
Foundations of Matrimonial Practice: Pendente Lite Motions, Discovery and Spousal Support

Thursday, September 15, 2016

Albany Marriott

CLE Course Materials and NotePad[®]

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

Sponsored by the

New York State Bar Association and the Committee on Legal Aid

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

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New York State Bar Association**

Lawyer Assistance Program 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

New York State Bar Association

FORM FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs, we are required to carefully monitor attendance at our programs to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Each person may only turn in his or her form-you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

Speakers, moderators, panelists and attendees are required to complete attendance verification forms in order to receive MCLE credit for programs. Faculty members and attendees: please complete, sign and return this form along with your evaluation, to the registration staff **before you leave** the program.

**You MUST turn in this form at the end of the
program for your MCLE credit.**

Foundations of Matrimonial Practice: Pendente Lite Motions, Discovery and Spousal Support. Thursday, September 15, 2016 | New York State Bar Association's Committee on Legal Aid, Albany Marriot, Albany, NY

Name:

(Please print)

I certify that I was present for the entire presentation of this program

Signature:

Date:

Speaking Credit: In order to obtain MCLE credit for speaking at today's program, please complete and return this form to the registration staff before you leave. **Speakers and Panelists** receive three (3) MCLE credits for each 50 minutes of presenting or participating on a panel. **Moderators** earn one (1) MCLE credit for each 50 minutes moderating a panel segment. Faculty members receive regular MCLE credit for attending other portions of the program.

NEW YORK STATE BAR ASSOCIATION

Live Program Evaluation (Attending In Person)

Please complete the following program evaluation. We rely on your assessment to strengthen teaching methods and improve the programs we provide. The New York State Bar Association is committed to providing high quality continuing legal education courses and your feedback is important to us.

Program Name: Foundations of Matrimonial Practice: Pendente Lite Motions, Discovery and Spousal Support

Program Code: THDVFC1

Program Location: Albany Marriott - Albany, NY

Program Date: September 15, 2016

1. What is your overall evaluation of this program? Please include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional Comments _____

2. Please rate each Speaker's Presentation based on **CONTENT** and **ABILITY** and include any additional comments.

	CONTENT				ABILITY			
	Excellent	Good	Fair	Poor	Excellent	Good	Fair	Poor
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Cindy Nolan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Additional comments (CONTENT)

Additional comments (ABILITY)

3. Please rate the program materials and include any additional comments.

☐ Excellent ☐ Good ☐ Fair ☐ Poor

Additional comments

4. Do you think any portions of the program should be **EXPANDED** or **SHORTENED**? Please include any additional comments.

☐ Yes – Expanded ☐ Yes – Shortened ☐ No – Fine as is

Additional comments

5. Please rate the following aspects of the program: **REGISTRATION; ORGANIZATION; ADMINISTRATION; MEETING SITE** (if applicable), and include any additional comments.

	Please rate the following:				
	Excellent	Good	Fair	Poor	N/A
Registration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Meeting Site (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Additional comments

6. How did you learn about this program?

☐ Ad in legal publication ☐ NYSBA web site ☐ Brochure or Postcard
☐ Social Media (Facebook / Google) ☐ Email ☐ Word of mouth

7. Please give us your suggestions for new programs or topics you would like to see offered



NEWYORK STATE BAR ASSOCIATION

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**Foundations of Matrimonial Practice:
Pendente Lite Motions, Discovery and Spousal Support
Thursday September 15th, 3:00 - 4:15
Presenters: Laura Russell and Cindy Carroll Nolan**

CLE Transitional Credits: 1.5 professional practice

I. Discussion of the New Maintenance Statute and formula

II. Negotiating prior to filing the Pendente Lite Motion

III. Pendente Lite Motion Essentials:

- a. What to include in the affidavit and affirmation**
- b. Required exhibits (including the Statement of Net Worth)**

IV. Discovery Devices

V. Subpoenas

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Foundations of Matrimonial Practice: Pendente Lite Motions, Discovery and Spousal Support

Outline

Effective Divorce Practice: Some Basics

Prepared by Cynthia Carroll Nolan

I. Case Strategy: What Do You Need to Prove & How Are You Going to Prove It?

A. Investigation

1. Informal/Practical

Documents in client's possession

Client's recollection of mail received by other party

Checks received by client from opposing party

Joint Tax Returns obtained from preparer or IRS

Information gleaned from other documents

Social Security Gross vs. Taxable Gross

Amount of Social Security and Medicare Tax Withheld

Interest income

Real property records

Social Media

Information about employer benefits available online

2. Sworn Statement of Net Worth -- Insist on it!

3. Notice to Admit pursuant to CPLR § 3123: Admissions as to Matters of Fact, Papers, Documents and Photographs

4. Discovery pursuant to Article 31 of the CPLR

a. Devices

Interrogatories

- Identify assets so that you can issue third party subpoenas
- Identify disability claims & related medical providers and records, so you can bring a motion for those records (or signal the OP that his argument is not going to stand up & he should get reasonable.)
- Keep them simple and targeted – you are more likely to get responses, & are more likely to get a conditional preclusion order if you need one

Demand for Discovery and Inspection/Notice to Produce

Demand for Expert Witness Information

Demand for Client Statements

Demand for Photos, Etc.

Depositions

Third Party Subpoenas

CPLR 3120

1. After commencement of an action, any party may serve on any other party a notice or on any other person a subpoena duces tecum:

(i) to produce and permit the party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party or person served; or

(ii) to permit entry upon designated land or other property in the possession, custody or control of the party or person served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any specifically designated object or operation thereon.

2. The notice or subpoena duces tecum shall specify the time, which shall be not less than twenty days after service of the notice or subpoena, and the place and manner of making the inspection, copy, test or photograph, or of the entry upon the land or other property and, in the case of an inspection, copying, testing or photographing, shall set forth the items to be inspected, copied, tested or photographed by individual item or by category, and shall describe each item and category with reasonable particularity.

3. The party issuing a subpoena duces tecum as provided hereinabove shall at the same time serve a copy of the subpoena upon all other parties and, within five days of compliance therewith, in whole or in part, give to each party notice that the items produced in response thereto are available for inspection and copying, specifying the time and place thereof.

4. Nothing contained in this section shall be construed to change the requirement of [section 2307](#) that a subpoena duces tecum to be served upon a library or a department or bureau of a municipal corporation, or of the state, or an officer thereof, requires a motion made on notice to the library, department, bureau or officer, and the adverse party, to a justice of the supreme court or a judge of the court in which the action is triable.

Kapon v. Koch, 23 NY3d 32 (2014): It is not necessary to prove “special circumstances” and that the information is not otherwise obtainable. The subpoenaed information does need to be material and necessary, and it should contain a short statement as to why it is material and necessary (either on the face of the subpoena or on a notice accompanying it.)

Examples of Sources of Information:

Employers	Unions
Tax preparers	Banks
Credit Cards	Customers
Loan applications	

Ask for certified records, give yourself plenty of time & comply with requirements of CPLR 3122-a

B. Imputing Income

- From expenses
- By statistical data based on profession and education
e.g., www.bls.gov
- Client's testimony
- If able-bodied but uneducated, by reference to the minimum wage

C. Court Intervention

1. Preliminary Conference

- Get your ducks in a row prior to filing RJI
- Have a plan for resolving the case going into that conference/give the judge something to work with in your Statement of Proposed Disposition

2. Motion Practice

Motion for Conditional Order of Preclusion

Motion for Temporary Support

II. Getting the Judgment that Your Client Needs & Other Practical Concerns

A. Settlement Agreements

- Prepare deed and related tax paperwork for signature at same time as agreement or prior to court appearance
- Do the same with tax forms, passport applications, etc.

B. Sheriff Deeds:

CPLR § 5107: "The court may require the sheriff to convey real property in conformity with its directions."

Put language in the judgment

C. Statement for Judgment

III. Dealing With Pro Se Parties

Rule 4.3: Communicating with unrepresented persons.

