## **NYSBA FAMILY LAW SECTION UPDATE, July 2024**

## **Matrimonial Update**

## **By Bruce J. Wagner**

## **Support Magistrate, Schenectady & Montgomery County Family Courts**

## **Child Support - CSSA – CSSA Worksheet as Evidence; Deviation; Imputed Income – Minimum Wage, Rent-Free Living**

## In Lauber v. Lauber, 2024 Westlaw 3187188 (1st Dept. June 27, 2024), the wife appealed from a December 2021 Supreme Court judgment which, after trial, awarded her basic child support of $250 per month for the parties’ 2 children. The First Department affirmed, holding that Supreme Court “considered the enumerated factors before deviating from the CSSA guideline amount, articulated its reasons for making such deviation, and related its reasons to the statutory factors.” The Appellate Division rejected the wife’s argument that “the court unfairly drew conclusions about the husband’s financial situation, yet [she] does not dispute that, pursuant to an interim agreement entered into in February 2018, she had to provide $25,000 in financial assistance to him to be able to move out of the marital residence.” The wife further contended that “the court should not have taken into consideration that the husband had nearly equal parenting time with her,” and while noting that the wife’s point “has merit,” citing Bast v. Rossoff, 91 NY2d 723, 730-731 (1998), the First Department noted that “the court’s observation, read in context, was apparently made to highlight the husband’s involvement in the children’s lives and to reiterate his less advantageous financial situation \*\*\*.” The Appellate Division further observed that while Supreme Court noted “the absence of proof” from the wife of “the husband’s income or deductions from his income,” the trial court “also acknowledged that the wife’s child support worksheet calculations (and, at least impliedly, the information about the husband’s income she used therein) were correct.” The First Department upheld Supreme Court’s imputation to the wife of $15,000 per year in income, based upon minimum wage of $15 per hour for the 20 hours per week the children were in school, while stating that Supreme Court “was thus mindful of what she might earn without expending child care costs.” While the wife argued that there was no basis for Supreme Court to find that she lived “rent-free,” the Appellate Division noted that “she submitted a net worth statement stating she does not work and has zero income, and testified that she has received no W-2 income at least since 2016, yet her net worth statement also stated that she has maintenance/condo charges of $8,000/month. The court reasonably interpreted this evidence to mean that those housing costs are being paid by someone other than herself.”

## **Child Support - FFCSOA and UIFSA – Continuing Exclusive Jurisdiction**

## In Matter of Isenberg v. Isenberg, 227 AD3d 1078 (2d Dept. May 29, 2024), the father appealed from a July 2023 Family Court order, denying his objection to an April 2023 Support Magistrate Order, which dismissed his petition seeking to modify a June 2019 New Jersey judgment of divorce, to award him child support for one of the children. The Second Department affirmed, finding that “the father is a permanent resident of \*\*\* New Jersey” and that state “retains continuing, exclusive jurisdiction of the New Jersey judgment, and New York does not have jurisdiction to modify it,” citing Matter of Spencer v. Spencer, 10 NY3d 60, 66 (2008), 28 USC 1738B, and Family Court Act 580-205.

## **Child Support - Imputed Income from Support for Non-Subject Children – Reversed**

## In Matter of Bram v. Bram, 2024 Westlaw 3168042 (2d Dept. June 26, 2024), the mother appealed from a July 2023 Family Court order, granting her objections to a May 2023 Support Magistrate order which, following a January 2023 post-judgment order granting the father custody of the parties’ 2 children and a hearing upon the father’s subsequent petition, directed her to pay the father child support of $281 per week, based upon imputed income to the mother of $59,004 per year. Family Court modified upon objections, finding that the mother’s income was $18,513.96 in 2022 W-2 wages, plus $18,000 per year from monies voluntarily paid to her by the father of 3 non-subject children following their prior separation, for a total of $36,513.96, and directed the mother to pay child support of $175.54 per week. The Second Department reversed, on the facts and in the exercise of discretion, remitted to Family Court for a new calculation of the mother’s child support obligation, and directed that in the interim, the mother shall pay child support in the sum of $87.77 per week. The Second Department held: “Under the circumstances presented, the court improvidently exercised its discretion in including the $18,000 annual contribution in calculating the mother's income for child support purposes (citations omitted).”

