of each spouse to the marriage and to the parties' automobile restoration business, and the probable future financial circumstances of each party[!]"

WIFE
20% of one business; 50% of another; 10% of financial accts.

Decision is inexplicable

Scher v Scher, 91 A.D.3d 842 (2d Dep't 2012)
W received 20% of the appreciated value of a business, which H incorporated three years prior to the parties' marriage. 2nd Dep't found that W made direct contributions to the business as its bookkeeper for seven years and indirect contributions as homemaker and occasional caretaker of one of H's children from a prior marriage, which enabled H to expand the business. Also, the Supreme Court's ruling that H's interest in another business was his separate property was modified and W received a 50% distributive share of the value of such business, which it found to be marital property because it was *acquired during the marriage*. W received 50% of appreciation in marital residence. ($340,000) **BUT** the Appellate Division then affirmed the award of 10% of the value of the financial accounts "considering W's distributive award with respect to the marital residence and Home Companion Services and Green Fields, and in light of W's direct and indirect contributions."

INTERESTING – the Supreme Court excoriated the W – and held "[d]uring the course of this short, rocky relationship, nothing tied the W to the marital home. There is no rearing of children, maintaining the marital abode and/or active participation in fostering the growth of [H]'s enterprises. At the time the [W] took employment with her husband's companies, she abused her stature as the boss's wife. She came and went as she pleased and neglected accounts, costing the business dearly. She engaged in self-dealing by secretly siphoning money....On the home front, she allowed her sons from a prior marriage to run amok, damage, soil and show no respect for the husband's property. In short, to suggest any kind of symbiosis between the [W] and [H] is sheer fiction. The W's presence, as suggested by the record, was parasitic."

WIFE 50%	**Keil v. Keil, 85 A.D.3d 1233 (3d Dep't 2011)** 26 yr marriage with no children. Parties were older at time of divorce; Given the length of the marriage and the contributions of each of the parties to the marriage and to the family business holdings, W awarded 50% of H's business, Keil's Pools ($437,000), and the parties' Farm. Keeping in mind W's "economic contributions towards the purchase of half of the farm, as well as her economic and noneconomic contributions towards improving [and developing] the property" the Court held that 50% of the farm was marital property, of which W was entitled to one half.
WIFE 40%	**Bergman v Bergman, 84 A.D.3d 537 (1st Dep't 2011)** 14 yr marriage with one child, W awarded 40% of H's business valued at $700,000 and 60% of her own business valued at $10,000. There was no discussion of the duration of marriage or the parties' respective contributions.
WIFE 50%	**Rich-Wolfe v. Wolfe, 83 A.D.3d 1359 (3d Dep't 2011)** W received 50% of the value of construction and demolition businesses given W's sizable contributions to the success of such businesses. W helped in operating them and eventually quit her job to work full time for the businesses. H admitted that she ran the office and was the bookkeeper; he stipulated that she made "substantial direct and indirect contributions" to the marital estate. 17 yr marriage and two children (age 16 and 7). • Contribution pull out – the term "substantially contributed" – shows up frequently.
WIFE 25%	**Massirman v. Massirman, 78 A.D.3d 1021 (2d Dep't 2010)** The Second Department affirmed the Supreme Court's award to the wife, who made only indirect contributions, of 25% of the value of H's business because she played a minimal role the husband's career while continuing her own career.
WIFE 52%	**Wesche v Wesche, 77 A.D.3d 921 (2d Dep't 2010)** Long term, 20 yr marriage with two unemancipated children. H ran a funeral home business and there was evidence that H tried to conceal income. W awarded 52% ($395,000) of the value of H's business ($760,000). There was no discussion of the parties' respective contributions, except that the W operated a separate business which provided headstones, and she ran a small karaoke business – which was not valued nor distributed.
WIFE HYBRID ~ 30%	**P.D. v L.D., 28 Misc. 3d 1232(A) (Sup. Ct. Westchester Co. 2010)** H's 50% share of a hair salon was valued at $106,000. W received a credit for one-half of the $25,000 of the marital funds applied to start the business *plus* in consideration of both parties' indirect and direct contributions to the value of the business, 30% of the value remaining

	after deducting the marital funds to start the business. In sum, W received $36,800. 24 yr marriage with 2 children.
WIFE 10% W pursued her own career distinguished from full time homemaker	**Giokas v Giokas, 73 A.D.3d 688 (2d Dep't 2010)** 33-year marriage. H did not commence his involvement in first of two businesses subject to equitable distribution until 21 years into marriage, which was at time when two sons were already teenagers; H's involvement with second of those businesses began six years after commencement of his involvement in first business, and only six years before he commenced the divorce action; further, during substantial portion of time in which H was involved in two businesses, W was employed outside home and parties' then-teenage children became emancipated. Since W made no direct contributions to H's businesses and made only modest, indirect contribution to them, she was awarded only 10% of their value. **IMPORTANTLY**, the Court held "[c]ontrary to the W's contentions, her circumstances are thus distinguishable from those of an untitled, full-time homemaker in a long-term marriage, whose spouse was involved in a business or practice for the entire duration of the marriage, during which time children were born and raised primarily by the untitled spouse."
WIFE 20% "Primary Caretaker" of kids but "minimal" direct contributions to business	**Baron v. Baron, 71 A.D.3d 807 (2d Dep't 2010)** Based upon W's minimal direct and indirect involvement in H's company, and her contributions as primary caretaker for the parties' children, W was awarded of the value of H's company. W's total distributive award was $4,566,857.90, 20%, which "takes into account W's minimal direct and indirect involvement in H's company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed H to focus upon his business."
WIFE 35%	**Kerrigan v. Kerrigan, 71 A.D.3d 737 (2d Dep't 2010)** 35% of the value of the appreciation of H's business during the marriage was awarded to W ($409,000). No specific reasons given for the appropriateness of the 35% award other than "under the circumstances of the case." While the 2nd Department decision did not identify the type of business, the Supreme Court decision (Kent, J.) described it as "a small company that sells industrial chemicals". The company had "minimal fixed assets" and "almost no inventory". There was no discuss about the duration of the marriage or there being children, except that child support was awarded.
WIFE 35% Business 50% Mar. Property H had skills that	**Wyser-Pratte v. Wyser-Pratte, 68 A.D.3d 624 (1st Dep't 2009)** H already possessed substantial business assets when the parties were married, as well as the skills that allowed him to earn the "extraordinary" income the parties enjoyed during the marriage. 1st Department noted that

drove his success before the marriage	W contributed to the further development of the business by decorating and renovating the parties' residences, among other things, to create impressive surroundings in which to entertain H's clients and potential investors. 35% of H's business assets to the W; which included the couple's own trading accounts, invested with H's brokerage business and deferred incentive fees; W awarded 50% of other assets.
WIFE 40% Remanded For Review	**Zaretsky v. Zaretsky, 66 A.D.3d 885 (2d Dep't 2009)** 15 yr marriage; 3 children; Appellate Division reversed award of 40% in H's separate property business (M&H Property and its appreciated value); and remanded award of 40% of appreciated value of H's 1/3 interest in one of his business (Maxi-Aids). Although H and his father attempted to downplay the H's efforts, the record revealed that the appreciation of Maxi-Aids during the marriage was due, at least in part, to the H's active participation, which was facilitated by W's indirect contributions as a homemaker. The Supreme Court, however, failed to articulate fully its basis for awarding W 40% of the *total* appreciated value of H's interest in Maxi-Aids, as opposed to a portion thereof. Before making the distributive award, the Court should have considered the extent and significance of H's efforts in relation to the active efforts of others and any additional passive or active factors, and determined what percentage of the total appreciation constituted marital property subject to equitable distribution.
WIFE 50%	**Bricker v Bricker, 69 A.D.3d 546 (2d Dep't 2010)** H's business (JCB Holdings) distributed 50/50 and 60/40 of corporate stock in Bricker's Inc. There was no discussion of the duration of marriage or the parties' respective contributions.
WIFE 50% Stay at home mother. No articulated direct contributions.	**Wasserman v. Wasserman, 66 A.D.3d 880 (2d Dep't 2009)** DOM 1979; 24 yr marriage with 2 emancipated children. H was sole source of financial support for the family and the W was a stay at home mother prior to the commencement of the divorce action but graduated from SUNY purchase with a BA in 2002 and became a licensed real estate broker in 2003. Fact that H may have made greater economic contributions to the marriage than W does not necessarily mean that he was entitled to a greater percentage of the marital property. W awarded 50% of the value of H's businesses (nature of business not specified in decision).
WIFE 40% (of 10% appreciation)	**Smith v. Winter, 64 A.D.3d 1218 (4th Dep't 2009)** DOM 1996; 12 yr marriage with no children. Prior to the marriage H was sole shareholder, CEO and president of American Wire, which acquired PNA. H was found to be substantially responsible for day to day management and operations of American Wire but had no involvement in

	the day-to-day operations of PNA. American Wire had no appreciation during the marriage while PNA appreciated by $20 Million. 10% of the $20 Million appreciation found to be marital property and W was entitled to 40% based on her "contribution as homemaker." Court also distributed marital bank accounts 50/50.
WIFE 15%	**Gering v. Tavano, 50 A.D.3d 299 (1st Dep't 2008)** Award was proper given W's failure to contribute to the business, lack of cooperation with respect to discovery of her own assets, and receipt of temporary maintenance. There was also an adverse inference drawn against her for failure to disclose. The duration of this marriage with 2 children was not specified.
WIFE 35% Housewife abandoned career; limited direct contributions	**Ciampa v. Ciampa, 2008 NY Slip Op 442 (2d Dep't 2008)** Long term marriage. Appellate division recognized accommodation between the W's limited involvement in the business, while not ignoring the direct and contributions she made as the primary caretaker of the parties'4 children, as homemaker, and as social companion to her husband, while foregoing her career as an attorney. (nature of business not specified in decision)
WIFE 40% Reduced from 50% Housewife no direct contributions	**Schorr v. Schorr, 46 A.D.3d 351 (1st Dep't 2007)** Because W's contributions to H's business interests, which accounted for substantial portion of the marital assets, were "modest, and taking into account her contributions as a homemaker, the 1st Department reduced W's award from 50% to 40% of the value of H's business interests (nature of business unspecified in the Court's decision).
WIFE 40%	**Meccariello v. Meccariello, 46 A.D.3d 640 (2d Dep't 2007)** The Supreme Court improvidently exercised its discretion in awarding W only 25% of the 30% portion of H's business that H acquired in 1997 (*see* Domestic Relations Law § 236 [B][5][d][6], [13]). Under the circumstances of this case, W should have been awarded 40% of the 30% portion. There was no discussion of the parties' respective contributions and the duration of the marriage was not specified.
WIFE 50% Direct contributions Also primary caretaker of children; H nearly allowed home to be	**M.A. v. K.A., 2007 N.Y. Misc. LEXIS 8578 (Sup. Ct. Nassau Co. 2007)** 28 yr marriage with two children. W was awarded 50 percent of H's share of the increase in the value of the H's Jewelry business's during the marriage. The increase in value was due in large measure to W's direct contributions, for which she was not compensated by salary or commissions. She took many courses during the marriage, which provided her with skills in grading diamonds and gem stones and in designing jewelry, and testimony established that she accompanied

foreclosed	H on many business trips and worked at trade shows. She also made indirect contributions, providing for virtually all the care for the children and the maritalresidence, even functioning as the general contractor while it was being built. W was also awarded a greater share of the marital home. As a consequence of H's failure to obey a *pendente lite* order, a foreclosure action was commenced on the home, and initially it was only through the efforts of her parents that the family was not rendered homeless.

III. Professional Practice Interests

WIFE
15%

MI. S. v. MA. S., N.Y.L.J. Pg. 26, Vol. 251, No. 50, March 17, 2014
Parties, who were both in their early 40s at the time of trial, were married 15 years and 11 months and had two teenage children. W was not employed during the last 13 years of the marriage. W conceded that she did not cook or clean the home but rather "supervised" staff employed to maintain the home and assist in child-care. W testified she scheduled and drove the children to their daily activities and assisted them with homework. Her direct contributions toward H's business was limited to an annual holiday party, picnic and at times entertaining pharmaceutical representatives at the home prior to dining out. Court found such contributions to be minimal. The Court noted that the W's efforts were different than those of an untitled, full-time homemaker in a long-term marriage, whose spouse was involved in a business practice during the marriage, during which time the children were raised primarily by the untitled spouse. W awarded 15 percent of the H's interest in his medical practice, in Orlin & Cohen, the entity known as ASC LLP and the property known as OCOA.

HUSBAND
25%; 0% in Bus. Corp.; 0% of W' s EEC

A.C. v J.O., 40 Misc. 3d 1226(A) (Kings Co. Sup Ct 2013)
Parties had 12 year marriage with two young children . The W owned a dental practice and the H worked as a first assistant director, primarily for television. He had also written screenplays and he made a full length film, which he both wrote and directed. In consideration of the H's minimal direct and indirect contributions toward the establishment of the W's business, but cognizant of his support of her for the four years she was in dental school, and of the parties' first child, who was born during the summer before she started her last year of dental school, the court awarded him as his equitable share of her dental practice, 25% percent of the value of Ada S. C D.D.S., P.C.. H also entitled to a credit for his one-half share of the HELOC funds used to purchase the client list acquired by the W as the "initial investment" in her business. The court awarded both H and W sole interest in his or her respective business corporations.

W's EEC from acquisition of her dental degree was determined to be zero. It was noted that the W left her position as an equity partner at a law firm and attended dental school with the full consent of her H, and that both parties understood this would allow her to earn a substantial salary, but was unlikely to enhance her earning capacity. If she was still an equity partner at a law firm, it is implied her earnings would be higher than they are now. Thus, regardless of whether H made non-monetary contributions to the achievement of the dental degree, there can be no distribution of any such value where the value of W's enhanced earning capacity is zero.

Wife 10% Indirect contributions only; W pursued own career	**Charap v. Willett, 84 A.D.3d 1000 (2d Dep't 2011)** W received 10% of the value of H's law practice, where she made only indirect contributions to his career and was employed herself as an attorney for most of the lengthy marriage.
WIFE 50%	**Henneberry v. Borstein, 87 A.D.3d 451 (1st Dep't 2011)** 1st Department affirmed Judgment of Supreme Court, New York County (J. Gische, J.S.C.) awarding W 50% the appreciation on H's share of his law practice. Also awarded 50% of value of interest in farm. There was no discussion of the duration of marriage or the parties' respective contributions.
WIFE 20% Bus 60% Remainder	**Davis v O'Brien, 79 A.D.3d 695 (2d Dep't 2010)** W awarded 20% of value of H's law partnership (reduced from 50%) where W successfully embarked on her own full-time career and made only indirect contributions to H's career; HOWEVER, W awarded 60% of certain marital assets based on the significant decrease in H's contributions to the marriage as a financial, emotional, and supportive partner for more than four years. Court noted that this was a longer duration marriage, and also recognized equitable distribution is not only on financial contribution but also on "wide range of non-renumerated services to the joint enterprise, such as homemaking, raising children and providing the emotional and moral support necessary to sustain the other spouse in coping with the vicissitudes of life outside the home."
WIFE 35% Bus. 15% Other Bus. Minimal Direct Contributions=35% No Direct Contributions=15%	**Robert M. v. Christina M., 29 Misc. 3d 1209(A)(Sup. Ct. Rockland Co. 2010)** During the marriage, in 2001, H purchased a dental practice, including a building, with marital funds and a loan, which, to the extent it was repaid, marital funds were used. Taking into account that W had minimal direct involvement with the practice (which "did little to enhance the value of the property"), other than as a short term employee, plus the contribution of marital funds, 35% share of the value of the business, including the real estate, was awarded to her. Separately, in 2001, H received as a gift a one-half interest in a New York City dental practice. As no marital funds were spent by H in obtaining his interest and W had no direct involvement in the practice, she was entitled 15% of the appreciation of H's one-half interest.
WIFE 0%	**Albanese v. Albanese, 69 A.D.3d 1005 (3d Dep't 2010)** 18 yr marriage with two children. H graduated from law school in 1982 (5 yrs before DOM) and worked as a solo practitioner in his own firm throughout. H's practice was found to be separate property but no base line value established at the DOM. The 3d Dep't noted that while W's

	role as homemaker and mother to the parties' children established that she was entitled to a share of any appreciation in the practice, because there was no evidence of appropriate value, the award to her of $104,000 was reversed.
WIFE 15% Reduced from 40%; W pursued own career	**Peritore v Peritore, 66 A.D.3d 750 (2d Dep't 2009)** Appellate Division reduced the Supreme Court's award of 40% to 15% of the value of H's dental practice ($233,000). W pursued her own career on a full-time basis and made only indirect contributions to H's dental practice. There were no children of this 6 yr marriage.
WIFE 25% READ AND SHAKE YOUR HEAD	**Mairs v. Mairs, 61 A.D.3d 1204 (3d Dep't 2009)** Appellate Division increased the Supreme Court's award to the wife of 15% to 25% of the value of H's medical practice and enhanced earning capacity from his medical license (ophthalmologist) ($1,493,000). During this long-term marriage, W, who was a tenured math professor employed at Community College of Philadelphia, was the primary caretaker for their 7 children, managed the household, made economic contributions (at times, was the primary source) relocated the family from Utah to Philadelphia and then to New York "for the express purpose of allowing H to pursue his medical studies and obtain his medical license." During the marriage, H completed his undergraduate studies and earned his medical degree and completed both his internship and residency. Additionally, W made direct contributions to the medical practice including managing the practice and assuming responsibility for the preparation of all invoices and payment of all bills.
WIFE 30% Bus. 50% Mar. Property No direct contribution *but* W abandoned career and moved to support H	**Quinn v. Quinn, 61 A.D.3d 1067 (3d Dep't 2009)** 14 yr marriage with 2 children. 30% of the value of H's medical practice awarded to W due to her indirect contributions as a homemaker and parent. W made no direct contributions, financial or otherwise, to H's business. However, W agreed to forgo a career in retail when the parties decided to get married and relocate, and Court recognized her domestic and child rearing contributions to the marriage that allowed H to build his practice. H had obtained medical degree and license and established orthopedic surgeon prior to the marriage. Court went on to hold that the remainder of the overall marital assets be distributed equally.
WIFE 25% Practice; 10% EEC W's overall contributions; No dir. contrib. and H worked very hard	**Fleischmann v. Fleischmann, 24 Misc.3d 1225(A) (Sup. Ct. Westchester Co. 2009)** 29 yr marriage; 3 children; W received 10% of the martial component of H's law license and 25% of the value of H's law firm partnership interest because W's contributions were overall contributions to the marriage and H's attainment of his partnership interest was due to him "having worked long of hours with thousands billable hours leading to a steady rise to partner."

WIFE 35% Indirect contributions only	**Petosa v. Petosa, 56 A.D.3d 1296 (4th Dep't 2008)** Wife awarded 35% of H's tax accounting business based on indirect contributions toward the business. There was no discussion of the duration of the marriage or whether there were any children.
WIFE 35% W homemaker No description of direct contributions; W's bad conduct hurt H's status	**Schwartz v. Schwartz, 54 A.D.3d 400 (2d Dep't 2008)** 30 yr marriage; 1 child. W awarded 35% of the value of H's law practice (at a mid-sized firm), which took into consideration the long term marriage (30 yrs), that W was the primary caretaker for the parties' child during the early part of H's career, which allowed H, at one time, to earn the 3rd highest share of profits at his law firm, but also her bad conduct toward the latter part of the marriage that harmed H's status at the law firm, reducing his salary and profits. **The decision specifically said that it took into account W's bad conduct- as if to suggest that it reduced her award accordingly**
WIFE 30% of both practice and EEC W's contributions, albeit limited, were both dir. and indir.	**Kaplan v. Kaplan, 51 A.D.3d 635 (2d Dep't 2008)** W received 30% of the value of H's dental practice and license. The award took into account the limits of W's involvement with the practice and the attainment of H's dental license while not ignoring her direct and indirect contributions.
WIFE 35% W's involvement in practice limited	**Griggs v. Griggs, 44 A.D.3d 710 (2d Dep't 2007)** Long duration; 2 children. Taking into account W's limited involvement with the H's medical practice and her indirect contributions to it, she received 35% of the value of it. "Award takes into account the limits of W's involvements with the practice, while not ignoring the direct and indirect contribution that she did make."

