## **NYSBA FAMILY LAW SECTION UPDATE, January 2025**

## **Matrimonial and Family Law Update**

## **By Bruce J. Wagner**

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

## **Child Support - CSSA – Imputed Income; No Deduct Other Order – No Proof of Payment; Over Cap ($163,000)**

## In Matter of Zwicklbauer v. Hannigan, 232 AD3d 1138 (3d Dept. Nov. 27, 2024), the father appealed from a September 2022 Family Court order, denying his objections to a Support Magistrate order which, following a hearing upon the mother’s October 2019 petition, directed him to pay her $2,400 per month in basic child support, plus an additional $1,179.24 per month toward childcare and health insurance premiums for the parties’ child born in August 2019. The Third Department affirmed, noting that the Support Magistrate found that: the parties’ combined parental income was $253,982.54, $53,906.55 for the mother (30 hours per week as an assistant public defender) and $200,075.99 for the father (a combination of 2020 W-2 wages, a private law practice and undistributed income); the father’s child support obligation up to the then $163,000 cap was $2,309 per month; if the CSSA was applied to all of the parties’ combined parental income, the father’s obligation would be $2,842 per month; and determined that the father’s obligation should be $2,400 per month, plus the aforementioned add-on expenses. The father argued on appeal that Family Court should have subtracted his monthly obligations to his wife ($2,800 for 2 children + $2,200 in spousal support = $5,000), from his income before performing the CSSA calculations. The Appellate Division found: “By consent order entered \*\*\* in August 2019, following an appearance on the day after the subject child was born, the father was directed to pay his wife [the aforesaid obligation].” The Court agreed that FCA §§413(1)(b)(5)(vii)[B] and [D] would provide such deductions from the father’s income for “amounts actually paid,” but found “the father did not provide any documentary proof showing that he actually made the child and spousal support payments set forth in the August 2019 consent order.” The Third Department rejected the father’s argument that the Support Magistrate “abuse[d] her discretion in declining to impute income to the mother,” noting the mother’s testimony that: “she is raising the child as a single mom, explaining that the father \*\*\* does not exercise any visitation”; “she has no opportunities for overtime pay in her current position and is unable to seek additional employment due to daycare constraints, noting that the child attends daycare three days per week”; and “[t]he maternal grandmother watches the child one of the remaining weekdays and the mother watches her the other.” The Appellate Division concluded that “given the significant income disparity between the parties, the fact that the mother is the child’s sole caretaker and that the father has a greater capacity to generate additional income, it was not – as the father claims – an abuse of discretion to award support beyond the statutory cap,” reiterating that the Support Magistrate “properly set forth her reasons for [exceeding the $163,000 cap] \*\*\* utilizing the factors set forth in Family Court Act §413(1)(f) \*\*\*, reducing that amount by approximately $400 per month.”

## **Child Support – CSSA – Over Cap; Custody – Visitation Expanded on Appeal; Equitable Distribution – Debts (100% to H), Separate Property Commingling Found, Credit Denied**