## **Child Support - Modification – Measured from Stipulated Income or Tax Return Income?**

## In Matter of Marianne L. v. Thomas L., 2024 Westlaw 3056224 (1st Dept. June 20, 2024), the mother appealed from a July 2023 Family Court order, denying her objections to a May 2023 Support Magistrate order, which dismissed her 2019 petition alleging a substantial increase in the father’s income and seeking upward modification of the father’s obligation to pay support for the parties’ child born in October 2006, as required by a 2014 stipulation incorporated into a 2015 judgment of divorce. The stipulation deviated from the CSSA and recited that: the father’s CSSA income was approximately $480,000; the mother’s CSSA income was $355,000; and if the guidelines were applied to the combined parental income, the father’s obligation would be $6,743 per month. The First Department affirmed, holding that Family Court properly dismissed the mother’s petition and finding: “Based on the father’s 2014 tax returns, which reflected his actual income at the time of the stipulation, the amounts shown in the father’s 2018 and 2019 income documents were less than, not greater than, his 2014 income.” The Appellate Division concluded: “Contrary to the mother’s contention, the income listed in the stipulation was not a ‘starting point’ for calculation of a substantial change in circumstances. \*\*\*[T]he stipulated income was clearly employed to satisfy \*\*\* the CSSA.”

## **Child Support -** **UIFSA – Alienation Defense Not Permitted**

## In Matter of Yakov T. v. Tracy S., 227 AD3d 633 (1st Dept. May 30, 2024), the mother appealed from a February 2023 Family Court order, denying her objections to a December 2022 Support Magistrate order, which determined her child support obligation and set retroactive support. The First Department affirmed, finding that “Family Court properly determined that the mother was barred from challenging the dismissal of her alienation affirmative defense, which was entered on her default,” given that “[t]he mother’s claim that she was unaware that she needed to appear for the hearing \*\*\* is not a reasonable excuse for her default.” The Appellate Division noted that: “she and her attorney were present in court when the date was selected”; “the mother presented no evidence as to what measures she took to ensure she was kept apprised as to when the hearing would commence \*\*\* by contacting her attorney or the court”; and “the record is clear that the mother knew that the hearing was set to move forward \*\*\* because she was advised of this fact by her attorney.” The First Department concluded that the mother lacked a meritorious defense, “as an alienation defense is not available in proceedings under the Uniform Interstate Family Court Act,” citing FCA 580-305(d).

## **Child Support - UIFSA – Vacatur of Registration Denied**

## In Matter of Rotem v. Mancini, 227 AD3d 1081 (2d Dept. May 29, 2024), the father appealed from a January 2022 Supreme Court order, which denied his motion to vacate the March 2020 registration of a July 2019 child support order issued by a court in Israel. The Second Department affirmed, noting that UIFSA permits the registration of a foreign support order, FCA 580-601 and 580-102(6) and (7), from a country “which has been declared under the law of the United States to be a foreign reciprocating country,” FCA 580-102(5)(i), and which includes Israel. The Appellate Division concluded that the father failed to establish any of the 8 enumerated defenses to registration, FCA 580-607(a), and that “[t]o the extent that the father contends that his consent to the foreign order was based on a mistake, his remedy is to move to vacate or resettle the order in the courts of Israel.”