In communicating on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person other than the advice to secure counsel if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

Foundations of Matrimonial Practice: Pendente Lite Motions, Discovery and Spousal Support

PowerPoint 1

Understanding Recent Updates to Maintenance and Spousal Support Laws



Laura A. Russell, Esq.
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Amendments to Domestic Relations Law and Family Court Act



- Completes the divorce reform, which began with the passage of no fault divorce and temporary maintenance in 2010
- Provides consistency and predictability for determining temporary and post divorce maintenance
- Important for low-income litigants and victims of domestic violence who now have better chance of obtaining much needed economic awards without counsel or expensive litigation
- Clarifies the relationship between child support and maintenance and the duration of spousal support

Amendments to Domestic Relations Law and Family Court Act



- Temporary Maintenance (DRL §236 (B)(5-a))
- Post Divorce Maintenance (DRL §236 (B)(6))
- DRL §248
- Spousal Support (FCA §412)
- Child support and maintenance interplay (FCA 413 and DRL 240)

Formulas for Temporary Maintenance



- There are now two different formulas to determine temporary maintenance
- One formula applies when child support is not being paid or the payor is the custodial parent (same formula as the old statute for temporary maintenance)
- Another formula when child support is being paid
- Same formula when determining final maintenance

Temporary Maintenance Formula: Where Child Support is being Paid by Payor

$20\% \text{ of Payor's Income}$ $-$ $\frac{25\% \text{ of Payee's Income}}{\text{Alternative 1}}$	$40\% \text{ of Combined Income}$ $-$ $\frac{\text{Payee's Income}}{\text{Alternative 2}}$
--	--

*Presumptive award is the lesser of Alternative 1 and Alternative 2

Temporary Maintenance Formula: Where Child Support is not being Paid or Payor is custodial parent

$30\% \text{ of payor's income}$ $-$ $20\% \text{ of payee's income}$ Alternative 1	$40\% \text{ of combine income}$ $-$ Payee's income Alternative 2
--	---

*presumptive award is lesser of alternative 1 or 2

*same formula as the original temporary maintenance statute

CAP



- The Income Cap for the formula portion of Temporary Maintenance Awards was lowered from \$543,000 to \$175,000 of the payor's income
- The income cap is subject to a cost of living adjustment (COLA) which adjusts the amount of the cap every two years beginning January 1, 2016 as per the CPI
- Where there is income over the cap, additional maintenance *may* be awarded after consideration of any one or more factors, which shall be set forth in the court's decision in writing or on the record
- Above the cap factors identical to the deviation factors

Above the CAP Factors



- DRL §236(B)(5-a)(h)(1)
- Age and health of the parties
- Present and future earning capacity
- The need of one party to incur education or training expenses
- The termination of a child support award during the pendency of the proceeding when calculation of temporary maintenance was based on child support being paid
- Wasteful dissipation of marital property, including transfer or encumbrance made in contemplation of a matrimonial action without fair consideration
- Existence and duration of a pre-marital joint household or a pre-divorce separate household
- Acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment, including acts of domestic violence

Above the CAP Factors (cont.)



- Availability and cost of medical insurance
- The care of children, stepchildren, disabled adult children, elderly parents that has inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment
- Tax consequences to each party
- The standard of living of the parties established during the marriage
- Reduced or lost earning capacity of the party seeking temporary maintenance as a result of having foregone or delayed education, training, employment
- Any other factor which the court shall find just and proper

"Income" for the Purpose of Calculating Maintenance



- Income determined pursuant to the CSSA and has not changed from the old law
- BUT temporary maintenance shall be deducted from income of payor and added to income of payee (also final maintenance is treated the same way)
- Final Maintenance difference: Amended law provides that income from incoming producing property distributed by equitable distribution shall be considered income for the purpose of calculating final maintenance
- Note: under this new statute, one decides ED, then maintenance and then child support

Maintenance as Income to Payee Spouse



- Bill A7637/S5691
- Signed into law on October 28, 2015
- Amends FCA §413(1)(b)(5)(iii) and DRL § 240(1-b)(5) (iii) to require that maintenance (temporary or final) or spousal support *actually being paid* be added to the payee spouse's income for the purposes of calculating child support and maintenance paid be deducted from payor's income

Deviating from the Formula



- The court shall order the presumptive award of temporary maintenance unless it finds that it is unjust or inappropriate and then can deviate based on any one or more of the enumerated factors
- If the court deviates from the presumptive amount, it must set forth its decision in writing or on the record including the factors it considered and the reason for deviation
- Same as the factors the court can consider in awarding temporary maintenance above the cap (see above)

Consideration of Household Expenses



- In determining temporary maintenance, the court shall consider and allocate, where appropriate, the responsibilities of the respective spouses for the family's expenses during the pendency of the proceeding

Termination of Temporary Maintenance



- Temporary maintenance terminates no later than judgment of divorce or the death of either party
- The new law clarifies that the Supreme Court can further limit the duration of temporary maintenance based on the length of marriage

Post Divorce Maintenance



- Cap is the same as for temporary maintenance
- Maintenance may be awarded based on income above the cap in the same manner as it for temporary maintenance
- Formulas for temporary maintenance now apply to post-divorce maintenance as well
- The court can deviate if it finds the presumptive award is unjust or inappropriate, but must set forth decision in writing or on the record, stating the presumptive award, the reason for deviating and factors it considered

Post Divorce Maintenance: Deviation Factors



- DRL §236(B)(6)(e)(1)
- Age and health of the parties
- Present and future earning capacity
- The need of one party to incur education or training expenses
- The termination of a child support award before the termination of a maintenance award when the calculation of maintenance was based upon child support being awarded and resulted in a lower amount
- Wasteful dissipation of marital property, including transfer or encumbrance made in contemplation of a matrimonial action without fair consideration
- Existence and duration of a pre-marital joint household or a pre-divorce separate household
- Acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment, including acts of domestic violence
- Availability and cost of medical insurance

Post Divorce Maintenance: Deviation Factors (cont.)



- The care of children, stepchildren, disabled adult children, elderly parents that has inhibited or continues to inhibit a party's earning capacity or ability to obtain meaningful employment
- Tax consequences to each party
- The standard of living of the parties established during the marriage
- Reduced or lost earning capacity of the party seeking temporary maintenance as a result of having foregone or delayed education, training, employment
- Equitable distribution of marital property and the income or imputed income on the assets distributed
- The contributions of and services of the payee as a spouse, parent, wage earner and homemaker to the career or career potential of the other spouse-(O'Brien)
- Any other factor which the court shall find just and proper

Other Changes



- The new law specifically provides that the court shall consider the effect of a barrier to remarriage on the deviation factors
- Actual full or partial retirement is now a basis for a change in circumstances
- Actual or anticipated retirement can be considered in deviating from the formula
- If the payor's income is below the self support reserve, maintenance is presumptively zero
- DRL 248 is now gender neutral
- CSSA now states that income includes maintenance received and maintenance paid is deducted from income

Enhanced Earning Capacity



- Under the amended statute, enhanced earning capacity shall no longer be considered marital property subject to equitable distribution, effectively overturning *O'Brien v. O'Brien*, 66 N.Y.2d 576, 498 N.Y.S.2d 743, 489 N.E.2d 712 (1985)
- However, in determining equitable distribution of marital property, the court shall consider the direct or indirect contribution of one spouse to the enhanced earning capacity of the other spouse as a factor

Post Divorce Maintenance: Duration



- The court may determine the duration of post-divorce maintenance in accordance with an advisory schedule
- Whether or not the court utilizes the advisory schedule, it will consider the enumerated deviation factors set forth in a written decision or on the record
- The court may still award non durational maintenance in appropriate cases
- Length of marriage is date of marriage to date of commencement of the action

Post Divorce Maintenance: Advisory Schedule

Length of the marriage	% of the length of the marriage maintenance will be payable
<ul style="list-style-type: none"> • 0 up to and including 15 years 	<ul style="list-style-type: none"> • 15%—30%
<ul style="list-style-type: none"> • More than 15 up to and including 20 years 	<ul style="list-style-type: none"> • 30%—40%
<ul style="list-style-type: none"> • More than 20 years 	<ul style="list-style-type: none"> • 35%—50%

Post Divorce Maintenance: Termination and Modification

<ul style="list-style-type: none"> • Post divorce maintenance terminates on the death of either party or the remarriage of the payee former spouse or pursuant to DRL §236(B)(9) (modification) or DRL §248 (remarriage or cohabitation) • In determining duration, courts should take into consideration the actual or anticipated retirement assets, benefits and retirement eligibility age of both parties. If not ascertainable at the time of the decision, the actual full or partial retirement of the payor shall be a basis for a modification of the award if there is a substantial diminution of income
--