IV. Division of Enhanced Earning Capacity

The spouse seeking the distributive award of the enhanced earning capacity or an interest in a business or professional practice must demonstrate that he/she made a substantial contribution to the title-holding spouse's acquisition of the license and/or degree or the business interest; it is not an overall contribution to the marriage analysis. *See* **Evans v. Evans, 55 A.D.3d 1079 (N.Y. App. Div. 3d Dep't 2008).**

W 30% EEC 50% of other assets	**Kim v Schiller, 112 A.D.3d 671 (2d Dep't 2013)** App. Div. reversed Sup. Ct. award to the W of 50% of the H's EEC and reduced it to 30%. No discussion of the duration of the marriage; 2 unemancipated children. Award was appropriate given W's substantial indirect contributions to the attainment of a medical degree and license, including having been supportive and worked full-time throughout the marriage, except when she was on maternity leave. The W did not make direct financial contributions to the attainment of the degree. Award was reduced given H's "accommodations for the sake of the [W's] career and desire to remain near her family." Each party awarded 50% of retirement accounts and equity in the marital residence.
HUSBAND 25%; 0% in Bus. Corp.; 0% of W' s EEC	**A.C. v J.O., 40 Misc. 3d 1226(A) (Kings Co. Sup Ct 2013)** Parties had 12 year marriage with two young children . The W owned a dental practice and the H worked as a first assistant director, primarily for television. He had also written screenplays and he made a full length film, which he both wrote and directed. In consideration of the H's minimal direct and indirect contributions toward the establishment of the W's business, but cognizant of his support of her for the four years she was in dental school, and of the parties' first child, who was born during the summer before she started her last year of dental school, the court awarded him as his equitable share of her dental practice, 25% percent of the value of Ada S. C D.D.S., P.C.. H also entitled to a credit for his one-half share of the HELOC funds used to purchase the client list acquired by the W as the "initial investment" in her business. The court awarded both H and W sole interest in his or her respective business corporations. W's EEC from acquisition of her dental degree was determined to be zero. It was noted that the W left her position an equity partner at a law firm and attended dental school with the full consent of her H, and that both parties understood this would allow her to earn a substantial salary, but was unlikely to enhance her earning capacity. If she was still an equity partner at a law firm, it is implied her earnings would be higher than they are now. Thus, regardless of whether H made non-monetary contributions to the achievement of the dental degree, there can be no distribution of any such value where the value of W's enhanced earning capacity is zero.

WIFE
25%
Other assets 50/50

Hogle v Hogle, 40 Misc. 3d 1220(A) (Columbia Co. Sup. Ct. 2013)
The parties, who were both in their late-50s, were married for almost 32 years. They had two emancipated children. W was the primary homemaker and generated income through her "Longaberger" basket business. Her efforts as a homemaker were found to be as significant as H's contributions as the primary wage earner. Shortly after the parties were married, H enrolled in law school full time and earned his law degree in 1982. While H worked part-time and in the summer during law school, W provided the primary family support. The parties financed H's law school education through student loans which were eventually paid with marital funds. W awarded 25% of the EEC attributable to the H's law degree and associated license. With respect to W "Longaberger" basket business, the Court found that the business was not appropriately valued and directed the W to turn over 150 baskets. With respect to the remainder of the assets, "[g]iven the long term of this marriage, and the respective contributions of the parties to the marriage..." the Court awarded the remainder of the assets essentially 50/50.

50% MR to W
30% EEC to H

Owens v Owens, 107 A.D.3d 1171(3d Dep't 2013)
W and H married for 24 years with 2 older children. Family lived off income generated from H's ownership in separate property, premarital Manhattan real estate. W earned a Bachelor's degree in nursing and obtained her license as a registered nurse. During the marriage, aside from very brief periods of employment, the W was not employed as a nurse or otherwise. In 2007, the H sold the NYC rental property for $6 million and, thereafter, the family was supported by the proceeds. The App. Div. modified the award to the W of the appreciation of the value of marital residence from 40% to 50% "taking into account the parties' assets at the commencement of the action and the husband's economic fault." The App. Div. did not modify the award to the H of 30% of the enhanced earnings attributable to the wife's nursing degree, as he encouraged her to pursue her dream, financed her education and was the primary caregiver for the children while she pursued her degree full time. The net result was the W received approximately $140,000.

WIFE
15%

McCaffrey v McCaffrey, 107 A.D.3d 1106 (3d Dep't2013)
During the 12 year, childless marriage, the H (age 52) earned an Associate's degree in telecommunications and a Bachelor's degree in business administration with a minor in accounting. H received numerous promotions throughout the marriage, eventually holding the title of director of a department relevant to his degrees. There was testimony from two witnesses that H's degrees were not required for his promotions and that his promotions were mostly attributable to his superior job performance, however "neither witness testified that his degrees were not a factor in his promotions" and the Court rejected that argument. W (age 42) found to have made contributions including, rearranging her schedule

	to transport H to and from classes, and assumed a greater share of the household responsibilities, and that part of the H's tuition was paid for by marital funds. However, H expended significant effort in obtaining his degrees; attended night classes while working full time, and occasionally at a part-time second job. Much of his professional success was attributable to his superior job performance. W awarded 15% of the enhanced earnings (totaling $11,475).
W TBD Investment and Retirement assets 50/50	**Lauzonis v Lauzonis, 105 A.D.3d 1351 (4d Dep't 2013)** App. Div. reversed Sup. Ct. and held that W entitled to a portion of EEC from H's master's degree which he earned in part during the marriage. W made a "modest" contribution toward the H's attainment of a master's degree and thus that she was entitled to some portion of his enhanced earnings. Record demonstrated that the parties married shortly after the W graduated from college and that, at the time, the H was teaching high school and had five years in which to obtain his master's degree. Court found that W put her own master's degree "on hold" while the H pursued his degree. During that period, the W substitute taught, performed household duties, and assisted H with his course work and took over H's swim club, planning practices for the varsity swim teams he coached, and volunteering to coach those teams for him several times a week. W also worked part-time as the head coach of a university swim team and, when the parties' first child was born, she worked full-time as an elementary school teacher. In addition the Court affirmed the equal distribution of the joint investment account and marital portion of H's 403-b was divided 50/50.
HUSBAND 15% Practice 15% EEC	**Vertucci v Vertucci, 2013 N.Y. App. Div. LEXIS 1120 (3d Dep't 2013)** 19 yr marriage with 3 children. H awarded 15% of W's EEC as a lawyer and 15% of her law practice value. W was married to H during her entire third year of law school and her practice was started during the marriage. Conflicting testimony regarding the extent of H's involvement in matters that contributed to W obtaining her law degree and her subsequent starting a private law practice and the decision does not address their finding with respect to H's involvement other than to state that the Appellate Division deferred to Sup. Ct. determination.
HUSBAND 0% MED LIC. Contributions "*de minimus*"	**Sotnik v. Zavilyansky, 956 N.Y.S.2d 514 (2d Dep't 2012)** Where H's contribution to W's attainment of her medical license was *de minimis*, the Supreme Court providently exercised its discretion in determining that H was not entitled to any distributive share of the W's enhanced earning capacity from her medical license. The duration of this marriage with one child was not specified.

HUSBAND
5% LIC.; 0% PHD

50% of accounts
Why does this guy
Get 50% of
anything?

Mojdeh M. v. Jamshid A., 36 Misc. 3d 1209A (Sup. Ct. Kings Co. 2012)

11 yr marriage, with one 11 yr old son; both parties had graduate degrees. Court determined that H did not make a substantial contribution toward W completing her license. He was not a homemaker, his contribution to raising the parties' child was minimal, taking the child for walks and watching television with the child. H did not perform many household duties and he cooked for himself and did his own laundry but did not do so for the wife. H provided no economic support, no maintenance to the martial home and did not sacrifice his education while W pursued her medical license. On the contrary, W testified that she repeatedly requested that H make use of his education and seek employment, but to no avail. He appeared to be more of an obstructionist and drain to the marital relationship as opposed to being an asset. W worked two jobs at times to enable the parties to pay their rent. In consideration of H's very limited contribution and efforts towards W attaining her license H is awarded 5% of the enhanced earning value. Equitable distribution of W's enhanced earning capacity related to her gastroenterology fellowship is denied, as H failed to proffer any evidence as to the value of this certificate. 50/50 on bank accounts and automobile.

HUSBAND
H 10% of W's EEC;
W 0% of H's J.D.

Esposito-Shea v. Shea, 94 A.D.3d 1215 (3d Dep't 2012)

15 yr marriage with 2 children. During the marriage H completed studies in psychology and earned PhD degree and W went to law school and earned degree. After DOC W passed bar exam and received her license to practice law. Appellate Division affirmed Sup. Ct. award of 10% of EEC of W's law degree. 3d Department held that H's contributions as the family's primary wage earner during the parties' marriage, and his willingness to arrange his work schedule so that he would care for the children while the W attended law school, were representative of "overall contributions to the marriage, rather than additional efforts to support W in obtaining her license." Further held that W's own efforts in obtaining her law degree cannot be minimized, because she worked in part time positions throughout the marriage and was employed during the summer months while attended law school, also earning merit scholarships and paid a significant part of her law school tuition with an inheritance she received during the marriage. W awarded 0% of value of H's PhD upon the ground that H had satisfied most of the requirements he needed to obtain his degree before the marriage and paid for it while providing financial support for his family. Court held that W's assistance was "simply not so significant or unique as to warrant awarding her a distributive share of its value."

HUSBAND
15% EEC

Gallagher v. Gallagher, 93 A.D.3d 1311 (4th Dep't 2012)

Long term marriage of over 25 yrs. Appellate Division awarded H 15% of the value of W's master's degree without discussing contributions, other

WIFE 45% of Farm H's contributions "modest"	than to state "where only modest contributions are made by the nontitled spouse toward the other spouse's attainment of a degree . . . and the attainment is more directly the result of the titled spouse's own ability, tenacity, perseverance and hard work, it is appropriate for courts to limit the distributed amount of that enhanced earning capacity." W awarded 45% of the value of the farm, where it proven that both parties operated the farm.
HUSBAND 5% Nursing 31.6% MR	**Nidositko v. Nidositko, 92 A.D.3d 653 (2d Dep't 2012)** 5 yr marriage. During the marriage, W attended college and received her nursing degree. H awarded 5% share of W enhanced earnings due to her attainment of a nursing degree and professional license ($18,850). Court also found that W's residence was separate property obtained 5 yrs prior to the marriage. One year into the marriage, home was conveyed from W to W and H and refinanced. Parties used the refi to pay off $30k of H's indebtedness and $20k of W's indebtedness. Appellate Division held that Supreme Court grant of $15k or 31.6% of marital portion of residence to H (*i.e.*, that amount of appreciation once it was transferred into joint names) was proper, but that because refinance was used to pay $30k of H's debts and only $20k of W's debt, W was entitled to $10k credit. Therefore, H was only due $5,000. The opinion contained no discussion about the parties' respective contributions or whether there were any children.
WIFE 10%	**Pankoff v. Pankoff, 84 A.D.3d 690 (1st Dep't 2011)** 10% of H's enhanced earning capacity awarded to W, affirmed, because the record demonstrated her "economic and non-economic contributions" to the husband's license and career during the marriage (nature of license and career unspecified). The duration of this marriage with two children was not specified.
WIFE 30% MBA "Substantial indirect contributions"	**Huffman v Huffman, 84 A.D.3d 875 (2d Dep't 2011)** W received a 30% share of H's enhanced earning capacity due to his MBA degree because she made substantial indirect contributions by supporting his educational endeavors, contributing her earnings to the family, being the primary caretaker of the parties' 3 children, cooking family meals and participating in housekeeping responsibilities. Not an actual prerequisite to H's employment. The duration of the marriage was not specified. • Contribution pull out – substantial indirect contributions – SUPPORTIVE; Contributing earnings; primary caretaker; cooking family meals – BASICALLY she did everything!
WIFE 10% Med. Lic.	**Sadaghiani v Ghayoori, 83 A.D.3d 1309 (3d Dep't 2011)** 8 yr marriage. In 2001, the parties were married in Iran, where H was a licensed physician. Shortly after the marriage, W, pregnant with the

HUSBAND 0% of W's Pension and Def. Comp.	parties' only child, returned to the W's residence in Albany County. Subsequent to W's move, H arrived in New York to obtain licensure and pursue his medical career in New York City, and he sporadically returned to the marital residence in Albany County. The 2nd Department reduced W's award to 10% of the marital portion of H's medical licenses (from 30%) referencing that: (i) H obtained his medical degree prior to the marriage and, by the time he arrived in the U.S., he had already passed some of the examinations required to practice medicine here; (ii) the W and H cohabited for less than six months in New York; (iii) H's expenses while living in New York City were paid by his mother; (iv) there was no evidence that W interrupted her career or adjusted her lifestyle to support H and she obtained a Master's degree while maintaining full-time employment; and (v) W initially provided some support/assistance to H upon his arrival, plus maintained the marital residence in Albany County, to where he occasionally returned, and cared for their child. H awarded no portion of W's pension and deferred compensation plans as "there was no evidence of any direct or indirect contribution by H to W's acquisition of either of these assets."
WIFE 35% Med. Lic.	**Bayer v. Bayer, 80 A.D.3d 492 (1st Dep't 2011)** W received 35% of H's enhanced earning capacity based on her economic and noneconomic contributions to his attainment of a medical license and subsequent lucrative career and her termination of her career and absence from the job market in order to maintain the marital household. Long duration marriage, with no discussion in the decision about whether there were any children.
WIFE 50 to 25% Prof. Lic.	**Haspel v. Haspel, 78 A.D.3d 887 (2d Dep't 2010)** 23 yr marriage with two children. The Second Department modified the trial Court's award of 50% to 25% of H's enhanced earning capacity due to his attainment of "various professional licenses, including, inter alia, several securities dealer's licenses and a real estate broker's license." There was no discussion about the parties' respective contributions.
HUSBAND 0% H made no contribution beyond "overall contribution to the marriage"	**McAuliffe v. McAuliffe, 70 A.D.3d 1129 (3d Dep't 2010)** 29 yr marriage with 3 children. No evidence that H made any efforts to help W attain her academic degrees beyond his overall contributions to marriage; therefore, H not entitled to share W's enhanced earning capacity, if any. Both parties obtained degrees during the marriage: H had an engineering degree and was regularly employed since early in the marriage and W had an undergraduate degree and worked in administrative and sales positions before leaving full time work to care for the children in 1992. Thereafter, she worked part time as a self-employed consultant and trainer. W obtained both her degrees at night and weekend

courses while working full time for employers that reimbursed all of her expenses for tuition and books. There was no evidence that any unreimbursed marital funds were expended or that the husband made any efforts to assist the W in obtaining either degree that went beyond "overall contribution to the marriage."

WIFE
10% of EEC
But all other assets
50/50

Really Reflects Different Standard

"Modest contribution to EEC *but* significant overall"

Schwartz v. Schwartz, 67 A.D.3d 989 (2d Dep't 2009)

H obtained securities licenses during the long duration marriage. The Appellate Division found that it was not error for the Supreme Court to award W only 10 percent of the value of H's enhanced earning capacity through those licenses. W made only modest contributions toward H's attainment of the licenses, which was more the directly result of H's own ability, tenacity, perseverance, and hard work. The Court then went on to award each party 50% of net proceeds from sale of the marital home. "Similar considerations lead to the conclusion that the Supreme Court providently exercised its discretion in dividing the personal property located within the marital residence equally between the parties... where both parties have made significant contributions during a marriage of long duration, a division of marital assets should be made as equal as possible."

WIFE
35% MBA

No direct financial contributions to EEC *but* "substantial indirect contribution"

Jayaram v. Jayaram, 62 A.D.3d 951 (2d Dep't 2009)

DOM 1992. W received 35% of H's enhanced earning capacity ($1,053,500) due to his MBA and NASD licenses because, although W did not make direct financial contributions to H's attainment of his MBA degree and NASD licenses, she made substantial indirect contributions by supporting H's education, working full-time and contributing earnings to the household, being the primary caretaker for their children, cooking family meals and participating in housekeeping responsibilities. 2 children. Prior to marriage H earned a Masters in Science degree from Georgia Institute of Technology and Ph.D. in mechanical and aerospace engineering from Princeton University. Earned his MBA during marriage.

HUSBAND
5% Med. Lic.

"Minimal financial contributions" and no substantial indirect contributions

Guha v. Guha, 61 A.D.3d 634 (2d Dep't 2009)

Court awarded only 5% of W's enhanced earning capacity to H because he made minimal financial contributions to the marriage, and he failed to satisfy his burden of demonstrating that he made substantial contributions to W's attainment of her medical license in the United States. W attended medical school in India before she met H, and after the parties were married, she passed the United States medical licensing exam, however, she did so based on her own ability and hard work.

WIFE
10% Deg. and License

Kriftcher v. Kriftcher, 59 A.D.3d 392 (2d Dep't 2009)

Marriage of short duration and there was at least one child; W worked part-time as substitute teacher ($10,000) and H earned $500k. W received 10% (modified the Supreme Court's award of 40%) of H's enhanced

"minimal contributions"	earning capacity from his law degree and license, "where only modest contributions are made by the non-titled spouse toward the other spouse's attainment of a degree or professional license, and the attainment is more directly the result of the titled spouse's own ability, tenacity, perseverance and hard work, it is appropriate for court's to limit the distributed amount of that EEC." W made minimal contributions to the degree.
HUSBAND 10% MBA	**Wiener v. Wiener, 57 A.D.3d 241 (1st Dep't 2008)** H received 10% of W's enhanced earning capacity due to her attainment of MBA degree. Decision did not discuss the parties' respective contributions. Distributed appreciation of marital residence equally as well as marital portion of certain retirement accounts.
WIFE 0% Engin. Deg. Failed to show "meaningful contributions" *but* there were overall contributions to the marriage	**Evans v. Evans, 55 A.D.3d 1079 (3d Dep't 2008)** 19 yr marriage with at least 2 children; W awarded zero, where the Appellate Division affirmed Supreme Court's determination that the EEC conferred upon him by his engineering degree earned during the marriage was zero and even if there was a value, W failed to demonstrate that she made any meaningful contributions that assisted defendant in earning it. W's contributions "can be seen more as overall contributions to the marriage rather than an additional effort to support [H] in obtaining his license."
HUSBAND 0% Bach. and Master Contributions not "substantial" although some efforts to "help"	**Higgins v. Higgins, 50 A.D.3d 852 (2d Dep't 2008)** H was not entitled to a share of W's enhanced earning capacity due to her bachelor and master's degrees, where he did not demonstrate that his contributions were substantial. Despite making some efforts to help, there was no evidence that he made career sacrifices or assumed a disproportionate share of the household work as a consequence of W's education. W worked full-time while attending school, paid for some of her educational costs and was the children's primary caregiver.
HUSBAND MBA increase from 0% to 25%	**Judge v. Judge, 48 A.D.3d 424 (2d Dep't 2008)** Appellate Division modified award to H of 0% to 25 % of W's MBA. Long term, 26 yr marriage with 2 children. In 1989 W stopped working outside the home in order to take care of parties' first child, she primarily stayed home and took care of the parties' children until the fall of 1993, when she enrolled in a program for a MBA at a college where H was employed as professor. Since W's MBA degree substantially increased her future earnings, H was entitled to equitable share of its value ($141,250).
HUSBAND 50% reduced to 25%	**Midy v. Midy, 45 A.D.3d 543 (2d Dep't 2007)** Reducing the Supreme Court's award of 50%, the Appellate Division

Master's degree 50% Fla Pro. H did not "sacrifice"; although he did make indirect contributions	directed W to pay H 25% of her enhanced earning capacity as a result of her Master's degree in speech pathology. Marriage was at least 9 yrs with 1 child. There was no evidence that H sacrificed any career opportunities during the time W pursued her degree. W testified that H never looked after their child while she was studying for her master's degree, nor did he ever assist her in any way in her attainment of her master's degree. And while both parties agreed to hire a babysitter to care for the child while W was in school, H testified that, although he continued to work full time while W was in school, he cared for the parties' child during the time when he was not working, relieved W of her household chores so that she could study, maintain the household, took the child to school and activities, and assisted W with her studies, as he had a similar background in special education. There was no evidence that H sacrificed any career opportunities. Also, H awarded 50% of proceeds of sale of Florida Property, after credit to W.
WIFE 35% MBA W's efforts both economic and non-economic were "substantial"; may have awarded more if asked	**K.J. v. M.J., 14 Misc. 3d 1235(A) (Sup. Ct. Westchester Co. 2007)** 11 yr marriage with 2 children. Court recognized H as driving force behind his effort to pursue MBA, W contributions to H's efforts, both economic and non-economic, were substantial. While H performed certain chores in the home, and at times, cared for the parties' children while W was engaged in other endeavors, beginning from the time W had just given birth to their first child, H insisted that W prepare elaborate Indian-style meals, ensure that the children were quiet so that his studies and his sleep were not interrupted, address the children's emotional and health problems and be the primary keeper of their home. W, in fact, did all of those things, while also working full-time hours, and even longer than ordinary work days, for her employer, and contributing her income to the family. Court also noted that W's efforts resulted in her earning a substantially lower salary and giving up potential for income growth. Court indicated that W only asked for 35% and therefore she could not be awarded more, as if to suggest that they would have done so.

v. Division of Marital Residence

HUSBAND
50%

Myers v Myers, 989 N.Y.S.2d 537 (3d Dep't 2014)
Parties married 11 years. The Court distributed the marital residence 50/50, even though the property was the W's premarital separate property. During the marriage, the parties' jointly refinanced and the H's name was placed on the deed. The Court held "the overall picture is of the parties engaging generally in a financial partnership, of which the marital residence, and the loans thereupon, was simply one agreed-upon portion." The record reveals that the funds received from the mortgage, as well as the subsequent refinancing and home equity loan, enabled the W and the H to consolidate their debts, go on numerous family vacations, make improvements to the marital residence and, generally, live a lifestyle that may have been above their means. Notably, the W's individual debt was eliminated by the proceeds of a new, jointly-held debt which, in turn, was primarily paid from the H's income for a number of years. Children are not mentioned in the decision.