## In Varnit v. Varnit, 2024 Westlaw 5205143 (2d Dept. Dec. 24, 2024), the parties were married in May 2010 and have 1 child. The husband appealed from a March 2022 judgment of divorce, rendered upon a December 2021 decision following trial of his March 2018 action, which, among other things: (1) awarded him time with the child during the school year on alternate weekends commencing from Friday after pick-up at school through Monday at drop-off at school, overnights on alternate Wednesdays from pick-up at school to drop-off at school on Thursday morning, and every other Wednesday from pick-up at school to drop-off at the wife’s residence at 7:00 p.m.; (2) declined to award him final decision-making authority as to the religious upbringing of the parties' child and awarded the wife final decision-making authority as to the medical needs of the parties' child; (3) awarded the wife maintenance of $1,416 per month for 18 months; (4) awarded the wife child support of $1,852 per month commencing January 1, 2022, and continuing through June 30, 2023, and $2,093 per month commencing July 1, 2023, until the emancipation of the parties' child; (5) directed him to pay 100% of the outstanding credit card debt and declined to award him credit for 50% of the sum paid to reduce the credit card debt during the pendency of the action; (6) declined to award him a credit for the sale of certain stocks; and (7) awarded the wife 50% of his deferred compensation account. The Second Department modified, on the facts and in the exercise of discretion, by directing that the husband shall have the child: (a) every Monday from pick-up at school, or at 9:00 a.m. when school is not in session, until Tuesday at 7:30 p.m.; (b) every Tuesday beginning at 7:30 p.m. until Thursday at 7:30 p.m.; and (c) on alternate weekends, defined as beginning at 7:30 p.m. on Thursday and ending at drop-off at school on Monday, or at 9:00 a.m. when school is not in session. The Court otherwise affirmed the judgment, finding: (1) Supreme Court’s grant to the husband of “access with the school-aged child only one day per week effectively deprives the [husband] of significant quality time with the child, especially where, as here, the evidence failed to demonstrate that the parental access schedule in place prior to the entry of the judgment of divorce would be harmful to the child or that the [husband] forfeited his right to parental access”; (2) “there is no evidence in the record that the well-being of the child is threatened by declining to intrude on either party's right to educate the child in their respective religions or by awarding the [wife] final decision-making authority over the child's medical needs”; (3) “considering the relevant factors, including the present and future earning capacities of the parties, the reduced earning capacity of the [wife] as a result of having foregone career opportunities during the marriage, and the [wife’s] ability and the time needed to become self-supporting, the duration of the Supreme Court's maintenance award was a provident exercise of discretion”; (4) “Supreme Court engaged in a thorough analysis of the parties' financial situation, including the [husband’s] considerable income, the income disparity between the parties, and the standard of living that the child would have enjoyed had the marriage not been dissolved. Under these circumstances, the court providently exercised its discretion in basing the calculation of child support on parental income in excess of the statutory cap”; (5) “Supreme Court providently exercised its discretion in directing the [husband] to pay 100% of the outstanding credit card debt and in declining to award [him] a credit for 50% of the sum paid to reduce the credit card debt during the pendency of the action. The evidence did not establish that the credit card debt constituted marital debt that should be shared equally by the parties, as opposed to a debt incurred by the [husband] for his personal expenses”; (6) the husband “failed to overcome the presumption that the funds obtained from a sale of stocks and deposited into a joint account, which he contended he used toward the purchase of the marital home, were marital property subject to equitable distribution. The Supreme Court, therefore, providently declined to award [him] a credit for those funds”; and (7) “the court providently exercised its discretion in awarding the [wife] one half of the [husband’s] deferred compensation account, as [he] failed to provide sufficient evidence of what portion of that account was his separate property.”

## **Child Support – Modification – Dismissed – Insufficient Employment Efforts; Violation – Willful – Upheld**

## In Matter of Botros v. Botros, 2024 Westlaw 5205120 (2d Dept. Dec. 24, 2024), the father appealed from: (1) a November 2023 Family Court order of commitment, which confirmed an October 2023 Support Magistrate Order of Disposition rendered after a hearing upon the mother’s December 2022 petition, finding that he willfully violated an October 2021 divorce judgment, which required him to pay $4,411 monthly toward the support of the parties’ 2 children, and committed him to jail for 30 days, unless he paid a purge amount of $46,521; and (2) a separate November 2023 order of the same Court, denying his objections to the Order of Disposition and two October 2023 Support Magistrate orders made after a hearing, dismissing his April 2022 petition for suspension of, and his January 2023 petition for downward modification of child support. The Second Department: (1) dismissed as academic the father’s appeal from that portion of the order of commitment as imposed a sentence, and affirmed the same insofar as reviewed; and (2) affirmed the separate November 2023 order. The Appellate Division held that “the father failed to meet his burden of demonstrating that his employment was terminated through no fault of his own and that he made diligent attempts to secure employment commensurate with his education, ability and experience,” such that the Support Magistrate properly found no basis for suspension or reduction of child support. As to the finding of willful violation, the Court found that “the father failed to meet his burden of presenting competent, credible evidence of his inability to comply with his child support obligation.”