Default



- When a party defaults or the court has insufficient evidence to determine gross income, the court shall order temporary or final maintenance based on the needs of the payee or the standard of living of the parties prior to commencement of the action, whichever is greater
- Such order may be modified without a showing of a change in circumstances upon a showing of newly discovered evidence

Agreements



- Any agreement or stipulation must include a provision that the parties were advised of the statute and that the presumptive amount of temporary maintenance is correct
- If deviating, the agreement must specify what the presumptive award is and the reason for deviation
- Unrepresented parties must be told of the formula and the presumptive amount
- Agreements must conform to Matisoff v. Dobi

FCA §412



- FCA §412 is amended so that the formulas for determining maintenance in divorce actions apply in determining spousal support awards
- Formulas where child support is and is not being paid apply
- The court may deviate if presumptive award unjust or inappropriate—decision in writing or on the record setting forth presumptive amount, reason and factors considered
- The court may order maintenance above the cap in consideration of enumerated factors

Spousal Support: Modification and Termination



- The court may modify an order of spousal support upon a showing of a substantial change in circumstance
- If not modified, spousal support order terminates with written or oral stipulation on the record, Judgment of Divorce or death of either party, whichever occurs earliest
- Family Court can not order durational spousal support

Effective Dates



- The portions of the new law pertaining to temporary maintenance took effect on Oct. 26, 2015
- Changes to final maintenance calculations and spousal support awards took effect on Jan. 25, 2016
- Applies to matrimonial and family law actions commenced on or after the effective date
- Modifications cannot be requested solely on the enactment of this statute. Any modification of an order from a date prior to this statute follows the old statute

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Foundations of Matrimonial Practice: Pendente Lite Motions, Discovery and Spousal Support

PowerPoint 2

Pendente Lite Applications

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Pendente Lite Relief

- ▶ Should you file by OSC or Notice of Motion?
- ▶ What are you asking for?
- ▶ Why?
- ▶ How will you get it?
- ▶ What do you need to prove?
- ▶ What exhibits do you need?

Pendente Lite Relief

- ▶ First chance Judge has to see case
- ▶ Very fact specific
- ▶ Ask for specific items-how much in child support/temp. maintenance?
- ▶ Do the math-Judges went to law school to avoid doing math
- ▶ Make sure the numbers make sense
- ▶ Ask for everything your client will need for the life of the case
- ▶ OSC vs. Notice of Motion-what is the difference?
- ▶ File before Preliminary Conference

What do you say in an affidavit of support?

- ▶ Start with a background of the marriage as a narrative, ages, children, lifestyle, property, history of employment
- ▶ Continue in section by section based on what is being sought:
 - ▶ DV specifics, focusing on most recent (OP?)
 - ▶ Exclusive use of the residence
 - ▶ Custody/visitation issues
 - ▶ Child support, medical, unreimbursed expenses
 - ▶ Temporary maintenance/paying residence carrying charges
 - ▶ Use of a vehicle
 - ▶ Medical insurance
 - ▶ Bank account, credit card access

Custody/Visitation

- ▶ Even if your client has physical custody, ask for it
- ▶ Asking for temporary legal custody is tricky, do you need it now? Is there a kidnapping? Is there an issue?
- ▶ List the mundane, who takes care of the child on a daily basis, who brings them to school, etc.
- ▶ Before the other side seeks visitation, mention it in your papers, state what you want and why
- ▶ Even if there is DV, that should not be your only analysis as to who should get custody

Support Paragraphs

- ▶ State what your client wants, and have your client state what the formula would give them
- ▶ If income unknown, list expenses and discuss why this amount is needed
- ▶ Justify the support needed (even if it is guidelines support)
- ▶ Do maintenance first, then deduct maintenance for child support
- ▶ Check the numbers-how should the formula interplay with who pays the mortgage?

Bank Accounts/Credit Cards

- ▶ If you are asking for access, or a restraint, be specific
- ▶ List the account number, bank and amount in account
- ▶ No marital monies are divided at this stage, so don't ask for half now
- ▶ Should have a bank statement as an exhibit to show account

Affirmation of Support in a Pendente Lite Application

- ▶ Begin with a background of procedure-dates of filing, service, attempts to settle
- ▶ Do not reiterate all the facts-just the most compelling
- ▶ Use basic case law for basic arguments (For example, if you are seeking custody, use Eschbach)
- ▶ Do the math as you would in a Stipulation of Settlement (remember do temporary maintenance then subtract for child support)
- ▶ Every section in the affidavit should have a corresponding section in the affirmation

Required Exhibits (22 N.Y.C.R.R. Part 202.16)

- ▶ Statement of Net Worth
- ▶ Retainer Agreement
- ▶ Statement of Client's Rights and Responsibilities
- ▶ Most recent Income Tax Returns
- ▶ Most recent pay stubs or pay documentation (1099)

Recommended Exhibits

- ▶ Opposing client's Statement of Net Worth, pay statements, Income Tax Returns
- ▶ Bank account statements
- ▶ Credit card statements
- ▶ Past Orders of Protection and/or DIRs
- ▶ Proof of lifestyle

[illegible]

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Foundations of Matrimonial Practice: Pendente Lite Motions, Discovery and Spousal Support

Biographies

Laura A. Russell

Laura A. Russell is currently the Co-Citywide Supervising attorney of the Family Law/Domestic Violence Unit of The Legal Aid Society in New York City. Formerly, she was the Matrimonial Director of Sanctuary for Families, Center for Battered Women's Legal Services and prior to this, the Director of SHIELD, a program of the New York City Bar's Justice Center. As a Supervising attorney, she supervises staff in family law, domestic violence and immigration matters, works on domestic violence policy issues and coordinates family law matters for the offices. She has handled a variety of matrimonial and family law actions, including Contested Matrimonials, Orders of Protection, Abuse/Neglect matters and Custody/Visitation issues. Ms. Russell is admitted in both New York and New Jersey, and has lectured on various family law topics, including equitable distribution, domestic violence and Orders of Protection, and also on consumer and tax issues, especially as they relate to domestic violence. She sat on Judge Miller's Matrimonial Commission, the NYC Bar's Judiciary Committee, and the Lawyers Committee Against Domestic Violence's Matrimonial Committee. She currently sits on the Attorney for the Child Advisory Committee for the Second Department.

Cynthia Carrol Nolan

Cindy is a Senior Attorney in the Family Law Unit of the Legal Aid Society of Rochester, NY. A graduate of Boston University and the University of Washington School of Law, she has been a legal services attorney since being admitted to the bar in 1996. In addition to her work with clients, Cindy has taught "Domestic Violence and the Law" as an adjunct professor at Syracuse University College of Law. She has presented at numerous CLE's, and she has been a guest lecturer at several local colleges.



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IRS Announces 2014 Pension Plan Limitations; Taxpayers May Contribute up to \$17,500 to their 401(k) plans in 2014

IR-2013-86, Oct. 31, 2013

WASHINGTON — The Internal Revenue Service today announced cost-of-living adjustments affecting dollar limitations for pension plans and other retirement-related items for tax year 2014. Some pension limitations such as those governing 401(k) plans and IRAs will remain unchanged because the increase in the Consumer Price Index did not meet the statutory thresholds for their adjustment. However, other pension plan limitations will increase for 2014. Highlights include the following:

- The elective deferral (contribution) limit for employees who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan remains unchanged at \$17,500.
- The catch-up contribution limit for employees aged 50 and over who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan remains unchanged at \$5,500.
- The limit on annual contributions to an Individual Retirement Arrangement (IRA) remains unchanged at \$5,500. The additional catch-up contribution limit for individuals aged 50 and over is not subject to an annual cost-of-living adjustment and remains \$1,000.
- The deduction for taxpayers making contributions to a traditional IRA is phased out for singles and heads of household who are covered by a workplace retirement plan and have modified adjusted gross incomes (AGI) between \$60,000 and \$70,000, up from \$59,000 and \$69,000 in 2013. For married couples filing jointly, in which the spouse who makes the IRA contribution is covered by a workplace retirement plan, the income phase-out range is \$96,000 to \$116,000, up from \$95,000 to \$115,000. For an IRA contributor who is not covered by a workplace retirement plan and is married to someone who is covered, the deduction is phased out if the couple's income is between \$181,000 and \$191,000, up from \$178,000 and \$188,000. For a married individual filing a separate return who is covered by a workplace retirement plan, the phase-out range is not subject to an annual cost-of-living adjustment and remains \$0 to \$10,000.
- The AGI phase-out range for taxpayers making contributions to a Roth IRA is \$181,000 to \$191,000 for married couples filing jointly, up from \$178,000 to \$188,000 in 2013. For singles and heads of household, the income phase-out range is \$114,000 to \$129,000, up from \$112,000 to \$127,000. For a married individual filing a separate return, the phase-out range is not subject to an annual cost-of-living adjustment and remains \$0 to \$10,000.
- The AGI limit for the saver's credit (also known as the retirement savings contribution credit) for low- and moderate-income workers is \$60,000 for married couples filing jointly, up from \$59,000 in 2013; \$45,000 for heads of household, up from \$44,250; and \$30,000 for married individuals filing separately and for singles, up from \$29,500.

