Bits and Bytes™

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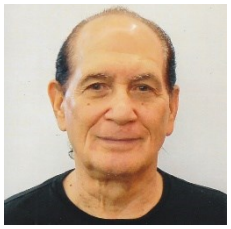

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The Law Firm of Joel R. Brandes, P.C concentrates its law practice on appeals in divorce, equitable distribution, custody, and family law cases as well as post-judgment enforcement and modification proceedings. Mr. Brandes also serves as counsel to attorneys with all levels of experience assisting them with their difficult appeals and litigated matters. Mr. Brandes has been recognized by the New York Appellate Division as a "noted authority and expert on New York family law and divorce."

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New Court Rule 22 NYCRR 202.16-c

Administrative Order AO/152/2024, amended Part 202 of the Uniform Rules for the New York State Trial Courts, by adding a new Section 202.16-c, to the Uniform Civil Rules for the Supreme and County Court effective April 23, 2024.

Attorneys must now remove themselves from NYSCEF in matrimonial cases once they no longer have an interest in the case or make an application to the Court for permission to remain. The Rule, which is effective April 23, 2024, reads as follows:

§ 202.16-c. Rules Governing the Electronic Filing of Matrimonial Actions in Supreme Court.

(a) Application

(1) Pursuant to 22 NYCRR § 202.5-b, documents may be filed and served by electronic means in matrimonial actions in the Supreme Court of authorized counties subject to the

conditions set forth below. Except as otherwise required by this rule, the provisions of 22 NYCRR § 202.5-b shall apply.

(2) For purposes of this rule:
(i) "Matrimonial actions" shall mean those actions set forth in CPLR § 105(p) and DRL § 236, as well as plenary actions for child support, custody or visitation, an order of protection pursuant to the Domestic Relations Law or an application pursuant to the Child Parent Security Act, wherein:
(A) the action is contested, and addresses issues including, but not limited to, alimony, counsel fees, pendente lite, maintenance, custody and visitation, child support, the equitable distribution of property, or domestic violence, abuse, paternity, or parental rights; or
(B) the action is uncontested; or
(C) the action is a post-judgment application that was initiated electronically that addresses an underlying matrimonial action previously filed in hard copy or electronically.
(ii) A "party" or "parties" shall mean the party or parties to the action or counsel thereto (as set forth in 22 NYCRR § 202.5-b(a)(2)(viii)) and the attorney(s) for the minor child(ren).

(3) No paper or document filed by electronic means in a matrimonial action shall be available for public inspection on-line or at any computer terminal in the courthouse or the office of the County Clerk; provided that nothing herein shall restrict access by a party whether or not such party is self-represented or access by a party's attorney, to a paper or document in the matrimonial action in which the party is involved on-line or at any such computer terminal.

(4) Nothing in this section shall be construed to abrogate existing personal service requirements as set forth in the domestic relations law, family court act or civil practice law and rules.

(5) Unless otherwise directed by the court, evaluations or investigations of the parties or a child by a forensic mental health professional (including underlying notes), and reports by a probation service or a child protective service in proceedings involving custody, visitation, neglect or abuse, and other matters concerning children, shall not be filed electronically.

(6) Unless the Court authorizes service to be effectuated via NYSCEF, service of the initiating documents in post-judgment applications subject to consensual e-filing must be effectuated in hard copy and accompanied by a notice of electronic filing. Proof of hard copy service shall be filed by electronic means.

(7) In a matrimonial action, attorneys appointed by the court as attorneys for minor children of the parties may register as an authorized e-filing user of the NYSCEF site and consent to e-file.

(8) In a matrimonial action, attorneys for the parties or for minor children of the parties must remove their representation of such parties or such minor children from the NYSCEF record by following the instructions on the NYSCEF website for such removal in an e-filed action, within sixty (60) days after the earlier of:

(i) a judgment of divorce, separation, annulment or action to declare a marriage void or voidable has been signed and entered in the office of the County Clerk, with notice of entry also signed and served; and where any post-judgment or plenary proceedings before the Court in which the attorney represented the party have concluded by stipulation, final order or withdrawal of the post-judgment or plenary proceeding, and there are no other such proceedings pending; and where any Qualified Domestic Relations Orders or Domestic Relations Orders have been signed and served with notice of entry, and no notice of appeal has been filed in which attorneys for the parties or the minor children have been retained as counsel. If counsel is retained on an appellate issue, they may remain on NYSCEF for the duration of the appellate proceeding or as may be otherwise ordered by the Court; or
(ii) they cease to be the attorney of record in the action or cease to be associated with the law firm that is the attorney of record in the action; or
(iii) they have filed a properly executed consent to change attorney pursuant to CPLR 321(b)(1); or
(iv) an order of the Court authorizing the withdrawal or change of attorney has been filed and entered pursuant to CPLR 321(b)(2); or
(v) they have filed a notice of completion of limited scope representation in the action pursuant to CPLR 321(d).

(9) Counsel shall promptly comply with any requirements in CPLR 321 for counsel to provide notices to parties or self-represented litigants or attorneys or anyone else directed by the Court as to a change in or authorized withdrawal of representation or as to completion of limited scope representation in the action. Counsel shall also promptly provide notice of any consent to change attorney or notice of completion of limited scope representation to the Court, unless otherwise directed by the Court.

(10) In a matrimonial action, attorneys for non-parties to the action must remove their consent from NYSCEF and the right to receive notices in an e-filed action by following the instructions for such removal on the NYSCEF website within ten (10) days after the matters before the Court related to the non-party application or any cross application have concluded, except in the event of a pending appeal on the issue.

(11) Notwithstanding anything contained in this rule or in Part 202 containing the Uniform Rules for Supreme and County Courts, counsel may apply to the court before whom proceedings are filed, on notice to all parties and counsel, for an order pursuant to DRL 235(1) granting permission:
(i) not to remove their representation of the parties or the minor children from the NYSCEF record if they have a pending application or order of the court for the recovery of legal fees and expenses, including but not limited to a charging lien, fee award, security interest, judgement, or other judicially recognized acknowledgement of such fees and expenses owed to counsel; or
(ii) to apply or reapply for access to seek enforcement; or
(iii) until further order of the court.

(12) Any issue regarding non-compliance with the provisions of this rule shall be addressed to the assigned Judge handling the matter on notice to all parties and counsel.

April 23, 2024
AO/152/24

Click on this link to go to the page to remove consent/representation in NYSCEF).

