

# POST-JUDGMENT MODIFICATIONS

PROCEDURES AND COMMON FORMS

BEGINNING, MANAGING AND CONCLUDING  
A POST-JUDGMENT MATTER

PRESENTED BY:



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## SECTION ONE – INTRODUCTION TO POST-DIVORCE MODIFICATIONS

### WHAT ARE POST-DIVORCE MODIFICATIONS?

Post-divorce modifications occur when a party seeks to change a prior judgment of divorce or an incorporated, unmerged agreement between the parties. The party may seek to modify an agreement mere days after a judgment was rendered, or several years afterwards. A party may also seek to modify substantially all or one individual paragraph of the judgment or agreement. This depends on the client's individual circumstances and reasons for seeking a modification.

The reasons presented to the court for a modification are decided on between the client and attorney. This is a critical part in the client's case and substantial preparation must be taken in gathering the information to present the requested change. More often than not, a change in the circumstances surrounding the parties' relationship, usually financial, is the reason.

To be successful, absent fraud or duress, post-divorce modifications require a *substantial* change in circumstances. This may include a change in the income of the parties, the express wishes of the children, the needs of the children, the needs of the parties and so forth.

A post-divorce modification to New York Supreme Court is typically brought by an Order to Show Cause. If the post-divorce modification is not brought in Supreme Court, the forum for modifications lies within the jurisdiction of Family Court in the county where the parties reside.

Regardless of the forum, each court has required standards that must be met to be successful with a modification request. However, Supreme Court has equity jurisdiction whereas Family Court is a court of limited jurisdiction and can only grant statutory relief.

## DIFFERENCES IN JUDGMENTS AND AGREEMENTS

There are two types of judgments: judgments based on the decision of the court; and judgments based on a stipulation or agreement between the parties.

Also, there are two sub-classifications of judgments: those incorporating but not merging the agreement or stipulation; and those merging the agreement or stipulation.

Judgments involving the decision of the court are much easier to modify because the court can apply a lower standard when considering a modification.

Judgments which incorporate but do not merge an agreement or stipulation entered into between the parties are more difficult to modify. In these situations, the judgment includes a contract between the parties, which cannot be modified unless a higher standard is met, because the court will assume that the parties entered into the agreement freely and that it represents mutually acceptable terms.

Instead, the party seeking modification must demonstrate the manifestly unfair nature of the agreement or a substantial change in circumstances which would render the agreement *unfair, unjust, improper and now unconscionable*, or that there was fraud or duress when making the agreement. This is because the agreement was deemed "fair, reasonable and not unconscionable" by the court prior to its incorporation but not merger into the judgment.

Stipulated agreements are not created equal. How they are drafted and the language used plays an important role in how a client can request relief and the type of relief that can be requested.

## DIFFERENCES BETWEEN FAMILY COURT AND SUPREME COURT

The main difference between Family Court and New York Supreme Court is that Family Court is of limited jurisdiction and does not have equity jurisdiction. It cannot interpret what the parties meant at the time of the agreement and can only enforce statutory law.

Most matters of Family Court and Supreme Court are intertwined and are set forth in the New York Family Court Act (FCA) and the New York Domestic Relations Law (DRL). Essentially, both forums hold concurrent jurisdiction over post-divorce matters.

On matters concerning the creation or enforcement of a support obligation for a minor child, both the Family Court Act and the Domestic Relations Law apply the Child Support Standards Act. The Child Support Standards Act creates an obligation for both parents to support the health and well-being of their natural or adopted children, and provides rules and procedures for the creation and modification of a child support payment.

On matters concerning the modification of custody and visitation of a minor child, the Family Court Act grants the Family Court all the powers and jurisdictional rights of New York Supreme Court.

Section 651(a) of the Family Court Act reads:

“When referred from the supreme court or county court to the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors.”

While Family Court and New York Supreme Court have similar jurisdiction and power over post-divorce matters, the two courts do have considerable differences that the attorney and the client must consider before proceeding with a post-divorce modification.

New York Supreme Court has exclusive jurisdiction over matters of divorce. For post-divorce modifications, New York Supreme Court is more difficult for a client to make an application without a lawyer and as such, is more expensive because there are filing fees that must be paid for.

The filing fees for Erie County are as follows:

Index Number	\$210.00
Application for Index Number with Request for Judicial Intervention (RJI)	\$305.00
Filing of Note of Issue with RJI	\$125.00
Filing of Note of Issue (filed separately)	\$30.00
Filing of Motion, Cross-Motion and Order To Show Causes	\$45.00 each
Filing fee for Certificate of Dissolution of Marriage (required to file Judgment)	\$15.00
Deed and Tax Filings (for property transfer executed by Quit Claim Deed)	\$94.00

Unlike New York Supreme Court, Family Court has no filing fees. Family Court is also streamlined to handle matters of custody, visitation and support, assigning various hearing examiners and support magistrates to each case.

Family Court does not require attorney representation to file a petition and is more user-friendly than Supreme Court. Finally, Family Court may be more receptive to applications for a post-divorce modification since this forum focuses on family matters while New York Supreme Court is a court of general subject matter.

## DIFFERENCES BETWEEN DOMESTIC AND FOREIGN JUDGMENTS

A distinction is made between domestic and foreign judgments. A domestic judgment is issued by New York Supreme Court. All other judgments issued by another state or country are considered foreign judgments.

Typically, domestic judgments do not involve a question over jurisdiction in order to modify such a judgment. The jurisdiction will typically involve the location of the parties and the children. However, foreign judgments require a determination of proper jurisdiction before a court will consider an application for modification.

On matters of support, foreign judgments typically contain within them language which requires a new jurisdiction to apply the laws and rules of the jurisdiction which originally granted the judgment. When such language is absent from the judgment, New York courts will typically apply the Child Support Standards Act on the basis that the children now take up primary residence under their jurisdiction.

On matters of custody and visitation, foreign judgments are enforceable and modifiable under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA is a body of legislation which permits New York courts to give full faith and credit to custody and visitation decisions of its sister courts throughout the United States and the world.

The UCCJEA affects foreign judgments in two substantial ways: a foreign judgment of divorce is enforceable as if it was issued by New York Supreme Court; and a foreign judgment of divorce is modifiable as if it was issued by a New York Supreme Court. The UCCJEA also prohibits modification through forum shopping for a judgment of divorce by preventing a party from seeking a judgment of divorce in New York when another has already been granted in a foreign jurisdiction.

**SECTION TWO – SAMPLES AND FORMS FOR POST-DIVORCE ACTIONS**

**CORRESPONDENCE PRIOR TO COMMENCING AN ACTION**

It is good practice to attempt to settle a matter prior to the commencement of any formal action. In this situation, you may be asked to draft a letter to the opposing counsel or the other party which tells them that you are representing your client. This letter should include an invitation to the opposing counsel or party to negotiate a settlement at a four-way conference to discuss the matter and decide if a resolution can be reached without court intervention.

***NOTICE OF APPEARANCE AND FOUR-WAY CONFERENCE***

Please be advised that this office has been retained by <CLIENT> with regard to <THE MATTER OF CUSTODY/RELOCATION/VISITATION/ ENFORCEMENT/SUPPORT (AS MENTIONED IN YOUR LETTER DATED XXXXX)>. <(KINDLY FORWARD YOUR DRAFT AGREEMENT/PETITION/REPLY/FINANCIAL AFFIDAVIT TO US AT THE OFFICE LOCATED AT XXX AVENUE, BUFFALO, NEW YORK 14202.)>

I would suggest that prior to the commencement of an action that we immediately schedule a four way conference at either your office or mine to attempt to amicably resolve this matter. I would further suggest that each party prepare a 236(b) financial affidavit so that settlement negotiations can be productive.

Kindly contact my office to set up a conference. Please have your client consider an attempt to settle this matter prior to starting an action.

Very truly yours,  
ESQ.

cc: <CLIENT>

COMMENCING A POST-DIVORCE ACTION

**FAMILY COURT PETITION FOR MODIFICATION**

STATE OF NEW YORK  
FAMILY COURT : COUNTY OF

In The Matter of a Proceeding for  
Support under Article \_\_\_\_\_ of the Family Court  
Act

Docket No. \_\_\_\_\_

,  
S.S.#

Petitioner,

-against-

,  
S.S.#

Respondent.

**PETITION FOR  
MODIFICATION OF ORDER  
MADE BY**  
 **FAMILY COURT**  
 **ANOTHER COURT**  
  
 **SUPPORT**  **CUSTODY**  
 **VISITATION**

TO THE FAMILY COURT:

The undersigned Petitioner respectfully shows that:

1. Petitioner resides at \_\_\_\_\_ and Respondent resides at \_\_\_\_\_.
2. Petitioner is \_\_\_\_\_ and was the \_\_\_\_\_ in an action instituted in the \_\_\_\_\_ Court of the State of \_\_\_\_\_, County of \_\_\_\_\_ entitled \_\_\_\_\_, Index No. \_\_\_\_\_, and the Respondent was the \_\_\_\_\_ in said action.
3.  Applicable
  - a. A  judgment  order dated \_\_\_\_\_ was entered in the action whereunder the  Respondent  Petitioner was directed to [specify terms]: \_\_\_\_\_. A true copy of the  judgment

order is annexed hereto and made part hereof.

b. An order of support dated \_\_\_\_\_ was entered  
wherein [specify terms]: \_\_\_\_\_.

4. The names, addresses, dates of birth and social security numbers of all children affected by this order are:

NAME	ADDRESS	D.O.B.	S.S.N.
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5. Under the terms of the  judgment  order the Court has not retained exclusive jurisdiction to modify said  judgment  order.

Said Court is a court of competent jurisdiction outside the State of New York.

6. Since the entry of said  judgment  order there has been a change in circumstances in that [specify]: \_\_\_\_\_.

7. By reason of said subsequent change of circumstances the said  judgment  order of the \_\_\_\_\_ Court should be modified in the following respects [specify]: \_\_\_\_\_.