Below are details on both the unchanged and adjusted limitations.

Section 415 of the Internal Revenue Code provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under Section 415. Under Section 415(d), the adjustments are to be made pursuant to adjustment procedures which are similar to those used to adjust benefit amounts under Section 215(i)(2)(A) of the Social Security Act.

Effective January 1, 2014, the limitation on the annual benefit under a defined benefit plan under Section 415(b)(1)(A) is increased from \$205,000 to \$210,000. For a participant who separated from service before January 1, 2014, the limitation for defined benefit plans under Section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2013, by 1.0155.

The limitation for defined contribution plans under Section 415(c)(1)(A) is increased in 2014 from \$51,000 to \$52,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of Section 415(b)(1)(A). After taking into account the applicable rounding rules, the amounts for 2014 are as follows:

The limitation under Section 402(g)(1) on the exclusion for elective deferrals described in Section 402(g)(3) remains unchanged at \$17,500.

The annual compensation limit under Sections 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from \$255,000 to \$260,000.

The dollar limitation under Section 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan is increased from \$165,000 to \$170,000.

The dollar amount under Section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from \$1,035,000 to \$1,050,000, while the dollar amount used to determine the lengthening of the 5-year distribution period is increased from \$205,000 to \$210,000.

The limitation used in the definition of highly compensated employee under Section 414(q)(1)(B) remains unchanged at \$115,000.

The dollar limitation under Section 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over remains unchanged at \$5,500. The dollar limitation under Section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over remains unchanged at \$2,500.

The annual compensation limitation under Section 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under Section 401(a)(17) to be taken into account, is increased from \$380,000 to \$385,000.

The compensation amount under Section 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at \$550.

The limitation under Section 408(p)(2)(E) regarding SIMPLE retirement accounts remains unchanged at \$12,000.

The limitation on deferrals under Section 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations remains unchanged at \$17,500.

The compensation amount under Section 1.61-21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation purposes is increased from \$100,000 to \$105,000. The compensation amount under Section 1.61-21(f)(5)(iii) is increased from \$205,000 to \$210,000.

The Code also provides that several pension-related amounts are to be adjusted using the cost-of-living adjustment under Section 1(f)(3). After taking the applicable rounding rules into account, the amounts for 2014 are as follows:

The adjusted gross income limitation under Section 25B(b)(1)(A) for determining the retirement savings contribution credit for married taxpayers filing a joint return is increased from \$35,500 to \$36,000; the limitation under Section 25B(b)(1)(B) is increased from \$38,500 to \$39,000; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$59,000 to \$60,000.

The adjusted gross income limitation under Section 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing as head of household is increased from \$26,625 to \$27,000; the limitation under Section 25B(b)(1)(B) is increased from \$28,875 to \$29,250; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$44,250 to \$45,000.

The adjusted gross income limitation under Section 25B(b)(1)(A) for determining the retirement savings contribution credit for all other taxpayers is increased from \$17,750 to \$18,000; the limitation under Section 25B(b)(1)(B) is increased from \$19,250 to \$19,500; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$29,500 to \$30,000.

The deductible amount under Section 219(b)(5)(A) for an individual making qualified retirement contributions remains unchanged at \$5,500.

The applicable dollar amount under Section 219(g)(3)(B)(i) for determining the deductible amount of an IRA contribution for taxpayers who are active participants filing a joint return or as a qualifying widow(er) is increased from \$95,000 to \$96,000. The applicable dollar amount under Section 219(g)(3)(B)(ii) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$59,000 to \$60,000. The applicable dollar amount under Section 219(g)(3)(B)(iii) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains \$0. The applicable dollar amount under Section 219(g)(7)(A) for a taxpayer who is not an active participant but whose spouse is an active participant is increased from \$178,000 to \$181,000.

The adjusted gross income limitation under Section 408A(c)(3)(B)(ii)(I) for determining the maximum Roth IRA contribution for married taxpayers filing a joint return or for taxpayers filing as a qualifying widow(er) is increased from \$178,000 to \$181,000. The adjusted gross income limitation under Section 408A(c)(3)(B)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$112,000 to \$114,000. The applicable dollar amount under Section 408A(c)(3)(B)(ii)(III) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains \$0.

The dollar amount under Section 430(c)(7)(D)(i)(II) used to determine excess employee compensation with respect to a single-employer defined benefit pension plan for which the special election under Section 430(c)(2)(D) has been made is increased from \$1,066,000 to \$1,084,000.

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IRS Announces 2015 Pension Plan Limitations; Taxpayers May Contribute up to \$18,000 to their 401(k) plans in 2015

IR-2014-99, Oct. 23, 2014

WASHINGTON — The Internal Revenue Service today announced cost-of-living adjustments affecting dollar limitations for pension plans and other retirement-related items for tax year 2015. Many of the pension plan limitations will change for 2015 because the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment. However, other limitations will remain unchanged because the increase in the index did not meet the statutory thresholds that trigger their adjustment. Highlights include the following:

- The elective deferral (contribution) limit for employees who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan is increased from \$17,500 to \$18,000.
- The catch-up contribution limit for employees aged 50 and over who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan is increased from \$5,500 to \$6,000.
- The limit on annual contributions to an Individual Retirement Arrangement (IRA) remains unchanged at \$5,500. The additional catch-up contribution limit for individuals aged 50 and over is not subject to an annual cost-of-living adjustment and remains \$1,000.
- The deduction for taxpayers making contributions to a traditional IRA is phased out for singles and heads of household who are covered by a workplace retirement plan and have modified adjusted gross incomes (AGI) between \$61,000 and \$71,000, up from \$60,000 and \$70,000 in 2014. For married couples filing jointly, in which the spouse who makes the IRA contribution is covered by a workplace retirement plan, the income phase-out range is \$98,000 to \$118,000, up from \$96,000 to \$116,000. For an IRA contributor who is not covered by a workplace retirement plan and is married to someone who is covered, the deduction is phased out if the couple's income is between \$183,000 and \$193,000, up from \$181,000 and \$191,000. For a married individual filing a separate return who is covered by a workplace retirement plan, the phase-out range is not subject to an annual cost-of-living adjustment and remains \$0 to \$10,000.
- The AGI phase-out range for taxpayers making contributions to a Roth IRA is \$183,000 to \$193,000 for married couples filing jointly, up from \$181,000 to \$191,000 in 2014. For singles and heads of household, the income phase-out range is \$116,000 to \$131,000, up from \$114,000 to \$129,000. For a married individual filing a separate return, the phase-out range is not subject to an annual cost-of-living adjustment and remains \$0 to \$10,000.
- The AGI limit for the saver's credit (also known as the retirement savings contribution credit) for low- and moderate-income workers is \$61,000 for married couples filing jointly, up from \$60,000 in 2014; \$45,750 for heads of household, up from \$45,000; and \$30,500 for married individuals filing separately and for singles, up from \$30,000.

Below are details on both the adjusted and unchanged limitations.

Section 415 of the Internal Revenue Code provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limits for cost-of-living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under Section 415. Under Section 415(d), the adjustments are to be made under adjustment procedures similar to those used to adjust benefit amounts under Section 215(i)(2)(A) of the Social Security Act.

Effective Jan. 1, 2015, the limitation on the annual benefit under a defined benefit plan under Section 415(b)(1)(A) remains unchanged at \$210,000. For a participant who separated from service before January 1, 2015, the limitation for defined benefit plans under Section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2014, by 1.0178.

The limitation for defined contribution plans under Section 415(c)(1)(A) is increased in 2015 from \$52,000 to \$53,000.