Appellate Divison, First Department

An attorney can be granted summary judgment on an account stated claim based on the defendant's receipt and retention of a plaintiff law firm's invoices seeking payment for professional services rendered, without objection within a reasonable time, even where there is a retainer agreement

In Aronson Mayefsky & Sloan, LLP,, v. Praeger, --- N.Y.S.3d ----, 2024 WL 2138638, 2024 N.Y. Slip Op. 02657 (1st Dept.,2024) the Appellate Division made it clear that the rule in the First Department is that an account stated claim is an independent cause of action that is not duplicative of a claim for breach of contract. Plaintiffs Aronson Mayefsky & Sloan, LLP (AMS) and Mosberg Sharma Stambleck & Gross, LLP (MSSG) represented defendant in his divorce action pursuant to a retainer agreement between defendant and AMS dated January 16, 2019, and a retainer agreement between defendant and MSSG dated January 20, 2022. AMS and MSSG rendered bills to defendant on a monthly basis, but defendant's payments stopped after September 30, 2022. AMS and MSSG continued to represent defendant from October 2022 through the end of January 2023. Defendant did not express dissatisfaction with the quality of the work performed and he did not express an inability to pay. From time to time, AMS and defendant would agree upon accommodations reducing some of the amounts owed. Ultimately, due to defendant's continued failure to pay, AMS and MSSG moved to withdraw as counsel, and that motion was granted. Plaintiffs commenced an action seeking to recover legal fees and disbursements they incurred while representing defendant in his divorce. They asserted claims for account stated and breach of the retainer agreement.The court found that plaintiffs were entitled to summary judgment on their account stated claims and dismissal of defendant's counterclaim. In its decision affirming the order the Appellate Division explained why an account stated claim is not duplicative of a . A defendant's receipt and retention of the plaintiff law firm's invoices seeking payment for professional services rendered, without objection within a reasonable time, gives rise to an actionable account stated, thereby entitling the plaintiff to summary judgment in its favor. When a law firm is asserting an account stated claim, it "does not have to establish the reasonableness of its fee" because the client's act of retaining the invoice without objection will be considered acquiescence as to its correctness. This case fell squarely within its well-established precedent that an attorney can be granted summary judgment on an account stated claim based on the defendant's receipt and retention of a plaintiff law firm's invoices seeking payment for professional services rendered, without objection within a reasonable time, even where there is a retainer agreement. As a result, the court properly granted summary judgment to plaintiffs on their account stated claims.

Where the Plaintiff was the less monied spouse, an award of interim attorneys' fees would permit her to continue the litigation. There is no requirement that she spend down a substantial portion of her assets to qualify for an award of attorneys' fees.

In Wolinsky v Berkowitz, --- N.Y.S.3d ----, 2024 WL 1915168 (Mem), 2024 N.Y. Slip Op. 02389 (1st Dept.,2024) the Appellate Division affirmed that part of an order that granted the plaintiff wife's cross-motion for pendente lite relief to the extent of awarding her $10,000 per month in temporary child support, $150,000 in interim attorneys' fees, and $10,000 in interim expert fees. It held that in general, an aggrieved party's remedy for any perceived inequities in a pendente lite award is a speedy trial. Contrary to the defendant's contention, the pendente lite order did not result in an impermissible double shelter allowance insofar as the order neither denied his request for the plaintiff to contribute to the carrying charges nor ordered him to pay 100% of the charges for the months during which the parties resided in the apartment post-commencement in addition to pendente lite child support. That the parties lived together between October 2022 and March 2023 did not bar an award of child support where there was evidence that the award is necessary to maintain the reasonable needs of the children during litigation. The court providently exercised its discretion in awarding interim attorneys' fees to plaintiff, considering the circumstances of the case and the parties' respective financial positions. Plaintiff was the less-monied spouse, and the award of interim attorneys' fees would permit her to continue the litigation. There is no requirement that she spend down a substantial portion of her assets to qualify for an award of attorneys' fees. It vacated so much of the order as permitted plaintiff to incur up to $2,000 of expenses on defendant's credit card per month, retroactive to the date of filing of the cross-motion, for the household goods and ancillary expenses for the children, and award defendant credit for charges made. The household goods and ancillary expenses were already included in the temporary child support award, which was also retroactive to the date of filing, and an award for additional expenses is therefore not necessary.

Plaintiff wife's motion for temporary exclusive use and occupancy of the marital residence under DRL § 234 was properly granted where there was an unquestioned history of protective orders issued for the wife's and children's benefit.

In Morris-Perry v Morris-Perry --- N.Y.S.3d ----, 2024 WL 1915189 (Mem), 2024 N.Y. Slip Op. 02372 (1st Dept., 2024) the Appellate Division affirmed an order which granted plaintiff wife's motion for temporary exclusive use and occupancy of the marital residence pursuant to Domestic Relations Law § 234. Under the circumstances presented, it perceived no reason to disturb Supreme Court's discretionary award. There was an unquestioned history of protective orders issued for the wife's and children's benefit as against defendant husband, most recently emanating from the criminal court following the husband's arrest at the home. Personal safety is implicated if supported by orders of protection or evidence of police involvement. Moreover, the resulting level of domestic strife further underpins the court's order to ensure the personal safety of the parties.

Appellate Division, Second Department

A court's power to dismiss a complaint, sua sponte, is to be used sparingly, and only when extraordinary circumstances exist to warrant dismissal.

In Ivashchenko v. Ruben Borukhov, --- N.Y.S.3d ----, 2024 WL 2035454, 2024 N.Y. Slip Op. 02526 (2d Dept.,2024) the plaintiff commenced an action against the defendant, seeking a divorce. The defendant moved to dismiss the first cause of action. The plaintiff moved for certain pendente lite relief. The Supreme Court, sua sponte, directed dismissal of the complaint, denied, in effect, as academic, the plaintiff's motion for certain pendente lite relief, and denied, as academic, the defendant's motion to dismiss the first cause of action. The Appellate Division reversed. It held that a court's power to dismiss a complaint, sua sponte, is to be used sparingly, and only when extraordinary circumstances exist to warrant dismissal. The Supreme Court did not identify any extraordinary circumstances warranting sua sponte dismissal of the complaint (see Matter of Weindling v. Berkowitz, 157 A.D.3d at 804, 69 N.Y.S.3d 340). The plaintiff moved, inter alia, to consolidate custody and family offense proceedings that were pending in the Family Court, Queens County, and the Family Court, Kings County, with this action. There was no motion to dismiss the complaint in its entirety or to change venue before the court. It reversed the order and remitted the matter to the Supreme Court, Kings County, for a determination on the merits of the plaintiff's motion for certain pendente lite relief and the defendant's motion to dismiss the first cause of action.