EQUAL

Lamparillo v. Lamparillo,116 A.D.3d 924 (2d Dep't 2014)
The Court directed the sale of the marital residence and the equal division of the net proceeds between the parties after the payment of all marital debt, including credit card debt in the amount of $22,648, and after payment of $7,000 to the W for her one-half interest in the household furnishings and other items. The decision did not address the duration of the marriage, the age of the parties, whether the parties had any children or any other factors relevant to the equitable distribution analysis.

50% MR to W
30% EEC to H

Owens v Owens, 107 A.D.3d 1171 (3d Dep't 2013)
W and H married for 24 years with 2 older children. Family lived off income generated from H's ownership in separate property, premarital Manhattan real estate. W earned a Bachelor's degree in nursing and obtained her license as a registered nurse. During the marriage, aside from very brief periods of employment, the W was not employed as a nurse or otherwise. In 2007, the H sold the NYC rental property for $6 million and, thereafter, the family was supported by the proceeds. The App. Div. modified the award to the W of the appreciation of the value of marital residence from 40% to 50% "taking into account the parties' assets at the commencement of the action and the husband's economic fault." The App. Div. did not modify the award to the H of 30% of the enhanced earnings attributable to the W's nursing degree, as he encouraged her to pursue her dream, financed her education and was the primary caregiver for the children while she pursued her degree full time. The net result was the W received approximately $140,000.

HUSBAND 50%	**Szewczuk v. Szewczuk,107 A.D.3d 692 (2d Dep't2013)** Marriage was of short duration with no children, and the parties generally kept their finances separate. While the marital residence was the W's separate property, the Sup. Ct. directed her to pay the H the sum of $102,500 as a distributive award based on the appreciation in value of the marital residence that was attributable to the efforts of both parties in physically improving the property during the marriage. The App. Div. held that although the H's counsel noted at trial that the H's distributive award based on the appreciation of the marital residence should be reduced by the H's equitable share of the marital debt incurred in financing the improvements to the residence, the Sup. Ct. improperly failed to do so.
WIFE 100%	**Henery v. Henery, 105 A.D.3d 903 (2d Dep't2013)** W awarded 100% of the marital residence. The court noted that it was directing the H to convey his interest in the property in lieu of, *inter alia*, maintenance and an attorney's fee. The court also noted that the mortgage on the marital residence had been satisfied by the W's parents, and that the expenses paid by the W, her financial sacrifices, her waiver of an attorney's fee, and the loss of retirement benefits resulting from the H's discharge for cause from a school administrative position, exceeded the H's share in the equity of the martial residence. No discussion of the duration of the marriage or the parties' respective contribution. Based on decision, H choose to argue that the Sup. Ct. Judge prejudged the case, that argument was rejected.
WIFE 50% Mar .Residence 0% EEC MPA Lots of contributions But not related directly to degree	**Edyta B. v. Tomasz B, 7029/10; N.Y.L.J 2/1/13** 12 yr marriage with one child, a special needs child who was under treatment for ADHD. The assets included a marital residence and W's EEC. The residence was purchased during the marriage with joint savings. Both parties were employed during the marriage with earnings deposited into joint bank account. The house was renovated by W's brother, father and the H. W's economic or intangible contributions, often exceed H's and found to enrich the marriage in a measure at least equal to those of H. W contributed her earnings; cared for H and their home; "shared the joys, and anxieties, and tears." Residence distributed 50/50. H awarded 0% of W's graduate MPA, where H not only did not provide sufficient evidence of value, but also due to H's disinterest in W's efforts. He rendered no help to her either in her job or in her making a home, or, for that matter, in aid and comfort to her other than efforts to remodel the marital domicile together and with W's brothers and father essentially to protect his investment.

WIFE 15% MR 10% Retirement Accounts	**Biagiotti v. Biagiotti, 97 A.D.3d 941 (3d Dep't 2012)** 8 yr marriage. Supreme Court did not err in distributing the appreciation in value of the marital residence, which was H's separate property. Considering the parties' different levels of involvement, and that most of the appreciation was passive based on market forces rather than related to the improvements, the Court did not err in granting W 15% of the amount of the property's appreciation ($15,825) and 50% of line credit as it was used for marital expenses. Based on the parties' disparate incomes, and the Court's lack of any explanation for the discrepancy in the percentages awarded for these similar assets, we modify by awarding each party 10% of the other's retirement plans. Whether there were children of the marriage was unspecified.
WIFE 100%	**Ropiecki v. Ropiecki, 94 A.D.3d 734 (2d Dep't 2012)** Long term, 27 yr marriage. W received 100% of equity in marital residence, with the H being required to pay the remaining mortgage, in light of W's very limited earning potential, which was as a result of her staying home and taking care of the parties' four children, including their daughter who suffered from a disability; H acquired considerable earning potential and as such the determination was provident under the circumstances.
WIFE 40% Why Not 50%?	**Jones v Jones, 92 A.D.3d 845 (2d Dep't 2012)** Separate property farm on 129 acres, where during marriage the parties' built a horse barn and created pasture land for the purpose of establishing a horse farm on the property. W primarily ran the horse farm business. Appreciation was found to be due to joint efforts and W awarded 40% considering W's contributions to the subject property, including, inter alia, her work on the horse farm. The duration of this marriage and whether there were children were unspecified.
EQUAL	**C.R.Z. v. D.E.Z. 7/22/11 NYLJ 7/22/11** Equal distribution of marital residence. 9 yr marriage with 2 children. Both parties made significant contributions to the marriage of long duration. W's contributions were primarily, if not exclusively, other than financial. W was the primary care giver to the parties' children. She also assumed the major role in the family's social life and took the lead in the extensive remodeling of the former marital residence. The assumption of these and other responsibilities fostered an opportunity for H to develop his business and devote himself thereto.
HUSBAND 20% If reversed do you Think W gets only	**Marcellus-Montrose v. Montrose, 84 A.D.3d 752 (2d Dep't 2011)** Affirmed Supreme Court's finding that H's income was not as significant, compared to the monetary contributions of W and, further, that H's annual income was about 20% of the annual income of W. Second Department rejected H's claims that his non-monetary contribution to the marriage

20% - *see B.M. v. D.M.* below	justified a higher award, consisting of claims that he cared for the 2 children while W was at work. It was established that the parties had a live-in babysitter who cared for children.
WIFE 50%/25%	**Taub v Taub, 31 Misc. 3d 1216(A) (Sup. Ct. Kings Co. 2011)** H worked, first in the knitting business, and then in real estate. "A lot of money was earned, a lot of money was spent, and a lot of money was lost." For her part, W cared for the home and the 2 children and insured that H could entertain friends and neighbors lavishly and frequently, all of which allowed him the freedom and earned him the respect that enabled his success. Given these essentially equal contributions to the acquisitions of the 33 yr marriage, the Court determined that the properties (4) purchased during the marriage are marital properties that shall be sold and any net proceeds equally divided between them. As to the fifth property, contracted prior to the marriage, which closing was postponed, as a result of the parties' wedding, until ten days after the marriage, the Court held that it would be unfair to apportion the property equally, but since the building was renovated in 1986 with marital moneys, some portion of the appreciation must be awarded to the plaintiff, i.e., 25%.
WIFE 40% **Really Reflects Different Standard**	**B.M. v D.M., 31 Misc. 3d 1211(A) (Sup. Ct. Richmond Co. 2011)** 11 yr childless marriage; Court credited testimony that W made little, if any, financial contributions towards the mortgage on the marital residence from 1996through 2002. The Court further credited H's testimony that from 1997 until the parties' separation in 2007, H did all of the cooking, cleaning, and laundry in addition to holding a full time job. H credibly testified that W worked only two years of this eleven year marriage. The Court credits H's testimony that W, who was a Reikki Master spiritual healer and a belly dancer (claimed to be able to channel god) slept all day or otherwise spent her day on the computer participating in internet blogs. Accordingly, H awarded sixty percent (60%) of the proceeds of the Marital Residence and W awarded forty percent (40%); H's pension distributed 50/50.
WIFE 0% Involves appreciation of pre-marital residence	**Alper v Alper, 77 A.D.3d 694 (2d Dep't 2010)** Although both parties worked throughout the 20 yr childless marriage, W contributed "little, if any financial support to the marriage," and did not contribute at all to the purchase, and only minimally to the maintenance of the marital residence. W denied entitlement to portion of the appreciation in marital residence and the H's country home. Conflicting testimony about W's direct contribution of time and labor toward the improvements made to those assets was resolved in favor of H.

HUSBAND 1% increased to 10% H only made "minimal" and "menial" contributions	**Del Villar v. Del Villar, 73 A.D.3d 651 (1st Dep't 2010)** Unequal distribution of the marital apartment in favor of W was appropriate, but the 1st Department increased H's equitable distribution from 1% to 10% (of $553,000), finding that although an unequal distribution of the marital apartment was appropriate after a 10 yr marriage, H did make some "minimal" contributions to the marriage, including performing some "menial tasks" in the various businesses operated by W. The decision noted that H failed to contribute to the apartment "after his 1991 incarceration" and that a significant increase in the value of the apartment was due to market forces.
HUSBAND 40% of appreciation of pre-marital residence	**Bernholc v Bornstein, 72 A.D.3d 625 (2d Dep't 2010)** Almost 15 yr marriage with one child. H awarded 40% of appreciation of marital residence purchased prior to the marriage and 40% credit for mortgage pay-down. Evidence established that H performed some of the renovation work himself and contributed to paying off the home equity loans used to make renovations, which were with marital funds.
HUSBAND 30% reduced to 15%	**Wansi v Wansi, 71 A.D.3d 599 (1st Dep't 2010)** Award to H of 30% of the value of the three-family residence deeded to the W was reduced to 15% of the value. H made "little, if any, contribution to the marital asset." The decision did not discuss the duration of the marriage or whether there were any children.
WIFE 45%	**Phillips v. Haralick, 70 A.D.3d 663 (2d Dep't 2010)** The Supreme Court providently exercised its discretion in equitably distributing 55% of the net proceeds from the sale of the marital home in Hewlett, New York, to the H, and 45% to the W. The duration of this marriage, contributions of the parties and whether there were children were unspecified.
WIFE 50% of appreciation of pre-marital residence	**Mongelli v. Mongelli, 68 A.D.3d 1070 (2d Dep't 2009)** The Court properly determined that W is entitled to an equitable share of the appreciation in the value of the marital residence over the course of the at least 9 yr marriage, notwithstanding that the residence was the separate property of H until 1999, when the property was transferred into joint names. The record establishes that the appreciation in the value of the marital residence was attributable to the joint efforts of the parties, who had two children during the marriage. Thus, W was entitled to share equitably in that increased value. In addition, the Court's award of a separate property credit to H in the sum of only $48,000 for the value of the marital residence at the time the parties were married was proper.
HUSBAND 15%	**Evans v. Evans, 57 A.D.3d 718 (2d Dep't 2008)** In light of evidence that H contributed minimally to marriage, award to H of 15% of value of marital residence and 10% of W's pension was

	provident exercise of discretion. The duration of this marriage and whether there were children were unspecified.
HUSBAND 50%	**Kilkenny v. Kilkenny, 54 A.D.3d 816 (2d Dep't 2008)** Increase in value of separate property residence was marital property and H was entitled to 50% where appreciation attributable to joint effort of parties (2 children). *See Kost v. Kost*, 63 A.D.3d 798, (2d Dep't 2009) – same result. The duration of this marriage with two children was unspecified.
EQUAL	**H. v. H., 2008 N.Y. Misc. LEXIS 2849 (Sup. Ct. Kings Co. 2008)** Long duration, 24 yr marriage with 2 children; W was homemaker for a time and H worked throughout marriage until he suffered a stroke. There was no dispute that marital residence was purchased during the marriage. The Court held the "long term marriage where both parties made contributions to the purchase and operation of the premises." Proceeds of any sale shall be shared equally, subject to the various adjustment caused by each party owing money to the other. H entitled to 50% of W's pension through the date of the commencement of the divorce action.
WIFE 25% of increase in pre-marital home	**Johnson v. Chapin, 49 A.D.3d 348 (1st Dep't 2008)** (Went up to the Court of Appeals and affirmed) H owned property prior to the marriage. The property was extensively renovated and new parcels added, all funded with marital income. Market forces over the approximately 11 yr marriage accounted for some of the summer home's increased value. Thus a 75/25 division of the home was found to be more equitable than 50/50.
HUSBAND 0% of increase in pre-marital home	**Embury v. Embury, 49 A.D.3d 802 (2d Dep't 2008)** The property, which was owned by W before the marriage, was not converted to marital property through H's contributions and efforts toward its renovation. H failed to set forth proof that the property actually increased in value and, in any event, he did not demonstrate the manner in which his contributions resulted in any alleged appreciation. 2 children of the marriage – duration not specified.
WIFE 15%	**Faello v. Faello, 43 A.D.3d 1102 (N.Y. App. Div. 2d Dep't 2007)** While the Florida residence, purchased in the parties' joint names, was marital property, H used proceeds from the sale of his separate property to purchase the residence as well as its furnishings and incidentals. Therefore, the direction that H receive the sum of $200,000 from the net proceeds of the sale of the parties' residence in Florida, with 85% of the remaining balance distributed to the husband and 15% distributed to W was proper. The duration of this marriage and whether there were children were not addressed.

WIFE 50%	**Dellafiora v. Dellafiora, 38 A.D.3d 825 (2d Dep't 2007)** Interest in two pieces of real property to be distributed equally between the parties. The duration of this marriage, respective contributions of the parties and whether there were children were not addressed.
WIFE 0%	**Davidman v. Davidman, 97 A.D.3d 627 (2d Dep't 2012)** Duration of this marriage with 1 child was not specified. Residence was owned by H prior to the marriage. W failed to carry her burden establishing that the marital residence appreciated in value during the parties' marriage and, if so, that such appreciation was due in part to her efforts.
WIFE 33%	**Dinoto v. Dinoto, 97 A.D.3d 529 (2d Dep't 2012)** W was responsible for causing damage to the former marital residence, the Court providently exercised its discretion by awarding her only one-third of the net proceeds from any sale of marital real property located in Whitestone, Queens, rather than one-half of the net proceeds from the sale. The duration of this marriage, respective contributions of the parties and whether there were children were unspecified.
HUSBAND 25% renovation costs of pre-marital home	**Linda D. v Theo C., 96 A.D.3d 432 (1st Dep't 2012)** 2 children; 10 year marriage; no findings that renovations had any effect on value property owned by W before the marriage. H failed to carry burden of how renovations had any effect on the value of the apartment. In any event, the Supreme Court adequately compensated H for his contributions by giving him a credit for one-quarter of the renovation costs.

VI. Division of Pensions and Others Assets

WIFE
50%

Zufall v. Zufall, 109 A.D.3d 1135 (4d Dep't 2013)
Parties were married for 21 years and had five children, one of whom was emancipated. During the marriage, W was primarily a homemaker, raising the parties' children while H worked as a correction officer. Shortly before action was commenced, H retired at the age of 50 after 25 years of service with the State of New York, leaving a job that paid him in excess of $90,000 annually. He now receives pension benefits. Although able-bodied, H does not presently work. W, on the other hand, has been determined by the Social Security Administration to be 50% disabled, and she receives partial Social Security disability benefits plus workers' compensation benefits. She also works 20 hours per week as a bartender. Due to parties' prenuptial agreement, W did not receive any interest in H's pension or in the marital residence, which H obtained prior to the marriage, notwithstanding the fact that H paid the mortgage on that property during the marriage with marital funds. Court held that award to W of 50% of the H's deferred compensation account earned during marriage.

WIFE
50%

Bellizzi v Bellizzi, 107 A.D.3d 1361 (3d Dep't 2013)
The parties were married in 1969 and had three adult children. Husband commenced an action for divorce in 2008 that was dismissed following a trial in 2011. The Husband commenced a second action in 2011. Both parties were in their mid-60s, have had serious health issues, were retired and receiving Social Security. 50% of H's military pension. The Court held, "relative parity was appropriate "in light of the 40-plus years of marriage and no factors justifying an unequal distributive award."

HUSBAND
30%

Cornish v. Eraca-Cornish, 107 A.D.3d 1322 (3d Dep't 2013)
19 yr marriage. Parties had three children (born in 1991, 1994 and 1997). Parties' arrangement was for the H to take on the responsibilities of homemaker and primary caretaker of the children while the W provided financial support for the family, but it further reveals that the H's alcoholism interfered with his ability to contribute to the household and that his parents provided a substantial amount of the children's care. H did not find employment after children reached school age and espite the family's financial difficulties and reliance upon financial assistance from the H's mother. H awarded 30% of the W's pension in light of his "limited contribution to the economic partnership of this marriage".

WIFE
100%

Rubackin v Rubackin, 107 A.D.3d 872 (2d Dep't 2013)
The Court awarded the W 100% of her pension based "upon the W's role in recent years as the parties' primary wage earner and the primary caregiver to the parties' children." In addition, the Supreme Court properly

	considered the H's receipt of a $2 million inheritance in arriving at its pension determination. There was no discussion of the duration of the marriage.
WIFE ?	**Williams v Williams, 99 A.D.3d 1094 (3d Dep't 2012)** The parties were married in 1981 and had two adult children. H left the marital residence in 2007, commenced an action for divorce in 2008 and discontinued it six months later; Wife--was 57 years old at the time of trial--would never acquire job skills permitting her to return to the comfortable upper-middle-class lifestyle that the parties enjoyed during the marriage.
WIFE 50%	**DeGroat v. DeGroat, 84 A.D.3d 1012 (2d Dep't 2011)** Here, in light of, *inter alia*, the long duration of the marriage and the respective contributions of the parties, the Supreme Court did not improvidently exercise its discretion in awarding to W a sum equal to 50% of the value of the parties' nonretirement marital assets. Stock options granted to H during the marriage were marital property and distributed accordingly.
WIFE 50%	**Shapiro v. Shapiro, 91 A.D.3d 1094 (3d Dep't 2012)** 33yr marriage with 2 children. Initial action was commenced in 2000 but discontinued and recommenced by W in 2008. W left the workforce to care for the parties' children, she made substantial non-economic contributions to the parties' assets during the early years of the marriage and by continuing as primary caretaker for the children after the separation, she sacrificed career development and earned substantially less than the H at the time of trial. Husband's pension equally distributed.
WIFE 50%	**Hughes v Hughes, 79 A.D.3d 473 (1st Dep't 2010)** Each party entitled to 50% of other's pensions. H's contention that W was not emotionally supportive during the marriage depended on statements made in his post-trial affidavit that the Supreme Court was free to disbelieve. There was no additional discussion of the parties' respective contributions.
WIFE 23%	**Marino v. Marino, 52 A.D.3d 585 (2d Dep't 2008)** 23% of H's pension. Although the decision did not discuss the parties' respective contributions, the non-durational award of maintenance noted the "long duration" of the marriage.
HUSBAND 35% WIFE 50% W did way more	**Glassberg v. Glassberg, 2009 N.Y. Misc. LEXIS 2436 (Sup. Ct. Suffolk Co. 2009)** During the marriage W provided a substantial share of the financial and day-to-day support in maintaining the household, including working full time, being the primary care giver for the parties son, and providing for the consistent and reliable income flow the family enjoyed. While H

than H. Pensions divided accordingly	provided some support toward these efforts, the Court found it was "limited, sporadic, unreliable and inconsistent." Court found that thee "economic partnership" between the parties was limited to the degree indicated and the W's Retirement accounts/pension are to be split with sixty-five percent (65 percent) to be received by W and thirty-five percent (35 percent) to be received by H and the marital portion of H's pension split evenly between the parties, fifty percent (50 percent) to W and fifty percent (50 percent) to the Husband.
HUSBAND 50% of W's pension. Accounts divided equally.	**S.A. v. K.F., 22 Misc. 3d 1115(A) (Sup. Ct. Kings Co. 2009)** 31 yr marriage with no children in common with one another. Both parties claimed a myriad of health issues. There were issues of DV and W was awarded rental apartment. Based on these factors, as well as the parties' respective age, future economic circumstances, health, standard of living and the disparity of the non-economic contributions to the marriage and Court's order of maintenance payment to H by W, H should receive 50% of W's pension, which she earned as an employee of New York State, as valued from the date of commencement of this action; 50/50 on bank accounts.