## **Child Support - UIFSA – Modification – Issuing State Lost Continuing Jurisdiction to Modify**

## In Matter of O’Connor v. Shaw, 2024 Westlaw 4964813 (2d Dept. Dec. 4, 2024), the mother appealed from a June 2022 Family Court order, denying her objections to an April 2022 Support Magistrate Order which, after a hearing, granted her November 2020 petition for upward modification of child support for the parties’ 2 children set by a Colorado Court, only to the extent of granting her $1,544.29 per month pursuant to Colorado law. The parties were divorced in Colorado in 2018 and a District Court order required the parties to recalculate support annually pursuant to that state’s guidelines. In August 2018, the parties and children all relocated to NY and have resided therein ever since. The Second Department reversed, on the law, granted the mother’s objections, vacated the Support Magistrate’s order, and remitted to Family Court for further proceedings, “following a hearing, if necessary, to adduce evidence relevant to that recalculation.” The Appellate Division held: “the issuing state loses \*\*\* jurisdiction where none of the parties or children continue to reside in that state,” FCA 580-613(a); and where, as here, “it is undisputed that the parties and their children reside in New York and that the mother registered the Colorado support order in this state \*\*\* Family Court \*\* had jurisdiction to adjudicate the proceeding” under the authority of 28 USC 1738B(e) and (i), FCA 580-611(a) and 580-613(a), and was obligated to apply NY law, FCA 580-613(b).

## **Counsel Fees - Family Court Act 438(a)**

## In Matter of Lucana v. Lawton, 2024 Westlaw 5063255 (2d Dept. Dec. 11, 2024), the father appealed from a January 2024 Family Court order, which granted his objections to a November 2023 Support Magistrate Order upon the mother’s FCA 438(a) motion for counsel fees in her February 2023 violation and modification proceedings, only to the extent of reducing the award from $12,870 to $9,775. The Second Department affirmed, holding that the Support Magistrate “providently exercised his discretion,” based upon “the father’s delay of the proceedings by failing to comply with the prior order of support, which caused the mother to incur unnecessary legal costs.” The Appellate Division concluded that Family Court’s reduced award “was appropriate in light of the parties’ financial situations and the extent of the services rendered.”

## **Custody – Joint Legal - Relocation to VA Permitted**

## In Matter of Jesse HH. v. Lindsey H., 2024 Westlaw 5216652 (3d Dept. Dec. 26, 2024), the father appealed from a September 2023 Family Court order which, following fact-finding and *Lincoln* hearings, granted the parties joint legal custody of the parties’ child born in 2017 and permitted the mother to relocate to VA with the child. The parties separated in 2020 and the mother relocated to VA in the fall of 2022, and the child returned to NY as directed by a December 2022 temporary order, residing with the maternal grandparents, with time to the father on weekends. The Third Department affirmed, finding: “the mother has most recently served as the child’s primary residential custodian and has historically undertaken the primary responsibility for the child’s schooling and healthcare”; the mother left her prior casino-related job in NY due to childcare constraints and found employment [she expects to double her income] in VA, where she resides with her husband in a residence that has a separate bedroom for the subject child”; and “the mother’s work schedule enabled her to be available for the child on weekdays after school and she had the support of her husband to help her with bedtime during her evening shifts.” In contrast, the Appellate Division noted: “the father was residing with the paternal grandparents in a residence that required him to share a room with the child”; his work schedule “sometimes require[s] him to work 11-to-12-hour shifts and up to seven days per week during the summer”; and “he relied more heavily on outside resources to assist with childcare.”

## **Custody – Modification - Joint to Sole – Deteriorated Relationship, Financial Responsibility, Interference with Parental Relationship and Promoting Disrespect, Refusal to Administer Medications, Special Education Needs Not Acknowledged;** **Wishes of Child (11 y/o) Not Determinative**

