

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

-----X  
MARY JONES,

Plaintiff,

Index No. 12345/03

-against-

**AFFIDAVIT IN SUPPORT OF  
MOTION TO PRECLUDE**

JOHN JONES,

Defendant.

-----X  
STATE OF NEW YORK )

)ss.:  
COUNTY OF NASSAU )

Willard H. DaSilva, being duly sworn, deposes and says:

1. I am a member of DaSilva, Hilowitz & McEvily LLP, attorneys for the plaintiff in the above-entitled action, am personally and fully familiar with all of the facts and circumstances hereof and make this affidavit in support of the plaintiff's motion to preclude the defendant, unconditionally, from presenting any evidence whatsoever in support of his claims or in opposition to the plaintiff's claims and directing that all issues, financial or otherwise, be deemed resolved for the purposes of this action in accordance with the claims of the plaintiff because of the defendant's willful and inexcusable refusal to appear for her oral deposition in this action and for an award of counsel fees to the plaintiff for the costs of this motion.

2. This is an action for a divorce and related relief which was commenced on October 21, 20\_\_, by the filing of a summons in the office of the Nassau County Clerk. A copy of the summons was served upon the defendant personally on November 29, 20\_\_.

3. On January 17, 20\_\_, a notice to take the deposition upon oral examination of the defendant on February 14, 20\_\_, was served upon the defendant's attorney, George G. Adversary, Esq. (see Exhibit "A"). On January 23, 20\_\_, the defendant served a notice to take the deposition of the plaintiff on February 17, 2003 (see Exhibit "B").

**THE DEFENDANT'S REFUSAL TO BE DEPOSED**

*[State facts specifying the manner in which the defendant refused to appear]*

**SERVICES RENDERED AND TO BE RENDERED**

*[Adapt the following to the facts of the case.]*

26. There have already been more than 3 hours devoted to the preparation of this application by reason of reviewing the file, preparing this motion, making various telephone calls, correspondence and other related services, as is shown more fully on Exhibit "C" annexed.

27. In addition, I expect that at least 2 additional hours will be required in connection with this application. This motion must be submitted to the court and served upon the defendant's attorney. The defendant will no doubt prepare an opposing affidavit, to which I shall be required to prepare and submit a reply.

28. In the event that this Court orders a hearing on the issues of this motion, many additional hours of time will be required for preparation and for the hearing itself, which additional time is not included in the 2 hour estimate of additional services noted above. I have made my estimates extremely conservative and easily could be required to expend more time on this application than projected, depending upon the opposition of the defendant or the lack of it. I, therefore, reserve the right to request fees in excess of those suggested herein.

29. My time is presently billed at the rate of \$\_\_\_\_\_ per hour on this case. The plaintiff has not paid or agreed to pay anything for the prosecution of this motion. A copy of my firm's "card" as set forth in the *Martindale-Hubbell Law Directory* is annexed as Exhibit "\_\_\_."\* I, therefore, respectfully request an award of counsel fees in the present amount of \$\_\_\_\_\_ in connection with this motion, assuming that there is no hearing and that the matter may be determined on the basis of the affidavits and that leave be granted for a further award, if warranted upon the conclusion of this application. A copy of my retainer agreement with the client and copies of all invoices rendered to date are collectively annexed as Exhibit "\_\_\_."

### CONCLUSION

30. By reason of all of the foregoing, I respectfully request that the plaintiff be granted all of the relief more particularly set forth in the annexed notice of motion.

Sworn to before me on the \_\_\_\_\_

Willard H. DaSilva

26th day of September, 20\_\_\_\_.

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