VII. Division of Marital Stock and Investments

WIFE 65%	**Pathak v. Shukla,109 A.D.3d 891(2d Dep't 2013)** The Supreme Court providently exercised its discretion in determining that the W was entitled to a money judgment in the sum of $84,053.11, or 65% of the amounts in the parties' bank accounts. The record amply supported the Supreme Court's determination that the H secreted marital funds and failed to comply with his obligation to provide full financial disclosure. Contrary to the H's contention, the Supreme Court's decision reflected that, in determining equitable distribution of the parties' bank accounts, it properly considered the relevant statutory factors. The decision addressed child support so it can be inferred that there was a child of the marriage, but duration was not discussed.
WIFE 50%	**Levitt v Levitt, 97 A.D.3d 543 (2d Dep't 2012)** "[T]he Supreme Court providently exercised its discretion in equally distributing [H's] stock, stock options, and interests in two limited partnerships[,]" including the long duration of the marriage, the extended absence of the wife from the work force.
WIFE 50% W had sacrificed her career and had limited financial prospects	**Murray v Murray, 956 N.Y.S.2d 252 (3d Dep't 2012)** 19 yr marriage with 4 children. Supreme Court did not err in ordering the liquidation and equal division of the parties' Verizon stock. While no discussion in the decision related to equitable distribution, in addressing the maintenance award, the Court recognized the "the wife's limited prospects for increased earnings, and the lost income, earning capacity and retirement savings that she incurred by remaining out of the paid work force to raise the parties' children for approximately 17 years during the marriage." In this regard, the court credited W's testimony that H demanded that she stay at home with the children. The Court went on to hold that in this long duration marriage, W had "been out of the work force for a number of years [and] has sacrificed her . . . own career development or has made substantial noneconomic contributions to the household or to the career of the payor." Whether there were children was not addressed in the decision.
WIFE 50%	**Hendry v Pierik, 78 A.D.3d 784 (2d Dep't 2010)** H received the subject stock options during the marriage and exercised them eight months after the commencement of the action as a result of the termination of his employment. The Supreme Court did not improvidently exercise its discretion in distributing the proceeds equally between the parties. Given nondurational maintenance award, safe to assume long term marriage.
WIFE	**Armstrong v. Armstrong, 72 A.D.3d 1409 (3d Dep't 2010)**

70% H keeps lots of separate assets	11 yr marriage with one child. It was proven that H was extremely verbally abusive and was also convicted of unrelated federal crimes during the marriage and sentenced to 27 months during the marriage. At issue was stock and stock options that had resulted in defendant (and a trust he had established) receiving during the marriage a gross amount of close to $10 million as part of his severance agreement with H's employer, Albany Molecular Research. Of the over 500,000 shares and options owned by H, the Court found a small portion to be marital property (14,137 shares). However, in light of H's "significant role in contributing to the success of the company during the pertinent years", the Court determined that 10% of the appreciation in value of the Albany flowed from H's direct efforts and, hence, constituted marital property. The Court calculated the appreciation of these stocks and treated 10% of such appreciation as marital property, which computed to $565,579.29. Supreme Court then added the net value of the parties' various other marital properties, including, among other things, the residence, a lake home, vehicles and sundry bank accounts. This resulted in a total marital estate of $1,141,683.34. The Court held that "after weighing the germane factors (*see* Domestic Relations Law § 236 [B] [5] [d]), and particularly noting defendant's wasteful dissipation of assets during the marriage," Supreme Court awarded W 70% of the marital estate."
WIFE 50%	**Filiaci v Filiaci, 68 A.D.3d 1810 (4th Dep't 2009)** The parties had at least two unemancipated children. The duration of the marriage was not specified. The Court properly awarded W one half of the proceeds from the sale of certain stock and one half of the costs of the computer training programs purchased by H.

Overall Division of Marital Assets

Case citation	To	Duration/children	Distribution	Contribution
R. M., v. C. M., NYLJ, Pg.36, Vol. 251, No. 74, (Westchester Co. Sup. Ct. 4/18/14)	-	5 yr marriage; 2 children	Equal	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."
Morille-Hinds v Hinds, 42 Misc. 3d 1230(A) (Queens Co. Sup. Ct. 2014)	H	19yr marriage; 1 child	50%	• The parties lived a shared economic partnership • W worked at her full time employment as a microbiologist and H took care of the marital home, caring for the parties' child, finding and fixing real property for investment.
Alleva v Alleva, 112 A.D.3d 567 (2d Dep't 2013)	-	Duration unspecified; 2 children	Equal	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."
Kessler v. Kessler, 111 A.D.3d 895 (2d Dep't2013)	-	Unspecified	Equal	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."
Alecca v. Alecca,111 A.D.3d 1127 (3d Dep't 2013)	W	14 yr marriage; 2 children	50%	• There was no discussion of the relevant factors forming the basis of the equal distribution award.
Gilliam v Gilliam, 109 A.D.3d 871(2d Dep't2013)	W	19 yr marriage; 2 children	50%	• In light of the length of the parties' marriage, the parties' respective roles in the marriage, the vast disparity in the parties' incomes, and the wife's age, health, education, and work history, 50% of the parties' minor assets.
Hogle v Hogle, 40 Misc. 3d 1220(A)(Sup. Ct.2013)	W	32 yr marriage; 2 children	25% EEC; 50% remainder	• W was the primary homemaker and generated income through her "Longaberger" basket business. • W's efforts as a homemaker were found to be as significant as H's contributions as the primary wage earner. • Parties financed H's law school education through student loans which were eventually paid with marital funds
Halley-Boyce v. Boyce,108 A.D.3d 503(N.Y. App. Div. 2d Dep't2013)	-	Unspecified	Equal	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."
Musacchio v. Musacchio, 107 A.D.3d 1326 (3d Dep't2013)	W	29 yr marriage; 3 children	?	• W had been out of the work force for a number of years. • W had sacrificed her own career development and made substantial noneconomic contributions to the household. • Award was appropriate "considering that 'marital property is distributed in light of the needs and circumstances of the parties'."
R.B. v. M.S.,2014 N.Y. Misc. LEXIS 2167(N.Y. Co. Sup. Ct 2014)	W	6 yr marriage; 1 child	Nil	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."
Wei Jiang Sun v Yong Jian Li, 43 Misc. 3d 1205(A) (N.Y. Sup. Ct. 2014)	H	13 yr marriage; 2 children	50%	• Both parties employed during longer term marriage. • Both parties involved in the business, but downplayed his or her involvement in the finances of the business.
Safi v Safi, 94 A.D.3d 737 (2d Dep't 2012)	W	25-year marriage; > 1 child	50%	• W worked at H's business. • Contributed directly and indirectly to the marriage as a spouse and mother.
Caracciolo v. Chodkowski, 90 A.D.3d 801 (2d Dep't 2011)	-	3 yr childless marriage.	Equal	• Both contributed equal to the appreciation of the other's property.

Case citation	To	Duration/children	Distribution	Contribution
Roberto v. Roberto, 90 A.D.3d 1373 (3d Dep't 2011)	W	28 yr marriage; 1 child	50%	• Each had been employed full time after the birth of their child and they were able to share child care responsibility by working different shifts. • W left insurance business and worked from home on KJR bookkeeping • True economic partnership - W made significant contributions."
Keil v Keil, 85 A.D.3d 1233 (3d Dep't 2011)	W	26 years childless	50%	• W's economic contributions towards the purchase of half of the farm, as well as her economic and noneconomic contributions towards improving the property, which H confirmed.
Popowich v Korman, 73 A.D.3d 515 (1st Dep't 2010)	-	16 yr; 1 child	H of 30% MP; W 40% of H's biz	• Substantial gifts during the marriage to W from her parents. • The evidence that, W "not only was the financial engine of this marriage, but ... was also the primary caretaker of the parties' son."
Kelly v. Kelly, 69 A.D.3d 577 (2d Dep't 2010)	W	Long term; none mentioned	60%	• Took into account the property held by each party at commencement of action, the length of the marriage, the limited maintenance award and H's more recent work experience and greater earning potential.
Glassberg v. Glassberg, 2009 N.Y. Misc. LEXIS 2436 (Suffolk Co. Sup. Ct. 2009)	H	Long term; 1 child	35%	• W responsible for substantial share of the financial and day-to-day support in maintaining the household, including working full time, being the primary care giver for the parties son, and providing for the consistent and reliable income flow the family enjoyed. • H's contribution was limited, sporadic, unreliable and inconsistent.
Steinberg v. Steinberg, 59 A.D.3d 702 (2d Dep't 2009)	W	23 year; none mentioned	50%	• Equal contribution.
HA v. HA, 2008 N.Y. Misc. LEXIS 4573 (Kings Co. Sup. Ct. 2008)	-	36 yrs before separating; 2 children	50%/50% (sort of)	• Both parties worked during the marriage. • Both parties made contributions to the operation of their home.
Groesbeck v. Groesbeck, 51 A.D.3d 722 (2d Dep't 2008)	W	Long term; > 2 children	50%+	• The parties' respective contributions were not addressed.
Blay v. Blay, 51 A.D.3d 1189 (3d Dep't 2008)	W	13 yr marriage, 3 children	50% Bus. 50% Resid.	• Use of marital funds throughout marriage. • Evidence of duplicity by H.
Schwalb v. Schwalb, 50 A.D.3d 1206 (3d Dep't 2008)	W	12 yr childless marriage.	10% Prof. P.; 50% Accts.	• W had little to do with acquisition, maintenance or increase in value of property owned by partnership. • W established proof of her noneconomic contributions to the acquisition of marital property, generally.
Costa v. Costa, 46 A.D.3d 495 (1st Dep't 2007)	W	Not specified	55% Overall	• 55-45 distribution is equitable under the circumstances, taking into consideration the W's contributions to the success of H's career and W's limited earnings prospects.
Moldofsky v. Moldofsky, 43 A.D.3d 1011 (2d Dep't 2007)	W	19 yr marriage	33%	• No discussion of the parties' respective contributions.
Li v. Li, 2009 N.Y. Misc. LEXIS 2444 (Queens Co. Sup. Ct. 2006)	-	Short term	50% App. M.R.; 100% of W's EEC; 0% of liquid assets	• Parties had effectuated their own version of equitable distribution by elaborate schemes conceived and carried out one against the other, manipulation, retaliation, and out-and-out self-help. • No discussion of the parties' respective contributions.

Division of Business Interests

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Alecca v. Alecca, 111 A.D.3d 1127 (3d Dep't2013)	W	14 yr marriage; 2 children	50%	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."
Hymowitz v. Hymowitz, 2014 N.Y. App. Div. LEXIS 5233 (2d Dep't 2014)	W	20 yr marriage; 2 children	25%	• Taking into account the W's limited involvement in the H's business, while not ignoring the direct and indirect contributions she made as the primary caretaker of the parties' children, as a homemaker, and as a social companion to the plaintiff, while foregoing her career
Turco v. Turco, 117 A.D.3d 719 (2d Dep't2014)	W	15 yr marriage; 2 children	50%	• No specific reasons given for the appropriateness of the 50% award.
Sykes v. Sykes, 43 Misc. 3d 1220(A) (N.Y. Sup. Ct.2014)	W	14 yr marriage; 1 child	30%	• Because of W's assumption of the duties related to running the couple's household and caring for their child, H was free to devote his time and attention to his business responsibilities. • Because of W's emotional support as a spouse and a confidante, H "was aided not only in coping with the "vicissitudes of life outside the home," but in making the decisions to change from one financial firm to another and then finally to go out on his own and start GS Gamma. • W's contributions were strictly indirect.
Alexander v. Alexander, 116 A.D.3d 472(1st Dep't 2014)	W	24 yr marriage; 2 children	35%	• Contribution by the W in running the household and raising their two sons throughout the marriage. • That most of the increase in corporate revenues, which resulted in the increased share price, occurred in the same year as the commencement of the action.
Domino v. Domino, 115 A.D.3d 906 (2d Dep't 2014)	W	Duration unspecified; No. of children unspecified	50%	• No specific reasons given for the appropriateness of the 50% award.
V.M. v N.M.,43 Misc. 3d 1204(A)(Albany Co. Sup. Ct.2014)	W	12 yr marriage; 2 children	30%	• W became the primary caretaker for the family while reducing her work activities. • Marriage of long duration and both parties made significant contributions to the marriage.
Wei Jiang Sun v Yong Jian Li, 43 Misc. 3d 1205(A) (N.Y. Sup. Ct. 2014)	H	13 yr marriage; 2 children	50%	• Both parties employed during longer term marriage. • Both parties involved in the business, but downplayed his or her involvement in the finances of the business.
Gordon v Gordon, 113 A.D.3d 654 (2d Dep't 2014)	W	Unspecified; children mentioned	20%	• Takes into account the W's minimal direct and indirect involvement in the H's company, while not ignoring her contributions as the primary caretaker for the parties' children, which allowed the H to focus on his business.
Finch-Kaiser v. Kaiser, 104 A.D.3d 906 (2d Dep't2013)	W	Unspecified	50%	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."
Benabu v Rienzo, 104 A.D.3d 714 (2d Dep't2013)	W	Unspecified	33%	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Elias v. Elias, 957 N.Y.S.2d 231 (2d Dep't 2012)	W	Long duration; 2 children	25%	• W's minimal direct and indirect involvement in H's company, and not ignoring her contributions as the primary caretaker for the parties' children, "which allowed [H] to focus on his business."
Shah v. Shah, 954 N.Y.S.2d 129 (2d Dep't 2012)	W	Unspecified	30%	• Decision had no discussion of the parties' respective contributions. • Evidence that H tried to transfer business shortly before commencement.
Golden v. Golden, 98 AD3d 647 (2d Dep't 2012)	W	10 yr marriage; 2 children (teenagers)	30%	• W was a stay at home mother. • Due in part to W's indirect contributions or efforts, as homemaker and parent.
D'Ambra v. D'Ambra, 94 A.D.3d 1532 (4d Dep't 2012)	W	Duration unspecified; 2 children	15%	• W only made indirect contributions.
Nicodemus v Nicodemus, 98 A.D.3d 605 (2nd Dep't 2012)	W	Long duration; children unspecified	50%	• Joint contribution of each spouse to the marriage and to the parties' automobile restoration business. • The probable future financial circumstances of each party.
Scher v. Scher, 91 A.D.3d 842 (2d Dept. 2012)	W	Unspecified	20% of one biz. 50% of other; 10% of accts.	• W made direct contributions to the business as its bookkeeper for 7 years • W's indirect contributions as homemaker and occasional caretaker of one of H's children from a prior marriage, which enabled H to expand the business.
Keil v. Keil 85 A.D.3d 1233 (3d Dep't 2011)	W	26 yr marriage; no children	50%	• W's "economic contributions towards the purchase" of business. • W's economic and noneconomic contributions towards improving [and developing] the property."
Rich-Wolfe v. Wolfe, 83 A.D.3d 1359 (3d Dept. 2011)	W	17 yr marriage; 2 children (16 and 7)	50%	• W's sizable contributions to the success of such businesses. • W helped in operating them and eventually quit her job to work full time for the businesses. • W ran the office and was the bookkeeper. • H stipulated that she made "substantial direct and indirect contributions" to the marital estate.
Bergman v Bergman, 84 A.D.3d 537 (1st Dep't 2011)	W	14 yr marriage; one child	40%	• Decision had no discussion of the parties' respective contributions.
Massirman v. Massirman, 78 A.D.3d 1021 (2d Dept. 2010)	W	Duration unspecified; 1 child	25%	• W, who made only indirect contributions, and W played a minimal role in H's career while continuing her own career
Wesche v. Wesche, 77 A.D.3d 921 (2d Dep't 2010)	W	Long term, 20 yr marriage; 2 unemancipated children	52%	• Evidence that H tried to conceal income. • Although there was no discussion of the parties' respective contributions, the decision did specify that W also operated a separate business which provided headstones, and she ran a small karaoke business (not valued or distributed).
P.D. v. L.D., 2010 NY Slip Op 51574U (Sup. Ct. Westchester Co. 2010)	W	24 yr marriage; 2 children	HYBRID ~30%	• Both parties' indirect and direct contributions to the value of the business, 30% of the value remaining after deducting the marital funds to start the business. In sum, W received $36,800.

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Giokas v. Giokas, 73 AD3d 688 (2d Dep't 2010)	W	33 yr marriage; 2 children	10%	• W was employed outside home; older children. • No direct contributions to H's businesses and made only modest, indirect contribution to them. • Distinguishable from those of an untitled, full-time homemaker in a long-term marriage, whose spouse was involved in a business or practice for the entire duration of the marriage, during which time children were born and raised primarily by the untitled spouse.
Baron v. Baron, 71 A.D.3d 807 (2d Dep't 2010)	W	Long duration; children	20%	• W's minimal direct and indirect involvement in the husband's company, and not ignoring her contributions as primary caretaker for the parties' children, "which allowed H to focus on his business."
Kerrigan v. Kerrigan, 71 A.D.3d 737 (2d Dep't 2010)	W	Duration unspecified; c/s awarded	35%	• No specific reasons given for the appropriateness of the 35% award other than "under the circumstances of the case."
Wyser-Pratte v. Wyser Pratte, 68 AD3d 624 (1st Dep't 2009)	W	Unspecified	35% Bus. 50% Mar. Prop.	• W contributed to the further development of the business by decorating and renovating the parties' residences, among other things, to create impressive surroundings in which to entertain H's clients and potential investors.
Zaretsky v. Zaretsky, 66 A.D.3d 885 (2d Dep't 2009)	W	15 yr marriage; 3 children	40%	• Considered the extent and significance of W's efforts in relation to the active efforts of others and any additional passive or active factors.
Bricker v. Bricker, 69 A.D.3d 546 (2d Dep't 2010)	W	Unspecified	50%	• Decision had no discussion of the parties' respective contributions.
Wasserman v. Wasserman, 66 A.D.3d 880 (2d Dept. 2009)	W	24 yr marriage; 2 children	50%	• H sole source of financial support for the family and W was a stay at home mother. • H greater economic contributions to the marriage than W does not necessarily mean that he was entitled to a greater percentage of the marital property.
Smith v. Winter, 64 A.D.3d 1218 (4d Dep't 2009)	W	12 yr marriage; no children	40%	• Based on W's "contribution as homemaker." Award of 40% of 10% appreciation of $20M (i.e., 40% of $2 Million = $800k).
Gering v. Tavano, 50 A.D.3d 299 (1st Dep't 2008)	W	Duration unspecified; 2 children	15%	• Given W's failure to contribute to the business, lack of cooperation with respect to discovery of her own assets, and receipt of temporary maintenance.
Ciampa v. Ciampa, 47 A.D.3d 745 (2d Dep't 2008)	W	Long term marriage; 4 children	35%	• Accommodation between the W's limited involvement in the business, while not ignoring the direct and indirect contributions she made as the primary caretaker of the parties'4 children, as homemaker, and as social companion to her husband, while foregoing her career as an attorney.
Schorr v. Schorr, 46 A.D.3d 351 (1st Dep't 2007)	W	Unspecified	40%	• W's modest contributions and taking into account her contributions as a homemaker.
Meccariello v. Meccariello, 46 A.D.3d. 640 (2d Dep't 2007)	W	Unspecified; appears to be less than 10 yrs	40%	• Decision had no discussion of the parties' respective contributions.
M.A. v. K.A., 2007 N.Y. Misc. Lexis 8578 (Sup. Ct. Nassau Co. 2007)	W	28 yr marriage; 2 children	50%	• Increase in value was due in large measure to the wife's direct contributions, for which she was not compensated by salary or commissions. • W took many courses during the marriage, which provided her with skills in grading diamonds and gem stones and in designing jewelry, and accompanied the husband on many business trips and worked at trade shows. • W also made indirect contributions, providing for virtually all the care for the children and the marital residence, even functioning as the general contractor while

				it was being built. • W was also awarded a greater share of the marital home.

Division of Professional Practice Interests

Case citation	To	Duration/children	Distribution	Contribution Take Aways
MI. S. v. MA. S., NYLJ pg. 26, Vol. 251, No. 50 (3/17/14)	W	15 yr marriage; 2 children	15% Med. Practice	• W conceded that she did not cook or clean the home but rather "supervised" staff employed to maintain the home and assist in child-care. • W testified she scheduled and drove the children to their daily activities and assisted them with homework • Her direct contributions toward H's business was limited to an annual holiday party, picnic and at times entertaining pharmaceutical representatives at the home prior to dining out
A.C. v J.O., 40 Misc. 3d 1226(A) (Kings Co. Sup Ct 2013)	H	12 yr marriage; 2 children	25% of Dental Practice; 0% EEC	• In consideration of the H's minimal direct and indirect contributions toward the establishment of the W's business, but cognizant of his support of her for the four years she was in dental school, and of the parties' first child, who was born during the summer before she started her last year of dental school, the court awarded him as his equitable share of her dental practice.
Charap v. Willett, 84 A.D.3d 1000 (2d Dep't 2011)	W	Long duration	10% Law practice	• W made only indirect contributions to H's career and was employed herself as an attorney for most of the lengthy marriage.
Henneberry v. Borstein, 87 A.D.3d 451 (1st Dep't 2011)	W	Unspecified	50%	• Decision had no discussion of the parties' respective contributions.
Davis v O'Brien, 79 AD3d 695 (2d Dep't 2010)	W	Long term	20% bus.; 60% remainder	• W successfully embarked on her own full-time career and made only indirect contributions to H's career. • W awarded 60% of certain marital assets was based on the significant decrease in H's contributions to the marriage as a financial, emotional, and supportive partner for more than four years.
Robert M. v. Christina M., 2010 N.Y. Slip Op 51766U (Sup. Ct. Rockland Co. 2010)	W	13 yr marriage; 3 children	35% Bus.	• W had minimal direct involvement with the practice (which "did little to enhance the value of the property"), other than as a short term employee, plus the contribution of marital funds.
			15% Bus.	• As no marital funds were spent by H in obtaining his interest and W had no direct involvement in the practice.
Albanese v. Albanese, 69 A.D3d 1005 (3d Dep't 2010)	W	18 yr marriage with two children	0%	• W's role as homemaker and mother to the parties' children entitled her to appreciation; but failed to prove value.
Peritore v. Peritore, 66 A.D.3d 750 (2d Dept. 2009)	W	6 yr marriage; no children	15%	• W pursued her own career on a full-time basis. • Made only indirect contributions to the H's dental practice.
Mairs v. Mairs, 61 A.D.3d 1204 (3d Dep't 2009)	W	Long term marriage; 7 children	25% Practice and License	• Long-term marriage, W worked and was the primary caretaker for 7 children, • Managed the household, made economic contributions (at times, primary source) • Relocated the family from Utah to Philadelphia and then to New York "for the express purpose of allowing the H pursue his medical studies and obtain his medical license." • W made direct contributions to the medical practice including managing the practice and assuming responsibility for the preparation of all invoices and payment of all bills.