## In Matter of Samantha E. v. Nicholas F., 2024 Westlaw 5160753 (3d Dept. Dec. 19, 2024), the father and AFC appealed from a May 2023 Family Court order which, after a multiday hearing and a *Lincoln* hearing, modified a stipulated December 2021 order (joint legal custody, primary to mother, and scheduled Tuesday, Wednesday & Thursday telephone calls for each party during the other’s time), by granting the mother sole legal custody of the parties’ child born in 2012, eliminating the father’s bi-weekly Sunday to Monday overnights, one week of his summer vacation time, Tuesday and Wednesday telephone calls, and allowing the mother to monitor the remaining telephone calls. The Third Department modified, on the law, by allowing the father unsupervised telephone calls on all days he does not have the child, and otherwise affirmed. The Appellate Division noted that the father does not dispute the parties’ markedly deteriorated relationship and held that joint legal custody is no longer feasible. The Court found that “the mother advocated for IEP testing when she noticed the child was struggling in school and has been closely involved in addressing the child's needs in school and at home, ensures that the child attends school, routinely communicates with the child's special education teachers and attends education planning meetings.” In contrast, the father “was opposed to the child being tested for learning disabilities because he did not want the child to be ‘labeled’ and admits to not being involved in the child's education.” Further, the father “refused to administer prescription medications to the child \*\*\*.” The Third Department found that “the record also amply supports Family Court's findings that the father had become unwilling to foster the child's relationship with the mother, the mother's home environment was more stable, and she was more likely to foster the child's relationship with the father. The mother is gainfully employed at a job that provides flexibility \*\*\* and she has a three-bedroom home \*\*\*.” The Appellate Division observed: “[t]he father, by contrast, is self-employed, but has not recently done any work for pay and at the time of the hearing was financially dependent on his fiancée for support and housing. Most troubling to us, however, is the evidence of deliberate steps the father has taken to create animosity between the child and the mother. By the father's own admission, he blames the mother for the issues that have come up. He also promotes the child's disrespectful and inappropriate behavior toward the mother. To be sure, the father has effectively crafted a narrative for the child, villainizing the mother when he tells the child that he is fighting for more parenting time, but that the mother will not allow it, and telling the child that he can do whatever he wants when he is with him.” The Court was “persuaded that Family Court's determination awarding sole legal custody and primary physical placement to the mother is in the child's best interests.” The Third Department noted that the AFC “otherwise supports Family Court's custodial arrangement, [but] joins the father's argument that the court erred in reducing his parenting time” yet “decline[d] to disturb the court's determination in this regard, which continues to provide the father with regular and meaningful access to the child.” The Appellate Division stated: while the AFC “expressed that this decision is against the child's wishes for more time with the father, the child's wishes are one factor in Family Court's decision but are not dispositive (citations omitted) — particularly where, as here, ‘the evidence received at the hearing supports the . . . finding that the child has been manipulated by one of the parties and the child's views regarding [the child's] relationship with the other party are the product of that manipulation’”; and “inasmuch as the record is replete with instances where the father failed to bring the child to school after a weekend \*\*\*, modifying the prior order to eliminate the Sunday night overnight visit prevents this issue from reoccurring.” The Court, however, agreed with the father’s contention “that Family Court should not have eliminated his Tuesday and Thursday telephone contact with the child,” finding “nothing in the record indicates that allowing additional telephone calls would be detrimental to the child's well-being” and did “not find it necessary that the child's phone contact with the father be supervised.”

## **Custody – Modification - Joint to Sole; No Time to Father – Limited Understanding of Autism; Prior Neglect Finding**

## In Matter of Gabrielle Q. v. James R., 2024 Westlaw 5216829 (3d Dept. Dec. 26, 2024), the father appealed from an October 2023 Family Court order which, following a hearing, granted the mother’s petition to modify a 2020 consent order (joint legal, primary to mother, every weekend to father) and awarded her sole legal and physical custody of the parties’ child born in 2011, with no time to the father. A 2022 order rendered upon a DSS petition found that the father neglected the child (who has a diagnosis of autism) “due to a pattern of excessive corporal punishment causing excessive bruising” and directed that the father have supervised visits, undergo a mental health evaluation and complete domestic violence and parenting education. The Third Department affirmed, finding the DSS caseworker testified that “the child’s emotions and behaviors significantly improved once contact with the father ceased” following the child’s refusal after April 2022 to have any further supervised biweekly telephone calls with the father, which had occurred since October 2021. The caseworker further testified that “the father initially refused to comply with Family Court’s order that he undergo evaluation and treatment, asserting that these requirements were unnecessary, and only complied with some of his obligations after the caseworker filed a violation petition against him.” The father testified: “his parenting style is more aggressive when it comes to discipline, while the mother’s style is to pacify the child and give him what he wants, which does not prepare the child well for adult life”; “a father’s role is to be a disciplinarian and the mother’s role is to offer emotional support, which a father does not provide”; and “physical discipline can be effective to manage the child’s behaviors, but conceded that professionals do not advise using this method because, in his opinion, it is politically incorrect for them to do so.”