8.  Petitioner failed to make an application for relief from said judgment or order directing payment prior to the accrual of arrears for the following reason(s) [specify]: \_\_\_\_\_.

9. No previous application has been made to any court or judge for the relief herein requested ( except [specify]: \_\_\_\_\_.)

10. Petitioner:

a.  has made application for child support services with the local Department of Social Services.

b.  hereby makes application for child support enforcement services by the filing of this petition.

c.  does not wish to make application for child support services.

d.  is not eligible for child support enforcement services on the grounds that Petitioner is seeking only spousal support.

WHEREFORE, Petitioner respectfully prays that the said  judgment  order of the \_\_\_\_\_ Court, dated \_\_\_\_\_, be modified in these respects set forth above and for such other relief as to the Court may seem just and proper.

NOTE:

- (1) A COURT ORDER OF SUPPORT RESULTING FROM A PROCEEDING COMMENCED BY THIS APPLICATION OR PETITION SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. SUCH COST OF LIVING ADJUSTMENT SHALL BE ON NOTICE TO BOTH PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THE RIGHT TO BE HEARD BY THE COURT AND TO PRESENT EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT, KNOWN AS THE CHILD SUPPORT STANDARDS ACT.
- (2) A PARTY SEEKING SUPPORT FOR ANY CHILD(REN) RECEIVING DAILY ASSISTANCE SHALL HAVE A CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT SELECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED BY THE SUPPORT COLLECTION UNIT, WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.
- (3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UP ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION FOUR HUNDRED FORTY-THREE OF THE FAMILY COURT ACT, TO



***UCCJEA PETITION***

STATE OF NEW YORK  
FAMILY COURT : COUNTY OF **ERIE**

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In The Matter of a Proceeding for  
 Custody  Visitation under the *Uniform Custody  
Jurisdiction and Enforcement Act*

Docket No. \_\_\_\_\_

,  
-against-

Petitioner,

**UCCJAE PETITION**

CUSTODY  
 VISITATION

,

Respondent.

---

TO THE FAMILY COURT:

The undersigned Petitioner respectfully alleges upon information and belief that:

1. I am [specify relationship to child] and am seeking an order of  custody  visitation regarding [child/children's names] . I  reside  am located at [specify address or indicate confidential if ordered to do so] .

2. Respondent, [specify name] , is [specify relationship to child] . Respondent  resides  is located at [specify address or indicate confidential if ordered to do so] .

3. The name, present address and date of birth of each child who is subject of this proceeding are as follows: [specify address or indicate confidential if ordered to do so]:

NAME	ADDRESS	D.O.B
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4. This Court has jurisdiction to issue a child custody or visitation order pursuant to Section 76(1) of the Domestic Relations Law on the following ground(s) [check all applicable box(es)]:

- a.  this state is the home state of the child on the date of the filing of this petition;
- this state was the home state of the child within six months before the filing of this petition; and the child is absent from this state but the following parent or person acting as a parent continues t

live in this state [specify]: \_\_\_\_\_ ; OR

b.  the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and substantial evidence is available in this state concerning the child's care, protection, training and personal relationships; and EITHER [check applicable box]:

a court of another state does not have home state jurisdiction under paragraph (a); OR

a court of the home state of the child [check applicable box]:  has declined  should decline to exercise jurisdiction on the ground that this state is the more appropriate forum under Domestic Relations Law Section 76-f or 76-g, because [specify]: \_\_\_\_\_ ; OR

c.  all courts having jurisdiction under paragraph (a) or (b) of this subdivision [check applicable box]:  have declined  should decline to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Domestic Relations Law Section 76-f or 76-g because [specify]: \_\_\_\_\_ ; OR

d.  no court of any other state would have jurisdiction under the criteria specified in paragraph (a), (b) or (c).

5. This Court should exercise temporary, emergency jurisdiction, pursuant to Domestic Relations Law Section 76-c, because the child is presently in this State and [check one or both boxes]:

the child has been abandoned [specify facts and circumstances]: \_\_\_\_\_

it is necessary in an emergency to protect the child, a sibling or parent of the child [specify facts or circumstances]: \_\_\_\_\_

6.  An order was issued by \_\_\_\_\_ Court, \_\_\_\_\_ County, State of \_\_\_\_\_, referring the issue of  custody  visitation to the Family Court of the State of New York in and for the County of \_\_\_\_\_ [specify]: \_\_\_\_\_

7. [Check Applicable Boxes]:  
 No proceeding has been commenced that could affect this action.

The following proceeding(s) have been commenced that could affect this action [specify jurisdiction, court, docket or index number, type and

status of the proceeding]:

(Upon information and belief) an order of  custody  visitation of one or more of the same child(ren) has been registered in  New York State  another state, territory, tribal jurisdiction or country [specify court(s) and jurisdiction(s) in which the order is registered, date of registration(s), court and jurisdiction that issued the order, children covered by the order and date of order, if available]:

8. [Check Applicable box(es)]:

a.  The father of the child(ren) who is/are subject(s) of this proceeding is [specify]:

The father was married to the child(ren)'s mother at the time of conception or birth.

An order of filiation was made on [specify date and attach true copy]:

An acknowledgement of paternity was signed on [specify date]: by [specify who signed and attach a true copy]:

The father is deceased.

b.  The father of the child(ren) who is/are the subject(s) of this proceeding has not been legally established.

c.  A paternity agreement or compromise was approved by the Family Court of \_\_\_\_\_ County on \_\_\_\_\_, concerning [name of parties to agreement or compromise and child(ren) and attach a true copy]:

9.  [Check if the mother is not a party] The name and address of the mother is [indicate if deceased or if address ordered to be kept confidential]:

10. During the last five years, each child who is the subject of this proceeding resided at [specify address or indicate if ordered to be kept confidential]:

NAME	ADDRESS	DURATION
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11. The name and present address of the person(s) with whom each child resided during the past five years are as follows [specify address or indicate if ordered to be kept confidential]:

NAME	ADDRESS	DURATION
------	---------	----------

12. Petitioner  has  has not participated as a  party  witness  other [specify]: \_\_\_\_\_ in other litigation concerning the custody of the same child(ren) in  New York State  Other State or other jurisdiction [specify]: \_\_\_\_\_. If so, specify type of case, capacity of participation, court, location and status of case: \_\_\_\_\_.

13. [Check applicable box]:  
 The following person(s) not party to these proceedings have claimed  physical custody or  visitation rights to the child(ren) as follows: \_\_\_\_\_; or

I know of no person(s) not a party to the proceedings who claim(s) to have custody or visitation rights with respect to the child(ren) affected by this proceeding.

14. The custody or visitation of the child(ren) has been determined or agreed upon in the following instruments [specify court, if any, and date and attach a true copy]:

Custody order of [specify court and location]: \_\_\_\_\_ dated \_\_\_\_\_.

Stipulation of settlement in [specify court and location]: \_\_\_\_\_ dated \_\_\_\_\_.

Judgment of Divorce of [specify court and location]: \_\_\_\_\_ dated \_\_\_\_\_.

Custody or Guardianship Agreement confirmed by [specify court and location]: \_\_\_\_\_ dated \_\_\_\_\_.

15.  Petitioner  Respondent obtained custody of the child(ren) on [specify date]: \_\_\_\_\_, as follows [specify schedule]: \_\_\_\_\_.

16. It would be in the best interest of the child(ren) for Petitioner to have  custody  visitation for the following reasons [specify]: \_\_\_\_\_.

17. The following circumstances have changed since entry of the  order  judgment  other [specify]: \_\_\_\_\_ of  custody  visitation [specify]: \_\_\_\_\_.

18. An Order of Protection or Temporary Order of Protection was issued [check applicable box(es)]:  against Respondent  against me in the following criminal, matrimonial or Family Court proceeding(s) [specify the court, docket or index number, date of order, next court date and status of case, if available]: \_\_\_\_\_.

The  Order of Protection  Temporary Order of Protection expired or will expire on [specify]: \_\_\_\_\_.

19.  Petitioner request a Temporary Order of Protection pursuant to Family Court Act Section 655 because [specify]: \_\_\_\_\_.

20. The subject child(ren)  are  are not Native American child(ren) subject to the Indian Welfare Act of 1978 (25 U.S.C. Section 1901-1963).

21.  No previous application has been made to any court or judge

for the relief herein requested, except [specify]: .

WHEREFORE, Petitioner respectfully requests this Court to issue:

- A. An order awarding  custody  visitation of the above-named child(ren) to the petitioner as follows [specify]: .
- B. An order directing the Respondent to appear before the Court immediately with the above named child(ren) for a hearing;
- C. A warrant for the Respondent to appear with the above-named children;
- D. An order directing the following temporary, emergency measures to protect the child, a parent or sibling [specify]: .
- E. An order directing the following measures necessary to ensure the safety of the child and any person ordered to appear: .
- F. An order directing the Respondent to pay Petitioner's attorneys' fees and costs, including reasonable and necessary travel expenses, for the prosecution of this proceeding; and
- G. A temporary order of protection containing the following condition(s) [specify]: .
- H. An order directing such other and further relief as the Court may determine to be just and proper.

Dated:

SIGNATURE OF ATTORNEY, IF ANY	PETITIONER
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ATTORNEY'S NAME (Print or Type)	PRINT OR TYPE NAME
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\_\_\_\_\_  
 ATTORNEY'S ADDRESS AND  
 TELEPHONE NUMBER

STATE OF NEW YORK	)	VERIFICATION
COUNTY OF	)	ss:

being duly sworn, says that (s)he is the Petitioner in the above-named proceeding and that the foregoing petition is true to his/her own knowledge, expect as to matters

therein stated to be alleged on information and belief and as to those matters (s)he believes it to be true.

Sworn to before me on this        day of

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NOTARY PUBLIC

**ORDER TO SHOW CAUSE FOR CONTEMPT**

At a Term of the Supreme Court, Part  
[\_\_\_\_], held in and for the County of \_\_\_\_\_ at  
the Courthouse located at  
[\_\_\_\_], , New York on  
[\_\_\_\_] day of [\_\_\_\_\_].