Under the circumstances of this custody case, the denial of the father's request for an adjournment effectively deprived the father of his fundamental right to counsel (see Family Ct Act § 262[a][iii]), which also constituted a denial of due process and required reversal, without regard to the merits of the father's position

In Mater of Olivos v Olivos, --- N.Y.S.3d ----, 2024 WL 1749693, 2024 N.Y. Slip Op. 02199 (2d Dept.,2024) a custody proceeding the Appellate Division held that Family Court should not have dismissed the father's petition without conducting a hearing to determine whether the court had jurisdiction pursuant to Domestic Relations Law § 76 and affording the father an opportunity to present evidence as to that issue. The mother had removed the children to Peru after the commencement of the proceeding despite an order directing her not to do so. It was undisputed that the children lived in the United States for approximately two years prior to the commencement of this child custody proceeding, and both parties provided their New York State residence addresses to the court. There was a dispute as to whether a Peruvian court already made an initial custody determination. Thus, the Family Court should have held a hearing to determine whether New York State was the children's home state on the date of the commencement of this proceeding and whether an initial custody determination has already been made (see Domestic Relations Law § 76–b). Moreover, under the particular circumstances of this case, the Family Court improvidently exercised its discretion by, in effect, denying the father's request for an adjournment. The denial of the father's request effectively deprived the father of his fundamental right to counsel (see Family Ct Act § 262[a][iii]), which also constituted a denial of due process and required

reversal, without regard to the merits of the father's position. It reversed and remitted for a determination of those issues.

The focus of the inquiry with respect to derivative neglect is whether the evidence of abuse or neglect of another child or children demonstrates such an impaired level of parental judgment to create a substantial risk of harm for the other child or children in the parent's care

In Matter of James L. --- N.Y.S.3d ----, 2024 WL 1749662, 2024 N.Y. Slip Op. 02196 (2d Dept.,2024) evidence was presented at a fact-finding hearing that while the children (14–year–old Kevin and Kevin's then 5–year–old brother, James) were present in the father's apartment, Kevin observed the father punching another person in the face, purportedly over rent money. DSS also presented evidence that Kevin wore inadequate clothing for the cold weather and had gone several days in January 2020 without heat or hot water in his home. The Appellate Division affirmed a finding of Neglect with regard to the son Kevin but reversed the finding of derivative neglect with regard to son James. A finding of neglect is proper where a preponderance of the evidence establishes that the child's physical, mental, or emotional condition was impaired or was in danger of becoming impaired by the parent's commission of an act, or acts, of domestic violence in the child's presence". However, "not every child exposed to domestic violence is at risk of impairment", and "exposing a child to domestic violence is not presumptively neglectful" (Nicholson v. Scoppetta, 3 N.Y.3d at 375). Here, the preponderance of the evidence did not establish that the father neglected James by engaging in acts of domestic violence. DSS failed to establish at the fact-finding hearing that the altercation that occurred in the father's apartment constituted domestic violence (cf. Family Ct Act § 812[1]). DSS did not present evidence that James had observed the incident or that it caused impairment, or an imminent danger of impairment, to his physical, mental, or emotional well-being. While proof of the abuse or neglect of one child is admissible evidence on the issue of the abuse or neglect of any other child of the parent, a finding of abuse or neglect as to one child does not mandate a finding of derivative abuse or neglect as to the other children" (Matter of Katherine L. [Adrian L.], 209 A.D.3d 737, 739, 175 N.Y.S.3d 570, citing Family Ct Act § 1046[a][i]). The focus of the inquiry with respect to derivative findings is whether the evidence of abuse or neglect of another child or children demonstrates such an impaired level of parental judgment so as to create a substantial risk of harm for the other child or children in the parent's care. DSS failed to demonstrate that the father had such an impaired level of parental judgment so as to create a substantial risk of harm to James. Notably, there was an approximately nine-year age difference between the children, and they had different living situations and different relationships with the father. Thus, under all of the circumstances of this case, a preponderance of the evidence did not support a finding that the father derivatively neglected James.

Motion to relieve AFC properly denied where plaintiff failed to submit evidence that AFC was not zealously advocating for the two children she was representing or that she could not advocate for each child's position without prejudicing the rights of the other child

In Hoberman v Hoberman, --- N.Y.S.3d ----, 2024 WL 1749575, 2024 N.Y. Slip Op. 02178 (2d Dept.,2024) the parties were divorced in 2019. They had three children together. In a stipulation of settlement, which was incorporated but not merged into the parties'

judgment of divorce, the parties agreed to raise the children in the Jewish religion, keep a kosher home, and provide the children with kosher food outside the home. The oldest and youngest children were represented by Susan G. Mintz during the matrimonial action and post-judgment proceedings. The plaintiff moved to hold the defendant in contempt for failing to keep a kosher home. The plaintiff then moved to discharge Mintz as the attorney for the parties' youngest child and to appoint a new attorney to represent that child. The plaintiff argued that Mintz had a conflict of interest in representing the two children, who had differing views on keeping kosher. The Supreme Court denied the plaintiff's motion. The Appellate Division held that the Supreme Court did not improvidently exercise its discretion in denying her motion. The plaintiff failed to submit evidence that Mintz was not zealously advocating for the two children she was representing or that she could not advocate for each child's position without prejudicing the rights of the other child (see 22 NYCRR 7.2[d]; Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.7[a][1]).

Where an order of protection expired by its own terms, and was not predicated on an adverse finding against the appealing party, an appeal from an order denying a motion to vacate the order of protection must be dismissed as academic.

In Wiley v Wiley --- N.Y.S.3d ----, 2024 WL 1749719, 2024 N.Y. Slip Op. 02202 (2d Dept.,2024) the Appellate Division held that where an order of protection has expired by its own terms, and was not predicated on an adverse finding against the appealing party, an appeal from an order denying a motion to vacate the order of protection must be dismissed as academic. Here, the order of protection dated January 26, 2022, was issued based upon the appellant's default, not upon a finding that he committed a family offense, and it had since expired by its own terms. Accordingly, the appeal from the order dated May 10, 2022, denying the appellant's motion to vacate that order of protection had to be dismissed as academic.