## **Custody – Modification - Lack of Ordered Visitation is Changed Circumstances**

## In Matter of Morales v. Diaz, 2024 Westlaw 5205119 (2d Dept. Dec. 24, 2024), the mother appealed from a December 2023 Family Court order which among other things, after a hearing, denied her April 2023 petition to modify an April 2022 order, to award her sole legal and physical custody of the parties’ 4 children, or, in the alternative, to expand her time with the children. The mother had relocated to NC, which led to the April 2022 order providing for sole legal and physical custody to the father, and directing that she was “entitled to either therapeutic or professionally supervised visitation with the … children for two hours a week when [she] [wa]s present in … New York” and “to video or telephone contact with the … children, to be supervised by [the father], every Sunday at 6:00 p.m.” The April 2022 custody determination was affirmed upon appeal. 214 AD3d 874 (3d Dept. 2023). The mother’s petition alleged that she had relocated from NC to NY and that she had not had access with the children, despite the April 2022 order. The Second Department affirmed so much of the order appealed from as denied the mother’s petition for sole legal and physical custody, but held that “the mother’s inability to obtain regular parental access with the children pursuant to the provisions of the 2022 order, despite her efforts to do so and her move back to New York from North Carolina, constituted a change in circumstances \*\*\*.” The Appellate Division modified the April 2022 order, on the facts and in the exercise of discretion, by directing the father “to produce the children for in-person therapeutic and/or supervised parental access with the mother and to produce the children for telephonic and/or video parental access with the mother” and remitted to Family Court “to establish with all convenient speed an appropriate schedule of parental access for the mother with the children \*\*\*.”

## **Custody - Modification – Relocation (WI) – Granted**

## In Matter of Plica v. Almonte, 2024 Westlaw 4964782 (2d Dept. Dec. 4, 2024), the father appealed from a September 2022 Family Court order which, after a hearing, granted the mother’s June 2022 petition to modify a May 2017 consent order (sole legal custody to mother, time to father), to permit her to relocate to Wisconsin with the parties’ child born in 2015. The Second Department affirmed, finding that: “the mother was the child’s primary caretaker and had a better understanding of the child’s medical and educational needs”; “the father did not demonstrate a thorough understanding of the child’s medical needs, generally did not attend school meetings or events or medical appointments, and did not communicate with the child’s doctors or teachers”; and “the father has been inconsistent in exercising his parental access.” The Appellate Division concluded that “the mother established that the relocation would enhance the lives of the mother and the child economically, emotionally, and educationally.”

## **Custody – Visitation - Delegation to Mother and Child Reversed; Expert Testimony Suggested**

## In Matter of Michael B. v. Patricia S., 2024 Westlaw 4940655 (1st Dept. Dec. 3, 2024), the father appealed from an April 2024 Family Court order which, after a hearing, granted the mother’s 2022 petition to modify a 2017 consent order, to the extent of directing the parties to agree upon visitation in writing, in consultation with the subject child (age unspecified, but referred to “during the early days of the pandemic” as having “entered her teenage years”). The First Department reversed, on the law, and remanded “for further proceedings as necessary for issuance of a visitation order.” The Appellate Division noted Family Court’s finding that the father appeared at the child’s school in October 2022 “and insisted that she spend the weekend with him, even though she made it clear that she did not want to, and despite the fact that the child had not spend time with the father in more than a year and a half \*\*\*.” The First Department observed that “the child was understandably upset immediately after the October 2022 visit, there was no evidence of what, if any, long-term damaging psychological effect that incident had on the child” and “there was no expert testimony on this issue,” citing FCA 251(a), “which might also have shed light on how and whether the father might better need the child’s emotional and developmental needs and repair their relationship going forward.” The Appellate Division reiterated their consistent holdings that a court “may not delegate its authority to determine visitation to either a parent or a child,” noting that “[a] visitation provision that is conditioned on the desires of the child tends … to defeat the right of visitation.” The Court concluded by directing Family Court to “establish an appropriate order of visitation \*\*\* on a schedule that is sensitive to the child’s needs and includes provisions for the father’s contact with the child by phone or in writing.”