The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of Section 415(b)(1)(A). After taking into account the applicable rounding rules, the amounts for 2015 are as follows:

The limitation under Section 402(g)(1) on the exclusion for elective deferrals described in Section 402(g)(3) is increased from \$17,500 to \$18,000.

The annual compensation limit under Sections 401(a)(17), 404(l), 408(k)(3)(C) and 408(k)(6)(D)(ii) is increased from \$260,000 to \$265,000.

The dollar limitation under Section 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan remains unchanged at \$170,000.

The dollar amount under Section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from \$1,050,000 to \$1,070,000, while the dollar amount used to determine the lengthening of the 5-year distribution period remains unchanged at \$210,000.

The limitation used in the definition of highly compensated employee under Section 414(q)(1)(B) is increased from \$115,000 to \$120,000.

The dollar limitation under Section 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over is increased from \$5,500 to \$6,000. The dollar limitation under Section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over is increased from \$2,500 to \$3,000.

The annual compensation limitation under Section 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost-of-living adjustments to the compensation limitation under the plan under Section 401(a)(17) to be taken into account, is increased from \$385,000 to \$395,000.

The compensation amount under Section 408(k)(2)(C) regarding simplified employee pensions (SEPs) is increased from \$550 to \$600.

The limitation under Section 408(p)(2)(E) regarding SIMPLE retirement accounts is increased from \$12,000 to \$12,500.

The limitation on deferrals under Section 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from \$17,500 to \$18,000.

The compensation amount under Section 1.61-21(f)(5)(i) of the Income Tax Regulations concerning the definition of "control employee" for fringe benefit valuation remains unchanged at \$105,000. The compensation amount under Section 1.61-21(f)(5)(iii) is increased from \$210,000 to \$215,000.

The Code also provides that several retirement-related amounts are to be adjusted using the cost-of-living adjustment under Section 1(f)(3). After taking the applicable rounding rules into account, the amounts for 2015 are as follows:

The adjusted gross income limitation under Section 25B(b)(1)(A) for determining the retirement savings contribution credit for married taxpayers filing a joint return is increased from \$36,000 to \$36,500; the limitation under Section 25B(b)(1)(B) is increased from \$39,000 to \$39,500; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$60,000 to \$61,000.

The adjusted gross income limitation under Section 25B(b)(1)(A) for determining the retirement savings contribution credit for taxpayers filing as head of household is increased from \$27,000 to \$27,375; the limitation under Section 25B(b)(1)(B) is increased from \$29,250 to \$29,625; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$45,000 to \$45,750.

The adjusted gross income limitation under Section 25B(b)(1)(A) for determining the retirement savings contribution credit for all other taxpayers is increased from \$18,000 to \$18,250; the limitation under Section 25B(b)(1)(B) is increased from \$19,500 to \$19,750; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$30,000 to \$30,500.

The deductible amount under Section 219(b)(5)(A) for an individual making qualified retirement contributions remains unchanged at \$5,500.

The applicable dollar amount under Section 219(g)(3)(B)(i) for determining the deductible amount of an IRA contribution for taxpayers who are active participants filing a joint return or as a qualifying widow(er) is increased from \$96,000 to \$98,000. The applicable dollar amount under Section 219(g)(3)(B)(ii) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$60,000 to \$61,000. The applicable dollar amount under Section 219(g)(3)(B)(iii) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains \$0. The applicable dollar amount under Section 219(g)(7)(A) for a taxpayer who is not an active participant but whose spouse is an active participant is increased from \$181,000 to \$183,000.

The adjusted gross income limitation under Section 408A(c)(3)(B)(ii)(I) for determining the maximum Roth IRA contribution for married taxpayers filing a joint return or for taxpayers filing as a qualifying widow(er) is increased from \$181,000 to \$183,000. The adjusted gross income limitation under Section 408A(c)(3)(B)(ii)(II) for all other taxpayers (other than married taxpayers filing separate returns) is increased from \$114,000 to \$116,000. The applicable dollar amount under Section 408A(c)(3)(B)(ii)(III) for a married individual filing a separate return is not subject to an annual cost-of-living adjustment and remains \$0.

The dollar amount under Section 430(c)(7)(D)(i)(II) used to determine excess employee compensation with respect to a single-employer defined benefit pension plan for which the special election under Section 430(c)(2)(D) has been made is increased from \$1,084,000 to \$1,101,000.

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STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

vs.

DEFENDANT,

Defendant.

**PLAINTIFF'S
FIRST SET OF
INTERROGATORIES**

Index No. NUMBER

TO THE DEFENDANT:

PLEASE TAKE NOTICE that pursuant to Sections 3130 and 3134 of the Civil Practice Law and Rules, the Plaintiff hereby requires that the Defendant serve upon the undersigned attorney for the Plaintiff, within twenty (20) days after the service of this Notice, verified answers to the following interrogatories.

The Defendant is invited to submit copies of documents in lieu of identifying same.

1. For period from January 1, 2014 to present, list the name and address of each financial institution in which you maintained any account in which cash or securities are or were held.
2. For period from January 1, 2014 to present, list the name and address of each financial institution in which FAMILY BUSINESS, Inc. and/or any entity in which you are or were a member, shareholder or partner maintained any account in which cash or securities are or were held.
3. Since January 1, 2014, have you completed any loan or lease application?
4. If the answer to Interrogatory 3 is anything other than an unqualified no, for each such application list the name and address or the person or entity receiving the application.
5. For the years 2014 and 2015 state the following with respect to each and every entity and/or person from who you received or should have received a W-2:

- a. The name of the entity or person;
 - b. The address of the entity or person.
6. For the years 2014 and 2015 state the following with respect to each and every entity and/or person from who you received or should have received a 1099:
 - a. The name of the entity or person;
 - b. The address of the entity or person.
7. To the best of your knowledge, who are the shareholders of FAMILY BUSINESS, Inc.?
8. For the period from January 1, 2014 to the present, have you received anything of value (e.g., money, goods and/or services) from FAMILY BUSINESS, Inc.?
9. If the answer to Interrogatory 8 is anything other than an unqualified no, for each value received list:
 - a. The date of receipt;
 - b. If you received any cash or its equivalent, the amount received.
 - c. If you received any services, a description of the services received.
 - d. If you received any goods, a description of the goods received.
10. List the name and address of each limited liability company in which you are a member.
11. List the name and address of each entity in which you have a partnership interest.
12. List the name and address of each limited liability company in which you are a member.
13. List the name and address of each corporation in which you are a shareholder.
14. List the name and address of any business not covered by previous interrogatories in which you have a legal or equitable interest.
15. In the period from January 1, 2014 to the present, did you receive income from any entity or person not previously described in your answers to these interrogatories?

16. If the answer to Interrogatory 15 is anything other than an unqualified no, for each such payment state:

- a. The name and address of the payor;
- b. The date of payment;
- c. The amount of payment.

17. Since January 1, 2015, have you applied for, been interviewed for and/or been offered any jobs?

18. If the answer to Interrogatory 17 is anything other than an unqualified no, for each such application, interview and/or job offer list:

- a. The name of the potential employer;
- b. The date(s) of all applications made to such employer and the title and salary of the job applied for;
- c. The date of each job interview and the outcome of each job interview;
- d. The details of any and all job offer(s) made, including but not limited to title, salary, wages, bonuses, incentives, deferred compensation and benefits associated with each job offer made.

19. Does anyone contribute to your support, income, and/or living expenses?

20. If the answer to Interrogatory 19 is anything other than an unqualified no, for each such individual state:

- a. The individual's name, address and telephone number;
- b. The individual's relationship to you;
- c. For each month since January 1, 2015, the total contribution made by said individual;
- d. The nature of each contribution made by such individual.