## **Custody - Education Decision-Making; Passport Provisions**

## In Kartik C. v. Sruti R., 2024 Westlaw 3032640 (1st Dept. June 18, 2024), the mother appealed from a June 2023 Supreme Court order which, among other things: (1) granted the father final decision-making authority over the subject child’s education; and (2) required him to provide the mother with the child’s passport only 2 days prior to international travel. The First Department modified, on the facts, by: (1) vacating the education decision-making authority to the father and granting the mother such authority after consultation with the father, holding that Supreme Court’s finding that “the mother’s objection to the child’s attending a gifted and talented program at a school in the borough where the father resides was without merit[,] is not supported by the record,” given the forensic expert’s testimony that “for the then five-year-old child to travel from the mother’s home to a school near the father’s home would be ‘profoundly inconvenient’ and ‘difficult’ for the child, who would have to get up earlier in the morning and whose ability to participate in after-school activities would be affected”; and (2) directing that the father provide the child’s passport to the mother within 48 hours after the mother gives him notice of any scheduled international travel, determining that “two days is not sufficient time for the mother to seek redress in the event the father does not comply.”

## **Divorce - Lack of Capacity to Marry – Marriage & Prenuptial Agreement Voided**

## In Matter of Edgar V.L., 2024 Westlaw 3107775 (1st Dept. June 25, 2024), the wife appealed from an August 2023 Supreme Court judgment which, after a hearing: determined that the marriage between she and Edgar was annulled *ab initio*; ordered that the prenuptial agreement between the parties was void *ab initio* and unenforceable; ordered that she was not entitled to any equitable distribution, support, maintenance, or right of election; stayed all transfer of Edgar's funds and property; and ordered that all property removed by her from his residences be returned. The First Department affirmed, finding: “The record demonstrates that Edgar, who was suffering from significant mental health issues and long-standing and worsening dementia, lacked the capacity to enter into either the prenuptial agreement or the marriage to [the wife], given the volume of medical records and testimony to that end. The trial court found that [the wife’s] two witnesses lacked credibility \*\*\*.” The Appellate Division concluded that “the trial court's determination that Edgar lacked capacity to enter into the prenuptial agreement and marriage was proper. Where there is medical evidence of mental illness or defect, the burden shifts to the opposing party to prove by clear and convincing evidence that the person entering the agreements in question possessed the requisite mental capacity (citations omitted). [The wife] failed to demonstrate that Edgar was competent at the time in question, as the testimony of the two witnesses she called was found to be not credible.” The First Department noted that “entry of judgment four days after Edgar's death was a mere ministerial act because the court had already ruled on the record annulling the marriage and voiding the prenuptial agreement, and nothing remained to be resolved.”

## **Enforcement - Child Support – Willful – Upheld – Employment Efforts Inadequate; Immigration Status Defense Rejected**

## In Matter of Franco v. Paez, 2024 Westlaw 2837565 (2d Dept. June 5, 2024), the father appealed from an October 2022 Family Court order confirming an August 2022 Support Magistrate order of disposition, made after a hearing, which found that he willfully violated a prior order directing him to pay support for the parties’ 2 children born in 2010 and 2012. The Second Department affirmed, noting: “Evidence of a failure to pay support as ordered constitutes prima facie evidence of a willful violation,” citing FCA 454(3)(a). The Appellate Division held that the father “failed to meet his burden of offering competent, credible evidence of his inability to make the required payments, as he did not present competent, credible evidence that he made a reasonable and diligent effort to secure employment to meet his child support obligations.” The Court concluded: “Although there were issues regarding the father’s immigration status, he failed to show that they rendered him financially unable to meet his obligations since he had admittedly previously obtained, and continued to obtain, employment in the United States.”

## **Enforcement - Child Support – Willful – Upheld–No Inability to Pay**

## In Matter of Jobin v. Hotaling, 2024 Westlaw 2964241 (3d Dept. June 13, 2024), the father appealed from a November 2022 Family Court order, which, after a hearing, revoked his 30-day suspended sentence of incarceration imposed in a 2015 proceeding, in which he was found in willful violation of a 2007 order requiring him to pay $140.62 per week toward the support of the parties’ 2 children born in 2003. The Third Department affirmed, noting that the SCU records in evidence showed that the father paid no child support for: 3 months in 2022, all of 2021, 7 months in 2020, and all of 2019, 2018 and 2017. The Appellate Division concluded that “the proof submitted by the father does nothing but further demonstrate his failure to pay and, as such, was ‘clearly inadequate to meet his burden of showing an inability to pay that would defeat the prima facie case of willful violation.’”