PRESENT: HON. [\_\_\_\_\_], <J.S.C.>,  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF <COUNTY>

<PLAINTIFF>, Plaintiff/Petitioner, VS. <DEFENDANT>, Defendant/Respondent.	<b><u>ORDER TO SHOW CAUSE AND APPLICATION TO PUNISH FOR CONTEMPT, ETC.</u></b>	Index No. <Number>
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**NOTICE**

THE PURPOSE OF THE HEREAFTER MOTION IS TO SEEK TO PUNISH YOU  
FOR CONTEMPT OF COURT, AND THE PUNISHMENT SOUGHT MAY  
CONSIST OF A FINE, IMPRISONMENT OR BOTH.

**WARNING**

YOUR FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR IMMEDIATE  
ARREST AND IMPRISONMENT FOR CONTEMPT OF COURT.

Upon the Judgment of Divorce granted by the HON. <JUDGE>, J.S.C.,  
on the <DATE OF JUDGMENT>, and upon reading and filing the annexed  
affidavit of the Plaintiff/Petitioner, <PLAINTIFF>, sworn to the [\_\_\_\_\_] day of  
<DATE OF AFFIDAVIT>, and the annexed Affirmation of ESQ., attorney for the  
Plaintiff/Petitioner, affirmed this [\_\_\_\_\_] day of <DATE OF AFFIRMATION>.

Let the Defendant/Respondent, **<DEFENDANT>**, show cause before this Court at a Special Term, Part 4, thereof, to be held at **<COURTHOUSE>**, in the City of Buffalo, New York on the [\_\_\_\_\_] day of [\_\_\_\_\_], 2006 at [\_\_\_\_\_] AM / PM of that day or as soon thereafter as counsel can be heard why an Order should not be made and entered therein, granting the Plaintiff the following relief:

1. For an Order directing that the Defendant/Respondent, **<DEFENDANT>**, be held in Contempt of this Court for his willful and intentional violations of the beforementioned Judgment of Divorce of the Honorable **<JUDGE>**, for **<SPECIFIC VIOLATION OF THE JUDGMENT>**.

2. For an Order of this Court granting the Plaintiff/Petitioner and LAW FIRM PC nine percent (9%) statutorily imposed interest on all unpaid sums owed by the Defendant/Respondent to the Plaintiff/Petitioner and LAW FIRM PC.

3. For a Money Judgment to the Plaintiff/Petitioner in the amount of **<SUM>** representing the Defendant/Respondent's **<SPECIFIC OBLIGATION TO PAY UNDER THE JUDGMENT>**, along with nine percent (9%) interest per annum. In the Alternative, for an Order granting an Ex Parte Money Judgment should the Defendant/Respondent fail to make payment on the unpaid sum and interest within fifteen (15) days.

4. For an Order settling the language of the qualified domestic relations orders required to distribute the various retirement assets of the marriage pursuant to the Judgment of Divorce.

5. For a Money Judgment to Plaintiff/Petitioner's counsel, ESQ., in the amount of <SUM> along with nine percent (9%) interest per annum. In the Alternative, for an Order granting an Ex Parte Money Judgment should the Defendant/Respondent fail to make payment on the unpaid sum and interest within fifteen (15) days.

6. For an Order granting the Plaintiff/Petitioner's attorneys an additional \$750.00 in counsel fee awards for the bringing of this action, based upon the increasing difficulty of the Defendant/Respondent.

7. For an Order granting the Plaintiff/Petitioner's attorneys judgment on any counsel fees awarded for the bringing of this action.

8. For an Order granting the Plaintiff/Petitioner's attorneys a wage assignment of the Defendant/Respondent's wages, pursuant to CPLR 5242 in the amount of <SUM> dollars per month until the total amount of fees due and owing to said attorneys have been satisfied in full.

9. For such other, further and different relief as to this Court may seem just, proper, and equitable under the totality of the circumstances; and it is further

ORDERED, upon service of this order upon <FINANCIAL INSTITUTION> that <FINANCIAL INSTITUTION> place a hold and freeze on the Defendant/Respondent's accounts, and it is further

ORDERED, that in respect to said hold and freeze that divestments from said account be permitted from <FINANCIAL INSTITUTION> to the

Plaintiff/Petitioner and LAW FIRM PC in regards to any and all monies owed pursuant to an order of this Court,

THEREFORE, let service of a copy of this Order, together with the papers upon which it is based, personally upon the Defendant/Respondent,

<DEFENDANT>, on or before the [\_\_\_\_\_] day of

[\_\_\_\_\_], be deemed sufficient; and it is further

ORDERED, that any Answering Affidavits in opposition to the within application be forwarded to the offices of the attorney for the Plaintiff/Petitioner at least three (3) days prior to the return of this motion.

\_\_\_\_\_  
HON. <JUDGE>, J.S.C.

GRANTED:

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF <COUNTY>

<PLAINTIFF>,  
Plaintiff/Petitioner,

VS.

<DEFENDANT>,  
Defendant/Respondent.

**ORDER TO SHOW CAUSE  
AND APPLICATION TO  
PUNISH FOR CONTEMPT,  
ETC.**

<Index > No. <Number>

STATE OF NEW YORK )  
COUNTY OF ) ss:

<PLAINTIFF>, being duly sworn, deposes and says:

1. I am the Plaintiff/Petitioner in the above-entitled action and am fully familiar with all of the facts and circumstances herein and make this application for the relief requested in the attached Order to Show Cause with Application to Punish for Contempt, Etc.

2. I have read the Affirmation of ESQ. annexed hereto on <DATE> and I swear to the contents of the information contained therein.

3. <LIST SPECIFIC VIOLATIONS OR LACK OF COMPLIANCE WITH THE JUDGMENT OF DIVORCE>

WHEREFORE, your despondent respectfully requests the Court to grant the Order to Show Cause together with such other, further and different relief as to this court may be just, proper and equitable under the totality of the circumstances.

\_\_\_\_\_  
<PLAINTIFF>

Sworn to before me the  
[ ] day of [ ] 2006

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF <COUNTY>

---

<PLAINTIFF>,

Plaintiff/Petitioner,

VS.

<DEFENDANT>,

Defendant/Respondent.

**ORDER TO SHOW CAUSE  
AND APPLICATION TO  
PUNISH FOR CONTEMPT,  
ETC.**

Index No. <Number>

---

<ATTORNEY>, ESQ., being an attorney duly admitted to practice in the State of New York, hereby affirms under penalties of perjury:

1. I am an attorney duly admitted to the practice of law in the State of New York with offices located at <ADDRESS>. I am a partner in the law firm of LAW FIRM PC, attorneys for the Plaintiff/Petitioner, <PLAINTIFF>. I make this affirmation in support of the attached Order to Show Cause.

2. <SUMMARY OF ALLEGATIONS>

3. <PRIOR ORDERS OR AGREEMENTS UPON WHICH  
THE JUDGMENT INCORPORATED>

4. <IF KNOWN, THE PRIOR PROCEDURE OF THIS CASE>

5. Based upon the Judgment of Divorce and the prior papers,  
<OBLIGATIONS OF THE DEFENDANT>.

6. To date, upon information and belief <SPECIFY THE  
MINIMAL COMPLIANCE WITH THE JUDGMENT>.

7. Upon information and belief, the Plaintiff/Petitioner has not received anything further pursuant to the decision of this Court. Additionally, your Affirmant has not received any payment on the award of counsel fees.

8. Upon information and belief, the withholding of funds is both willful and malicious. According to my client, <EXPLAIN WHY PLAINTIFF FEELS THE ACTIONS WERE MALICIOUS>.

9. In addition to these sums, your Affirmant is asking for an award of \$750.00 in connection with the costs and expenses of having to prepare and argue this motion to compel the Defendant to make payment pursuant to the decision of this Court. I also ask that the Defendant be held in contempt of this Court for his willful violation of the Court's decision.

WHEREFORE, your Affirmant respectfully requests the Court to grant this Order to Show Cause with the relief requested within together with such other, further and different relief as to this court may be just, proper and equitable under the totality of the circumstances.

---

ESQ.

Affirmed this [\_\_\_\_\_] day of [\_\_\_\_\_].

The undersigned certifies that, to the best of her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this paper or contentions therein are not frivolous as defined in NYCRR 130-1.1(c).

---

ESQ.

**CLIENT CERTIFICATION**

I, **<PLAINTIFF>**, HEREBY CERTIFY, under penalty of perjury, that neither my attorney, nor anyone acting on my attorney's behalf, was the source of any of the information contained in the annexed document; that I provided all of the information contained in the annexed document to my attorney; and that I understand that my attorney, in executing the Attorney Certification required by 22 NYCRR 202.16(e), is relying entirely upon the information provided by me and upon my certification that all such information is true and accurate.

I FURTHER CERTIFY, that the annexed document includes all information that I have provided to my attorney which is relevant to such document and that my attorney has not deleted, omitted or excluded any such information.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**<PLAINTIFF>**

**ATTORNEY'S CERTIFICATION**

I, **ESQ.**, HEREBY CERTIFY, under penalty of perjury, that I have no actual knowledge that the substance of any statements of fact contained in the annexed document are false. This Certification is based solely and exclusively upon information provided by the client, and upon the client's certification to the undersigned attorney that such information is not false, and is not based upon any review, audit, examination, inquiry or investigation made by the undersigned attorney or by anyone acting on behalf of said attorney.

PLEASE TAKE NOTICE that this Certification is made by the attorney as an officer of the Court and is directed solely and exclusively to the Court in accordance with 22 NYCRR 202.16(e) and is expressly not directed or extended to the opposing party herein.

PLEASE TAKE FURTHER NOTICE that the opposing party may not and should not rely upon this Attorney's Certification in assessing the truth or validity of the information contained in the annexed document. The credibility of this submission is no greater than the credibility of the client represented by the undersigned attorney and the opposing party should give this document no greater credence merely because it bears this Attorney's Certification.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**ESQ.**

## RESPONDING TO A POST-DIVORCE ACTION

Once a party prepares and serves a petition to Family Court, the opposing party will likely serve a response to the petition to state their position.