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Quinn v. Quinn, 61 A.D.3d 1067 (3d Dep't 2009)	W	14 yr marriage; 2 children	30% Bus. 50% Mar. Property	• W's indirect contributions as a homemaker and parent. • W made no direct contributions, financial or otherwise, to H's business. • W agreed to forgo a career in retail when the parties decided to get married and relocate. • Court recognized her domestic and child rearing contributions to the marriage that allowed H to build his practice.
Fleischmann v. Fleischmann, 24 Misc.3d 1225(A) (Sup. Ct. Westchester Co. 2009)	W	29 yr marriage; 3 children	25% EEC 10% Firm	• W's contributions were overall contributions to the marriage and husband's attainment of his partnership interest was due to him "having worked long hours with thousands of billable hours leading to a steady rise to partner."
Petosa v. Petosa, 56 A.D.3d 1296 (4d Dep't 2008)	W	Duration unspecified; c/s awarded	35%	• W's indirect contributions toward the business.
Schwartz v. Schwartz, 54 A.D.3d 400 (2d Dep't 2008)	W	30 yr marriage; 1 child	35%	• W was the primary caretaker for the parties' child during the early part of husband's career, which allowed the H, at one time, to earn the 3rd highest share of profits at his law firm. • Accounted for her bad conduct toward the latter part of the marriage that harmed the husband's status at the law firm , which reduced his salary and profits.
Kaplan v. Kaplan, 51 A.D.3d 635 (2d Dep't 2008)	W	Long duration	30% dental practice and license	• Accounts for the limits of W's involvement with the practice and the attainment of H's dental license while not ignoring her direct and indirect contributions.
Griggs v. Griggs, 44 A.D.3d 710 (2d Dep't 2007)	W	Long duration; 2 children	35%	• Accounts for the limits of the W's involvements with the practice, while not ignoring the direct and indirect contribution that she did make, including care of children and marital home.

Division of Enhanced Earning Capacity

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Kim v Schiller, 112 A.D.3d 671(2d Dep't 2013)	W	Duration unspecified; 2 children	30% EEC	• W made substantial indirect contributions to the attainment of a medical degree and license, including being supportive. • W worked full-time during marriage, except when she was on maternity leave. • W did not make direct financial contributions to the attainment of the degree. Award was reduced given H's "accommodations for the sake of the [W's] career and desire to remain near her family."
A.C. v J.O., 40 Misc. 3d 1226(A) (Kings Co. Sup Ct 2013)	H	12 yr marriage; 2 children	25% of Dental Practice; 0% EEC	• W left her position as equity partner's at a law firm and attended dental school with the full consent of her H, and that both parties understood this would allow her to earn a substantial salary, but was unlikely to enhance her earning capacity. • If she was still an equity partner at a law firm, it is implied her earnings would be higher than they are now.
Hogle v Hogle, 40 Misc. 3d 1220(A) (Sup. Ct.2013)	W	32 yr marriage; 2 children	25%	• W was the primary homemaker and generated income through her "Longaberger" basket business. • W's efforts as a homemaker were found to be as significant as H's contributions as the primary wage earner. • Parties financed H's law school education through student loans which were eventually paid with marital funds
Owens v Owens, 107 A.D.3d 1171 (3d Dep't2013)	H	24 yr marriage; 2 adult children	30% EEC	• H encouraged W to pursue her dream. • H financed W's education. • H was the primary caregiver for the children while she pursued her degree full time.
McCaffrey v McCaffrey, 107 A.D.3d 1106 (3d Dep't2013)	W	12 yrs; childless	15% EEC	• W (age 42) found to made contributions including, rearranging her schedule to transport H to and from classes. • W assumed a greater share of the household responsibilities. • Part of the H's tuition was paid for by marital funds. • H expended significant effort in obtaining his degrees; attended night classes while working full time, and occasionally at a part-time second job.
Lauzonis v Lauzonis, 105 A.D.3d 1351 (4d Dep't 2013)	W	Duration unspecified; No. of children unspecified	EEC to be distributed	• W made a "modest" contribution toward the husband's attainment of a master's degree. • W put her own master's degree "on hold" while the H pursued his degree. • W substitute taught, performed household duties, and assisted H with his course work and other work.
Vertucci v. Vertucci, 2013 N.Y. App. Div. Lexis 1120 (3d Dep't 2013)	H	19yr marriage; three children	15% practice 15% EEC	• W was married to the H during her entire third year of law school and her practice was started during the marriage – no discussion of parties' respective contributions.
Sotnik v. Zavilyansky, 2012 N.Y. App. Div. LEXIS 9020 (2d Dep't 2012)	H	Duration unspecified; one child	0% Med. Lic.	• H's contribution to W's attainment of her medical license was *de minimis.*

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Mojdeh M. v Jamshid A., 36 Misc. 3d 1209A (Kings Co. 2012)	H	11 yr marriage; 1 child (11 yr old son)	5% Lic.; 0% Phd	• H did not make a substantial contribution toward W completing her license. • He was not a homemaker, his contribution to raising the parties' child was minimal, taking the child for walks and watching television with the child, he did not perform many household duties and he cooked for himself and did his own laundry but did not do so for the wife. Nor did the husband support the family financially. • W worked two jobs at times to enable the parties to pay their rent.
Esposito-Shay v. Shay, 94 A.D.3d 1215 (3d Dep't 2012)	H	15 yr marriage; 2 children	H 10% of W's EEC; W 0% of H's J.D.	• H's contributions as the family's primary wage earner during the parties' marriage, and his willingness to arrange his work schedule so that he would care for the children while W attended law school, were representative of "overall contributions to the marriage, rather than additional efforts to support W in obtaining her license." • W's own efforts in obtaining her law degree cannot be minimized, because she worked in part time positions throughout the marriage and was employed during the summer months while attended law school, also earning merit scholarships and paid a significant part of her law school tuition with an inheritance she received during the marriage.
Gallagher v Gallagher, 93 A.D.3d 1311 (4th Dep't 2012)	H	Long term marriage of over 25 yrs; children unspecified	15% of W's Master's degree; W 45% of Farm	• "[W]here only modest contributions are made by the nontitled spouse toward the other spouse's attainment of a degree . . . and the attainment is more directly the result of the titled spouse's own ability, tenacity, perseverance and hard work, it is appropriate for courts to limit the distributed amount of that enhanced earning capacity"
Nidositko v. Nidositko, 92 A.D.3d 845 (2d Dep't 2012)	H	5 yr marriage; children unspecified	5% Nursing	• Decision contained no discussion about the parties' respective contributions.
Pankoff v. Pankoff, 84 A.D.3d 690 (1st Dep't 2011)	W	Duration not addressed; 2 children	10%	• W demonstrated her "economic and non-economic contributions" to the H's license and career during the marriage
Huffman v. Huffman, 84 A.D.3d 875 (2d Dep't 2011)	W	Duration unspecified; 3 children	30% MBA degree	• W made substantial indirect contributions by supporting H's educational endeavors, contributing her earnings to the family, being the primary caretaker of the children, cooking family meals and participating in housekeeping responsibilities.
Sadaghiani v. Ghayoori, 83 A.D.3d 1309 (3d Dep't 2011)	W	8 yr marriage; 1 child	10% Med Lic.	• H obtained his medical degree prior to the marriage. • Short period of cohabitation during marriage. • No evidence that W interrupted her career or adjusted her lifestyle to support H and she obtained a Master's degree while maintaining full-time employment; • Both cared for the child.

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Bayer v. Bayer, 80 A.D.3d 492 (1st Dept. 2011)	W	Long duration; children unspecified	35% Med. Lic.	• W's economic and noneconomic contributions to H's attainment of a medical license and subsequent lucrative career and W's termination of her career and absence from the job market in order to maintain the marital household.
Haspel v. Haspel, 78 A.D.3d 887 (2d Dep't 2010)	W	23 yr marriage; 2 children	25% Pro. Lic.	• Decision contained no discussion about the parties' respective contributions.
McAuliffe v. McAuliffe, 70 A.D.3d 1129 (3d Dep't 2010)	H	29 yr marriage; 3 children	0%	• No evidence that H made any efforts to help W attain her academic degrees beyond his overall contributions to marriage; therefore, H not entitled to share W's enhanced earning capacity, if any. • No evidence that any unreimbursed marital funds were expended or that H made any efforts to assist W in obtaining either degree that went beyond "overall contribution to the marriage."
Schwartz v. Schwartz, 67 A.D.3d 989 (2d Dep't 2009)	W	Long duration; children unspecified	10%; EEC; 50% on all other assets	• W made only modest contributions toward H's attainment of the licenses, which was more directly the result of the husband's own ability, tenacity, perseverance, and hard work.
Jayaram v. Jayaram, 62 A.D.3d 951 (2d Dept. 2009)	W	15 yr marriage; 2 children	35% MBA	• W did not make direct financial contributions to the H's attainment of his MBA degree and NASD licenses, she made substantial indirect contributions by supporting the husband's education, working full-time and contributing earnings to the household, being the primary caretaker for their children, cooking family meals and participating in housekeeping responsibilities
Guha v. Guha, 61 A.D.3d 634 (2d Dept. 2009)	H	Unspecified	5% Med. Lic.	• H made minimal financial contributions to the marriage, • H failed to satisfy his burden of demonstrating that he made substantial contributions to W's attainment of her medical license in the United States
Kriftcher v. Kriftcher, 59 A.D.3d 392 (2d Dept. 2009)	W	Short duration and there was at least one child;	10% Degree and license	• Where only modest contributions are made by the non-titled spouse toward the other spouse's attainment of a degree or professional license, and the attainment is more directly the result of the titled spouse's own ability, tenacity, perseverance and hard work, it is appropriate for court's to limit the distributed amount of that EEC. • W made minimal contributions to the degree.
Wiener v. Wiener, 57 A.D.3d 241 (1st Dep't 2008)	H	At least 3 years; children unspecified	10% MBA	• Decision contained no discussion of the parties' respective contributions.
Evans v. Evans, 55 A.D.3d 1079 (3d Dep't 2008)	W	19 year marriage; at least two children	0% Engineering Deg.	• Even if there was a value, W failed to demonstrate that she made any meaningful contributions that assisted H in earning it. • W contributions, while significant, "can be seen more as overall contributions to the marriage rather than an additional effort to support [H] in obtaining his license"
Higgins v. Higgins, 50 A.D.3d 852 (2d Dep't 2008)	H	Duration unspecified; at least 2 children	0% Bach. and Masters	• H did not demonstrate that his contributions were substantial. • Despite making some efforts to help, no evidence that H made career sacrifices or assumed a disproportionate share of the household work as a consequence of the W's education. • W worked full-time while attending school, paid for some of her educational costs and was the children's primary caregiver.
Judge v. Judge, 851 N.Y.S.2d 639 (2d Dep't 2008)	H	Long term, 26 yr marriage; 2 children	25% MBA	• H's contributions not discussed.

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Midy v. Midy, 45 A.D.3d 543 (2d Dep't 2007)	H	At least 9 yrs; 1 child	25% Master's degree; 50% Fla Pro.	• W testified that H never looked after their child while she was studying for her degree, nor did he ever assist her in any way in her attainment of her degree. • Although had child care, H testified that he continued to work full time while the W was in school, he cared for the parties' child during the time when he was not working, relieved the wife of her household chores so that she could study, also took the child to school and activities. No evidence that H sacrificed any career opportunities.
K.J. v. M.J., 14 Misc. 3d 1235(A) (Sup. Ct. Westchester Co. 2007)	W	11 yr marriage; 2 children	35% MBA	• W contributions to H's efforts, both economic and non-economic, were substantial. • While H performed certain chores in the Home, and at times, cared for the parties' children while W was engaged in other endeavors, beginning from the time W had just given birth to their first child, H insisted that W prepare elaborate Indian-style meals, ensure that the children were quiet so that his studies and his sleep were not interrupted, address the children's emotional and health problems and be the primary keeper of their home. • W, in fact, did all of those things, while also working full-time hours, and even longer than ordinary work days, for her employer, and contributing her income to the family. Court also noted that W's efforts caused her remain in her position, with a substantially lower salary and potential for income growth than him.

Division of Marital Residence

Case Citation	To	Duration/children	Distribution	Contribution Take Aways
Myers v Myers, 989 N.Y.S.2d 537(3d Dep't 2014)	H	11 yr marriage; children unspecified	50%	• Overall parties engaged in a financial partnership, of which the marital residence, and the loans thereupon, was simply one agreed-upon portion • Funds received from the mortgage, as well as the subsequent refinancing and home equity loan, enabled the W and the H to live a lifestyle that may have been above their means
Lamparillo v. Lamparillo, 116 A.D.3d 924 (2d Dep't 2014)	-	Unspecified	Equal	• The decision did not address the duration of the marriage, the age of the parties, whether the parties had any children or any other factors relevant to the equitable distribution analysis
Owens v Owens, 107 A.D.3d 1171(3d Dep't 2013)	W	24 yr marriage; 2 older children	50% MR; 30% W's EEC to H	• Taking into account the parties' assets at the commencement of the action and the husband's economic fault.
Szewczuk v. Szewczuk, 107 A.D.3d 692 (2d Dep't2013)	H	Short marriage; no children	50%	• Marriage was of short duration with no children, and the parties generally kept their finances separate. • Appreciation in value of the marital residence that was attributable to the efforts of both parties in physically improving the property during the marriage.
Henery v. Henery, 105 A.D.3d 903 (2d Dep't2013)	W	Unspecified	100%	• No specific reasons given for the appropriateness of the 50% award other than "under the circumstances of the case."
Edyta B. v. Tomasz B, N.Y.L.J 2/1/13 7029/10	W	12 yr marriage; 1 child	50% MR; 0% EEC MPA	• W's economic or intangible contributions, often exceed H's and found to enrich the marriage in a measure at least equal to those of her husband. W contributed her earnings; cared for her husband and their home; shared the joys, and anxieties, and tears. • H not only did not provide sufficient evidence of value, but also due to H's disinterest in W's efforts, he rendered no help to her either in her job or in her making a home, or, for that matter, in aid and comfort to her other than efforts to remodel the marital domicile together and with his wife's brothers and father essentially to protect his investment.
Biagiotti v. Biagiotti, 97 A.D.3d 941 (3d Dep't 2012)	W	8 yr marriage; children unspecified	15% MR; 15% Re. Acct	• Considering different levels of involvement, and that most of the appreciation was passive based on market forces rather than related to the improvements.
Ropiecki v. Ropiecki, 94 A.D.3d 734 (2d Dep't 2012)	W	Long term, 27 yr marriage; Children unspecified	100%	• W's very limited earning potential, which was as a result of her staying home and taking care of the parties' four children, including their daughter who suffered from a disability.
Jones v. Jones, 92 A.D.3d 845 (2d Dep't 2012)	W	Unspecified	40%	• Appreciation was found to be due to joint efforts. • W awarded 40% considering W's contributions to the subject property, including, *inter alia*, her work on the horse farm.

Case citation	To	Duration/children	Distribution	Contribution Take Aways
C.R.Z. v. D.E.Z. 7/22/11 NYLJ	-	9 yr marriage; 2 children	Equal	• Both parties made significant contributions to the marriage of long duration. • That W's contributions to the marriage were primarily, if not exclusively, other than financial, is not a reductive factor. • W was the primary care giver to the parties' children. She also assumed the major role in the family's social life and took the lead in the extensive remodeling of the former marital residence.
Marcellus-Montrose v. Montrose, 84 A.D.3d 752 (2d Dep't 2011)	H	Duration unspecified; 2 children	20%	• H's income was not as significant, compared to the monetary contributions of W • H's annual income was about 20% of the annual income of W. • Rejected claims that H cared for the children while W was at work. It was established that the parties had a live-in babysitter who cared for children.
Taub v. Taub, 31 Misc.3d 1216(A) (Sup. Ct. Kings Co. 2011)	W	33yr marriage; 2 children	50%/25%	• W cared for the home and the children and insured that H could entertain friends and neighbors lavishly and frequently, all of which allowed him the freedom and earned him the respect that enabled his success. • Given these essentially equal contributions to the acquisitions of the marriage.
B.M. v. D.M., 31 Misc. 3d 1211(A) (Sup. Ct. Richmond Co. 2011)	W	11 yr childless marriage	40%	• W made little, if any, financial contributions towards the mortgage on the Marital Residence from 1996 through 2002. • H did all of the cooking, cleaning, and laundry in addition to holding a full time job for 10 of 11 yrs. • H credibly testified that W worked only two years of this eleven year marriage
Alper v. Alper, 77 A.D.3d 694 (2d Dep't 2010)	W	20 yr marriage; No children	0%	• W contributed "little, if any financial support to the marriage," and did not contribute at all to the purchase, and only minimally to the maintenance of the M.R.
Del Villar v. Del Villar, 73 A.D.3d 651 (1st Dep't 2010)	H	10 yr marriage;	Increased to 10%	• H did make some "minimal" contributions to the marriage, including performing some "menial tasks" in the various businesses operated by W. • H failed to contribute to the Apartment "after his 1991 incarceration" and that a significant increase in the marital apartment was due to market forces.
Bernholc v. Bornstein, 72 A.D.3d 625 (2d Dep't 2010)	H	Almost 15 yr marriage; one child	40% of Appreciation	• H performed some of the renovation work himself and contributed to paying off the home equity loans used to make renovations, which were with marital funds
Wansi v Wansi, 71 A.D.3d 599 (1st Dep't 2010)	H	Unspecified	Reduced to 15%	• H made "little, if any, contribution to the marital asset."
Phillips v. Haralick, 70 A.D.3d 663 (2d Dep't 2010)	W	Duration of marriage and children unspecified	45%	• Decision contained no discussion of the parties' respective contributions.
Mongelli v. Mongelli, 68 A.D.3d 1070 (2d Dep't 2009)	W	At least 9 yrs; 2 children	50% of Appreciation	• Appreciation in the value of the marital residence was attributable to the joint efforts of the parties, who had two children during the marriage.
Evans v. Evans, 57 A.D.3d 718 (3d Dep't 2008)	H	Duration unspecified; one child	15%	• In light of evidence that H contributed minimally to marriage.
Kilkenny v. Kilkenny, 54 AD3d 816 (2d Dep't 2008)	H	Duration unspecified; 2 children	50%	• Appreciation attributable to joint effort of parties.
H. v. H., 2008 N.Y. Misc. LEXIS 2849 (Sup. Ct. Kings Co. 2008)	-	Long duration, 24 yr marriage; 2 children	50%	• Long term marriage where both parties made contributions to the purchase and operation of the premises.

Case citation	To	Duration/children	Distribution	Contribution Take Aways
Johnson v. Chapin, 49A.D.3d 348 (1st Dep't 2008)	W	11 yr marriage; children unspecified	25% of increase	• Decision contained no discussion of the parties' respective contributions.
Embury v. Embury, 49 A.D.3d 802 (2d Dep't 2008)	H	Duration unspecified; 2 children	0% of increase	• H failed to set forth proof that the property actually increased in value and, in any event, he did not demonstrate the manner in which his contributions resulted in any alleged appreciation.
Faello v. Faello, 43 A.D.3d 1102 (2d Dep't 2007)	W	Unspecified	15%	• Other than separate property contributions, equitable distribution factors not addressed.
Davidman v. Davidman , 97 A.D.3d 627 (2d Dep't 2012)	W	Duration unspecified; 1 child	0%	• W failed to carry her burden establishing that the marital residence appreciated in value during the parties' marriage and, if so, that such appreciation was due in part to her efforts.
Dinoto v. Dinoto, 97 A.D.3d 529 (2d Dep't 2012)	W	Unspecified	33%	• 1/3 in light of damage caused by W.
Linda D. v. Theo C., 96 A.D.3d 432 (1st Dep't 2012)	H	10 yrs; 2 children	25% of renovation costs	• No findings about renovations had any effect on value of residence; H failed to carry burden of how renovations had any effect on the value of the apartment.
Dellafiora v. Dellafiora, 38 AD.3d 825 (2d Dep't 2007)	W	Unspecified	50%	• Decision contained no discussion of the parties' respective contributions.