## **Enforcement - Amended DRO Not Time-Barred**

## In Pasquale v. Pasquale, 232 AD3d 907 (2d Dept. Nov. 27, 2024), the former husband (husband) appealed from a May 2021 Supreme Court order, Amended DRO and Money Judgment, which provided for distribution of the former wife’s (wife’s) marital share of his pension, directed payment to her of pension arrears from January 1, 2007 to April 4, 2020, and granted a money judgment in the wife’s favor of $84,195.27. The parties were divorced by a May 1990 judgment, which incorporated a March 1990 stipulation stating that the wife “was entitled to a share of the [husband’s] pension as of the date the [husband] retired and first began receiving benefits.” In June 2020, the wife submitted a proposed DRO, which provided for payments retroactive to April 2020, and Supreme Court signed the same. The wife thereafter moved for an amended DRO and a money judgment, contending that she had learned that the husband had retired and began receiving benefits effective December 30, 2006. The Second Department affirmed the money judgment, dismissed the appeals from the order and the Amended DRO, finding that the same were superseded by the money judgment, and held that the contrary to the husband’s contention, the wife’s motion was not time-barred, citing Kraus v. Kraus, 131 AD3d 94 (2d Dept. 2015).

## **Enforcement – Equitable Distribution – Contempt Found**

## In Botros v. Botros, 2024 Westlaw 5205089 (2d Dept. Dec. 24, 2024), the former husband (husband) appealed from an April 2022 Supreme Court order, which, among other things, granted the former wife’s (wife’s) December 2021 motion to hold him in civil contempt for failing to comply with the parties’ October 2021 judgment and incorporated February 2021 stipulation’s directive that he transfer 100% of his SEP IRA to an account designated by the wife, within 5 days of such designation. The Second Department affirmed, holding that the wife showed the husband “refused to sign a letter of instruction authorizing the transfer despite his awareness that [the plan administrator] would not transfer the funds” to the wife’s account without the same, such that the husband “knowingly disobeyed an unequivocal mandate of the Supreme Court and that [she] was prejudiced by [his] conduct.”

## **Family Offense – Aggravated Harassment 2d – Found; 2-year Order**

## In Matter of Monique WW. v. Dean XX., 2024 Westlaw 5216953 (3d Dept. Dec. 26, 2024), the father appealed from a November 2023 Family Court order which, after a hearing upon the mother’s August 2023 family offense petition, found that he committed aggravated harassment 2d [PL 240.30(1)] against her, and issued a 2-year order of protection in favor of the mother and the parties’ child born in 2017. The Third Department affirmed, noting the mother’s testimony that the father was incarcerated for 4 years for domestic violence against her, which resulted in a stay-away order of protection in her favor until 2031. The Appellate Division found: after being released from jail, the father “repeatedly posted Facebook messages and sent texts to her for over one year”; the father was permitted to contact the mother to arrange telephone and video contact with the child, but he addressed text messages to the child (who was then 3 years old and unable to read) and then forwarded the texts to her; the text messages “stated that the father had heard that *people* were going to break into her house in order to rob, extort and rape both her and the child (emphasis in decision)”; and “[g]iven the father’s history of domestic violence and mental illness, the mother testified that she felt harassed and threatened.” The Court rejected the father’s contention that Family Court erred in finding that he intended to harass the mother, holding “his intent may be readily inferred from the numerous texts threatening violent conduct by others upon her and the child and from the surrounding circumstances including the father’s history of domestic violence and his violation of the order of protection.” The Third Department concluded: “Although the father claims that the texts show his love and concern for the child, thus offering an innocent intent for sending the texts, Family Court was unconvinced, as are we.”

## **Family Offense - Aggravating Circumstances; Assault 3d, Criminal Obstruction, Harassment 2d, Sexual Abuse 3d, Stalking 4th – Found**