Where the Support Magistrate erroneously indicated that the mother would bear the burden of proving the father's income during a hearing it could not be said that the mother's consent to the order of support calculated by the Support Magistrate was given knowingly.

In Matter of Barrows v Ryan, --- N.Y.S.3d ----, 2024 WL 1749607, 2024 N.Y. Slip Op. 02186 (2d Dept.,2024) the parties, who were not married, had one child together. The mother commenced a proceeding against the father for child support. During an appearance before the Family Court, the father verbally represented his income to the Support Magistrate, but the mother stated that she believed that the father's income was higher than what he represented. The Support Magistrate accepted the father's verbal representation of his income to calculate the father's support obligation. The parties agreed to the calculated amount of support and the Support Magistrate issued an order which, inter alia, directed the father to pay basic child support of $492 per month and 35% of certain add-on expenses. The Court denied the mother's objections, noting that the mother consented to the child support calculation performed by the Support Magistrate. The Appellate Division held that under the particular facts of this case, it cannot be said that the mother's consent to the order of support was given knowingly. The mother contended that she did not knowingly consent to the order of support. Generally, when an order of support is entered on the

parties' consent, that consent must be given knowingly and voluntarily. Here, after the mother indicated to the Support Magistrate that she believed that the father's income was higher than he verbally represented, the Support Magistrate erroneously indicated that the mother would bear the burden of proving the father's income during a hearing. The Support Magistrate's brief allocution did not correct this error (see Family Ct Act §§ 424–a, 413[1][k]). Thus, the Family Court should have granted the mother's objections. It reversed the order and remitted the matter to the Family Court, for a hearing on the mother's petition.

The award of counsel fees under Family Ct Act § 438 should be based upon the totality of the circumstances, including the equities and circumstances of each particular case

In Matter of Marcus v Marcus, --- N.Y.S.3d ----, 2024 WL 1749630, 2024 N.Y. Slip Op. 02197 (2d Dept.,2024) the Appellate Division held that a court may allow counsel fees at any stage of a proceeding under Family Court Act article 4 (Family Ct Act § 438). The factors to be considered in computing an appropriate award include the parties' ability to pay, the merits of the parties' positions, the nature and extent of the services rendered, the complexity of the issues involved, and the reasonableness of counsel's performance and the fees under the circumstances. Ultimately, the award should be based on the totality of the circumstances, including the equities and circumstances of each particular case.

For a juvenile to qualify for special immigrant juvenile status, a court must find that reunification of the juvenile with one or both of the juvenile's parents is not viable due to parental abuse, neglect, abandonment, or a similar basis, and that it would not be in the juvenile's best interest to be returned to his or her native country or country of last habitual residence

In Matter of Eddy A.P.C. --- N.Y.S.3d ----, 2024 WL 1749625, 2024 N.Y. Slip Op. 02187 (2d Dept.,2024) the Appellate Division reversed an order which, after a hearing, denied the subject children's motion for the issuance of an order, inter alia, making specific findings to enable them to petition the United States Citizenship and Immigration Services for special immigrant juvenile status pursuant to 8 USC § 1101(a)(27)(J). In March 2023, the subject children, Eddy A.P.C. and Cleidy F.P.C., who arrived in the United States from Guatemala in 2019, filed separate petitions pursuant to Family Court Act article 6 seeking to have their father appointed as their guardian. Thereafter, the children moved for the issuance of an order declaring that they were dependent on the Family Court and making specific findings that they are unmarried and under 21 years of age, that reunification with their mother was not viable due to parental neglect, and that it would not be in their best interests to be returned to Guatemala, their previous country of nationality and last habitual residence, to enable them to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101(a)(27)(J). The court appointed the father as guardian of the children. However, after a hearing, it found neglect on the part of the mother, but denied the children's motion on the ground that they failed to establish that reunification with their mother was not viable. The Appellate Division observed that a pursuant to 8 USC § 1101(a)(27)(J) and 8 CFR 204.11, a 'special immigrant' is a resident alien who is, inter alia, under 21 years of age, unmarried, and dependent upon a juvenile court or legally committed to an individual appointed by a state or juvenile court.

For a juvenile to qualify for special immigrant juvenile status, a court must find that reunification of the juvenile with one or both of the juvenile's parents is not viable due to parental abuse, neglect, abandonment, or a similar basis found under State law, and that it would not be in the juvenile's best interest to be returned to his or her native country or country of last habitual residence. Based upon its independent review, the record supported a finding that reunification of the children with their mother was not viable due to the mother's abandonment of the children; that the mother provided little to no emotional support to the children while in Guatemala before the mother abandoned the children entirely by moving to the United States and after the children arrived in the United States; the mother continued to neglect the children; the mother failed to protect the children from gang violence in Guatemala and did not provide emotional support with regard to the threat of gang violence; and that it would not be in the best interests of the children to return to Guatemala, their previous country of nationality and country of last habitual residence

In determining whether a child born after the underlying acts of abuse or neglect should be adjudicated derivatively neglected, the determinative factor is whether, taking into account the nature of the conduct and any other pertinent considerations, the conduct which formed the basis for a finding of abuse or neglect as to one child is so proximate in time to the derivative proceeding that it can reasonably be concluded that the condition still exists

In Matter of Kiarah V.R., --- N.Y.S.3d ----, 225 A.D.3d 774, 2024 WL 1184168, 2024 N.Y. Slip Op. 01552 (2d Dept.,2024) the children were born in 2020 and 2021. The Administration for Children's Services (ACS) commenced proceedings alleging, among other things, that the mother derivatively neglected the children based on findings of neglect against the mother in 2007 and 2009 as to the children's older siblings. ACS moved for summary judgment. The Family Court granted the motion. The Appellate Division reversed. It held that although there is no express provision for a summary judgment procedure in Family Court Act article 10 proceedings, summary judgment pursuant to CPLR 3212 may be granted in such a proceeding when it clearly has been ascertained that there is no triable issue of fact. While proof of the abuse or neglect of one child is admissible evidence on the issue of the abuse or neglect of any other child of the parent (see Family Ct Act § 1046[b]), "there is no per se rule that a finding of neglect of one sibling requires a finding of derivative neglect with respect to the other siblings. The focus of the inquiry is whether the evidence of abuse or neglect of one child indicates a fundamental defect in the parent's understanding of the duties of parenthood". In determining whether a child born after the underlying acts of abuse or neglect should be adjudicated derivatively neglected, the determinative factor is whether, taking into account the nature of the conduct and any other pertinent considerations, the conduct which formed the basis for a finding of abuse or neglect as to one child is so proximate in time to the derivative proceeding that it can reasonably be concluded that the condition still exists. Here, ACS failed to establish, prima facie, that the mother derivatively neglected the children based upon her alleged failure to address certain mental health issues underlying the 2007 and 2009 findings of neglect. In support of its motion, ACS relied solely on the prior neglect findings and failed to include an affidavit from anyone with personal knowledge of the events alleged in the neglect petitions or any other evidentiary material (see CPLR 3212[b]). The prior neglect findings were not so proximate in

time to establish, as a matter of law, that the conditions that formed the basis therefore continued to exist.