Below is a sample responding document, drafted in the form of a client's affidavit. Most replies to a petition will be drafted as a sworn statement by the respondent to the allegations brought against him.

### *RESPONDENT'S AFFIDAVIT TO A PETITION*

STATE OF NEW YORK :  
FAMILY COURT: COUNTY OF ERIE

---

<PETITIONER>,

Petitioner,

VS.

<RESPONDENT>,

Respondent.

**REPLY AND  
RESPONDENT'S  
SUPPLEMENTAL AFFIDAVIT**

Docket No. <NUMBER>

---

STATE OF NEW YORK            )  
COUNTY OF ERIE            ) ss:

<RESPONDENT>, being duly sworn, deposes and says:

1. I am the Respondent in the above entitled action and have personal knowledge of the facts and circumstances contained within. I make this affidavit in opposition of the Petitioner's <PETITION>.

2. The parties have a child in common, namely <NAME>, born <DATE>.

3. There is presently an order of Family Court, entered by this Court on <DATE>, permitting your Deponent <TERMS OF THE ORDER>. Annexed hereto as Exhibit "A" is a true copy of this Court's <DATE> Order.

4. <SUMMARY OF RESPONSE TO PETITIONER>

<ISSUE ONE OF PETITIONER'S PETITION>

5. <RESPONSE TO ISSUE ONE>

<ISSUE TWO OF PETITIONER'S PETITION>

6. <RESPONSE TO ISSUE ONE>

<COUNTER ACCUSATIONS AGAINST THE PETITIONER>

7. <COUNTER ACCUSATION AND SUPPORT FOR COUNTER ACCUSATION>

8. <STEPS RESPONDENT IS TAKING TO SECURE EVIDENCE TO SUPPORT THIS COUNTER ACCUSATION>

WHEREFORE, your Deponent respectfully requests the Court to dismiss the Petitioner's petition together with such other, further and different relief as to this court may be just and proper under the totality of the circumstances.

\_\_\_\_\_  
<RESPONDENT>

Sworn to before me the  
[ ] day of [ ] 2006

\_\_\_\_\_  
Notary Public

## CORRESPONDING WITH THE LAW GUARDIAN

In matters of custody and visitation, the court may appoint a law guardian to represent the minor children. A letter of introduction should be sent to the appointed law guardian introducing the client you represent and the child. This letter is a forum to advise the law guardian of your client's position, the specific matters of the case, and to forward documents and other materials to the law guardian which will assist your client.

The law guardian represents the child(ren) in the custody or visitation matter, and does not represent your client. The law guardian may offer a position adverse to your client, based upon the wishes of the child or the best interests of the child.

### *INTRODUCTORY LETTER TO THE LAW GUARDIAN*

Please be advised that the court has appointed you as law guardian in the above captioned matter to <NAME OF CHILD>, date of birth <CHILD'S DATE OF BIRTH>.

This office represents <CLIENT'S NAME>, the <MOTHER/FATHER/ OTHER> of your client. This matter is scheduled for <DATE> at <TIME> for a report back in <NAME OF COURT> in <LOCATION OF COURT>.

<(I enclose for your review notes by my client which <RESPONDS TO THE OPPOSING SPOUSE'S ALLEGATIONS/SUPPORTS OUR CLIENT'S ALLEGATIONS/ETC>.)>

It is my office policy not to allow my client to be interviewed by anyone outside of my presence. If you wish to meet with my client I will accompany <HIM/HER> at your convenience. Please contact my office to set up a date and time at your convenience to meet with my client.

I have instructed my client that if you wish to interview your client <HE/SHE> will bring <HIM/HER> to you at your convenience to wherever you would like to see <HIM/HER>. You are also welcome to interview <HIM/HER> at <HIS/HER> home.

Very truly yours,  
ESQ.

cc: <CLIENT>

## DISCOVERY AND DUE DILIGENCE

As is the case in many litigated matters, both parties must undergo discovery and due diligence to ascertain the strengths and weaknesses of each case.

### *LETTER TO CLIENT FOR WITNESSES AND EVIDENCE*

This letter is to remind you that this matter is scheduled for a report back conference before the Judge on *<DATE AND TIME>* and set for hearing on *<DATE AND TIME>*.

To prepare for your hearing, we must receive from you a list of potential witnesses who could testify on your behalf *<ABOUT THE ISSUES/AGAINST THE OPPOSING PARTY/ETC.>*. For each include the witnesses' name, address, telephone number and what you expect they would testify to.

Also, indicate whether or not you believe the witness is willing to testify or may be hostile. It is all too common that a key witness will state they will volunteer and be more than willing to take the stand at a hearing and later decide they do not want to cooperate. Please keep this in mind when you talk to your potential witnesses.

For this reason, I maintain that it is good practice to have each voluntary potential witness sign an affidavit as to what information or other evidence they will attest to. Should the witness become uncooperative in the future, this affidavit will become essential.

In addition, we will need ample evidence to support your position and show the court that your position is correct. Specifically, *<SPECIFIC PIECES OF EVIDENCE THE CLIENT NEEDS TO OBTAIN OR ANY ADDITIONAL OUTSTANDING ISSUES THE CLIENT NEEDS TO ADDRESS>*.

This preliminary preparation will bring to our attention whatever other information – no matter how insignificant – that may give us evidence against *<OPPOSING PARTY>*. Such things like hockey tickets, receipts and so forth may prove valuable to show how his money is spent.

We understand that this will take time. However, we have less than *<NUMBER OF MONTHS>* months to prepare for this trial, so please begin working on this information as soon as you can.

Very truly yours,

**LETTER TO OPPOSING COUNSEL FOR FINANCIAL DISCOVERY**

Please be advised that we are formally demanding a copy of your client's financial affidavit and past five (5) years of federal and state income tax return filings, W-2s and 1099s if applicable. Please forward these documents within ten (10) days of receipt of this letter.

Thank you for your anticipated courtesies. We look forward to hearing from you soon.

Very truly yours,  
ESQ.

**DEMAND FOR FINANCIAL DISCLOSURE**

STATE OF NEW YORK  
FAMILY COURT: COUNTY OF ERIE

---

<PETITIONER>,

Petitioner,

**DEMAND FOR FINANCIAL  
DISCLOSURE**

VS.

<RESPONDENT>,

Respondent.

Docket No. <NUMBER>

---

**PLEASE TAKE NOTICE** that pursuant to NY Family Court Act Section 424-a, the Respondent demands that the Petitioner within 20 days after receipt of this Notice, file with the Family Court of the State of New York, and serve upon the Petitioner's Attorneys, LAW FIRM PC, at their offices located at <ADDRESS>, a sworn statement of Respondent's net worth and financial status, including W-2 and 1099 statements for the year 2005 and all tax returns for the last five years.

**PLEASE TAKE FURTHER NOTICE** that non-compliance shall be punishable by any and all penalties prescribed in Section 3126 of the Civil Practice Law and Rules.

DATED: Buffalo, New York  
<DATE>

---

LAW FIRM PC  
<ADDRESS>

TO: <RESPONDENT'S ATTORNEY>

**FAMILY COURT FINANCIAL AFFIDAVIT**

STATE OF NEW YORK :  
FAMILY COURT: COUNTY OF

In the Matter of a Proceeding for Support

**PLAINTIFF'S NAME,**

S.S.#

Petitioner,

**FINANCIAL DISCLOSURE**  
**AFFIDAVIT**

VS.

Docket No.

**DEFENDANT'S NAME,**

S.S.#

Respondent.

**NOTICE: YOU ARE REQUIRED TO ATTACH TO THIS FORM A CURRENT AND REPRESENTATIVE PAYCHECK STUB AND COPIES OF YOUR MOST RECENTLY FILED STATE AND FEDERAL INCOME TAX RETURNS, INCLUDING A COPY OF THE W-2 WAGE AND TAX STATEMENT(S) SUBMITTED WITH THE RETURNS. YOU MAY ALSO BE REQUIRED TO PRODUCE OTHER PAYCHECK STUBS, EMPLOYMENT OR BUSINESS RECORDS AND PROOF OF CLAIMED EXPENSES. YOU ARE ALSO REQUIRED TO PROVIDE INFORMATION RELATING TO ALL ACCIDENT, LIFE AND HEALTH INSURANCE PLANS AVAILABLE TO YOU FOR THE PROVISION OF INSURANCE, HEALTH CARE, DENTAL CARE, OPTICAL CARE, PRESCRIPTION DRUG AND OTHER PHARMACEUTICAL AND HEALTH-RELATED BENEFITS FOR THE CHILD(REN) FOR WHOM SUPPORT IS SOUGHT.**

STATE OF NEW YORK )  
COUNTY OF ERIE ) ss:

, the **PETITIONER/RESPONDENT** herein, residing at , being duly sworn, deposes and says that the following is an accurate statement of my income from all sources, my liabilities, my assets and my net worth, from whatever sources, and whatever kind and nature, and wherever situated:

**I. INCOME FROM ALL SOURCES**

The correct amount of the child support obligation is presumed to be a percentage of income as defined by law. The percentages are set forth in Addendum A. Other pertinent information is set forth in Addendum B and C. List your income from all sources as follows:

- a. Wages and Salaries (as reportable on Federal and State income tax returns):
  - i. Employer's Name:
  - Employer's Address:
  - ii. Number of members in the household:

- iii. Number of dependants:
- iv. Hours worked per week:
- v. Weekly gross salary or wages: \$
- vi. Weekly Deductions:
  - 1. Social Security/Medicare (FICA) Tax: \$
  - 2. New York State Tax: \$
  - 3. Federal Income Tax: \$
  - 4. Other Payroll Deductions:
- vii. Income from other members of the household:

**NOTE:** ATTACH INCOME FROM OTHER EMPLOYERS ON SEPARATE PAGES.

- b. Self-Employment Income (Describe and list self-employment income; attach to this form the most recently filed Federal and State income tax returns, including all schedules):
- c. Interest and Dividends
- d. Other Income
  - i. Worker's Compensation:
  - ii. Disability Benefits:
  - iii. Unemployment Insurance Benefits:
  - iv. Social Security Benefits:
  - v. Veteran's Benefits:
  - vi. Pension and Retirement Benefits:
  - vii. Fellowships/Stipends/Annuities:
- e. Income from other sources: (List here and explain any other income including but not limited to: non-income producing assets; employment 'perks' and reimbursed expenses; fringe benefits as a result of employment; periodic income, personal injury settlements; non-reported income; and money, goods and services provided by relatives and friends):

II. **ASSETS** The Court can consider the assets of the custodial parent and/or the non-custodial parent in its award of child support. List your assets as follows:

- a. Savings Account Balance
  - Name of Bank:
  - Current Balance: \$
- b. Checking Account Balance
  - Name of Bank:
  - Current Balance: \$

- c. Automobile(s) (year and make:            )  
Loan Information:
- d. Residence Owned (address:            )  
Value: \$
- e. Other Real Estate Owned (address:            )  
Value: \$
- f. Other Assets (For example: stocks, bonds, trailers, boat, etc.):  
Value \$
- g. Driver's, professional, recreational, sporting and other licenses and permits held (provide name of issuing agency, license number and attach a copy if possible):

III. **DEDUCTIONS FROM INCOME** The Court allows certain deductions from income prior to applying the child support percentages. List the deductions that apply to you as follows:

- a. Unreimbursed employee business expenses  
\$
- b. Maintenance actually paid to a spouse not a party to this action \* \$
- c. Maintenance actually paid to a spouse who is a party to this action  
\$
- d. Child support actually paid on behalf of a non-subject child(ren)\* \$
- e. Family Assistance  
\$
- f. Supplemental Security Income  
\$
- g. NYC/Yonkers Income Tax  
\$
- h. FICA  
\$

**\*Attach to this form a copy of the appropriate Court Order**

IV. **HEALTH INSURANCE, UNREIMBURSED HEALTH-RELATED EXPENSES, CHILD CARE, EXPENSES, EDUCATIONAL EXPENSES AND LIFE AND ACCIDENT INSURANCE POLICIES** As part of the child support obligation, parents shall be directed to provide health insurance coverage, pay a pro-rated share of the cost or premiums to obtain or maintain the health insurance coverage, and pay a pro-rated share of unreimbursed health- related expenses, pay a pro-rated share of child care expenses and in the Court's discretion pay educational expenses. The Court may direct you to purchase and maintain life and/or accident insurance benefits or assign benefits on existing policies for the benefit of your children. List your information as follows and cross out or delete inapplicable provisions:

- a.  I have health insurance coverage through [specify]:  employer or organization  private purchase  New York State "Child Health Plus" program  New York State Medical Assistance Program
- I do not have health insurance coverage [If this box is checked, skip to ¶ IV b].
  - i. My coverage includes  medical  dental,  prescription drug,  optical,  other health care services or benefits [specify]:

- ii. The portion of the cost of the insurance paid by my employer or through my employment is \$ \_\_\_\_\_ per [specify time period]:  
The cost of the insurance paid by me is \$ \_\_\_\_\_ per [specify time period]: \_\_\_\_\_.
- iii. The person(s) covered by my insurance is/are:
- iv. My policy number is:
- v. Coverage  does  does not presently include my child(ren).  
The additional cost to me to include my child(ren) would be [specify cost for each type of benefit; if benefit unavailable, so indicate]:
  - 1. Medical: \_\_\_\_\_ \$ \_\_\_\_\_ per \_\_\_\_\_.
  - 2. Dental: \_\_\_\_\_ \$ \_\_\_\_\_ per \_\_\_\_\_.
  - 3. Optical: \_\_\_\_\_ \$ \_\_\_\_\_ per \_\_\_\_\_.
  - 4. Prescription Drugs: \_\_\_\_\_ \$ \_\_\_\_\_ per \_\_\_\_\_.
  - 5. Other: \_\_\_\_\_ \$ \_\_\_\_\_ per \_\_\_\_\_.
 Specify: \_\_\_\_\_
- vi. The name and address of my primary (and secondary) health insurer is/are:
- vii. My primary (and secondary) health plan administrator is/are: (indicate name, address and telephone number of contact person for employer or organization):
- viii. There are  medical,  dental,  prescription drug,  optical,  other health care benefits [specify]: \_\_\_\_\_ insurance benefits available to the child(ren) through an individual who is not a party to the action [indicate name and relationship]:  
These benefit costs are as follows:
- b. My child care provider is: \_\_\_\_\_ . The average number of hours of child care incurred per week are \_\_\_\_\_ .
- c. My child's educational needs and expenses are: \_\_\_\_\_ .
- d. I have the following life and accident insurance policies:
  - i. Life Insurance  
Name of Insurer:  
Beneficiary/Beneficiaries:  
Policy Value: \$ \_\_\_\_\_  
  
Name of Insurer:  
Beneficiary/Beneficiaries:  
Policy Value: \$ \_\_\_\_\_
  - ii. Accident Insurance  
Name of Insurer:  
Policy Value: \$ \_\_\_\_\_  
  
Name of Insurer:  
Policy Value: \$ \_\_\_\_\_

**This information is current as of \_\_\_\_\_ .**

V. **VARIANCE FROM THE PERCENTAGES** The Family Court Act allows the Court to order support different from the percentages if the Court finds that the support

based upon the percentages would be unjust or inappropriate due to certain factors. The factors are set forth in Addendum D. The following is/are the factor(s) that the Court should consider in this case:

VI. **EXPENSES** In ordering support by the percentages the Court is not obligated to consider expenses. However, if the Court varies from the percentages, expenses may be considered. List your expenses as follows: [List all expenses on a weekly or monthly basis; however, you must be consistent: if any items are paid monthly, divide by 4.3 to obtain the weekly payment; if any items are paid weekly, multiply by 4.3 to obtain the monthly payment).

I am listing my expenses on a **MONTHLY** basis:

- a. Rent or mortgage payment \$
- b. Mortgage interest and amortization \$
- c. Realty taxes (if not included in mortgage payment) \$
- d. Insurance on realty \$
- e. Utilities: \$  
(Gas \$ Electric/Water \$ Telephone \$ Cable \$ )
- f. Garbage collection \$
- g. Household repairs \$  
(specify: )
- h. Food \$
- i. Charge accounts, loans, etc
  - i. Account:  
Current Balance \$
  - ii. Account:  
Current Balance \$
  - iii. Account:  
Current Balance \$
- j. Auto expenses: \$  
(Gas \$ Maintenance \$ Insurance & fees \$ Loan \$ )
- k. Public transportation \$
- l. Life insurance \$
- m. Health insurance \$
- n. Clothing \$  
(self \$ others \$ (explain: ))
- o. Laundry and dry cleaning \$
- p. Education and tuition \$  
(explain: )
- q. Child care \$
- r. Contributions \$
- s. Union dues  Mandatory \$
- t. Entertainment \$
- u. Miscellaneous personal expenses \$  
(specify: )
- v. Other \$  
(specify: )

VII. **LIABILITIES, LOANS AND DEBTS** In ordering support by the percentages the Court is not obligated to consider liabilities, loans, and debts. However, if the

Court varies from the percentages, they may be considered. List your liabilities, loans and debts as follows:

- a. Creditor:  
Purpose:  
Date Incurred:  
Total Balance Due: \$
- b. Creditor:  
Purpose:  
Date Incurred:  
Total Balance Due: \$
- c. Creditor:  
Purpose:  
Date Incurred:  
Total Balance Due: \$
- d. Creditor:  
Purpose:  
Date Incurred:  
Total Balance Due: \$
- e. Creditor:  
Purpose:  
Date Incurred:  
Total Balance Due: \$

**NOTE:** ATTACH TO THIS FORM INFORMATION REGARDING ANY ADDITIONAL DEBTS.

\_\_\_\_\_  
**-SELECT ONE-**

\_\_\_\_\_  
**Print or Type Name**

\_\_\_\_\_  
**Signature of Attorney, if any**

\_\_\_\_\_  
**Attorney's Name (Print or Type)**

**Attorney's Address and  
Telephone Number**

I have carefully read the foregoing statement and attest to its truth and accuracy.

\_\_\_\_\_  
**-SELECT ONE-**

Sworn to before me this  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Deputy)Clerk of the Court  
Notary Public

**SAMPLE HIPAA AUTHORIZATION FORM**

	<b>AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION TO THIRD PARTY</b> <i>Please print or type and use blue or black ink.</i>
--	--

Name of Individual \_\_\_\_\_ Birth Date \_\_\_\_\_

Subscriber Name \_\_\_\_\_ Subscriber Number/Group Number \_\_\_\_\_

**AUTHORIZES:**

<b>&lt;MEDICAL GROUP&gt;</b> <b>&lt;ADDRESS&gt;</b> <b>&lt;CITY, STATE, ZIP&gt;</b>
---

**TO DISCLOSE PROTECTED HEALTH  
INFORMATION TO:**

**<ATTORNEY>**  
**<ADDRESS>**

I authorize the abovementioned party to disclose the following information to the person(s)/organization named above:

- Claims History    Case Management Records    Payment Summary    Enrollment Records  
 Claim Correspondence  
 Provider records/correspondence    Other (Specify): \_\_\_\_\_  
\_\_\_\_\_

For the Following Dates: \_\_\_\_\_  
\_\_\_\_\_

I understand that portions of my records may have extra protection under New York statutes or federal law, including information relating to mental health, alcohol and/or drug abuse, developmental disabilities, and HIV test results. However, if any such information is included in the information held by the abovementioned party, I understand that the abovementioned party will not attempt to separate out such information; thus, specially protected information may be disclosed pursuant to this request. I hereby authorize the disclosure of that information.