Division of Pension and Other Assets

Case Citation	To	Duration/children	Distribution	Contribution Take Aways
Zufall v. Zufall, 109 A.D.3d 1135 (4d Dep't 2013)	W	21 yr marriage; 5 children	50%	• W was primarily a homemaker, raising the parties' children while H worked as a correction officer.
Bellizzi v Bellizzi,107 A.D.3d 1361(N.Y. App. Div. 3d Dep't2013)	W	41 yr marriage; 3 children	50%	• Relative parity was appropriate "in light of the 40-plus years of marriage and no factors justifying an unequal distributive award."
Cornish v. Eraca-Cornish, 107 A.D.3d 1322 (3d Dep't 2013)	H	19 yr marriage; 3 children	30%	• In light of H's "limited contribution to the economic partnership of this marriage". • H stayed home while W worked. • H refused to obtain work after children reached school age.
Rubackin v Rubackin, 107 A.D.3d 872 (2d Dep't 2013)	W	Unspecified	100%	• Based upon the W's role in recent years as the parties' primary wage earner and the primary caregiver to the parties' children.
DeGroat v. DeGroat, 84 A.D.3d 1012 (2d Dep't 2011)	W	Duration and children unspecified	50%	• Long duration of the marriage and the respective contributions of the parties.
Shapiro v. Shapiro, 91 A.D.3d 1094 (3d Dep't 2012)	W	33 yrs, with 2 children	50%	• W left the workforce to care for the parties' children • W made substantial non-economic contributions to the parties' assets during the early years of the marriage and by continuing as primary caretaker for the children after the separation • W sacrificed career development and earned substantially less than the H at the time of trial
Hughes v. Hughes, 79 A.D.3d 473 (1st Dep't 2010)	W	Unspecified	50%	• H's contention that W was not emotionally supportive during the marriage depended on statements made in his post-trial affidavit that the Supreme Court was free to disbelieve. There was no additional discussion of the parties' respective contributions.
Marino v. Marino, 52 A.D.3d 585 (2d Dep't 2008)	W	Long duration; children unspecified	23%	• Although the decision did not discuss the parties' respective contributions, the nondurational award of maintenance noted the "long duration" of the marriage.
Glassberg v. Glassberg, 2009 N.Y. Misc. LEXIS 2436 (Suffolk Co. Sup. Ct. 2009)	H/ W	Long term; 1 child	35%/50%	• W's substantial share of the financial and day-to-day support in maintaining the household, including working full time, being the primary care giver for the parties son, and providing for the consistent and reliable income flow the family enjoyed • H's contribution was limited, sporadic, unreliable and inconsistent.
SA v. KF, 22 Misc. 3d 1115A (Sup. Ct. Kings Co. 2009)	H	31 yr marriage; no children	50% of W's Pension	• Based on these factors, as well as the parties' respective age, future economic circumstances, health, standard of living and the disparity of the non-economic contributions to the marriage and court's order of maintenance payment to H by W.

Division of Marital Stock and Investments

Case Citation	To	Duration/children	Distribution	Contribution Take Aways
Pathak v. Shukla, 109 A.D.3d 891(2d Dep't 2013)	W	Unspecified	65%	• Sup. Ct. "properly considered the statutory factors." • Based upon H having secreted marital funds.
Levitt v. Levitt, 97 A.D.3d 543 (2d Dep't 2012)	W	Long duration; no children specified	50%	• Decision contained no discussion of the parties' respective contributions.
Murray v. Murray, 956 N.Y.S.2d 252 (3d Dep't 2012)	W	19 yr marriage with 4 children	50%	• While no discussion in the majority related to equitable distribution, in addressing the maintenance award, the Court recognized the "the wife's limited prospects for increased earnings, and the lost income, earning capacity and retirement savings that she incurred by remaining out of the paid work force to raise the parties' children for approximately 17 years during the marriage." • W had "been out of the work force for a number of years [and] has sacrificed her… own career development or has made substantial noneconomic contributions to the household or to the career of the payor."
Hendry v. Pierik, 78 A.D.3d 784 (2d Dep't 2010)	W	Unspecified	50%	• Decision contained no discussion of the parties' respective contributions. • Safe to assume long term marriage; given nondurational maintenance award.
Armstrong v. Armstrong, 72 A.D.3d 1409 (3d Dep't 2010)	W	11 year marriage with one child	70%	• Decision contained no discussion of the parties' respective contributions, other than "germane factors" and wasteful dissipation.
Filiaci v. Filiaci, 68 A.D.3d 1810 (4d Dep't 2009)	W	The parties had at least two unemancipated children	50%	• Decision contained no discussion of the parties' respective contributions.

FACULTY BIOGRAPHIES

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LICENSES AND ADMISSIONS

State Bar of New York - 1988
United States District Court, United States Bankruptcy Court - 1993

EDUCATION

State University of New York at Buffalo Law School
Buffalo, New York - Juris Doctorate : 1987 Cum Laude
Syracuse University, S.I. Newhouse School of Public Communications
Syracuse, New York - Bachelor of Science/ Journalism : 1980 Cum Laude

EMPLOYMENT

Offermann, Cassano, Greco, Slisz & Adams, LLP.
Partner, 1998 - present
Ange, Gordon & Adams
Partner, 1992 - 1997
Associate, 1987 - 1992

PROFESSIONAL AND FACULTY

Certified Fellow, American Academy of Matrimonial Lawyers
1994 - present

Sustaining Member, New York State Bar Association
Family Law Section
8th District Representative, 1992 - present
Member, Executive Committee 1992 - present
Co-Chair, Continuing legal Education Committee, 2004 - present
Co-Chair, Membership Committee 2000 - present
Co-Chair, Special Committee on Mediation and Arbitration 1992 - present
Member, Child Custody Committee 1992 - 2000
Committee on Children and the Law, 1996-1998

Women and the Courts Committee
Member, 1990 - 2001
Chair, Ruth Schapiro Memorial Award Committee, 1995 - 2001
Civil Practice Laws and Rules Committee
Member, 1989 - 1993
Special Committee on Biotechnology and the Law,
Member, 1994-1995
Young Lawyer Section,
Mentor to Young Lawyers, 1995 - present

Member, Bar Association of Erie County
Matrimonial and Family Law Committee
Chair, 1999 - 2002
Member, 1988 - present
Practice and Procedure in Family Court Committee
Member, 1991 - present
Judiciary Committee
Member, 2000 - 2004
Law Office Management Committee
Chair, 1993 - 1995
Member 1991-1995
Appellate Practice Committee
Member, 1991 - 1995

Member, Western New York Trial Lawyers Association
2000 - present

Member, Western New York Matrimonial Trial Lawyers Association
2000 - present

Member, Women Lawyers of Western New York
President, 1993 - 1994
Vice-President, 1992-1993

Adjunct Professor, Medaille College
1995 - 1997

Founding Board Member, GOLD Group (Graduates of the Last Decade),
SUNY at Buffalo Law School, 1988 - 1990

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Ms. Baiamonte was admitted to the Bar in January, 1994. She is a graduate of Brandeis University (B.S., *cum laude*, 1990) and Syracuse University College of Law (J.D., *magna cum laude*, 1993), and has been an associate of the firm's founding member, Stephen Gassman, since March, 1996. Prior to that time, Ms. Baiamonte was an associate of the firm of DaSilva & Keidel from October, 1993 through February, 1996. Ms. Baiamonte was named a member of the firm on August 1, 2007.

Since admission to the bar, Ms. Baiamonte has been engaged exclusively in the practice of matrimonial and family law. She is an active and contributing member of the New York State Bar Association, where she serves as the Treasurer/Finance Officer of the Executive Committee and CLE Co-Chair of the Family Law Section, and of the Nassau County Bar Association, where she serves as First Vice Chair of the Matrimonial Law Committee and Chair of the Judiciary Committee. Ms. Baiamonte is also an elected member of the Board of Directors of the Nassau County Bar Association.

Ms. Baiamonte has served as an Arbitrator in the Early Neutral Evaluation Program in the Nassau County Supreme Court, and currently serves as a Discovery Referee in the Matrimonial Center as well as a Part 137 Fee Arbitrator for the 10th Judicial District.

Ms. Baiamonte is a frequent lecturer on various matrimonial topics for the New York State and Nassau County Bar Associations and Nassau Academy of Law. Since 2009, she has Chaired the Practical Skills - Basic Matrimonial Practice and Family Court Practice day-long seminars presented by the New York State Bar Association, Family Law Section. Ms. Baiamonte has appeared as a guest lecturer at C.W. Post and St. John's University School of Law; and she has been invited by Justices of the Supreme Court, Nassau County, to address Law Interns on the topic of legal research and writing. Ms. Baiamonte is an Editor of *Library of New York Matrimonial Law Forms*, a 1,350+ page compendium of matrimonial law forms currently on sale through the New York Law Journal (©2012).

Ms. Baiamonte has extensive appellate advocacy experience, having prosecuted and defended dozens of appeals involving complex matrimonial and family law issues, most notably: *Goncalves v. Goncalves*, 105 A.D.3d 901, 963 N.Y.S.2d 686 (2nd Dept., 2013); *Chesner v. Chesner*, 95 A.D.3d 1252, 945 N.Y.S.2d 409 (2nd Dept., 2012); *Beroza v. Hendler*, 71 A.D.3d 615, 896 N.Y.S.2d 144 (2nd Dept., 2010); *Kriftcher v. Kriftcher*, 59 A.D.3d 392, 874 N.Y.S.2d 153 (2nd Dept., 2009); *DeMille v. DeMille*, 5 A.D.3d 428, 774 N.Y.S.2d 156 (2nd Dept., 2004); *DeMille v. DeMille*, 32 A.D.3d 411, 820 N.Y.S.2d 111 (2nd Dept., 2006); *Matter of Brim v. Combs*, 25 A.D.3d, 691, 808 N.Y.S.2d 735 (2nd Dept., 2006); *Klein v. Klein*, 296 A.D.2d 533, 745 N.Y.S.2d 569 (2nd Dept., 2002); *Rindos v. Rindos*, 264 A.D.2d 722, 694 N.Y.S.2d 735 (2nd Dept., 1999); and *Vigliotti v. Vigliotti*, 260 A.D.2d 470, 688 N.Y.S.2d 198 (2nd Dept., 1999).

Henry S. Berman graduated from Queens College with a Bachelor of Arts degree in 1964. He attended St. John's University School of Law and graduated with a JD in 1967. He was editor of the Law Review and the Catholic Lawyer and was named a St. Thomas Moore Scholar. Following his law school graduation, Mr. Berman attended NYU School of Law, where he obtained a Masters in Law. Mr. Berman is admitted to practice law in New York State and the United States District Court, Eastern District of New York.

Mr. Berman began his career as a Law Assistant in the Appellate Division of the Supreme Court for the Second Judicial Department and then because a Law Secretary to a Supreme Court Justice in the Ninth Judicial District in Westchester County. Mr. Berman entered private practice in 1977 when he joined the Family Law Department of an international, general practice law firm, of which he subsequently became Chair. He has practiced exclusively in the field of matrimonial and family law since 1977.

Mr. Berman served as Vice President of the New York State Bar Association for the Ninth Judicial District, served on the New York State Bar Association's nominating committee and was a member of the House of Delegates. He is a former chair of the Family Law Section of the New York State Bar Association and continues to co-chair the Continuing Legal Education Committee of the Family Law Section of the New York State Bar Association as he has done since 1985. He has and continues to serve as chair for many of the statewide New York State Bar Association Continuing Education programs.

He is past member of the Board of Directors of the Westchester County Bar Association, and a past chair of the Matrimonial and Family Law Section of the Westchester County Bar Association, and served as editor of the *Domestic Law Review.*

He has been a Fellow of the American Academy of Matrimonial Lawyers since 1980. He served as Vice President and was Member of the Board of Governors, Board of Examiners and Admissions Committee of the New York Chapter of the Academy of Matrimonial.

Mr. Berman participated as a member of the task force appointed by the New York State Chief Judge to study present law as it relates to the family.

He participated in the Peace Program in Westchester County.

Mr. Berman has been named one of the top ten leaders of Matrimonial & Divorce Law in Westchester-Rockland New York.

He has been name Top 10 Family Law Attorneys In New York by the National Academy of Family Law Attorneys

Mr. Berman has been listed in Best Lawyers in America for Family Law since 1989 through the present date.

He has been listed as one of the Top 25 Lawyers in Westchester County in the New York

Times Super Lawyers since 2007 through 2013. He was named Best Lawyers' 2011 Family Lawyer of the Year.

Mr. Berman has achieved the AV Preeminent® Rating from Martindale Hubbell.

He has lectured innumerable times on divorce and family law to the bar and judiciary, under the auspices of bar associations, law schools, judicial training institutes, and other legal organizations. In September of 2010, Mr. Berman presented a popular webcast for the New York State Bar Association and a widely attended lecture for the Westchester County Bar Association on **New Legislation for the Family Law Practitioner: An Analysis of New York's New Laws on "No-Fault" Divorce, Counsel Fees, Temporary Maintenance Guidelines, Child Support Modification and Orders of Protection.**

CHARLES P. INCLIMA, ESQ.

Mr. Inclima, of the Inclima Law Firm, PLLC located in Rochester, concentrates his practice in the areas of matrimonial and family law. He is a member of the Executive Committee of the New York State Bar Association's Family Law Section and a Past President of the Monroe County Bar Association. Mr. Inclima was also Chair of its Family Law Section and Dean of the Monroe County Bar Association's Academy of Law. He is a Fellow of the American Academy of Matrimonial Lawyers. He has recently completed his term as Chairperson of the Seventh Judicial District's Grievance Committee. He is the immediate past-Chair of the MCBA Communications Committee. Mr. Inclima is listed in The Best Lawyers In America, 13th and 14th editions, 2007 and 2008 and has been named to the 2007 and 2008 editions of New York Super Lawyers.

Mr. Inclima is a frequent lecturer for the New York State and Monroe County Bar Associations, has been a panelist for various programs of American Academy of Matrimonial Lawyers and he has made presentations to Judges and Court Personnel for the New York State Judicial Institute. He is a former Adjunct Professor at Rochester Institute of Technology.

Sophie Jacobi-Parisi

Sophie Jacobi-Parisi is a member of Mayerson, Abramowitz & Kahn, LLP, a boutique firm located in Manhattan and specializing in matrimonial and family law. Prior to joining Mayerson Abramowitz & Kahn, LLP, she worked for the Legal Aid Society Juvenile Rights Division in the Bronx Family Court and the Chicago Public Defender Program. She has practiced exclusively in the area of matrimonial and family law since 2007, from the preparation of complex prenuptial and marital settlement agreements to the preparation of matrimonial matters for trial, with an emphasis on complicated custody matters. She is a 1998 graduate of Bucknell University, and she has dual degrees from Loyola University Chicago: a J.D. from Loyola University Chicago School of Law (2003) and a Master in Social Work from Loyola University Social Work School (2004).

Ms. Jacobi-Parisi a member of the New York State Bar Association, Family Law Section and a co-chair of the CLE committee; a member of the New York Women's Bar Association, where she was a co-chair of the Family and Matrimonial committee from 2009 to 2011; and, a member and of the Association of the Bar of the City of New York, where she was a member of the Committee on Matrimonial Law from 2011 through 2013. She has co-authored a number of articles on family law topics which have appeared in various publications, including Family Law Monthly. Ms. Jacobi-Parisi has been named in The Best Lawyers In America and New York Super Lawyers (Rising Star) most recent editions.

Peter R. Stambleck, Esq.
Aronson Mayefsky & Sloan, LLP
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Peter is a partner with Aronson Mayefsky & Sloan, LLP in New York, where he represents clients in all aspects of family law.

He is a member of both the Young Lawyers Division and the Family Law Section of the American Bar Association and serves as the Chair of the Young Lawyers Committee of the American Bar Association's Family Law Section. He is also active in the New York State Bar Association where he serves as Co-Chair of the Family Law Section's Continuing Legal Education Committee and is also a member of the Family Law Section's Executive Committee. Peter was recently selected as a Rising Star by Super Lawyers (2011, 2012 and 2013). Prior to joining the Firm, Peter worked as a Certified Public Accountant at Pricewaterhouse Coopers for four years.

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 and Connecticut State Bars.

Lectures
2014 "J.P. Morgan Private Bank: Emerging Family Leaders; Family Law Considerations"

2014 "Prenups, Postnups and Divorce – What Agents and Advisors Need to Know to Effectively Counsel Their Clients" | Sports Lawyers Association, Chicago, Illinois

2013 "Matrimonial Trial Institute IV: A Mock Financial Trial" | New York State Bar Association

2013 "Bridging the Gap: Consultation with the Client and Moving the Matrimonial Case Through the System" | New York State Bar Association

2013 "Matrimonial Trial Institute III: Trial Techniques and Strategies; Closely Held Businesses, Licenses and Professional Practices" | New York State Bar Association

2013 "Practical Skills – Family Court Practice: Custody, Child Protective Proceedings and Ethics" | New York State Bar Association

2012 "Basic Matrimonial Practice" | New York State Bar Association

2012 "Criminal Law in an Un-Civil Case: A Lawyers Guide to Handling the Intersection of Criminal and Family Law" | American Bar Association

2012 "Divorce And Trusts: How to Effectively Represent Your Client" | American Bar Association

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

2011 "Mining Individual, Corporate, & Partnership Tax Returns" | American Bar Association

2010 "Bridging the Gap: Consultation with the Client and Moving the Matrimonial Case Through the System" | New York State Bar Association Publications

2010 Understanding New York's O'Brien Decision and its Progeny (with Allan E. Mayefsky)

As of 09-09-2014

Bruce J. Wagner is Chair of the Family Law Practice Group at McNamee, Lochner, Titus & Williams, P.C., Albany, NY, and is a principal and shareholder in that law firm. His primary areas of practice are matrimonial law and appeals. He is a 1982 graduate of Cornell University and a 1985 graduate of Albany Law School of Union University. In September 2002, he was appointed as a Town Justice in the Town of Schodack (pronounced sko'-dak), Rensselaer County, was elected in November 2002 and re-elected in November 2006 and in November 2010. Justice Wagner is designated on a regular basis by the Administrative Judge of the Third Judicial District to serve as an Acting City Court Judge in the Criminal and Civil Parts of the City Courts of Troy, Albany, Rensselaer, Hudson and Cohoes. In November 2013, he was elected as President of the Rensselaer County Magistrates' Association, having served a prior term as President from January 2010 to January 2012, and is a member of the New York State Magistrates' Association. He is listed in the last 17 consecutive editions of The Best Lawyers in America (Woodward-White, 1999 through 2015). Based on peer voting, Mr. Wagner was named to *2014* *2013*, *2012*, *2011*, *2010*, *2009*, *2008* and *2007 New York Super Lawyers- Upstate*, and placed in the top 25 in the Hudson Valley balloting for all years 2007-2014. In October 2011, Mr. Wagner was named the Albany *Best Lawyers* Family Law Lawyer of the Year for 2012. Mr. Wagner was the subject of a profile entitled "From Constitutional Law to the Court of Appeals" in the 2011 New York-Upstate edition of *Super Lawyers*. From January 2005 to January 2007, he served as President of the 167 member American Academy of Matrimonial Lawyers, New York Chapter, which is part of a national organization of about 1,600 Certified Fellows. Mr. Wagner is also a Certified Fellow of the International Academy of Matrimonial Lawyers. He is a Past Chair (2010-2012) of the 2,700 member NYSBA Family Law Section, having previously served the section for 2 years each as Financial Officer, Secretary and Vice Chair. Mr. Wagner has served as a co-chair of the Continuing Legal Education Committee of the NYSBA Family Law Section since June 2000. Since 1998, he has represented the 3rd Judicial District on what is now named the Chief Administrative Judge's Matrimonial Practice Advisory and Rules Committee, now chaired by Hon. Jeffrey Sunshine. He is a member of the Rensselaer County, Albany County, New York State and American Bar Associations. Mr. Wagner is a frequent lecturer and author for continuing legal and judicial education programs which have been sponsored by the Albany, Broome, Nassau, New York City, Queens, Schenectady and Westchester County Bar Associations, the NYS Bar Association, the American Academy of Matrimonial Lawyers, the Appellate Division (First and Third Departments), the NYS Judicial Institute (Judicial and Court Attorney Seminars), the Association of NYS Supreme Court Justices, and other organizations. He was a member of the 2005 through 2011 local faculties for the Advanced Judicial Education Program for Town & Village Justices, and also served on the 2006 and 2007 faculties for the Basic Certification Course for newly elected Town & Village Justices. Mr. Wagner resides in Schodack with his wife, and they have two children, one who works in NYC and one who is in nursing school. He is an Assistant Scoutmaster of Boy Scout Troop 53, Castleton; a Merit Badge Counselor for the Twin Rivers Council, Boy Scouts of America; a past Sunday School Teacher for the First United Methodist Church, East Greenbush; a past assistant coach for the East Greenbush Girls' Softball League; and currently serves as Choir Director for the First United Methodist Church and as Conductor of the Hendrick Hudson Male Chorus, East Greenbush. Mr. Wagner has been the President of the Mohawk-Hudson Male Chorus Association since 2008.