## **Equitable Distribution - Credits; Income Tax Refund; Retirement Accounts Valued as of Date of Commencement; Wasteful Dissipation – Not Found**

## In Kirshner v. Kirshner, 2024 Westlaw 3168022 (2d Dept. June 26, 2024), the parties were married in August 2001, executed a prenuptial agreement prior thereto and had 3 children. The wife appealed from a January 2020 Supreme Court judgment which, upon a July 2019 decision following trial of her August 2013 action, among other things: (1) awarded the husband a $550,000 credit for her wasteful dissipation of assets with respect to her use of marital funds to purchase a car wash; (2) failed to award her a credit in the sum of $125,000 for the husband’s use of funds from a joint checking account to purchase a pharmacy, (3) failed to award her a credit in the sum of $13,871.50, representing one-half of the 2012 state tax refund retained by the husband; (4) failed to award her a credit in the sum of $85,000, representing one-half of the legal fees paid to defend the husband in a criminal proceeding during the marriage; and (5) valued certain retirement assets as of the date of the commencement of the action when making an equitable distribution award. The Second Department modified, on the law, on the facts, and in the exercise of discretion: (1) by deleting the $550,000 credit to the husband for the wife’s wasteful dissipation regarding the car wash purchase, and substituting a provision awarding the parties an equal share of the proceeds from the sale thereof, finding that “Supreme Court improvidently exercised its discretion in awarding the [husband] a credit in the sum of $550,000 for the [wife’s] alleged wasteful dissipation of assets with respect to her use of marital funds to purchase a car wash.” The Appellate Division noted: “the record discloses that the car wash was purchased with the [husband’s] consent to provide a source of income for the family during [his] incarceration in federal prison and to afford him a place to work upon his release. Moreover, although the [wife] sold the car wash at a loss during the pendency of this action, an unsuccessful investment into a business interest during a marriage is ‘not subject to scrutiny in the absence of any evidence that [a party] acted recklessly or in bad faith’ (citation omitted). The record does not indicate that the [wife’s] sale of the car wash was done recklessly or in bad faith. Notwithstanding that the car wash was sold in contravention of an order restraining the transfer of marital assets, the [husband] had previously agreed to sell the car wash for the same purchase price ultimately obtained by the [wife]”; (2) by adding a provision awarding the wife a credit in the sum of $125,000 for the husband’s use of funds from a joint checking account to “reacquire a pharmacy that he had sold to his mother during the marriage and that remained his separate property. \*\*\* [T]he record reflects that the [husband] paid his mother the sum of $250,000 from the parties' joint checking account to reacquire the pharmacy, and the [husband] failed to establish that the funds in the joint checking account had been commingled solely for convenience without an intention of creating a marital beneficial interest; (3) by adding thereto a provision awarding the wife a credit in the sum of $13,871.50, representing one-half of the 2012 state tax refund retained by the husband, holding that “Supreme Court should have awarded the [wife] a credit for one-half of the 2012 state tax refund retained by the [husband]. The [husband] conceded at trial that he paid his estimated 2012 state tax liability in the sum of $27,743 from marital funds, which funds were subsequently refunded to him. Because the [husband’s] 2012 state tax liability was paid with marital property, the refund is also marital property (citation omitted). The Second Department otherwise affirmed, holding: (a) The Supreme Court providently exercised its discretion in denying the [wife] a credit for one-half of $170,000 in legal fees paid during the marriage in connection with the [husband’s] defense to federal criminal charges of health insurance fraud. The [husband] ultimately pleaded guilty to one count of health care fraud \*\*\* [and] “the legal fees here were incurred by the [husband] in connection with wrongdoing involving his separate property (citations omitted). However, the [wife] failed to introduce evidence of the source of the funds used to pay the legal fees and, therefore, failed to establish that the legal fees were paid with marital funds and not with the [husband’s] separate property” and (b) “The Supreme Court properly determined that the [wife] was not entitled to an award for the appreciation in value of certain separate property retirement assets identified in the prenuptial agreement following the date of the commencement of this action, including the cash surrender value of the [husband’s] life insurance policy. \*\*\* Here, the prenuptial agreement obligated the [husband] to maintain a life insurance policy naming the [wife] as a beneficiary ‘[f]rom and after the date of the marriage of the parties, and until there is a separation event,’ and provides that in the event of a ‘separation event,’ all marital property, including the increase in value of the [husband’s] separate property retirement accounts, shall be equally divided between the parties. The prenuptial agreement defines a ‘separation event’ as the earlier of ‘the commencement of an action or proceeding by either party which seeks a . . . divorce’ \*\*\*. Affording this language its practical interpretation, the Supreme Court properly determined that the [wife] was entitled to a distributive award for the value of these assets to the extent they constituted marital property calculated as of the date of the commencement of this action.”