Where the plaintiff's affidavit of service revealed that the defendant was served via email, rather than by personal delivery, absent a court order authorizing service by email, the service was ineffective

In Rae v. Marciano, --- N.Y.S.3d ----, 2024 WL 1895957, 2024 N.Y. Slip Op. 02337 (2d Dept.,2024) the plaintiff commenced an action for a divorce and served the defendant with the summons and complaint via email. The defendant rejected the papers. The plaintiff then made an oral application for the Supreme Court to authorize service by email nunc pro tunc, claiming, without proof, that the defendant had previously agreed to it. The plaintiff also sought to consolidate this action with an action entitled Rae v. Marciano et al., pending in the same court. The court denied the application and dismissed the action for lack of personal jurisdiction due to improper service upon the defendant. The Appellate Division affirmed. It held that Supreme Court properly denied the plaintiff's application based on improper service. Domestic Relations Law § 232 permits substituted service pursuant to CPLR 308 by court order upon a showing that personal delivery of the summons and complaint upon the defendant could not be effected despite efforts made with due diligence. A court lacks personal jurisdiction over a defendant who is not properly served with process. Here, the plaintiff's affidavit of service revealed that the defendant was served via email, rather than by personal delivery. Contrary to the plaintiff's contention, she failed to adequately demonstrate that the defendant previously consented to such service. Thus, absent a court order authorizing service by email, the service was ineffective (see Domestic Relations Law § 232[a]).

Family Court properly awarded the mother summary judgment on her petition for sole custody. A hearing was not required where it was undisputed that the terms of the father's probation prohibited him from having any contact with the children.

In Palumbo v Palumbo, --- N.Y.S.3d ----, 2024 WL 1895962 (2d Dept.,2024) the Appellate Division affirmed an order of the Family Court which awarded the mother summary judgment on her petition for sole custody. It held that a hearing was not required under the particular circumstances of this case. The mother demonstrated, prima facie, that it was in the best interests of the children to award her sole legal and physical custody. It was undisputed that the terms of the father's probation prohibited him from having any contact with the children as a result of his conviction of sexual abuse in the second degree of the children's half-sister. The Family Court also conducted the mandatory review of decisions addressing custody, reports of the statewide registry of orders of protection, and reports of the sex offender registry (see Family Ct Act § 651[e][3]), which revealed that the father was "a level 2 sex offender on probation stemming from a January 14, 2021 conviction. In opposition, the father failed to raise a triable issue of fact. The father's unsubstantiated and conclusory allegations were insufficient to defeat a motion for summary judgment.

Appellate Division, Third Department

Due to the commingling of funds with the proceeds of her personal injury recovery the wife could not sufficiently delineate any of the funds in the joint account as separate property , and the Court did not err in determining that the funds used for the improvement to the marital residence were not the wife's separate property and that she was not entitled to a credit for improvements.

In St. John v Beinart-St. John, --- N.Y.S.3d ----, 2024 WL 2063971, 2024 N.Y. Slip Op. 02565 (3d Dept.,2024) the parties were married in 2003 and had three children together. In 2018, the wife filed for divorce. After a nonjury trial, Supreme Court ordered that the proceeds of the sale of the marital residence be equally divided. The wife appealed contending that Supreme Court erred by failing to grant her credits for her investment of her personal injury proceeds to the improvements of the marital residence and the investment of gifted funds from her mother that were used for the purchase of the marital residence. The Appellate Division found the wife's mother testified that she gave the wife $10,000 to make a down payment on the marital residence and, after the husband called the mother from the closing, $2,300 to assist with the closing costs. The mother testified that the money was a gift intended for the wife and any benefit that the husband received was ancillary. The wife testified similarly and explained that the money was never deposited into an account in the husband's name. As for the personal injury proceeds, the wife testified that in 2015 she received $135,000 from a lawsuit settlement against her former employer; $100,000 for emotional and personal distress and $35,000 for lost wages. The proceeds were deposited into her personal checking account, which was in her name alone. The wife also testified that her paycheck was deposited into the same account, and that it was this account that was used to pay bills. The wife ultimately used these funds to satisfy the husband's debt and make improvements to the marital residence.. Receipts were stipulated into evidence demonstrating the total cost of these improvements. A licensed real estate appraiser testified that these improvements attributed to a 14% increase in the value of the home. The husband testified mostly in conformity with the wife but stated that the funds for the down payment contributed by the wife's mother were put into a joint account. The husband also explained that each of the parties maintained their own individual accounts and that their paychecks were deposited into those respective accounts. Supreme Court ultimately determined that neither the wife nor the husband established an entitlement to more than 50% of the proceeds from the sale of the marital residence. The court found that the wife was not entitled to a credit for either the gifted down payment or the improvements made to the marital residence. The Appellate Division affirmed. As to the gift from the mother, the wife's claim that the gift was only intended for her was belied by the mother's own testimony that the husband was the one who called and asked the mother for the additional funds for closing costs. Moreover, as the court indicted, the wife did not establish that she maintained the funds provided by the mother separate from marital funds. Therefore, the wife failed to establish that the money from the mother used to purchase the marital residence was a gift to her alone. As to the wife's request for a separate property credit in the amount of improvements made to the marital residence, her testimony and bank records established that the proceeds used to make the improvements to the home were drawn from an account that contained the settlement proceeds as well as the wife's paychecks and other deposits. Given that the part of the settlement that was for lost wages

and the wife's paycheck deposits were marital property the only property in the account that was not marital property would be the proceeds from the lawsuit that were attributed to personal injury. However, due to the commingling of funds that make it so the wife could not sufficiently delineate any of the funds in the account as separate property , Supreme Court did not err in determining that the funds used for the improvement to the marital residence were not the wife's separate property and that she was not entitled to a credit for said improvements.