SYRACUSE FACULTY

CHARLES P. INCLIMA, ESQ.

Mr. Inclima, of the Inclima Law Firm, PLLC located in Rochester, concentrates his practice in the areas of matrimonial and family law. He is a member of the Executive Committee of the New York State Bar Association's Family Law Section and a Past President of the Monroe County Bar Association. Mr. Inclima was also Chair of its Family Law Section and Dean of the Monroe County Bar Association's Academy of Law. He is a Fellow of the American Academy of Matrimonial Lawyers. He has recently completed his term as Chairperson of the Seventh Judicial District's Grievance Committee. He is the immediate past-Chair of the MCBA Communications Committee. Mr. Inclima is listed in The Best Lawyers In America, 13th and 14th editions, 2007 and 2008 and has been named to the 2007 and 2008 editions of New York Super Lawyers.

Mr. Inclima is a frequent lecturer for the New York State and Monroe County Bar Associations, has been a panelist for various programs of American Academy of Matrimonial Lawyers and he has made presentations to Judges and Court Personnel for the New York State Judicial Institute. He is a former Adjunct Professor at Rochester Institute of Technology.

Deborah K. Field

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4933 Jamesville Rd.
Jamesville, New York

Practice Areas:	Matrimonial Law; Family Law
University:	Cornell University, B.S.
Law School:	Albany Law School, J.D.
Admitted:	1980

Susan Hamlin Nasci
Associate Deputy Chief Support Magistrate for UCMS Training
Support Magistrate
Onondaga County Family Court

Susan Hamlin Nasci attended Albany Law School, graduating in May 1989, and was admitted to the NYS Bar in January 1990. Susan worked in California for one year and was admitted to the Bar in California in December 1990. Susan returned to Clinton New York in late 1990 and was in private practice for 8 years. Also for 5 ½ of those years she served as an attorney for the Oneida County Department of Social Services.

In October 1998, Susan became served as law clerk to Hon. James W. Morgan in Oneida County Family Court. As of November 2000, Susan has served as a Support Magistrate in Onondaga County Family Court. She also serves as the Associate Deputy Chief Magistrate for the State, assisting with such things as training of other Magistrates.

As of 09-09-2014

Bruce J. Wagner is Chair of the Family Law Practice Group at McNamee, Lochner, Titus & Williams, P.C., Albany, NY, and is a principal and shareholder in that law firm. His primary areas of practice are matrimonial law and appeals. He is a 1982 graduate of Cornell University and a 1985 graduate of Albany Law School of Union University. In September 2002, he was appointed as a Town Justice in the Town of Schodack (pronounced sko'-dak), Rensselaer County, was elected in November 2002 and re-elected in November 2006 and in November 2010. Justice Wagner is designated on a regular basis by the Administrative Judge of the Third Judicial District to serve as an Acting City Court Judge in the Criminal and Civil Parts of the City Courts of Troy, Albany, Rensselaer, Hudson and Cohoes. In November 2013, he was elected as President of the Rensselaer County Magistrates' Association, having served a prior term as President from January 2010 to January 2012, and is a member of the New York State Magistrates' Association. He is listed in the last 17 consecutive editions of The Best Lawyers in America (Woodward-White, 1999 through 2015). Based on peer voting, Mr. Wagner was named to *2014* *2013*, *2012*, *2011*, *2010*, *2009*, *2008* and *2007 New York Super Lawyers- Upstate*, and placed in the top 25 in the Hudson Valley balloting for all years 2007-2014. In October 2011, Mr. Wagner was named the Albany *Best Lawyers* Family Law Lawyer of the Year for 2012. Mr. Wagner was the subject of a profile entitled "From Constitutional Law to the Court of Appeals" in the 2011 New York-Upstate edition of *Super Lawyers*. From January 2005 to January 2007, he served as President of the 167 member American Academy of Matrimonial Lawyers, New York Chapter, which is part of a national organization of about 1,600 Certified Fellows. Mr. Wagner is also a Certified Fellow of the International Academy of Matrimonial Lawyers. He is a Past Chair (2010-2012) of the 2,700 member NYSBA Family Law Section, having previously served the section for 2 years each as Financial Officer, Secretary and Vice Chair. Mr. Wagner has served as a co-chair of the Continuing Legal Education Committee of the NYSBA Family Law Section since June 2000. Since 1998, he has represented the 3rd Judicial District on what is now named the Chief Administrative Judge's Matrimonial Practice Advisory and Rules Committee, now chaired by Hon. Jeffrey Sunshine. He is a member of the Rensselaer County, Albany County, New York State and American Bar Associations. Mr. Wagner is a frequent lecturer and author for continuing legal and judicial education programs which have been sponsored by the Albany, Broome, Nassau, New York City, Queens, Schenectady and Westchester County Bar Associations, the NYS Bar Association, the American Academy of Matrimonial Lawyers, the Appellate Division (First and Third Departments), the NYS Judicial Institute (Judicial and Court Attorney Seminars), the Association of NYS Supreme Court Justices, and other organizations. He was a member of the 2005 through 2011 local faculties for the Advanced Judicial Education Program for Town & Village Justices, and also served on the 2006 and 2007 faculties for the Basic Certification Course for newly elected Town & Village Justices. Mr. Wagner resides in Schodack with his wife, and they have two children, one who works in NYC and one who is in nursing school. He is an Assistant Scoutmaster of Boy Scout Troop 53, Castleton; a Merit Badge Counselor for the Twin Rivers Council, Boy Scouts of America; a past Sunday School Teacher for the First United Methodist Church, East Greenbush; a past assistant coach for the East Greenbush Girls' Softball League; and currently serves as Choir Director for the First United Methodist Church and as Conductor of the Hendrick Hudson Male Chorus, East Greenbush. Mr. Wagner has been the President of the Mohawk-Hudson Male Chorus Association since 2008.

NEW YORK CITY FACULTY

Peter R. Stambleck, Esq.
Aronson Mayefsky & Sloan, LLP
New York City

Peter is a partner with Aronson Mayefsky & Sloan, LLP in New York, where he represents clients in all aspects of family law.

He is a member of both the Young Lawyers Division and the Family Law Section of the American Bar Association and serves as the Chair of the Young Lawyers Committee of the American Bar Association's Family Law Section. He is also active in the New York State Bar Association where he serves as Co-Chair of the Family Law Section's Continuing Legal Education Committee and is also a member of the Family Law Section's Executive Committee. Peter was recently selected as a Rising Star by Super Lawyers (2011, 2012 and 2013). Prior to joining the Firm, Peter worked as a Certified Public Accountant at Pricewaterhouse Coopers for four years.

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 and Connecticut State Bars.

Lectures
2014 "J.P. Morgan Private Bank: Emerging Family Leaders; Family Law Considerations"

2014 "Prenups, Postnups and Divorce – What Agents and Advisors Need to Know to Effectively Counsel Their Clients" | Sports Lawyers Association, Chicago, Illinois

2013 "Matrimonial Trial Institute IV: A Mock Financial Trial" | New York State Bar Association

2013 "Bridging the Gap: Consultation with the Client and Moving the Matrimonial Case Through the System" | New York State Bar Association

2013 "Matrimonial Trial Institute III: Trial Techniques and Strategies; Closely Held Businesses, Licenses and Professional Practices" | New York State Bar Association

2013 "Practical Skills – Family Court Practice: Custody, Child Protective Proceedings and Ethics" | New York State Bar Association

2012 "Basic Matrimonial Practice" | New York State Bar Association

2012 "Criminal Law in an Un-Civil Case: A Lawyers Guide to Handling the Intersection of Criminal and Family Law" | American Bar Association

2012 "Divorce And Trusts: How to Effectively Represent Your Client" | American Bar Association

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

2011 "Mining Individual, Corporate, & Partnership Tax Returns" | American Bar Association

2010 "Bridging the Gap: Consultation with the Client and Moving the Matrimonial Case Through the System" | New York State Bar Association Publications

2010 Understanding New York's O'Brien Decision and its Progeny (with Allan E. Mayefsky)

Sophie Jacobi-Parisi

Sophie Jacobi-Parisi is a member of Mayerson, Abramowitz & Kahn, LLP, a boutique firm located in Manhattan and specializing in matrimonial and family law. Prior to joining Mayerson Abramowitz & Kahn, LLP, she worked for the Legal Aid Society Juvenile Rights Division in the Bronx Family Court and the Chicago Public Defender Program. She has practiced exclusively in the area of matrimonial and family law since 2007, from the preparation of complex prenuptial and marital settlement agreements to the preparation of matrimonial matters for trial, with an emphasis on complicated custody matters. She is a 1998 graduate of Bucknell University, and she has dual degrees from Loyola University Chicago: a J.D. from Loyola University Chicago School of Law (2003) and a Master in Social Work from Loyola University Social Work School (2004).

Ms. Jacobi-Parisi a member of the New York State Bar Association, Family Law Section and a co-chair of the CLE committee; a member of the New York Women's Bar Association, where she was a co-chair of the Family and Matrimonial committee from 2009 to 2011; and, a member and of the Association of the Bar of the City of New York, where she was a member of the Committee on Matrimonial Law from 2011 through 2013. She has co-authored a number of articles on family law topics which have appeared in various publications, including Family Law Monthly. Ms. Jacobi-Parisi has been named in The Best Lawyers In America and New York Super Lawyers (Rising Star) most recent editions.

David Aronson
Aronson, Mayefsky & Sloan LLP
New York City

David has been named in a variety of peer review surveys as one of the top matrimonial attorneys in New York. He has been regularly selected for inclusion in "The Best Lawyers in America" and for more than twenty years he has received the highest peer rating for competence and ethics ('AV') by the well-respected Martindale-Hubbell directory of attorneys.

In 2011 David was named the New York area's "Lawyer of the Year" by Best Lawyers and for the past several years he has been named among the "Top 100 Lawyers" in New York (including lawyers in all specialties) by Super Lawyers.

David was admitted to the bar in 1975 after graduating cum laude from Brooklyn Law School, where he was an Editor of the Law Review. Following his graduation, he served as the Law Clerk to a United States District Judge before joining the litigation department at one of New York City's most prestigious law firms. Beginning in 1983, David applied the skills he had acquired as a commercial litigator to the practice of matrimonial law and has been among the most respected lawyers in the field.

Although an experienced and respected trial lawyer, David is proud of his reputation as a creative settlor of cases, who recognizes that whenever possible, disputes should be resolved through negotiation, and that litigation should be viewed as a last resort. For that reason, other matrimonial lawyers have frequently turned to David to act as a mediator or arbitrator when their efforts to settle cases for their clients have deadlocked.

David is a member of the American Academy of Matrimonial Lawyers, the International Academy of Matrimonial Lawyers, the American College of Family Trial Lawyers (which has only 100 members nationwide), the American Bar Association, the Association of the Bar of the City of New York (and sat as a member of that Association's Council on Judicial Administration), and the New York State Bar Association. He is a former Adjunct Assistant Professor at Brooklyn Law School. He has served as Vice President and on the Board of Managers of the New York Chapter of the American Academy of Matrimonial Lawyers and on the Board of Managers of the New York State Bar Association, Family Law Section.

David is currently a member of the New York State's Office of Court Administration's Matrimonial Practice Advisory Committee chaired by the Hon. Sharon S. Townsend and also served as member of its predecessor, the New York State Courts Committee on Matrimonial Practice. As a committee member, David has helped organize seminars and has regularly lectured to the sitting matrimonial judges and their staffs on such issues as valuation, equitable distribution, and maintenance.

David is also a frequent lecturer at professional seminars and continuing legal education courses. Among the organizations that have asked him to appear are the New York State Office of Court Administration, the New York State Judicial Institute, the Women's Bar Association, the American Academy of Matrimonial Lawyers, the American Society of Appraisers, the Association of Divorce Financial Planners, the Appellate Division, First Department of the Supreme Court of the State of New York, the Practicing Law Institute and the New York City, County and State Bar Associations.

David and his wife of thirty five years, Inette, have a daughter, who is a theatrical director, and a son, who is a lawyer.

Hon. Matthew F. Cooper

Supreme Court, Civil Branch, New York County
New York, NY

Judicial Offices

Justice, Supreme Court, New York County, Elected, 2011 to 2024

Acting Justice, Supreme Court, New York County, Appointed by Chief Administrative Judge Ann Pfau, 2008 to 2010

Judge, Civil Court of the City of New York, New York County, Elected, 2001 to 2010

Other Professional Experience

Teamsters Local 237 Legal Services, Director, 1988 to 2000

District Council 37 Municipal Employees Legal Services Plan, Supervising Attorney/ Staff Attorney, 1980 to 1988

Bronx Legal Services, VISTA Volunteer, 1974 to 1976

City University of the City of New York-- Worker Education Program, Adjunct Professor, 1999 to 2000

Admission to the Bar

NYS, Appellate Division, First Department, 1980

Education

J.D., Antioch School of Law, 1979

B.A., Hobart College, 1974

Professional & Civic Activities

Civil Court Practice Section, New York County Lawyers Association, 2004 to 2005

Vice President, Civil Court Board of Judges, 2004 to 2005

Housing Court Guardian Ad Litem, Association of the Bar of the City of New York, 1994 to 2001

Emily Ruben Bio

Emily Ruben, Esq. is Attorney-in-Charge of the Brooklyn Neighborhood Office of the Legal Aid Society and has supervised Legal Aid's citywide domestic violence and family law practice since 1996. She is a member of the Lawyers Committee Against Domestic Violence, which she co-chaired from 2009 through 2012. She is a member of the New York State Unified Court System's Matrimonial Practice Advisory Committee and chairs the Custody, Visitation, Order of Protection Systems subcommittee of the New York City Family Court Advisory Committee. She is also a member of the New York State Judicial Committee on Women in the Courts. She is the author of an article entitled *Representing Victims of Domestic Violence in Supreme Court Matrimonial Actions,* published in Lawyer's Manual on Domestic Violence Representing the Victim, Fifth Edition, (Supreme Court of the State of New York, Appellate Division, First Department, 2006, Jill Laurie Goodman and Dorchen A. Leidholdt, eds.) Ms. Ruben began her legal career as law clerk to the Hon. Elliott Wilk at the time when he was one of the first matrimonial IAS judges in New York County. She is a graduate of Princeton University and New York University School of Law.

As of 09-09-2014

Bruce J. Wagner is Chair of the Family Law Practice Group at McNamee, Lochner, Titus & Williams, P.C., Albany, NY, and is a principal and shareholder in that law firm. His primary areas of practice are matrimonial law and appeals. He is a 1982 graduate of Cornell University and a 1985 graduate of Albany Law School of Union University. In September 2002, he was appointed as a Town Justice in the Town of Schodack (pronounced sko'-dak), Rensselaer County, was elected in November 2002 and re-elected in November 2006 and in November 2010. Justice Wagner is designated on a regular basis by the Administrative Judge of the Third Judicial District to serve as an Acting City Court Judge in the Criminal and Civil Parts of the City Courts of Troy, Albany, Rensselaer, Hudson and Cohoes. In November 2013, he was elected as President of the Rensselaer County Magistrates' Association, having served a prior term as President from January 2010 to January 2012, and is a member of the New York State Magistrates' Association. He is listed in the last 17 consecutive editions of The Best Lawyers in America (Woodward-White, 1999 through 2015). Based on peer voting, Mr. Wagner was named to *2014* *2013*, *2012*, *2011*, *2010*, *2009*, *2008* and *2007 New York Super Lawyers- Upstate*, and placed in the top 25 in the Hudson Valley balloting for all years 2007-2014. In October 2011, Mr. Wagner was named the Albany *Best Lawyers* Family Law Lawyer of the Year for 2012. Mr. Wagner was the subject of a profile entitled "From Constitutional Law to the Court of Appeals" in the 2011 New York-Upstate edition of *Super Lawyers*. From January 2005 to January 2007, he served as President of the 167 member American Academy of Matrimonial Lawyers, New York Chapter, which is part of a national organization of about 1,600 Certified Fellows. Mr. Wagner is also a Certified Fellow of the International Academy of Matrimonial Lawyers. He is a Past Chair (2010-2012) of the 2,700 member NYSBA Family Law Section, having previously served the section for 2 years each as Financial Officer, Secretary and Vice Chair. Mr. Wagner has served as a co-chair of the Continuing Legal Education Committee of the NYSBA Family Law Section since June 2000. Since 1998, he has represented the 3rd Judicial District on what is now named the Chief Administrative Judge's Matrimonial Practice Advisory and Rules Committee, now chaired by Hon. Jeffrey Sunshine. He is a member of the Rensselaer County, Albany County, New York State and American Bar Associations. Mr. Wagner is a frequent lecturer and author for continuing legal and judicial education programs which have been sponsored by the Albany, Broome, Nassau, New York City, Queens, Schenectady and Westchester County Bar Associations, the NYS Bar Association, the American Academy of Matrimonial Lawyers, the Appellate Division (First and Third Departments), the NYS Judicial Institute (Judicial and Court Attorney Seminars), the Association of NYS Supreme Court Justices, and other organizations. He was a member of the 2005 through 2011 local faculties for the Advanced Judicial Education Program for Town & Village Justices, and also served on the 2006 and 2007 faculties for the Basic Certification Course for newly elected Town & Village Justices. Mr. Wagner resides in Schodack with his wife, and they have two children, one who works in NYC and one who is in nursing school. He is an Assistant Scoutmaster of Boy Scout Troop 53, Castleton; a Merit Badge Counselor for the Twin Rivers Council, Boy Scouts of America; a past Sunday School Teacher for the First United Methodist Church, East Greenbush; a past assistant coach for the East Greenbush Girls' Softball League; and currently serves as Choir Director for the First United Methodist Church and as Conductor of the Hendrick Hudson Male Chorus, East Greenbush. Mr. Wagner has been the President of the Mohawk-Hudson Male Chorus Association since 2008.

ALBANY FACULTY

As of 09-09-2014

Bruce J. Wagner is Chair of the Family Law Practice Group at McNamee, Lochner, Titus & Williams, P.C., Albany, NY, and is a principal and shareholder in that law firm. His primary areas of practice are matrimonial law and appeals. He is a 1982 graduate of Cornell University and a 1985 graduate of Albany Law School of Union University. In September 2002, he was appointed as a Town Justice in the Town of Schodack (pronounced sko'-dak), Rensselaer County, was elected in November 2002 and re-elected in November 2006 and in November 2010. Justice Wagner is designated on a regular basis by the Administrative Judge of the Third Judicial District to serve as an Acting City Court Judge in the Criminal and Civil Parts of the City Courts of Troy, Albany, Rensselaer, Hudson and Cohoes. In November 2013, he was elected as President of the Rensselaer County Magistrates' Association, having served a prior term as President from January 2010 to January 2012, and is a member of the New York State Magistrates' Association. He is listed in the last 17 consecutive editions of The Best Lawyers in America (Woodward-White, 1999 through 2015). Based on peer voting, Mr. Wagner was named to *2014* *2013*, *2012*, *2011*, *2010*, *2009*, *2008* and *2007 New York Super Lawyers- Upstate*, and placed in the top 25 in the Hudson Valley balloting for all years 2007-2014. In October 2011, Mr. Wagner was named the Albany *Best Lawyers* Family Law Lawyer of the Year for 2012. Mr. Wagner was the subject of a profile entitled "From Constitutional Law to the Court of Appeals" in the 2011 New York-Upstate edition of *Super Lawyers*. From January 2005 to January 2007, he served as President of the 167 member American Academy of Matrimonial Lawyers, New York Chapter, which is part of a national organization of about 1,600 Certified Fellows. Mr. Wagner is also a Certified Fellow of the International Academy of Matrimonial Lawyers. He is a Past Chair (2010-2012) of the 2,700 member NYSBA Family Law Section, having previously served the section for 2 years each as Financial Officer, Secretary and Vice Chair. Mr. Wagner has served as a co-chair of the Continuing Legal Education Committee of the NYSBA Family Law Section since June 2000. Since 1998, he has represented the 3rd Judicial District on what is now named the Chief Administrative Judge's Matrimonial Practice Advisory and Rules Committee, now chaired by Hon. Jeffrey Sunshine. He is a member of the Rensselaer County, Albany County, New York State and American Bar Associations. Mr. Wagner is a frequent lecturer and author for continuing legal and judicial education programs which have been sponsored by the Albany, Broome, Nassau, New York City, Queens, Schenectady and Westchester County Bar Associations, the NYS Bar Association, the American Academy of Matrimonial Lawyers, the Appellate Division (First and Third Departments), the NYS Judicial Institute (Judicial and Court Attorney Seminars), the Association of NYS Supreme Court Justices, and other organizations. He was a member of the 2005 through 2011 local faculties for the Advanced Judicial Education Program for Town & Village Justices, and also served on the 2006 and 2007 faculties for the Basic Certification Course for newly elected Town & Village Justices. Mr. Wagner resides in Schodack with his wife, and they have two children, one who works in NYC and one who is in nursing school. He is an Assistant Scoutmaster of Boy Scout Troop 53, Castleton; a Merit Badge Counselor for the Twin Rivers Council, Boy Scouts of America; a past Sunday School Teacher for the First United Methodist Church, East Greenbush; a past assistant coach for the East Greenbush Girls' Softball League; and currently serves as Choir Director for the First United Methodist Church and as Conductor of the Hendrick Hudson Male Chorus, East Greenbush. Mr. Wagner has been the President of the Mohawk-Hudson Male Chorus Association since 2008.