21. From January 1, 2013 to the present, have you owned any stocks?

22. If the answer to Interrogatory 21 is anything other than an unqualified no, for each stock list:
- a. The name of said stock;
 - b. The class of stock owned;
 - c. The number of shares owned;
 - d. Any broker involved;
 - e. The date, if any, on which you sold said stock, the number of shares sold and the sale price.
23. From January 1, 2013 to the present, have you owned any bonds?
24. If the answer to Interrogatory 23 is anything other than an unqualified no, for each type of bond state:
- a. The name of said bond;
 - b. The face amount of said bond;
 - c. The maturity date of said bond;
 - d. The acquisition date of said bond;
 - e. The number of bonds owned;
 - f. The present location of said bonds;
 - g. The date, if any, you cashed in said bonds, the number of bonds cashed in and the sum you received.
25. From DATE OF MARRIAGE to the present, have you had any interest in any real property?
26. If the answer to Interrogatory 25 is anything other than an unqualified no, for each such interest, state:
- a. The address of said property;
 - b. A detailed description of your fee interest;

- c. The date you acquired an interest in said property;
 - d. The date, if any, that you sold said property and the sum you received for said sale;
 - e. The assessed value of said property;
 - f. The present value of said property.
27. Excepting assets already identified in your answers to the above Interrogatories, from January 1, 2014 to the present, have you had any interest in any asset with a value of more than \$1,000?
28. If the answer to Interrogatory 27 is anything other than an unqualified no, for each such asset list:
- a. A detailed description of the asset;
 - b. If applicable, the present location of the asset;
 - c. The present value of said asset.
29. Since January 1, 2014, have you sold, transferred, given away or disposed of any property item or any interest in property valued in excess of \$1,000?
30. If the answer to Interrogatory 29 is anything other than an unqualified no, for each item and/or interest state:
- a. A detailed description of the item or interest, including but not limited to identifying information, what happened to it and when;
 - b. The name and address of any person to whom a transfer was made;
 - c. The amount received, if any, upon the transfer, or the amount of funds transferred;
 - d. The date of each transfer.
31. Since January 1, 2013, have you employed, engaged, retained or consulted any accountant, tax advisor, tax preparer, business advisor or other financial professional?

32. If the answer to Interrogatory 31 is anything other than an unqualified no, for each such professional state:

- a. The name and address of said professional;
- b. The date(s) services were performed;
- c. A detailed description of the work performed by said professional.

PLEASE TAKE NOTICE that a copy of such answers must be served upon the undersigned within twenty (20) days after the service of these interrogatories.

PLEASE TAKE FURTHER NOTICE that these interrogatories shall be deemed continuing and shall require supplementation as additional or different information becomes known to the Plaintiff.

Dated: August 15, 2016
at CITY, New York

By: _____
ATTORNEY NAME, ADDRESS & TELEPHONE

TO: OPPOSING ATTORNEY NAME & ADDRESS

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

vs.

DEFENDANT,

Defendant.

NOTICE OF MOTION

Index No. NUMBER

Name of Assigned Judge:

Hon. JUDGE

Oral argument is requested

PLEASE TAKE NOTICE, that upon the annexed Affirmation of ATTORNEY NAME, the annexed Affidavit of the Plaintiff, the annexed sworn 236B Net Worth Statement of the Plaintiff, and upon all papers and proceedings filed by the Plaintiff in the above-entitled action, a motion will be made on September 15, 2016 at 9:30 a.m., before the Honorable JUDGE, Justice of the Supreme Court, at the COURTHOUSE NAME, COURTHOUSE ADDRESS, requesting that the Court grant the Plaintiff an order:

- A. Pursuant to DRL § 240, granting the Plaintiff temporary physical residency of the subject children;
- B. Pursuant to DRL § 236(B)(5-a), directing the Defendant to pay the Plaintiff temporary maintenance of at least \$255 per week; and
- C. Pursuant to DRL § 240, directing the Defendant to pay the Plaintiff temporary child support pursuant to the Child Support Standards Act, in the amount of at least \$402 per week, plus \$133 per week as an add-on representing Defendant's proportionate share of child care expenses, plus 72% of uninsured health care expenses (plus additional sums and increased percentages in the event that the Court orders less than \$255 per week in temporary maintenance); and
- D. Pursuant to DRL § 240, directing the Defendant to continue to provide health insurance for the children and the Plaintiff; and
- E. Pursuant to CPLR 3124, CPLR § 3126 and DRL § 236(B):
 - (1) Directing the Defendant to immediately serve a sworn 236B Statement of Net Worth and required attachments, including but not limited to his most recent representative paystubs, any and all 2015 W-2 and 1099 forms and his retainer agreement; and

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

vs.

DEFENDANT,

Defendant.

NOTICE OF MOTION

Index No. NUMBER

Name of Assigned Judge:

Hon. JUDGE

Oral argument is requested

PLEASE TAKE NOTICE, that upon the annexed Affirmation of ATTORNEY NAME, the annexed Affidavit of the Plaintiff, the annexed sworn 236B Net Worth Statement of the Plaintiff, and upon all papers and proceedings filed by the Plaintiff in the above-entitled action, a motion will be made on September 15, 2016 at 9:30 a.m., before the Honorable JUDGE, Justice of the Supreme Court, at the COURTHOUSE NAME, COURTHOUSE ADDRESS, requesting that the Court grant the Plaintiff an order:

- A. Pursuant to DRL § 240, granting the Plaintiff temporary physical residency of the subject children;
- B. Pursuant to DRL § 236(B)(5-a), directing the Defendant to pay the Plaintiff temporary maintenance of at least \$255 per week; and
- C. Pursuant to DRL § 240, directing the Defendant to pay the Plaintiff temporary child support pursuant to the Child Support Standards Act, in the amount of at least \$402 per week, plus \$133 per week as an add-on representing Defendant's proportionate share of child care expenses, plus 72% of uninsured health care expenses (plus additional sums and increased percentages in the event that the Court orders less than \$255 per week in temporary maintenance); and
- D. Pursuant to DRL § 240, directing the Defendant to continue to provide health insurance for the children and the Plaintiff; and
- E. Pursuant to CPLR 3124, CPLR § 3126 and DRL § 236(B):
 - (1) Directing the Defendant to immediately serve a sworn 236B Statement of Net Worth and required attachments, including but not limited to his most recent representative paystubs, any and all 2015 W-2 and 1099 forms and his retainer agreement; and

- (2) Granting the Plaintiff an order providing that in the event that the Defendant fails to serve a sworn 236(B) Statement of Net Worth and all required attachments by the due date set by the Court, the Defendant's appearance shall be stricken or, in the alternative, thereafter the Defendant shall be absolutely precluded from offering evidence on any financial issue in this case;

and

- F. Granting the Plaintiff such other and further relief as the Court deems just and proper;

Dated: August 15, 2015
at CITY, New York

INDIVIDUAL ATTORNEY'S NAME, of Counsel
LEGAL SERVICES AGENCY NAME
ADDRESS
PHONE NUMBER

TO: OPPOSING ATTORNEY NAME

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

AFFIRMATION

vs.

DEFENDANT,

Index No. NUMBER

Defendant.

ATTORNEY'S NAME, an attorney duly admitted to practice before the Court of the State of New York, hereby affirms under penalty of perjury as follows:

1. I am an attorney associated with the Legal Aid Society of Rochester, NY, Inc., (hereinafter "LAS") attorneys for the Plaintiff in this action, PLAINTIFF, and I am fully familiar with the facts and circumstances pertaining to the proceedings had herein. I make this Affirmation in support of the Plaintiff's motion for an order:

- A. Pursuant to DRL § 240, granting the Plaintiff temporary physical residency of the subject children;
- B. Pursuant to DRL § 236(B)(5-a), directing the Defendant to pay the Plaintiff temporary maintenance of at least \$255 per week; and
- C. Pursuant to DRL § 240, directing the Defendant to pay the Plaintiff temporary child support pursuant to the Child Support Standards Act, in the amount of at least \$402 per week, plus \$133 per week as an add-on representing Defendant's proportionate share of child care expenses, plus 72% of uninsured health care expenses (plus additional sums and increased percentages in the event that the Court orders less than \$255 per week in temporary maintenance); and
- D. Pursuant to DRL § 240, directing the Defendant to continue to provide health insurance for the children and the Plaintiff; and
- F. Pursuant to CPLR 3124, CPLR § 3126 and DRL § 236(B):
 - (3) Directing the Defendant to immediately serve a sworn 236B Statement of Net Worth and required attachments, including but not limited to his most recent representative paystubs, any and all 2015 W-2 and 1099 forms and his retainer

agreement; and

- (4) Granting the Plaintiff an order providing that in the event that the Defendant fails to serve a sworn 236(B) Statement of Net Worth and all required attachments by the due date set by the Court, the Defendant's appearance shall be stricken or, in the alternative, thereafter the Defendant shall be absolutely precluded from offering evidence on any financial issue in this case;

and

- F. Granting the Plaintiff such other and further relief as the Court deems just and proper;

2. This action was commenced by the filing of a Summons with Notice on June 3, 2016, and the Defendant was served with that document as well as notice of the automatic orders on June 10, 2016. [Exhibit A: Summons with Notice and Affidavit of Service.]