**Plan(s) Covered by This Authorization:**    Health    Long Term Care    Dental     
Other: \_\_\_\_\_

**Purpose of Disclosure:**    Payment of claim(s)    Coordination of Benefits     
Preauthorization    Legal Reasons  
 Grievance    Personal Reasons    Other (Specify): \_\_\_\_\_  
\_\_\_\_\_

**MY RIGHTS WITH RESPECT TO THIS AUTHORIZATION:**

I understand that I have the right to revoke this authorization at any time by providing a written revocation to the abovementioned party's Privacy Office. I am aware that my revocation is not

effective until it is received by the Privacy Office, and that it has no effect on disclosures made prior to receipt of my revocation. I understand that I am under no obligation to sign this form and that the abovementioned party may not condition treatment, payment, or eligibility for benefits on my decision to sign this authorization. I may make or request a copy of this authorization at any time.

**Redisclosure Notice:** I understand that once the abovementioned party discloses my information based on this authorization, the information will no longer be protected by federal and state privacy standards. This could result in redisclosure by the recipient; the abovementioned party has no liability for any subsequent disclosure.

**Expiration Date:** This authorization is valid for 6 months, unless I substitute a specific date here:

\_\_\_\_\_

I have had an opportunity to review and understand the content of this authorization form. By signing this authorization, I am confirming that it accurately reflects my wishes.

---

Signature

Date

If individual is 18 or older and not signing, please state reason why individual cannot sign and signer's relationship to individual:

*A photocopy of this authorization shall be as valid as the original.*

<ANY - Blank HIPAA Authorization Form.doc>

## SETTLEMENT PROPOSALS AND COURT ORDERS

Settlement is typically more economical to a client than a court hearing. It may be strategically important to seek a settlement. Below are typical correspondence – both generally and specific to child support – which may be used when negotiating a settlement agreement.

### *LETTER PROPOSING A SETTLEMENT*

In an effort to settle this case, the following settlement proposal is offered without prejudice, and not to be used in litigation or revealed to the trier of fact or for any other purpose.

Our client would like to propose the following *<VISITATION SCHEDULE/CUSTODIAL ARRANGEMENT/CHILD SUPPORT ARRANGEMENT/ETC>*:

*<PROPOSAL>*

Very truly yours,  
ESQ.

cc: *<CLIENT>*

*<ANY - Proposed Settlement Offer Form Letter.doc>*

### *LETTER ADVISING A CLIENT OF A SETTLEMENT OFFER*

*<OPPOSING COUNSEL>* has offered as a settlement proposal for you to *<TERMS OF SETTLEMENT>* to settle the matters of *<MATTERS TO BE SETTLED>*. In addition, this settlement offer would include an agreement by *<OPPOSING PARTY>* that your obligation towards *<ADDITIONAL MATTER>* would be *<TERMS OF ADDITIONAL MATTER>*. The issue of the *<UNRESOLVED ISSUES>* would still need to be resolved.

*<TOTAL COSTS OF THIS SETTLEMENT TO CLIENT>*

I recommend this settlement proposal. From an economic view point, you have a much better chance of *<DESIRED RELIEF>* than you would should a court hold a hearing on these matters. We have estimated that your exposed risk on the issues of *<HIGH RISK ISSUES>*, including the previously mentioned agreement on *<MEDIUM RISK ISSUES>*, and believe you could be at risk to be ordered to *<THE COURT'S LIKELY RELIEF>*.

This <TYPE OF RISK> risk is derived from <NATURE OF RISK>. It is my opinion that this risk to you is <VERY HIGH/LOW>.

<(In preparation of the upcoming hearing on these matters, you will need to sign another retainer agreement, and we request an additional retainer of <RETAINER AMOUNT> for the preparation and litigation work for this upcoming hearing. You have insisted on a hearing on <ISSUES>, which increased the amount of the retainer.)>

<(However, if you feel you have lost confidence in my ability to represent you I can recommend other legal counsel to assist you with these remaining issues. If you choose to do so, I can work with any new legal counsel to help prepare for the upcoming hearing.)>

<(Your hearing is scheduled for <DATE AND TIME>. Therefore, I recommend taking a few days to review this matter before deciding to move forward with the hearing. Should you decide to continue, please return one of the enclosed retainer agreements with your payment and I will be happy to represent you.)>

Very truly yours,  
ESQ.

<ANY - Analysis of Settlement and Recommendation Form Letter.doc>

## **LETTER CONFIRMING AN ORDER OR SETTLEMENT**

This letter is to confirm our understanding of the events that occurred on the <DATE> <COURT APPEARANCE/CONFERENCE/ETC.>.

<**TOPIC**> <HOW THE ISSUE WAS DECIDED OR RESOLVED, OR IF THE ISSUE IS UNRESOLVED AND WHY>

<(The next Court appearance is scheduled for <**DATE AND TIME OF NEXT APPEARANCE**>.)>

<(Pursuant to the Court's direction, please prepare and forward a proposed <ORDER/STIPULATION> within the next five (5) days for our review.)>

Thank you for your time and attention to this matter. We look forward to hearing from you soon.

Very truly yours,  
ESQ.

cc: <CLIENT>

<ANY - Confirmation of Order or Stipulation Form Letter.doc>

## SETTLEMENT PROPOSALS IN CHILD SUPPORT

### *LETTER ADVISING CLIENT OF SUPPORT CALCULATIONS*

We were recently served with <OPPOSING CLIENT>'s Financial Affidavit <(and <DEMAND FOR DISCOVERY>)>. Enclosed is an additional copy of the financial affidavit <(and <DEMAND FOR DISCOVERY>)>.

Please review the financial affidavit and advise us of any discrepancies you believe may assist you in your case. <(Also, please look through Schedule "A" attached to the Notice and please provide copies of all relevant documents as soon as it is possible. While we hope a deposition will not be needed in this matter, it is best to prepare for one just in case.)>

Along with copies of the requested information, please begin thinking about what your realistic goals are for this litigation. When you are ready, please advise us as to what <SUPPORT/SUPPORT MODIFICATIONS> you need so that we may present these in hopes to settle or in preparation for a hearing.

With receipt of <OPPOSING CLIENT>'s recent pay stub and <YEAR> W-2, we can begin to estimate what <HIS/HER> child support obligations would be under the Child Support Standards Act. According to <OPPOSING CLIENT>'s <YEAR> W-2, his <YEAR> gross income is <INCOME> before any deductions (pre or post-tax).

According to <OPPOSING CLIENT>'s <YEAR> Pay Stubs, <OPPOSING CLIENT> receives a base annual salary of <SALARY> (based upon an hourly rate of <RATE> at 80 hours per bi-weekly pay schedule, as indicated in <HIS/HER> pay stub). <(OPPOSING CLIENT>also receives commissions. According to is pay stub, <OPPOSING CLIENT>has received <TRUNCATED COMMISSIONS/ADDITIONAL PAY> in <TITLE OF ADDITIONAL PAY> as of <DATE OF PAY PERIOD> – or roughly <TRUNCATED PAY DIVIDED BY NUMBER OF WEEKS> per week, averaging out his commissions over the previous <NUMBER OF WEEKS> weeks. This would place <OPPOSING CLIENT>'s estimated <TRUNCATED COMMISSIONS/ADDITIONAL PAY> rate for <YEAR> at <ESTIMATED INCOME>. <OPPOSING CLIENT>estimated <YEAR> gross income would be \$68,583.69.)>

You have indicated in your materials that you have a gross income of <CLIENT'S GROSS INCOME> in <YEAR>. <(We will assume, for the sake of the Child Support Standards Act that your <NEXT YEAR> income and expenses will be similar to the figures you provided for <YEAR>.)>

From this point on, we will break up the calculations based upon <YEAR>

or <NEXT YEAR> figures, and includes various scenarios for both parties' gross and adjusted gross incomes.

**<YEAR> W-2s**

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This is the basic Child Support Standards Act calculation, using the prior year's income figures to calculate this year's support requirements.

<OPPOSING CLIENT>'s Adjusted Gross Income is <ADJUSTED GROSS INCOME>. This number is derived from his <YEAR> W-2 gross income of <INCOME> minus FICA at 7.65%, or <FICA>. <(In addition, <OPPOSING CLIENT> has unreimbursed business expenses of <EXPENSES>, and pays <CHILD SUPPORT/MAINTENANCE> pursuant to a prior court order in the amount of <PRIOR SUPPORT>. These expenses are permitted deductions under the Child Support Standards Act.)>

Your Adjusted Gross Income is <ADJUSTED GROSS INCOME>. This number is derived from your 2005 income of \$23,860.00 minus FICA at 7.65%, or \$1,825.29. <(In addition, you have unreimbursed business expenses of <EXPENSES>, and pay <CHILD SUPPORT/MAINTENANCE> pursuant to a prior court order in the amount of <PRIOR SUPPORT>. These expenses are permitted deductions under the Child Support Standards Act.)>

The Combined Parental Income is <COMBINED INCOME>. Mr. Mann's contribution towards this combined income is <PERCENTAGE OF COMBINED INCOME>. Your contribution is <PERCENTAGE OF COMBINED INCOME>.

Child support under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income, or <TOTAL CHILD SUPPORT FOR BOTH PARENTS>.

<OPPOSING CLIENT>'s obligation would be <PERCENTAGE OF COMBINED INCOME> of the <TOTAL CHILD SUPPORT FOR BOTH PARENTS> child support calculation, or <OPPOSING PARTY'S CHILD SUPPORT OBLIGATION>. Each bi-weekly pay period, Mr. Mann would be obligated to pay you <BI-WEEKLY OBLIGATION> in child support.

<(Child support for the first \$80,000.00 under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income, or <CAPPED CHILD SUPPORT FOR BOTH PARENTS>.>

Child support for the remaining <AMOUNT ABOVE \$80,000> under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income exceeding the \$80,000.00 cap, or <ADDITIONAL CHILD SUPPORT>.