Tom Gordon is a support magistrate in Rensselaer County Family Court. He is an Associate Deputy Chief Magistrate for Technology and a member of the Family Court Advisory and Rules Committee. Prior to joining the court system, Mr. Gordon was a supervising attorney at the Legal Aid Society of Northeastern New York where he directed the law student externship program in cooperation with Albany Law School. Prior to that, Mr. Gordon was a supervising attorney with the Juvenile Rights Division of The Legal Aid Society in New York City. He is past president of the New York State Support Magistrates Association. Mr. Gordon received his B.A. from the University of Vermont and his J.D. from Brooklyn Law School.

Jennifer Powers Rutkey, Esq.
Gordon, Tepper & DeCoursey, LLP
Glenville, NY

Jennifer Powers Rutkey is a partner in the law firm of Gordon, Tepper & DeCoursey. 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. 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. Ms. Rutkey served on the Executive Committee of the New York State Bar Association Family Law Section as the district delegate from the Fourth Judicial District from 2009 through 2014. 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.

Gordon, Tepper & DeCoursey, LLP

ATTORNEYS AT LAW

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LAWRENCE M. GORDON
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*ALSO ADMITTED IN MASSACHUSETTS
**ALSO ADMITTED IN NEW JERSEY

Eric A. Tepper is a partner in the law firm of Gordon, Tepper & DeCoursey, LLP. Mr. Tepper graduated from Hamilton College with a B.A. degree, magna cum laude, in 1979, and from George Washington University Law School with a Juris Doctor degree, with honors, in 1982. He has been selected for inclusion in "The Best Lawyers in America," for the 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015 editions. Best Lawyers selected him as the Family Law—Lawyer of the Year for the Albany area for 2013. He is also listed in the 2007, 2008, 2009, 2010, 2011, 2012, 2013 and 2014 New York Super Lawyers-Upstate Edition. Super Lawyers previously selected him as one of the top 25 lawyers from all categories in the Hudson Valley region. In 2011, he was named one of the top 10 divorce lawyers in New York State by Avvo, as published in *Arrive Magazine*. Of the top ten divorce lawyers in New York State, he was the only one selected from north of Westchester County.

Mr. Tepper is admitted to the New York and Massachusetts Bars, and to the U.S. District Court for the Northern District of New York and the District of Massachusetts. In 1999, he was appointed by New York's then Chief Administrative Judge to serve on the Statewide Committee on Matrimonial Practice for the Office of Court Administration. In June 2014, Mr. Tepper was appointed by New York's Chief Administrative Judge, Hon. A. Gail Prudenti, to serve on the newly formed Matrimonial Practice Advisory and Rules Committee chaired by the Hon. Jeffrey S. Sunshine. He is the only person from the 4th Judicial District who was appointed to the statewide committee.

Mr. Tepper serves on the Executive Committee of the New York State Bar Association, Family Law Section, and serves as one of the four elected officers of

the nearly 3,000 member section. In 2012, he was elected Financial Officer and in 2014, he was elevated to Secretary. He co-chaired the Family Law Section's Committee on Substantive Law Related to the Family, and also served on the Family Law Section's ethics hot line. He previously served on the Continuing Legal Education Committee for the New York State Bar Association. Mr. Tepper is a member of the Saratoga County Bar Association, Capital District Women's Bar Association and Schenectady County Bar Association. He currently serves as Chair of the matrimonial and family law committee for the Schenectady County Bar Association.

Mr. Tepper has lectured extensively, and written course material on family law, divorce, and matrimonial issues for New York State Bar Association continuing legal education programs throughout New York State. He has also lectured on matrimonial law at judicial education seminars on many occasions throughout the years. He has also lectured on matrimonial law to court attorneys for the Office of Court Administration. Mr. Tepper has lectured on matrimonial law to the Appellate Division, Third Department. He has lectured on newly enacted divorce and family law legislation at a legislative continuing legal education program for the New York State Senate, New York State Assembly, and staff counsel. Mr. Tepper has also lectured on matrimonial law to the New York State Supreme Court Justice's Association. He has lectured for the New York State Council on Divorce Mediation, Business Law Institute, Schenectady County Legal Professionals, Schenectady County Bar Association, and the Capital District Women's Bar Association.

Mr. Tepper previously served on the Board of Directors of the Schenectady Jewish Community Center and the Center for Community Justice. He previously was on the Board of Directors of the Northeast Parent and Child Society for nine years. Mr. Tepper served on the Board of Directors of the New York Chapter of the Association of Family and Conciliation Courts ("AFCC") until 2014 and was a founding member of the AFCC New York Chapter. In 2003, Mr. Tepper was appointed to the Editorial Board for the Lexis/Nexis publication on New York Matrimonial Actions. In 2012, he joined the Board of Directors of The Giving Circle, Inc., a not-for-profit organization based in Saratoga Springs which performs charitable work in Saratoga Springs, surrounding communities and in Africa.

BUFFALO FACULTY

JOAN CASILIO ADAMS, ESQ.
J. Adams & Associates, PLLC
500 Essjay Road, Suite 260
Williamsville, NY 14221
Telephone: (716) 856-4800
Facsimile: (716) 856-4839
Email address: jadams@adamspllc.com

LICENSES AND ADMISSIONS

State Bar of New York - 1988
United States District Court, United States Bankruptcy Court - 1993

EDUCATION

State University of New York at Buffalo Law School
Buffalo, New York - Juris Doctorate : 1987 Cum Laude
Syracuse University, S.I. Newhouse School of Public Communications
Syracuse, New York - Bachelor of Science/ Journalism : 1980 Cum Laude

EMPLOYMENT

Offermann, Cassano, Greco, Slisz & Adams, LLP.
Partner, 1998 - present
Ange, Gordon & Adams
Partner, 1992 - 1997
Associate, 1987 - 1992

PROFESSIONAL AND FACULTY

Certified Fellow, American Academy of Matrimonial Lawyers
1994 - present

Sustaining Member, New York State Bar Association
Family Law Section
8th District Representative, 1992 - present
Member, Executive Committee 1992 - present
Co-Chair, Continuing legal Education Committee, 2004 - present
Co-Chair, Membership Committee 2000 - present
Co-Chair, Special Committee on Mediation and Arbitration 1992 - present
Member, Child Custody Committee 1992 - 2000
Committee on Children and the Law, 1996-1998

Women and the Courts Committee
Member, 1990 - 2001
Chair, Ruth Schapiro Memorial Award Committee, 1995 - 2001
Civil Practice Laws and Rules Committee
Member, 1989 - 1993
Special Committee on Biotechnology and the Law,
Member, 1994-1995
Young Lawyer Section,
Mentor to Young Lawyers, 1995 - present

Member, Bar Association of Erie County
Matrimonial and Family Law Committee
Chair, 1999 - 2002
Member, 1988 - present
Practice and Procedure in Family Court Committee
Member, 1991 - present
Judiciary Committee
Member, 2000 - 2004
Law Office Management Committee
Chair, 1993 - 1995
Member 1991-1995
Appellate Practice Committee
Member, 1991 - 1995

Member, Western New York Trial Lawyers Association
2000 - present

Member, Western New York Matrimonial Trial Lawyers Association
2000 - present

Member, Women Lawyers of Western New York
President, 1993 - 1994
Vice-President, 1992-1993

Adjunct Professor, Medaille College
1995 - 1997

Founding Board Member, GOLD Group (Graduates of the Last Decade),
SUNY at Buffalo Law School, 1988 - 1990

John J. Aman, Esq.
Biography

John was born and raised in Buffalo, New York; attended Canisius College, and the University of Buffalo Law School; and is licensed to practice law in New York State, in the Federal Courts, and before the United States Supreme Court. John has practiced law in Erie County, Buffalo, New York since February, 1978. His practice has generally been focused in the in the family law field. From 1988 to 1992, he became interested in public service and took a position as staff attorney at Neighborhood Legal Services, a provider of legal services for poor people. In 1993 he was appointed a Support Magistrate and still holds that position. As a Support Magistrate he hears and decides child support cases. Also, John acts as Deputy Support Magistrate for the State as such assists in administration, and education for all New York Support Magistrates. John is very active in the Erie County Bar Association and is past Chair of the Practice and Procedure in Family Court Committee. John has made numerous presentations at the local (Erie County) and New York State Bar Association level and has published various articles. John is a member of the New York State Family Court Advisory and Rules Committee, past president of the New York State Support Magistrate's Association, past President of the Board of Directors of the Erie County Bar Foundation, a member of the Board of Directors of the Erie County Aid to Indigent Persons Society, Inc. and a member of the Board of Directors of the St. Thomas More Guild. John is also the former Dean of the Erie Institute of Law, the educational component of the Erie County Bar Association. He authors two newsletters on family law issues and has been honored with the "Special Service Award" of the Erie County Bar Association in 2000. John and his wife have been foster parents for the Erie County Department of Social Services for a period of 15 years, taking five foster children into their family, one of whom was adopted. John is active at St. Joseph's University Church in Buffalo, where he served as Parish Council President, is a current lector and Eucharistic Minister, and is President of the conference of the St. Vincent De Paul Society. John has been married to Kathleen Dunwoodie for over 29 years. They have three children: Teresa, a doctoral candidate at Northwestern; John a recent graduate of Notre Dame; and Jordan, a junior in the Amherst School District. The Amans live in Amherst, NY.

Paul Vance is the Senior Partner of the Vance Law Firm and has practiced exclusively in the area of matrimonial and family law for the last 29 years. He has lectured extensively for the Erie County Bar Association, New York State Bar Association, American Institute of Certified Public Accountants, and the American Academy of Matrimonial Lawyers. He is former chair of the Erie County Matrimonial Family Law committee and since 1995 his name appears annually in the national directory "Best Lawyers in America" in the field of matrimonial and family law.

Steven Wiseman

Hogan Willig, Attorneys at Law

Steven Wiseman formerly of Siegel, Kelleher & Kahn, LLP, has limited his area of practice primarily to Matrimonial & Family Law for 25 years. Mr. Wiseman has served as Chairperson of the Matrimonial and Family Law Committee of the Bar Association of Erie County. He is frequently invited by the New York State Bar Association and Erie Institute of Law to lecture on marital and family law topics at continuing legal education seminars and programs across New York. Mr. Wiseman has had the honor of addressing Supreme and Family Court judges and has significant appellate practice experience, not only in matrimonial and family law matters, but in other legal areas as well. He was the author of a brief submitted to the Court of Appeals, New York State's highest court, in People v. Kendzia, involving the right of a criminal defendant to a speedy trial, which has since been regularly cited by courts throughout the state, leading to what is commonly known in state criminal procedure as the "Kendzia letter."

Mr. Wiseman has earned the distinguished peer rating for ethical standards, and for professional ability based upon legal knowledge and experience in his specific area of practice, analytical abilities, judgment, and communication abilities, by the nation's leading directory of attorneys, Martindale-Hubbell.

Mr. Wiseman has been active in community organizations, having served as an officer and director of Temples Beth Israel and Shaarey Zedek, as well as a director of Deaf Adult Services of Western New York, Inc.

Education

J.D., 1976, Georgetown University
B.A., 1973, State University of New York at Binghamton

Admissions to Practice

New York State, 1977

Professional Associations & Memberships

NYS Bar Association, Member
Bar Association of Erie County, Member

Awards

SuperLawyers, Upstate New York Edition, 2008 - 2014 - Family Law

MELVILLE, L.I. FACULTY

ROSALIA BAIAMONTE, ESQ.
Gassman Baiamonte Betts, PC
666 Old Country Road, Suite 801
Garden City, New York 11530
(516) 228-9181

Ms. Baiamonte was admitted to the Bar in January 1994. Since admission to the bar, Ms. Baiamonte has been engaged exclusively in the practice of matrimonial and family law.

Ms. Baiamonte is a graduate of Brandeis University (B.S., *cum laude*, 1990) and Syracuse University College of Law (J.D., *magna cum laude*, 1993). From October, 1993 through February, 1996, Ms. Baiamonte was an associate of the firm of DaSilva & Keidel. In March, 1996, Ms. Baiamonte became an associate of Stephen Gassman, Esq., a renowned leader in the field of matrimonial and family law. Ms. Baiamonte was named a member of the firm on August 1, 2007.

Ms. Baiamonte is a member of the New York State Bar Association, Family Law Section, where she serves on the Executive Committee and the Continuing Legal Education Committee. She is a member of the Nassau County Bar Association, serving on both the Judiciary Committee and the Matrimonial Law Committee as the incoming First Vice Chair. Ms. Baiamonte is a frequent lecturer on various matrimonial topics for the New York State and Nassau County Bar Associations, Nassau Academy of Law, and New York State Judicial Institute. Ms. Baiamonte has also appeared as a guest lecturer at C.W. Post and St. John’s University School of Law.

HON. ANDREW A. CRECCA

Andrew A. Crecca is the Supervising Judge of the Matrimonial Parts in the Tenth Judicial District, Suffolk County, New York. In addition to his duties as Supervising Judge, he is the presiding Justice of Suffolk County's Integrated Domestic Violence Court, and has served in that position since January of 2007. He was first elected to the bench in 2004 as a County Court Judge and presided over felony criminal cases in a dedicated trial part. In January of 2007 he was appointed an Acting Justice of the Supreme Court. In 2010 he was elected Justice of the New York State Supreme Court for the 10th Judicial District.

Prior to his time on the bench Justice Crecca served as a County Legislator, and maintained a private law practice concentrating in matrimonial and family law. He also served as an Assistant District Attorney in the New York County District Attorney's office from 1989 to 1994. He received his undergraduate degree from Marist College in 1986, and his law degree from St. John's University School of Law in 1989.

Justice Crecca has lectured throughout the United States and internationally on domestic violence issues, problem solving courts, matrimonial and family law, as well as on court operations. He serves as a faculty member to the *National Judicial Institute on Domestic Violence*, the *New York State Judicial Institute*, the *National Council of Juvenile and Family Court Judges*, the *Suffolk Academy of Law*, and as an Adjunct Professor at *Touro Law School*. He has also held the position of Adjunct Assistant Professor of political science at *Hofstra University*.

As an active member of the *Suffolk County Bar Association*, Justice Crecca serves as Co-Chair of its Law Student Committee and has served on its Board of Directors and as chair of the Bench Bar Committee. In 2011 Justice Crecca was appointed and continues to serve as a member of the Chief Administrative Judge's *Matrimonial Practice Advisory & Rules Committee* for New York State.

Justice Crecca is also a member of the *Alexander Hamilton American Inn of Court*, the *National Council of Juvenile & Family Court Judges*, the *New York State Association of Supreme Court Justices* and the *Suffolk County Matrimonial Bar Association*.

In addition to his judicial duties, Justice Crecca has contributed to the community through participation in not-for-profit organizations such as the *Hauppauge Youth Organization,* the *Cleary School for the Deaf*, and other charitable organizations.

Justice Crecca lives on Long Island with his wife Donna and their two boys.

NANCY E. GIANAKOS, ESQ
PARTNER

ALBANESE & ALBANESE LLP
ATTORNEYS AT LAW

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Garden City, New York 11530
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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:

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 International 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 Advisory Board of the Academy of Law, former Board of Director NCBA (2011-2013), and Mediator for the Matrimonial Alternative Dispute Resolution Program (Nassau County 2012).

Published Articles:

2014	"An Insider's View: Business Valuations for Matrimon Litigation"
2014	"Protecting the Privacy of the Matrimonial Litigant"
2013	"Wasteful Dissipation of Separate Property Assets"
2013	"It's 2013 – Time to Spare the Children"
2012	"Drafting Defensively: Time for Belts and Suspenders" Domestic Relations Law §236(B)
2011	"When Words Wound – A Matter of Opinion"... Cyberbullying and the state of law in New York
2009	"Beyond Biological Boundaries"...defining "parent" pursuant to New York Domestic Relations Law
2009	"Know Before you Go - Distributing Options Equitably" Dividing a hybrid asset in matrimonial litigation
2009	"Boundary Lines: Post Madoff"...Revisiting Equitable Distribution Post Judgment
2007	"Divorcing with Civility"... Collaborative Law, An alternative forum for dispute resolution
2007	"Due Process/Fundamental Rights versus Parens Patriae"...Equitable powers of the court versus individual rights

GLENN S. KOOPERSMITH

Mr. Koopersmith is a graduate of the University of Pennsylvania and obtained his Juris Doctor degree from the Washington College of Law of the American University in 1978. He was admitted to practice law in the State of New York in the Second Judicial Department in 1982.

In 1982, Mr. Koopersmith became employed as a legal assistant at the Appellate Division, Second Department. Approximately two years thereafter, he became employed by the law firm of Koopersmith, Feigenbaum & Potruch, Esqs, practicing primarily in the fields of matrimonial law and matrimonial appellate litigation. Between 1986 and 1993, he was a member of Di Mascio, Meisner & Koopersmith, Esqs. Since June, 1997, he has been a sole practitioner. Mr. Koopersmith's practice is focused upon matrimonial and other civil appeals. His office is located in Garden City, New York.

Mr. Koopersmith is a fellow of the American Academy of Matrimonial Lawyers. He is a founding Barrister in the New York Family Law Inns of Court. He has lectured in the field of matrimonial law to the Judiciary at the *New York State Judicial Institute* and at the *Nassau County Matrimonial Judges Seminar* and to various professional and non-professional groups as well, including the New York State Bar Association, Nassau County Bar Association and its Family Law Committee, the Nassau Academy of Law and the Hofstra University School of Law CLE division, Hofstra University School of Law Career Symposium and the Nassau County Bar Association High School Career Development Seminar.

Mr. Koopersmith has also authored numerous articles pertaining to matrimonial law and appellate practice. He is the author of several articles which have appeared in the *Outside Counsel* column of the New York Law Journal including the following: *Prenuptials and*

Early Postnuptials: Let's Call the Whole Thing Off, which appeared on April 16, 2013*; Appeals of TROs And Orders Issued Sua Sponte Orders* which appeared on October 4, 2010; *Discord Over Non-compliant Child Support Orders*, which appeared on August 5, 2010; *Spousal Credit for Voluntary Support in Pending Divorce?*, which appeared on March 12, 2007; *Homemaker's Services Devalued in Equitable Distribution*, which appeared on May 24, 2005; and *The Application of "Holterman" to the Child Support Standards Act*, which appeared on September 23, 2004. He is the author of *The Implications of Mesholam v. Mesholam* which appeared in Volume 40, No. 3 of the Family Law Review in the Fall, 2008 edition. He is the Revision Editor of Chapter 17 of the treatise New York Appellate Practice, entitled *Special Considerations in Matrimonial Appeals*.

Kenneth J. Weinstein, Esq.
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Garden City, New York 11530
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EDUCATION:

New York Law School, New York, NY
J.D., June 1971

Hunter College, CUNY, New York, NY
B.A. Degree conferred June, 1967

BAR ADMISSIONS:

Supreme Court, Appellate Division, Second Judicial Department - April, 1972
Southern District of New York - June, 1975
Eastern District of New York - 1975
Supreme Court of the United States – 1979

EXPERIENCE:

Office of the District Attorney of Nassau County, NY: 1972 - 1975;

Law Secretary - Hon. Richard C. Delin, Judge of the County Court : 1975 - 1977;

Partner - Levine, Lipton, Rosenthal & Weinstein: 1977 - 1980;

Partner - Jonas, Libert & Weinstein: 1980 - 1984;

Partner - D'Amato, Forchelli, Libert, Schwartz, Mineo & Weinstein: 1984

Law Offices of Kenneth J. Weinstein, Esq.: 1985 -1987;

Partner - Roach & Bergman: 1987 to 1990;

Law Offices of Kenneth J. Weinstein, P.C.: 1990 to date.

PROFESSIONAL AFFILIATIONS:

Member of Nassau County Bar Association and New York State Bar Association;
Former member of Board of Directors of Nassau County Bar Association;
Former Chairman of the Court's Committee of Nassau County Bar Association;
Former Chairman of the Grievance Committee of the Nassau County Bar Association;
Former Chairman of the Unauthorized Practice of Law Committee of the Nassau County Bar Association;
Former Vice Chairperson and Member of the Appellate Division Grievance Committee for the Second Judicial Department, Tenth Judicial District;

Member, Judiciary Committee, Nassau County Bar Association;
Member and past President, Jewish Lawyers Association of Nassau County;
Articles published in New York Law Journal and Nassau Lawyer.
Lectured at Nassau County Bar Association.