## **Family Offense - Aggravating Circumstances – 5-year Order; Assault 3d, Criminal Obstruction of Breathing, Disorderly Conduct, Harassment 2d, Sexual Abuse 3d – Found**

## In Matter of J.N.W. v. K.T., 2024 Westlaw 3187314 (1st Dept. June 27, 2024), the father appealed from a November 2022 Family Court order which, after a hearing, found that he had committed assault 3d, criminal obstruction of breathing, sexual abuse 3d, and disorderly conduct against the mother, harassment 2d against the mother and children, and found aggravating circumstances warranting a 5-year stay away order of protection in favor of the mother and children. The First Department affirmed, finding that “[t]he mother’s credible testimony established that the father committed assault in the third degree based on his conduct in March 2013, when he dragged the mother by the hair, choked her, and punched her in the face, causing her pain and visible bruising” and this testimony “also established that the father committed criminal obstruction of breathing (citation omitted) when he choked the mother in March 2013, and sexual abuse in the third degree (citation omitted) when he subjected her to sexual contact without her consent on November 11, 2020. The Appellate Division determined that “the mother’s testimony supports a finding that the father committed disorderly conduct (citation omitted) against the mother and harassment in the second degree against the children as well as the mother \*\*\* in December 2020, \*\*\* [when he], while apparently intoxicated, forced his way into the mother and the children’s home where the children were attending online school, and began screaming, crying, and flailing \*\*\* prompting the children to cry and scream for the father to stop and not hurt the mother.” As to aggravating circumstances, the First Department concluded that: “the testimony established that the father engaged in numerous violent acts toward the mother with one incident in the presence of the children (citations omitted)”; and “the father conceded that he repeatedly violated a prior Kings County order of protection (citations omitted).”

## **Family Offense - Aggravating Circumstances – 5-year Order Made on Appeal; Suspended Judgment was Error**

## In Matter of Dandu v. Jatamoni, 2024 Westlaw 3058233 (2d Dept. June 20, 2024), the former wife (wife) appealed from a July 2023 Family Court order which, after a hearing upon her April 2019 petition, found that the former husband (husband) committed harassment 2d, assault 2d, menacing 3d, and criminal obstruction of breathing, declined to issue an order of protection, and issued a 6-month suspended judgment. The parties were married in 2010, divorced in 2018 and have one child born in 2011. The Second Department reversed, on the facts and in the exercise of discretion, and remitted to Family Court for the issuance of a 5-year order of protection. The Appellate Division held that “Family Court improvidently exercised its discretion in declining to issue an order of protection to the wife,” noting its finding that the husband “had committed ‘severe acts of violence’ against her.” The Court concluded that the evidence “demonstrated that the [wife] sustained physical injuries, that the [husband] used dangerous instruments against the [wife] during some of the incidents” and “[i]n light of these aggravating circumstances, the court improvidently exercised its discretion in issuing a suspended judgment for a period of six months instead of issuing a five-year order of protection,” citing FCA 827(a)(vii) and 842.