3. On June 30, 2016, the Defendant appeared in this action by and through his attorney, DEFENDANT'S ATTORNEY'S NAME. [Exhibit B: Notice of Appearance]

4. On June 27, 2016, the Defendant's attorney was served by mail with the Plaintiff's verified Complaint and a Demand for Statement of Net Worth. [Exhibit C: Complaint; Exhibit D: Demand for Statement of Net Worth.] In the cover letter accompanying those documents, I raised our client's need for temporary maintenance and child support, and I asked DEFENDANT'S ATTORNEY to speak with his client and get back to me. In that same letter, I mentioned that our client reports that the Defendant has not seen the children in more than two (2) months, and I asked the attorney to speak to the Defendant about whether he would like to set up a temporary parenting time schedule with the children.

5. The Defendant's sworn Statement of Net Worth and required attachments were due on or before July 22, 2016 (25 days after the demand for it was mailed.) On August 1, 2016 and again on August 8, 2016, I left messages and sent follow up e-mails to the Defendant's attorney regarding the need for the Defendant's Statement of Net Worth and the Plaintiff's need for temporary maintenance

and child support. When there had been no response to these communications, on August 12, 2016, I sent Mr. DEFENDANT'S ATTORNEY a letter regarding our need for the document, by fax and by regular mail.

6. I have heard nothing from Mr. DEFENDANT'S ATTORNEY since his notice of appearance.

7. Upon information and belief, and as set forth in the Plaintiff's Affidavit, the Defendant has a history of earning between \$75,000 and \$130,000.

8. Upon information and belief, the Plaintiff has provided a copy of the parties' joint 2015 income tax returns [attachment to Plaintiff's Statement of Net Worth, attached as Exhibit E], which reflect the Defendant's taxable wages of \$74,041. However, based on Defendant's history of contributing to deferred compensation plans, his total 2015 income, for purposes of calculating child support and maintenance, is presumably thousands of dollars more than that.

9. Upon information and belief, the Plaintiff does not have access to a copy of the Defendant's 2015 W-2. She has provided me with a copy of the joint 2014 tax returns, which includes his 2014 W-2. [Exhibit F] Based on those documents, it appears that in 2014 the Defendant made \$17,500 in voluntary deferrals to a 401(k) retirement plan, the maximum contribution for that year [Exhibit G: IR-2013-86]. Assuming that in 2015 the Defendant again made the maximum contribution (\$18,000) [Exhibit H: IR-2014-99], his 2015 "Social Security Wages" and "Medicare Wages" totaled \$92,041, and his 2015 adjusted gross income after FICA taxes was approximately \$85,000.

10. Upon information and belief, as set forth in the Plaintiff's Affidavit, the Plaintiff's 2015 income after FICA taxes totaled \$15,000.

11. Based upon Domestic Relations Law § 236(B)(5-a) and the parties' 2015 incomes, the presumptive amount of the Defendant's temporary maintenance obligation to the Plaintiff is \$255 per week.

Defendant's 2015 Adjusted Gross Income: $\$85,000 \times 20\% =$	\$17,000
(Plaintiff's 2015 Adjusted Gross Income: $\$15,000 \times 25\% =$	<u>(\$3,750)</u>
	\$13,250
Combined Parental AGI of $\$100,000 \times 40\% =$	\$40,000
(Plaintiff's 2015 AGI)	<u>(\$15,000)</u>
	\$25,000

$\$13,250 < \$25,000$ therefore the presumptive amount of temporary maintenance is \$13,250.
 $\$13,250/52 = \255 .

12. Assuming that the Court orders the Defendant to pay temporary maintenance of \$255 per week, the Defendant's presumptive child support obligation is \$402 per week, plus 72% of the reasonable cost of health insurance, health care expenses not covered by insurance and reasonable daycare expenses.

Husband's AGI of $\$85,000 - \$13,250$ temporary maintenance =	\$71,750
+Wife's AGI of $\$15,000 + \$13,250$ temporary maintenances =	<u>\$28,250</u>
Combined parental AGI:	\$100,000
Husband's pro rata share:	$\$71,750/\$100,000 = 72\%$

Combined parental AGI:	\$100,000
x child support percentage for 3 children	<u>29%</u>
\$29,000 plus reasonable cost of health insurance, uninsured health care expenses, and daycare expenses.	

Husband's pro rata share: $\$29,000 \times 72\% = \$20,880/52 = \$402$ per week, plus 72% of the reasonable cost of health insurance, uninsured health care expenses, and daycare expenses

13. Additionally, the Plaintiff is entitled to contribution for daycare expenses. Applying the above figures to the daycare expenses, his proportionate share works out to be \$133 per week.

$\$150/\text{week} \times 40$ weeks of school =	\$6,000
$\$300/\text{week} \times 12$ weeks of recess =	<u>\$3,600</u>
Total annual child care expense:	\$9,600
X Defendant's proportionate share:	<u>x 72%</u>
	$\$6,912/52 = \133

14. In the event that the Court orders less than the presumptive amount of temporary maintenance, the above child support calculations should be revised and the Defendant's child support obligation should increase accordingly.

15. Because the Defendant has not yet served a sworn Statement of Net Worth and the

required attachments, the temporary award of maintenance and child support should be without prejudice to the Plaintiff's ability to seek additional maintenance and child support once such disclosure has been made.

16. The Defendant's attorney and I have discussed the issue of temporary child support and maintenance and the fact that I would be bringing an order to show cause.

17. There was a prior action in Family Court, pursuant to Article 8 of the Family Court Act, wherein the Plaintiff was awarded a final Order of Protection on consent which provides, inter alia, that primary physical residency of the children is with the Plaintiff and that the Defendant shall have parenting time at such times as can be mutually agreed upon between the parties. The Order of Protection permits the parties to communicate with respect to visitation and the well-being of the children, and it remains in effect until June 10, 2017. [Exhibit J: Family Court Order of Protection entered June 10, 2016.]

18. To the best of my knowledge, other than the aforementioned Family Court Order of Protection, there has been no prior application for the relief herein requested.

Dated: August 15, 2016
at CITY, New York

INDIVIDUAL ATTORNEY'S NAME, of Counsel
LEGAL SERVICES AGENCY NAME
ADDRESS
PHONE NUMBER

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

AFFIDAVIT

vs.

Index No. NUMBER

DEFENDANT,

Defendant.

STATE OF NEW YORK }
COUNTY OF WHEREVER } ss:

PLAINTIFF, being duly sworn, deposes and says:

1. I am the Plaintiff in the above-entitled action, and I make this affidavit in support of my motion for an order:

- A. Pursuant to DRL § 240, granting me temporary physical residency of the subject children;
- B. Pursuant to DRL § 236(B)(5-a), directing the Defendant to pay me temporary maintenance of at least \$255 per week; and
- C. Pursuant to DRL § 240, directing the Defendant to pay me temporary child support pursuant to the Child Support Standards Act, in the amount of at least \$402 per week, plus \$133 per week as an add-on representing Defendant's proportionate share of child care expenses, plus 72% of uninsured health care expenses (plus additional sums and increased percentages in the event that the Court orders less than \$255 per week in temporary maintenance); and
- D. Pursuant to DRL § 240, directing the Defendant to continue to provide health insurance for the children and me; and
- G. Pursuant to CPLR 3124, CPLR § 3126 and DRL § 236(B):
 - (5) Directing the Defendant to immediately serve a sworn 236B Statement of Net Worth and required attachments, including but not limited to his most recent representative paystubs, any and all 2015 W-2 and 1099 forms and his retainer agreement; and
 - (6) Granting me an order providing that in the event that the Defendant fails to serve a sworn 236(B) Statement of Net Worth and all required attachments by the due date set by the Court, the Defendant's appearance shall be stricken or,

in the alternative, thereafter the Defendant shall be absolutely precluded from offering evidence on any financial issue in this case;

and

F. Granting me such other and further relief as the Court deems just and proper;

2. The Defendant and I were married on February 14, 2004. We have three children, namely:

DAUGHTER, born March 1, 2008 (age 8);

ELDER SON, born April 1, 2009 (age 7); and

YOUNGER SON, born May 1, 2012 (age 4).