## In Matter of C.H. v. M.J.G., 2024 Westlaw 5126750 (1st Dept. Dec. 17, 2024), respondent appealed from a July 2023 Supreme Court (IDV Part) order which, after a hearing, found that he committed Assault 3d, Criminal Obstruction, Harassment 2d, Sexual Abuse 3d, Stalking 4th, and upon finding aggravating circumstances, issued a 5-year order of protection. The First Department affirmed, holding that petitioner proved: (1) harassment 2d (PL 240.26[1] and [3]), through her testimony that “during the parties' relationship, respondent pinned her down onto the bed and squeezed her neck on one occasion; grabbed her arm on another occasion, causing bruising and soreness; on a third occasion, tried to strangle her after she rebuffed his sexual advances; and on a fourth occasion, squeezed her so hard that she heard her rib pop and experienced pain for approximately two weeks thereafter”; “she was scared and upset by respondent's actions, and the court properly inferred from respondent's actions and the surrounding circumstances that he intended to cause these effects (citations omitted)” and that “respondent intentionally engaged in a course of conduct or repeatedly committed acts that alarmed or seriously annoyed petitioner, and that served no legitimate purpose”; (2) assault 3d (PL 120.00[1]) through her testimony “regarding her injured rib \*\*\* including infliction of physical injury”; (3) criminal obstruction of breathing or blood circulation (PL 121.11[a]), through her testimony that respondent grabbed her “by her neck and strangl[ed] her until she was gasping for air and felt lightheaded,” finding that the facts that petitioner “submitted no evidence documenting her injuries is of no moment”; (4) sexual abuse 3d (PL 130.55), through her testimony that “after she ended the parties' relationship and told respondent not to contact her, he nonetheless came to her apartment, kissed her, and ‘put his hands all over her body’ without her permission”; (5) stalking 4th(PL 120.45), through her testimony that “respondent continued trying to communicate with her through email, social media, and in person — including, for example, by approaching her in person at a professional event and making a suicide attempt outside her apartment door, despite petitioner's repeated requests to respondent to desist in his attempts to contact her”; that respondent was clearly informed to stop contacting her given “respondent's acknowledgement that petitioner told him to stop contacting her”; and that her “mental and emotional health was materially harmed by respondent's conduct.” The Appellate Division upheld the finding of aggravating circumstances, given “the immediate and ongoing danger to petitioner from respondent's actions — warranted the issuance of a five-year final order of protection in petitioner's favor as reasonably necessary to provide meaningful protection.”

## **LEGISLATIVE & COURT RULE ITEMS**

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

## **Effective December 13, 2024**, this legislation authorizes the Chief Administrative Judge to make e-filing mandatory or voluntary in any or all of the state’s trial courts and in any class of cases, including matrimonial actions. Advance approval of the local county clerk outside New York City is still required as to e-filing in Supreme Court and County Court pursuant to CPLR 2111(a). New CPLR 2111(b)(1) and (2) continue the present exemptions from mandatory e-filing for unrepresented persons and for certain lawyers without technical skills or equipment and continue the requirement for consultation with various bar associations and attorneys. New Family Court Act 214(c) continues: (1) the present exemptions from mandatory e-filing for unrepresented persons and for certain lawyers without technical skills or equipment; (2) the requirement that the Chief Administrative Judge secure approval of authorized local presentment and child protective agencies, along with the Family Court bars representing parents and children, respectively, before instituting mandatory e-filing in Family Court in a county; and (3) the requirement of consultation with the advisory committee provided by Judiciary Law 212(2)(u)(vi). A.10350, S.07524. Signed December 13, 2024, Laws of 2024, Ch. 579.

## **Family Offense – “Members of the Same Family or Household” - Expanded**

## Family Court Act 812(1)(f) and Criminal Procedure Law 530.11(f) are **added, effective November 25, 2024,** to expand the definition of “members of the same family or household” to include “persons who are related by consanguinity or affinity to parties who are or have been in an intimate relationship as defined in paragraph (e) of this subdivision.” A.06026/S.06288, Signed November 25, 2024, Laws of 2024, Ch. 541.

## **Name Change and Sex Designation Change Applications – Sealing**

## 22 NYCRR §202.5(e)(5) is **added, effective December 2, 2024,** to provide, among other things, that immediately upon the filing of applications for name changes and sex designation changes pursuant to Civil Rights Law Articles 6 and 6-a, respectively, the applications are deemed sealed upon filing, and the court shall determine, prior to the entry of a final order, whether there is a legal basis to maintain the sealing. Administrative Order 286 of 2024 (A/O 286/24) dated October 1, 2024.

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

## This legislation, **effective December 21, 2024**, amends numerous provisions of the statutes pertaining to surrogacy. In particular, Family Court Act 581-205 is 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. Signed December 21, 2024, Laws of 2024, Ch. 671.

## **Venue in Matrimonial Actions**

## **Effective February 19, 2025,** this legislation amends 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 applies to matrimonial actions commenced on or after the effective date.** A.10353, S.09733. Signed December 21, 2024, Laws of 2024, Ch. 638.

## **Verification of Pleadings Governed by CPLR 2106**

## CPLR 3020(a) is amended, **effective December 21, 2024**, to define a verification as “a statement subscribed and affirmed to be true under the penalties of perjury in accordance with rule twenty-one hundred six of this chapter \*\*\*.” A.09478A, S.09032A. Signed December 21, 2024, Laws of 2024, Ch. 665.

## Dated: December 30, 2024