*<OPPOSING CLIENT>'s obligation for the child support capped at \$80,000.00, or <CAPPED CHILD SUPPORT FOR BOTH PARENTS>, is <OPPOSING PARTY'S CHILD SUPPORT OBLIGATION> or <BI-WEEKLY OBLIGATION> per bi-weekly pay schedule. <OPPOSING CLIENT>'s obligation, should the \$80,000.00 be permitted to be exceeded, for the remaining <ADDITIONAL CHILD SUPPORT> in child support would be an additional <OPPOSING PARTY'S ADDITIONAL CHILD SUPPORT>, or an additional <BI-WEEKLY OBLIGATION> per bi-weekly pay period. The total bi-weekly amount would be <BI-WEEKLY OBLIGATION FOR \$80,000 PLUS EXCESS OF \$80,000>.)>*

This is the most likely estimate should this matter be decided by a support magistrate.

### ***<YEAR> Pay Stubs***

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For the sake of completeness, and to show a range of child support possibilities, this next calculation using <OPPOSING CLIENT>'s <YEAR> pay stubs and estimated income.

*<OPPOSING CLIENT>'s Adjusted Gross Income is <ADJUSTED GROSS INCOME>. This number is derived from his <YEAR> W-2 gross income of <INCOME> minus FICA at 7.65%, or <FICA>. <(In addition, <OPPOSING CLIENT> has unreimbursed business expenses of <EXPENSES>, and pays <CHILD SUPPORT/MAINTENANCE> pursuant to a prior court order in the amount of <PRIOR SUPPORT>. These expenses are permitted deductions under the Child Support Standards Act.)>*

*Your Adjusted Gross Income is <ADJUSTED GROSS INCOME>. This number is derived from your 2005 income of \$23,860.00 minus FICA at 7.65%, or \$1,825.29. <(In addition, you have unreimbursed business expenses of <EXPENSES>, and pay <CHILD SUPPORT/MAINTENANCE> pursuant to a prior court order in the amount of <PRIOR SUPPORT>. These expenses are permitted deductions under the Child Support Standards Act.)>*

The Combined Parental Income is <COMBINED INCOME>. Mr. Mann's contribution towards this combined income is <PERCENTAGE OF COMBINED INCOME>. Your contribution is <PERCENTAGE OF COMBINED INCOME>.

Child support under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income, or <TOTAL CHILD SUPPORT FOR BOTH PARENTS>.

<OPPOSING CLIENT>'s obligation would be <PERCENTAGE OF COMBINED INCOME> of the <TOTAL CHILD SUPPORT FOR BOTH

PARENTS> child support calculation, or <OPPOSING PARTY'S CHILD SUPPORT OBLIGATION>. Each bi-weekly pay period, Mr. Mann would be obligated to pay you <BI-WEEKLY OBLIGATION> in child support.

<(Child support for the first \$80,000.00 under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income, or <CAPPED CHILD SUPPORT FOR BOTH PARENTS>.

Child support for the remaining <AMOUNT ABOVE \$80,000> under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income exceeding the \$80,000.00 cap, or <ADDITIONAL CHILD SUPPORT>.

<OPPOSING CLIENT>'s obligation for the child support capped at \$80,000.00, or <CAPPED CHILD SUPPORT FOR BOTH PARENTS>, is <OPPOSING PARTY'S CHILD SUPPORT OBLIGATION> or <BI-WEEKLY OBLIGATION> per bi-weekly pay schedule. <OPPOSING CLIENT>'s obligation, should the \$80,000.00 be permitted to be exceeded, for the remaining <ADDITIONAL CHILD SUPPORT> in child support would be an additional <OPPOSING PARTY'S ADDITIONAL CHILD SUPPORT>, or an additional <BI-WEEKLY OBLIGATION> per bi-weekly pay period. The total bi-weekly amount would be <BI-WEEKLY OBLIGATION FOR \$80,000 PLUS EXCESS OF \$80,000>.)>

Please advise us if the above calculations are acceptable. Also, please indicate what percentages of <MEDICAL EXPENSES/UNREIMBURSED MEDICAL EXPENSES/SCHOOL EXPENSES/TUITION/DAY CAR/EXTRA-CURRICULAR ACTIVITIES> you would like <OPPOSING CLIENT> to pay for.

This outcome is less likely because <REASONS WHY A SUPPORT MAGISTRATE MAY NOT RULE THIS WAY>.

Please advise us if the above calculations are acceptable. Also, please indicate what percentages of <MEDICAL EXPENSES/UNREIMBURSED MEDICAL EXPENSES/SCHOOL EXPENSES/TUITION/DAY CAR/EXTRA-CURRICULAR ACTIVITIES> you would like <OPPOSING CLIENT> to pay for.

Very truly yours,  
ESQ.

## LETTER TO COUNSEL PROPOSING A SUPPORT SETTLEMENT

In an effort to settle this case, the following settlement proposal is offered without prejudice, and not to be used in litigation or revealed to the trier of fact or for any other purpose.

Our client would like to propose the following child support settlement:

According to <OPPOSING CLIENT>'s <YEAR> W-2, his <YEAR> gross income is <INCOME> before any deductions (pre or post-tax).

According to <OPPOSING CLIENT>'s <YEAR> Pay Stubs, <OPPOSING CLIENT> receives a base annual salary of <SALARY> (based upon an hourly rate of <RATE> at 80 hours per bi-weekly pay schedule, as indicated in <HIS/HER> pay stub). <OPPOSING CLIENT> also receives commissions. According to his pay stub, <OPPOSING CLIENT> has received <TRUNCATED COMMISSIONS/ADDITIONAL PAY> in <TITLE OF ADDITIONAL PAY> as of <DATE OF PAY PERIOD> – or roughly <TRUNCATED PAY DIVIDED BY NUMBER OF WEEKS> per week, averaging out his commissions over the previous <NUMBER OF WEEKS> weeks. This would place <OPPOSING CLIENT>'s estimated <TRUNCATED COMMISSIONS/ADDITIONAL PAY> rate for <YEAR> at <ESTIMATED INCOME>. <OPPOSING CLIENT> estimated <YEAR> gross income would be \$68,583.69.)>

Our client has indicated in <HIS/HER> financial affidavit that <HE/SHE> have a gross income of <CLIENT'S GROSS INCOME> in <YEAR>.

Our client would like to propose that your client pay a bi-weekly sum of <BI-WEEKLY OFFER> <(through the support collections unit)> as <HIS/HER> child support for <NAME OF CHILD/CHILDREN>. In addition, your client shall provide medical insurance for the children and be responsible for <PERCENTAGE> of the unreimbursed medical expenses payable within fifteen (15) days of receipt of the medical bill. Your client shall also be obligated to pay <PERCENTAGE> of the children's day care expenses.

<(On the issue of secondary education, your client would be responsible to pay <PERCENTAGE> of the <CHILD/CHILDREN>'s school tuition, room, board, books and fees up to the higher of either the school's tuition minus financial aid received or the undergraduate rate of the State University of New York at Buffalo for that year the child is in school.)>

Below is our calculation of your client's child support obligations based upon <YEAR> or <NEXT YEAR> incomes:

<YEAR> W-2s

This is the basic Child Support Standards Act calculation, using the prior year's income figures to calculate this year's support requirements.

<OPPOSING CLIENT>'s Adjusted Gross Income is <ADJUSTED GROSS INCOME>. This number is derived from his <YEAR> W-2 gross income of <INCOME> minus FICA at 7.65%, or <FICA>. <(In addition, <OPPOSING CLIENT> has unreimbursed business expenses of <EXPENSES>, and pays <CHILD SUPPORT/MAINTENANCE> pursuant to a prior court order in the amount of <PRIOR SUPPORT>. These expenses are permitted deductions under the Child Support Standards Act.)>

Your Adjusted Gross Income is <ADJUSTED GROSS INCOME>. This number is derived from your 2005 income of \$23,860.00 minus FICA at 7.65%, or \$1,825.29. <(In addition, you have unreimbursed business expenses of <EXPENSES>, and pay <CHILD SUPPORT/MAINTENANCE> pursuant to a prior court order in the amount of <PRIOR SUPPORT>. These expenses are permitted deductions under the Child Support Standards Act.)>

The Combined Parental Income is <COMBINED INCOME>. Mr. Mann's contribution towards this combined income is <PERCENTAGE OF COMBINED INCOME>. Your contribution is <PERCENTAGE OF COMBINED INCOME>.

Child support under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income, or <TOTAL CHILD SUPPORT FOR BOTH PARENTS>.

<OPPOSING CLIENT>'s obligation would be <PERCENTAGE OF COMBINED INCOME> of the <TOTAL CHILD SUPPORT FOR BOTH PARENTS> child support calculation, or <OPPOSING PARTY'S CHILD SUPPORT OBLIGATION>. Each bi-weekly pay period, Mr. Mann would be obligated to pay you <BI-WEEKLY OBLIGATION> in child support.

<(Child support for the first \$80,000.00 under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income, or <CAPPED CHILD SUPPORT FOR BOTH PARENTS>.>

Child support for the remaining <AMOUNT ABOVE \$80,000> under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income exceeding the \$80,000.00 cap, or <ADDITIONAL CHILD SUPPORT>.

<OPPOSING CLIENT>'s obligation for the child support capped at \$80,000.00, or <CAPPED CHILD SUPPORT FOR BOTH PARENTS>, is <OPPOSING PARTY'S CHILD SUPPORT OBLIGATION> or <BI-WEEKLY

*OBLIGATION> per bi-weekly pay schedule. <OPPOSING CLIENT>'s obligation, should the \$80,000.00 be permitted to be exceeded, for the remaining <ADDITIONAL CHILD SUPPORT> in child support would be an additional <OPPOSING PARTY'S ADDITIONAL CHILD SUPPORT>, or an additional <BI-WEEKLY OBLIGATION> per bi-weekly pay period. The total bi-weekly amount would be <BI-WEEKLY OBLIGATION FOR \$80,000 PLUS EXCESS OF \$80,000>.)>*

We believe this to be the likely outcome should the support magistrate determine the issue on its merits.