3. The Defendant was physically, verbally, emotionally and financially abusive to me throughout our marriage, sometimes in the presence of the children. On February 1, 2016, I filed a petition seeking an Order of Protection in Family Court. The Defendant and I subsequently stipulated to a final Order of Protection, valid until February 15, 2017, which prohibits contact between us with a specific exception for visitation exchanges and communication regarding visitation and the well-being of our children. [Exhibit J: Family Court Order of Protection]

4. Since February 1, 2016, the Defendant has not attempted to see the children. When I texted him on February 27, 2016, stating that DAUGHTER really wanted to see him for her birthday, he texted back a statement to the effect that so long as I have an order of protection against him he will not be seeing them.

5. The children have lived with me since birth, and continue to do so. I have always been their primary caregiver. I have always been the nurturing parent and the one who primarily sees to their physical, emotional, psychological and educational needs. I provide an appropriate home for the children, and I am the one who sees that they get to school and get proper medical care.

6. From the birth of our daughter until September 2014, I was a stay-at-home wife and mother and was not employed outside the home.

7. In September 2014 I began working for DAYCARE CENTER, earning \$9 per hour. I continue to work there, and I currently work between 32 and 40 hours per week and earn \$11 per hour. In 2015, my earnings after FICA taxes totaled \$15,000. [Exhibit E: Statement of Net Worth, including attached 2015 income tax returns, W-2 and four most recent paystubs.]

8. The children and I have health insurance through plan with INSURANCE CARRIER. Upon information and belief, this plan is provided through the Defendant's employer.

9. Because of my employment at DAYCARE CENTER, I get a reduced rate for child care for my children at the center. When school is in session, I pay a total of \$150 per week for such child care. During school recess periods, I pay a total of \$300 per week for such child care.

10. Since commencement of the divorce, the Defendant has paid me nothing for my support and the support of the children.

11. The Defendant has a human resources degree from COLLEGE, and he has been working in that field since 2005. In 2013, he earned \$130,000 working for BUSINESS, as reflected on the W-2 attached to our 2013 joint income tax return. [Exhibit J] Upon information and belief, he was fired from that job in November 2013.

12. The Defendant began work for ANOTHER COMPANY in December 2013.

13. When the children and I left the home, I took the complete copy of our joint 2014 income tax returns. [Exhibit F] According to the Defendant's 2014 W-2, in 2014 the Defendant put \$17,500 into a deferred compensation plan.

14. I obtained copies of our joint 2015 tax returns from TAX PREPARER. [Exhibit E] However, TAX PREPARER told me that he could only give me copies of my own W-2 and that he could not give me a copy of the Defendant's W-2.

15. As indicated in the attached Statement of Net Worth, my current monthly expenses for myself and the children total \$4,675 per month. I am currently unable to meet these expenses – I am behind on my rent, I have already maxed out my only credit card, and I have applied for SNAP benefits (Food Stamps) for myself and the children.

16. I request Child Support Enforcement Services.

17. I request that contribution toward daycare expenses be collected as an add-on through COUNTY Child Support Enforcement Unit at the rate of \$133 per week

18. Other than the relief requested in the family offense case discussed above, I have made no prior application for the relief herein requested.

WHEREFORE, I respectfully request the relief outlined above.

PLAINTIFF

Sworn to before me this 15th
day of August 2016.

Notary Public

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

vs.

**DEMAND FOR DISCOVERY
AND INSPECTION**

DEFENDANT,

Index No. NUMBER

Defendant.

TO THE DEFENDANT:

PLEASE TAKE NOTICE, that pursuant to CPLR 3120 you are hereby required to produce and permit discovery and copying by the Plaintiff and her attorneys, ATTORNEY NAME, on September 15, 2016 at 2:00 pm on that date, of all of the items referred to on the attached schedule "A" in connection with the above-entitled action.

Dated: August 15, 2016
at CITY, New York

By: _____
ATTORNEY NAME, ADDRESS & TELEPHONE

TO: OPPOSING ATTORNEY NAME & ADDRESS

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

DEMAND FOR STATEMENTS

vs.

Index No. NUMBER

DEFENDANT,

Defendant.

TO THE DEFENDANT:

PLEASE TAKE NOTICE, that the undersigned demands that you furnish within twenty (20) days of the receipt of this Demand, pursuant to CPLR 3101 (e), any and all statements of the Plaintiff, whether signed or otherwise, including but not limited to written statements and electronically recorded statements, in the Defendant's possession or control, or in the possession or control of the Defendant's representatives, and if there be no such statements, that you advise the undersigned in writing within twenty (20) days of the date hereof.

PLEASE TAKE FURTHER NOTICE, that upon your failure to comply with the terms of this Demand, the undersigned will object to the use of such statements for any purpose at the trial for this action.

Dated: August 15, 2016
at CITY, New York

By: _____
ATTORNEY NAME, ADDRESS & TELEPHONE

TO: OPPOSING ATTORNEY NAME & ADDRESS

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

**DEMAND TO PRODUCE
PHOTOGRAPHS, ETC.**

vs.

Index No. NUMBER

DEFENDANT,

Defendant.

TO THE DEFENDANT:

PLEASE TAKE NOTICE that pursuant to CPLR 3101 the Plaintiff demands that within twenty (20) days of the service of this Demand upon you, that you serve upon the undersigned any and all photographs relating to the occurrences, acts, omissions, or commissions alleged by the Defendant against the Plaintiff, including but not limited to photographic and/or digital prints, slides, film, and videotape, and if there be no such photographs, that you advise the undersigned in writing within twenty (20) days of the date hereof.

PLEASE TAKE FURTHER NOTICE that failure to comply with the foregoing Demand will act as the basis for a Motion to Preclude the production of such photographs and other materials at any subsequent time to the date of this Demand for any purpose.

PLEASE TAKE FURTHER NOTICE, that upon your failure to comply with the terms of this Demand, the Plaintiff will object to the use of such photographs for any purpose at the trial for this action.

Dated: August 15, 2016
at CITY, New York

By: _____
ATTORNEY NAME, ADDRESS & TELEPHONE

TO: OPPOSING ATTORNEY NAME & ADDRESS

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

vs.

**DEMAND FOR EXPERT
WITNESS INFORMATION**

DEFENDANT,

Defendant.

Index No. NUMBER

TO THE DEFENDANT:

PLEASE TAKE NOTICE, that pursuant to CPLR § 3101, the Plaintiff demands that you furnish in writing, the following:

- A. The identity of each and every person whom you expect to call as an expert witness at trial;
- B. A disclosure in reasonable detail of the subject matter in which each expert is expected to testify;
- C. The substance of the facts and opinions on which each expert is expected to testify;
- D. The qualifications of each expert witness;
- E. A summary of the grounds for each expert's opinion; and
- F. Identify all documents your expert reviewed in order to testify.

PLEASE TAKE FURTHER NOTICE, that should disclosure not be made in accordance with the aforesaid Demand, the Plaintiff will be entitled to all sanctions provided by law, and the Plaintiff will further object to the admission of any material at the time of trial which has not been disclosed pursuant to this Demand in a timely fashion.

Dated: August 15, 2016
at CITY, New York

By: _____
ATTORNEY NAME, ADDRESS & TELEPHONE

TO: OPPOSING ATTORNEY NAME & ADDRESS

STATE OF NEW YORK
SUPREME COURT COUNTY OF WHEREVER

PLAINTIFF,

Plaintiff,

vs.

DEFENDANT,

Defendant.

Index No. NUMBER

**NOTICE TO TAKE
DEPOSITION UPON
ORAL EXAMINATION**

TO THE DEFENDANT:

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules the testimony, upon oral examination, of **DEFENDANT**, as an adverse party, will be taken before a Notary Public who is not an attorney or employee of an attorney for any party or prospective party or employee of an attorney for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at the law offices of the Plaintiff's attorney, ATTORNEY NAME & ADDRESS, on September 15, 2016 at 2:00 in the afternoon of that day, and at all necessary additional days, with respect to evidence material and necessary in the prosecution of this action.

Said person to be examined is required to produce at such examination the following:

*** * SEE SCHEDULE "A" ATTACHED HERETO * ***

Dated: August 15, 2016
at CITY, New York

By: _____
ATTORNEY NAME, ADDRESS & TELEPHONE

TO: OPPOSING ATTORNEY NAME & ADDRESS