## **Family Offense - Attempted Assault, Harassment 2d (Single Incident) – Found, 2-year Order; Corroboration; Delay in Filing not a Bar; Dispositional Hearing not Required**

## In Matter of N.V. v. A.J., 2024 Westlaw 3032709 (1st Dept. June 18, 2024), respondent appealed from a September 2022 Family Court order which, after a hearing, determined that respondent committed attempted assault and harassment 2d, and issued a 2-year order of protection in favor of petitioner. The First Department affirmed, holding that Petitioner’s testimony “that respondent threw bleach water on her, causing the water to go into her eyes and onto her body, kicked her in the stomach, causing her to fall, and threw a bucket at her, supports the finding that respondent committed harassment in the second degree (citation omitted) and attempted assault (citations omitted).” The Appellate Division found that the testimony of “the parties’ older sister that she smelled bleach and saw the bucket, the water on the floor, and petitioner’s discolored shoes and petitioner washing out her eyes corroborated petitioner’s testimony” and noted that this “single incident is legally sufficient to support a finding of harassment in the second degree.” The Court rejected respondent’s argument that “[p]etitioner’s delay of 17 months in filing the petition after the incident \*\*\* provide[s] a basis for vacating the order,” citing, among other authorities, FCA 812(1). The First Department concluded, despite respondent’s contention to the contrary: “There is no explicit statutory mandate that a dispositional hearing be conducted in proceedings under Family Court Act article 8, \*\*\*.”

## **Maintenance - Denial – Upheld**

## In Gardner v. Gardner, 2024 Westlaw 2963940 (3d Dept. June 13, 2024), the wife appealed from a May 2022 Supreme Court judgment of divorce which, following a 5-day trial of her 2018 action, imputed an annual income of $120,000 to her and determined that she was not entitled to maintenance. The parties were married in 1999 and have twins born in 2000 and a 3rd child born in 2002. The Third Department affirmed, holding that the record “supports the court’s finding that the wife is an experienced and qualified pediatric occupational therapist, receiving income from self-employment and an agency that provides evaluations upon referral of which she is a one-third owner.” The Appellate Division noted Supreme Court’s findings that: the wife “grossly overexaggerate[d]” her business expenses; “purchased three rental properties after separating from the husband”; and “feigned ignorance \*\*\* when asked to elaborate upon her income and business expenses related to her real property investments.” The Third Department concluded: “deferring to the Court’s credibility determinations, there is no basis to find that the court abused its discretion in imputing an annual income of $120,000 to the wife” and held there was “no abuse of discretion in its determination denying the wife \*\*\* spousal maintenance.”

## **Paternity - Equitable Estoppel – Not Found**

## In Matter of Jacob G. v. Antonia H., 2024 Westlaw 227 AD3d 1329 (3d Dept. May 30, 2024), the mother appealed from an August 2022 Family Court order, which, after a hearing upon her equitable estoppel defense to the putative father’s March 2020 paternity petition, ordered a genetic marker test at his request pertaining to the subject child born in 2018. The Third Department affirmed, holding that Family Court properly determined that “the mother failed to satisfy her initial burden” to establish that petitioner should be equitably estopped from claiming paternity. The Appellate Division found: “[a]lthough petitioner had minimal contact with the child since his birth, petitioner, while incarcerated, participated in the child’s birth by telephone”; “the mother and [her] paramour facilitated petitioner’s relationship with the child by, for example, arranging for petitioner to see the child while petitioner was incarcerated and upon his release”; “[t]he paramour has not held himself out as, nor do others consider him to be, the child’s biological father”; and “the child bears petitioner’s last name and lives with maternal half siblings who are also not – nor do they believe themselves to be – the paramour’s biological children, suggesting that the child’s interests will not be adversely affected by learning that someone other than the paramour is his biological father.”