Where the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of Health and Human Services, unpaid child support arrears in excess of [$500] shall not accrue.

In Matter of Naeem Akhtar v Naeem, --- N.Y.S.3d ----, 2024 WL 1774239, 2024 N.Y. Slip Op. 02240 (3d Dept.,2024) the father challenged Family Court's refusal to cancel the child support arrears in excess of $500, which accumulated from September 2017 to January 2019, corresponding with the 17–month period during which he claimed he lacked an ability to pay because of little or no income. The Appellate Division observed that the statutory scheme of child support enforcement carves out an exception to the general prohibition barring the adjustment or vacatur of child support arrears where the noncustodial parent demonstrates that he or she experienced a period of time during which his or her income fell below the poverty income guidelines. Pursuant to Family Ct Act § 413(1)(g), "[w]here the non-custodial parent's income is less than or equal to the poverty income guidelines amount for a single person as reported by the federal department of Health and human services, unpaid child support arrears in excess of [$500] shall not accrue." The poverty level for a one-person household in 2017 was $12,060 and in 2018 was $12,140.Family Court may properly consider a noncustodial parent's ability to work when determining whether his or her child support arrears are required to be capped at $500. It could not agree with Family Court's finding that the father failed to present sufficient evidence of his inability to work during the relevant 17–month period when his income was well below the poverty guidelines. The record revealed that, commensurate with the loss of his employment in 2016, the father collected unemployment insurance benefits, which terminated in August 2017. He testified that he had no other income for the remaining months of 2017 because he was, at that time, undergoing regular medical treatment for kidney failure. In 2018, the father had only $6,887 in earned income from part-time retail work, and he testified that he was unable to find or perform other work. According to his testimony, during these 17 months, the father's credit cards were involuntarily cancelled for nonpayment, he lacked sufficient funds even to launder his clothing, and he begged others to purchase groceries for him. The father's testimony and evidence was uncontroverted as the mother did not cross-examine the father. It held that Family Court erred when it declined to recalculate the father's arrearage because it relied upon the incorrect premise that the father had failed to file a sworn financial disclosure affidavit; because the submission of his SSI eligibility approval letter was missing multiple pages, and because he did not state the total amount of unemployment benefits he received. None of these omissions in the proof pertained to the father's financial circumstances during the 17–month period corresponding with his claim of indigency. Thus, Family Court erred insofar as it considered these omissions in the record to be relevant in assessing whether the father's income was below the level of poverty during the time period claimed by the father. The father met his burden and

sufficiently supported his claim of indigency during the relevant 17–month period so as to afford him a viable claim under Family Ct Act § 413(1)(g). This was not a matter of arrears being forgiven in contravention of Family Ct Act § 451 but, rather, a circumstance of arrears between September 2017 and January 2019 never having accrued

Family Court also erred in denying him a credit for $977.58, representing the amount of overpayment of child support beyond the parties' middle child having reached the age of 21, as well as the effective date for the reduced obligation relative to the one remaining child for whom the obligation continued. Family Court lacked the authority to raise issues, sua sponte, which the parties did not preserve through the filing of objections pursuant to Family Ct Act § 439(e) (see Matter of Porter v. D'Adamo, 113 A.D.3d 908, 910, 979 N.Y.S.2d 407 [3d Dept. 2014]; Matter of Hubbard v. Barber, 107 A.D.3d 1344, 1345, 968 N.Y.S.2d 245 [3d Dept. 2013]). The Order was reversed and remitted to the Family Court for further proceedings not inconsistent with this Court's decision.

Appellate Division, Fourth Department

The determination to divide the mortgage balance equitably between the parties was intended as a distribution of marital debt, not a form of maintenance. Distributive awards and maintenance awards serve distinct purposes. In view of these distinct purposes, courts have previously indicated that the treatment of a distributive award as maintenance is improper

In Monroe v Monroe, --- N.Y.S.3d ----, 2024 WL 2102463, 2024 N.Y. Slip Op. 02621(4th Dept.,2024) the parties were married in 2013, and plaintiff commenced the action in 2021. In 2019, during the course of the marriage, defendant received an inheritance from her grandfather, and the following year the parties purchased their marital residence for $160,000. Defendant used $125,000 of her inheritance to fund that purchase, with the balance covered by a mortgage. In order to secure the mortgage, plaintiff needed to prove to the bank that he had sufficient funds, so defendant provided him with a "gift letter" stating that she was giving him $125,000 "as an outright gift and not a loan in any form" and that the money was being given to him "for the purchase of [the marital residence]." The Fourth Department held that to the extent that plaintiff contends that Supreme Court erred in awarding defendant a separate credit of $125,000 for inherited funds she used to purchase the marital residence, he failed to preserve that contention for review. It rejected Plaintiff's argument that the court erred in determining that he should be solely responsible for the 27-year mortgage on the marital residence, less defendant's $20,000 share of the balance due. It rejected the Plaintiff's assertion that the determination is akin to an award of maintenance and that its duration is thus subject to the constraints of Domestic Relations Law § 236 (B) (6) (f) (1). While there are cases that have deemed mortgage payments a "form" of maintenance this was not such a case. Here, the court ordered plaintiff to pay both maintenance and the mortgage balance, less defendant's $20,000 share. It noted that distributive awards and maintenance awards serve distinct purposes. "A distributive award is intended to reflect the equitable division of the marital assets between the parties, while maintenance is merely a payment awarded in the discretion of the court to a needy spouse ... In view of these distinct purposes, [courts have] previously indicated that the treatment

of a distributive award as maintenance is improper. In its view, the determination to divide the mortgage balance equitably between the parties was intended as a distribution of marital debt, not a form of maintenance. The judgment of divorce required plaintiff to pay his portion of the mortgage balance within 60 days of entry of the judgment. Thus, contrary to plaintiff's contention, the requirement that he pay a portion of a mortgage was not an award spanning 27 years. The Appellate Division also held, inter alia, that the court erred in failing to direct defendant to take measures to remove plaintiff's name from the mortgage upon his payment of his share of the mortgage balance. Defendant was receiving the home and was also responsible for a portion of the mortgage payments. Once plaintiff made his payment, assuming, arguendo, that he made the payment as the judgment directed, he should have been relieved of any further obligation to the bank holding the mortgage.