## **Procedure - Appeal – Dismissal Not Vacated, Stipulations to Adjourn Not Effective**

## In Matter of Trina M. v. Bryant P., 227 AD3d 620 (1st Dept. May 30, 2024), the father, by notice of appeal dated February 19, 2020, appealed from a January 2020 Family Court order which, after a hearing, permitted the mother to relocate with the subject child to NC. The First Department dismissed the father’s appeal, for failure to timely perfect the same. The Appellate Division found that the father’s appeal “was dismissed by operation of the Rules of the Appellate Division \*\*\* (22 NYCRR) § 1250.10[a], which states, ‘In the event that an appellant fails to perfect a civil matter within six months of the date of the notice of appeal … the matter shall be deemed dismissed without further order.’” The First Department observed that the father, who “at all relevant times was represented by appellate counsel, did not perfect his appeal until November 2, 2023, more than three years from the date of the notice of appeal. Nor did he seek to vacate the dismissal.” The Appellate Division noted that the father’s counsel “refiled the previously filed notice of appeal in tandem with the filing of his brief. This was not effective to extend the six-month perfection deadline (22 NYCRR 1250.9[a]).” The Court concluded: “Moreover, the parties’ stipulations to adjourn the appeal, executed in 2023 and 2024, are outside the scope of those contemplated in 22 NYCRR 1250.9(b).”

## **Procedure - Default – No Reasonable Excuse, Failure to Contact Attorney or Court**

## In Matter of Fabiola A. v. Salvador A.G., 2024 Westlaw 3032605 (1st Dept. June 18, 2024), the mother appealed from a November 2022 Family Court order, denying her motion to vacate a final order of custody entered upon her default in appearance on February 28, 2022 which, after an inquest, awarded the father custody of the subject 2 children. The First Department affirmed, holding that “Family Court providently exercised its discretion in denying the mother’s motion \*\*\* because her moving papers failed to demonstrate a reasonable excuse for her absence.” The mother “asserted \*\*\* that she failed to appear because she could not locate any court personnel to direct her to the hearing” and the Appellate Division found that this claim “was insufficient to establish a reasonable excuse for her default.” The Court noted that “the mother did not explain why she did not contact her attorney or the court,” while observing that “the mother’s purported excuse for failing to appear conflicts with her prior trial counsel’s representation to Family Court that the mother did not appear due to ‘personal reasons.’”

## **Legislative Items**

## **Child Support – Amendments to Conform to Federal Law**

## As reported in the June 2024 Update, this legislation has passed both houses. Enactment is expected by reason of federal mandate (see 45 CFR 302.56, effective January 19, 2017, published in 81 FR 93562 on December 20, 2016). A.09505, S.09015.

## **E-Filing May Be Made Mandatory**

## Passed by both houses, and if signed, this legislation would authorize the Chief Administrative Judge to make e-filing mandatory in various types of actions, including matrimonial actions. A.10350, S.07524.

## **Extreme Risk Orders of Protection – Added to Orders of Protection Registry**

## Passed by both houses, and if signed, this legislation would add extreme risk orders of protection (EROPs) to the domestic violence registry. A.05873, S.03340.

## **Proof of Service – Stop Civil Discrimination Act**

## Passed by both houses, and if signed, this legislation would amend CPLR Rule 306(b) to remove from the required list of items to be included in proof of service the terms “sex” and “color of skin” and replace those words with “the process server’s perception of the person’s: gender, race \*\*\*.” A.08081B, S.07801A.

## **Surrogacy – Technical Amendments and Sanitized Captions**

## Passed by both houses, and if signed, this legislation would amend numerous provisions of the statutes pertaining to surrogacy. In particular, Family Court Act 581-205 would be amended to provide that the surnames of the child or parties shall not be displayed in any caption, document, index, minutes or other record available to the public. A.04921C, S.05107C.

## **Venue in Matrimonial Actions**

## Passed by both house, and if signed, this legislation would amend CPLR 509, which allows “the place of trial of an action” to be “in the county designated by the plaintiff,” to be subject to an exception set forth in new CPLR Rule 515, which provides that in actions for divorce, dissolution, annulment, declaration of nullity, distribution following a foreign judgment, supreme court actions for custody or visitation, applications to modify the same, and all post-judgment proceedings, venue shall be in a county where either party or one of the children resides, subject to certain narrow exceptions or subject to an order on motion. This legislation would be effective 60 days after signing and would apply to actions commenced on or after the effective date. A.10353, S.09733.