Although the amended order included the statement that it was entered on the father's default, the court's bench decision specified that it was granting the petition based on the evidence adduced during the hearing, during which the father was represented by counsel. Where there is a discrepancy between the order and the decision, the decision controls

In Matter Miller v Boyden --- N.Y.S.3d ----, 2024 WL 2103457, 2024 N.Y. Slip Op. 02648 (4th Dept, 2024) in an amended order granted after a hearing, Family Court granted the mother's petition in part and, inter alia, suspended the father's visitation with the child for the remainder of his time in prison. The Appellate Division agreed with the father that the amended order was not entered upon his default, and he was therefore not precluded from appealing from the amended order. Although the amended order included the statement that it was entered on the father's default, the court's bench decision clearly specified that it was granting the mother's modification petition based on the evidence adduced during the hearing, during which the father was represented by counsel. It held that where, as here, there is a discrepancy between the order and the decision, the decision controls, and it concluded that the amended order was not entered on the father's default to the extent that it granted in part the mother's petition. It also agreed with the father that the court failed to make any factual findings whatsoever to support the determination to suspend the father's visitation with the child. It is well established that the court is obligated 'to set forth those facts essential to its decision (see CPLR 4213 [b]; Family Ct Act § 165 [a]). Here, the court completely failed to follow that well-established rule when it failed to issue any factual findings to support its determination either with respect to whether there had been a change in circumstances, or the relevant factors that it considered in making a best interests of the child determination. It reversed the amended order and remit the matter to Family Court to make a determination on the petition.

Where child's attendance at school was not mandated by article 65 of the Education Law. the mother had no duty to supply the older child child with adequate education within the meaning of FCA § 1012 (f) (i) (A) and was not guilty of neglect.

In Matter of Justice H.M. --- N.Y.S.3d ----, 225 A.D.3d 1298, 2024 WL 1228530, 2024 N.Y. Slip Op. 01653(4th Dept.,2024) the Appellate Division, inter alia, reversed a finding that the mother committed educational neglect with respect to the older child. It was undisputed

that the older child had not attained the age of six by December 1 of the year in which the educational neglect was alleged to have taken place, and thus his attendance at school was not mandated by article 65 of the Education Law. Inasmuch as Article 65 did not require the older child's attendance at school, the mother had no duty to supply the older child with adequate education within the meaning of Family Court Act § 1012 (f) (i) (A).

In order to have substitute counsel appointed, a party must establish that good cause for release existed necessitating dismissal of assigned counsel.

In Bracken v Bracken, -- N.Y.S.3d ----, 225 A.D.3d 1241, 2024 WL 1130038, 2024 N.Y. Slip Op. 01468 (4th Dept, 2024) a custody proceeding, the Appellate Division held, inter alia, that the Family Court did not err in refusing to appoint new counsel for the mother after she released her assigned counsel after two days of the fact-finding hearing, which was held on three days over the course of four months. It is well settled that an indigent party's right to court-appointed counsel under the Family Court Act is not absolute. In order to have substitute counsel appointed, a party must establish that good cause for release existed necessitating dismissal of assigned counsel. The mother did not demonstrate that good cause existed for substitution of assigned counsel. The record showed that there was just a disagreement between the mother and her counsel over trial strategy and the mother's filing of pro se violation petitions.

The finding of permanent neglect was not undermined by the evidence that petitioner took steps to arrange for the discharge of the children to the father which never materialized due to the father's newly disclosed and unaddressed auditory hallucinations that were telling him to sexually abuse the children

In Matter of Tori-Lynn L. --- N.Y.S.3d ----, 2024 WL 1952044, 2024 N.Y. Slip Op. 02440 (4th Dept., 2024) the Appellate Division affirmed an order that, inter alia, adjudicated the subject children to be permanently neglected by the father and terminated the father's parental rights. It held that while the father was correct that, prior to June 2021, petitioner had considered the father to be in compliance with the service plan such that the children were scheduled to return to the biological parents that month, petitioner's excusable misperception of the father's progress at that point was, through no fault of its own, as the court properly held, based on the father's active concealment that he was experiencing auditory hallucinations—i.e., hearing voices—that had been instructing him to sexually abuse the children. The caseworker testified that petitioner received an additional CPS report in June 2021 informing it that the father had disclosed the auditory hallucinations to his psychiatrist. The caseworker specifically explained that, prior to the father's disclosure, petitioner was unaware of the auditory hallucinations issue, and the father would not have been considered compliant with treatment if he was being dishonest with his mental health provider. Following the father's disclosure, the caseworker asked him to enroll in a counseling program that treats people with sexualized behaviors. The father, however, did not enroll in that program prior to the end of the statutory period alleged in the petition. The record established both that petitioner's perception of the progress that the father had made prior to June 2021 was due to his own non-disclosure of dangerous delusional thinking regarding the children, and that the father failed to sufficiently comply with the

service plan for the remainder of the alleged one-year period. It concluded that, under the circumstances of this case, the finding of permanent neglect was not undermined by the evidence that petitioner took steps to arrange for the discharge of the children to the fatherwhich never materialized due to" the father's newly disclosed and unaddressed auditory hallucinations that were telling him to sexually abuse the children (Matter of Wilfredo A.M., 56 A.D.3d 338, 338, 868 N.Y.S.2d 180 [1st Dept. 2008]). A different result was not warranted even if the court erred in admitting the full testimony of the psychiatrist on the ground that the father's confidential communications remained subject to physician-client privilege. The psychiatrist, as a mental health professional, was required to report that he had reasonable cause to suspect that the children were maltreated based on the father's disclosure that he was hearing voices instructing him to sexually abuse the children (see Social Services Law § 413 [1] [a]; see also § 412 [2] [a]; Family Ct Act § 1012 [f] [i]). The psychiatrist made such a report by immediately placing a telephone call to the caseworker (see Social Services Law § 415).

Family Court erred in addressing the merits of the petition without first resolving whether it had subject matter jurisdiction to do so, inasmuch as this threshold issue implicates a court's competence to entertain an action

In Matter of. Adams v. John, --- N.Y.S.3d ----, 2024 WL 1951532, 2024 N.Y. Slip Op. 02404 (4th Dept., 2024) a custody case, the Appellate Division held court erred in addressing the merits of the petition without first resolving whether it had subject matter jurisdiction to do so, inasmuch as this threshold issue implicates a court's "competence to entertain an action" Further, Domestic Relations Law § 75-f expressly provides that where, as here, a party in a child custody proceeding raises an issue regarding the existence of jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, that issue "must be given priority on the calendar and handled expeditiously" (Domestic Relations Law § 75-f). The court here not only failed to prioritize that threshold issue, it never expressly resolved the issue before rendering a final determination on the merits. Nonetheless it rejected the mother's contention that the court lacked subject matter jurisdiction to consider the petition. The mother's jurisdictional argument relied on Domestic Relations Law § 76, which pertains to an initial custody determination. Here, however, at the time of the filing of the instant petition, custody of the subject child was governed by an order of Ontario County Family Court. The New York court never lost or relinquished its exclusive, continuing jurisdiction under Domestic Relations Law § 76-a. It agreed with the mother, however, that the court's determination to award petitioners joint custody of the child along with herself and the father lacked a sound and substantial basis in the record inasmuch as petitioners failed to establish the existence of extraordinary circumstances.

The court did not err in finding defendant in contempt without conducting a hearing. A hearing is required only if the papers in opposition raise a factual dispute as to the elements of civil contempt, or the existence of a defense

In McCurty v Roberts --- N.Y.S.3d ----, 2024 WL 1952074, 2024 N.Y. Slip Op. 02450 (4th Dept., 2024) the Appellate Division affirmed an order which held the defendant in contempt for violating the maintenance provisions of the parties' judgment of divorce. It held that the

court did not err in finding defendant in contempt without conducting a hearing. A hearing is required only if the papers in opposition raise a factual dispute as to the elements of civil contempt, or the existence of a defense (El-Dehdan v. El-Dehdan, 114 A.D.3d 4, 17, 978 N.Y.S.2d 239 [2d Dept. 2013], affd 26 N.Y.3d 19, 19 N.Y.S.3d 475, 41 N.E.3d 340 [2015]). Here, defendant failed to raise an issue of fact on his defense, i.e., his inability to pay the maintenance obligation. Instead, defendant simply stated in his affidavit that permitting the award of full maintenance for the three-year period would be "unaffordable." "Such vague and conclusory allegations of ... inability to pay or perform are not acceptable.

Courts should not second-guess the economic decisions made during the course of the marriage, but rather should equitably distribute the assets and obligations remaining once the relationship is at an end

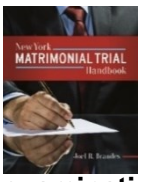
In Jonas v Jonas, 225 A.D.3d 1229, 207 N.Y.S.3d 784, 2024 N.Y. Slip Op. 01460 (4th Dept.,2024) plaintiff wife appealed from a judgment that, inter alia, equitably distributed marital property. The Appellate Division held that the wife's contention that Supreme Court erred in failing to determine defendant husband's child support and maintenance obligations was not properly before it inasmuch as she consented to the referral of those issues to Family Court, and no appeal lies from that part of an order entered on consent. The court did not abuse its discretion in its equitable distribution of the marital property. Although the wife contended that the equitable distribution award ignored the husband's dissipation of marital assets, the wife's claims of dissipation were conclusory and relied on the credibility of the parties, and in such circumstances, this Court shall afford the trial court great deference. The evidence presented at trial established that the parties mutually liquidated marital assets, and accumulated significant debt, in an unsuccessful attempt to save their family business. Courts should not second-guess the economic decisions made during the course of the marriage, but rather should equitably distribute the assets and obligations remaining once the relationship is at an end" (Mahoney-Buntzman v. Buntzman, 12 N.Y.3d 415, 421 [2009]).

Supreme Court

CPLR § 321(a) prohibits a party who has appeared with counsel from acting as a self-represented litigant without court approval. If a party appears by attorney such party may not act in person in the action except by consent of the court.

In P.M., v. J.A., --- N.Y.S.3d ----, 2024 WL 1903202, 2024 N.Y. Slip Op. 24131 (Sup. Ct, 2024) the Supreme Court observed that CPLR § 321(a) prohibits a party who has appeared with counsel from acting as a self-represented litigant without court approval. If a party appears by attorney such party may not act in person in the action except by consent of the court. CPLR § 321(d) permits limited scope appearance: 1. An attorney may appear on behalf of a party in a civil action or proceeding for limited purposes. Whenever an attorney appears for limited purposes, a notice of limited scope appearance shall be filed in addition to any self-represented appearance that the party may have already filed with the court. The notice of

limited scope appearance shall be signed by the attorney entering the limited scope appearance and shall define the purposes for which the attorney is appearing. Upon such filing, and unless otherwise directed by the court, the attorney shall be entitled to appear for the defined purposes. 2. Unless otherwise directed by the court upon a finding of extraordinary circumstances and for good cause shown, upon completion of the purposes for which the attorney has filed a limited scope appearance, the attorney shall file a notice of completion of limited scope appearance which shall constitute the attorney's withdrawal from the action or proceeding. Delving into the meaning of the use of "preliminary to" in 22 NYCRR § 1400, one author noted, "We believe that the words 'preliminary to' are intended to make the rule applicable to any consultation regarding such claim, action or proceeding which results in the commencement of such claim, action or proceeding which results in the commencement of such a claim, action or proceeding within a reasonable time after the consultation." (see Law & The Family NY Forms § 4:1 [2d])



The New York Matrimonial Trial Handbook (Bookbaby) is a "how to" book that focuses on the procedural and substantive law, and law of evidence you need to know for trying a matrimonial action and custody case. It has extensive coverage of the testimonial and documentary evidence necessary to meet the burdens of proof. There are *thousands of suggested questions* for the examination and cross-examination of the parties and expert witnesses. It is available in hardcover, as well as Kindle and electronic editions. See Table of Contents. New purchasers of the New York Matrimonial Trial Handbook in hardcover from Bookbaby, or in Kindle and ebook editions from the Consulting Services Bookstore can obtain a free copy of the New York Matrimonial Trial Handbook 2023 Update pdf Edition by submitting proof of purchase to divorce@ix.netcom.com

The New York Matrimonial Trial Handbook 2023 Cumulative Update is available on Amazon in hardcover, paperback, Kindle, and electronic editions. This update includes changes in the law and important cases decided by the New York Courts since the original volume was published. It brings the text and case law up to date through and including December 31, 2022, and contains additional questions for witnesses. See Table of Contents.

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