### ***<YEAR> Pay Stubs***

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This next calculation using <OPPOSING CLIENT>'s <YEAR> pay stubs and estimated income.

*<OPPOSING CLIENT>'s Adjusted Gross Income is <ADJUSTED GROSS INCOME>. This number is derived from his <YEAR> W-2 gross income of <INCOME> minus FICA at 7.65%, or <FICA>. <(In addition, <OPPOSING CLIENT> has unreimbursed business expenses of <EXPENSES>, and pays <CHILD SUPPORT/MAINTENANCE> pursuant to a prior court order in the amount of <PRIOR SUPPORT>. These expenses are permitted deductions under the Child Support Standards Act.)>*

*Your Adjusted Gross Income is <ADJUSTED GROSS INCOME>. This number is derived from your 2005 income of \$23,860.00 minus FICA at 7.65%, or \$1,825.29. <(In addition, you have unreimbursed business expenses of <EXPENSES>, and pay <CHILD SUPPORT/MAINTENANCE> pursuant to a prior court order in the amount of <PRIOR SUPPORT>. These expenses are permitted deductions under the Child Support Standards Act.)>*

*The Combined Parental Income is <COMBINED INCOME>. Mr. Mann's contribution towards this combined income is <PERCENTAGE OF COMBINED INCOME>. Your contribution is <PERCENTAGE OF COMBINED INCOME>.*

*Child support under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income, or <TOTAL CHILD SUPPORT FOR BOTH PARENTS>.*

*<OPPOSING CLIENT>'s obligation would be <PERCENTAGE OF COMBINED INCOME> of the <TOTAL CHILD SUPPORT FOR BOTH PARENTS> child support calculation, or <OPPOSING PARTY'S CHILD SUPPORT OBLIGATION>. Each bi-weekly pay period, Mr. Mann would be obligated to pay you <BI-WEEKLY OBLIGATION> in child support.*

<(Child support for the first \$80,000.00 under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income, or <CAPPED CHILD SUPPORT FOR BOTH PARENTS>.>

Child support for the remaining <AMOUNT ABOVE \$80,000> under the Child Support Standards Act is <17%/25%/29%/32%/etc> of the combined parental income exceeding the \$80,000.00 cap, or <ADDITIONAL CHILD SUPPORT>.>

<OPPOSING CLIENT>'s obligation for the child support capped at \$80,000.00, or <CAPPED CHILD SUPPORT FOR BOTH PARENTS>, is <OPPOSING PARTY'S CHILD SUPPORT OBLIGATION> or <BI-WEEKLY OBLIGATION> per bi-weekly pay schedule. <OPPOSING CLIENT>'s obligation, should the \$80,000.00 be permitted to be exceeded, for the remaining <ADDITIONAL CHILD SUPPORT> in child support would be an additional <OPPOSING PARTY'S ADDITIONAL CHILD SUPPORT>, or an additional <BI-WEEKLY OBLIGATION> per bi-weekly pay period. The total bi-weekly amount would be <BI-WEEKLY OBLIGATION FOR \$80,000 PLUS EXCESS OF \$80,000>.)>

Please advise us if the above calculations are acceptable. Also, please indicate what percentages of <MEDICAL EXPENSES/UNREIMBURSED MEDICAL EXPENSES/SCHOOL EXPENSES/TUITION/DAY CAR/EXTRA-CURRICULAR ACTIVITIES> you would like <OPPOSING CLIENT>to pay for.

This outcome is less likely because <REASONS WHY A SUPPORT MAGISTRATE MAY NOT RULE THIS WAY>.>

Thank you for your anticipated courtesies. We look forward to hearing from you.

Very truly yours,  
ESQ.

cc: <CLIENT>

## DRAFTING AN ORDER OR AGREEMENT

Once an agreement has been reached, it becomes a matter of drafting a proposed agreement, stipulation or stipulated order. Below are some samples of various agreements and stipulated orders, including a relocation agreement.

### *STIPULATED ORDERS*

At a Term of the Supreme Court, Part  
[\_\_\_\_], held in and for the County of Erie  
at the Courthouse located at  
[\_\_\_\_], Buffalo, New  
York on [\_\_\_\_] day of [\_\_\_\_] 2006.

PRESENT: HON. [\_\_\_\_], <J.S.C./J.F.C./Other>.  
Justice Presiding

STATE OF NEW YORK  
<SUPREME/FAMILY> COURT: COUNTY OF <COUNTY>

**<PLAINTIFF/PETITIONER>,**  
SSN: <SSN>

<Plaintiff/Petitioner>,

### **STIPULATED ORDER**

VS.

<Index/Docket> No.  
<Number>

**<DEFENDANT/RESPONDENT>,**  
SSN: <SSN>

<Defendant/Respondent>.

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Upon the Judgment of Divorce granted by the Hon. <JUDGE>, J.S.C. on  
<DATE GRANTED> and filed in the <CLERK'S OFFICE> on <DATE FILED>,  
<(which incorporated but did not merge an oral stipulation entered into and  
ratified between the parties on DATE)>; and upon the <ORDER TO SHOW  
CAUSE/PETITION> of the <PLAINTIFF/DEFENDANT/PETITIONER/  
RESPONDENT>, <NAME> by his attorneys, <LAW OFFICE>, <ATTORNEY>,

Esq., of Counsel, and upon the <PLAINTIFF/DEFENDANT/PETITIONER/  
RESPONDENT>'s Responding Affidavit of the <PLAINTIFF/DEFENDANT/  
PETITIONER/RESPONDENT>, <NAME>, by her attorneys, <LAW OFFICE>,  
<ATTORNEY>, Esq. of Counsel and this matter having been heard before this  
Court on <DATE HEARD>, and due deliberation having been had thereon;

NOW, upon the <MOTION/PETITIONER> of <ATTORNEY>, ESQ.,  
Attorney for the <PLAINTIFF/DEFENDANT/PETITIONER/RESPONDENT>, it is  
hereby

ORDERED, upon the agreement of the parties, <TERMS OF  
AGREEMENT>; and it is further

ORDERED, upon the agreement of the parties, <TERMS OF  
AGREEMENT>.

AGREED TO

\_\_\_\_\_  
<PLAINTIFF/PETITIONER>

AGREED TO

\_\_\_\_\_  
<DEFENDANT/RESPONDENT>

APPROVED BY:

\_\_\_\_\_  
<ATTORNEY>, ESQ.  
ATTORNEY FOR THE <PLAINTIFF/PETITIONER>

APPROVED BY:

\_\_\_\_\_  
<ATTORNEY>, ESQ.  
ATTORNEY FOR THE <DEFENDANT/RESPONDENT>

APPROVED BY:

\_\_\_\_\_  
<ATTORNEY>, ESQ.  
LAW GUARDIAN

GRANTED:

\_\_\_\_\_  
HON. <JUDGE/MAGISTRATE>

STATE OF NEW YORK                    )  
COUNTY OF ERIE                    ) s.s:

On this [\_\_\_\_] day of [\_\_\_\_\_], before me, the undersigned, a notary public in and for said state, personally appeared **<PLAINTIFF/PETITIONER>**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

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NOTARY PUBLIC

STATE OF NEW YORK                    )  
COUNTY OF ERIE                    ) s.s:

On this [\_\_\_\_] day of [\_\_\_\_\_], before me, the undersigned, a notary public in and for said state, personally appeared **<DEFENDANT/RESPONDENT>**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

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NOTARY PUBLIC

<ANY - Blank Stipulated Order.doc>

## ***RELOCATION AGREEMENT***

### MODIFICATION AGREEMENT

THIS AGREEMENT, made this 1<sup>st</sup> day of August, 2005, by and between <PLAINTIFF>, residing at <ADDRESS>, hereinafter referred to as “Mother” or “Plaintiff” and <DEFENDANT>, residing at <ADDRESS>, hereinafter referred to as “Father” or “Defendant.”

#### WITNESSETH:

WHEREAS, the parties were divorced pursuant to a Judgment of Divorce granted by the Hon. <JUDGE> on <DATE GRANTED> and filed in the Erie County Clerk’s Office on <DATE FILED> which incorporated by reference but did not merge a written Property Settlement/Separation Agreement between the parties dated <DATE AGREED>; and

WHEREAS, Plaintiff has brought an Order to Show Cause by her attorney <ATTORNEY>, ESQ., granted by the Hon. <JUDGE> on <DATE OF OSC> seeking among other things to be declared the primary residential parent of the parties’ two children, <CHILD> (d/o/b <DATE>) and <CHILD> (d/o/b <DATE>) and seeking relocation of the children;

WHEREAS, Defendant has opposed this application having been represented throughout by his attorney, <ATTORNEY>, ESQ., of the Law Offices of <LAW OFFICE>, and;

WHEREAS, the children having been represented throughout by their designated law guardian, <LAW GUARDIAN>, ESQ., of the Law Offices of the <LAW OFFICE>, and;

WHEREAS, the parties have reached an agreement whereby the children will, pursuant to the terms of this agreement, be permitted to conditionally relocate to <NEW ADDRESS> and primarily reside with Plaintiff, and;

WHEREAS, the parties, their attorneys and the law guardian find this agreement to be in the best interest of the children.

NOW, THEREFORE, in consideration of the premises and mutual covenants, promises and agreements hereinafter contained, the parties hereby agree as follows:

**FIRST:** Article XI of the parties' written Property Settlement Agreement concerning custody of the children shall be modified to designate the Plaintiff Mother as primary residential parent of both <CHILD> (d/o/b <DATE>) and <CHILD> (d/o/b <DATE>). The Plaintiff Mother shall conditionally be permitted to relocate both children to the <NEW ADDRESS> area and said residence shall continue based upon <CONDITION OF RELOCATION>. Likewise, <ADDITIONAL CONDITION OF RELOCATION>.

In the event that <CONDITION IS NOT MAINTAINED>, the Plaintiff's conditional primary residential custody concerning both children shall terminate and the conditional relocation provision shall terminate and the primary residential custody of both children shall revert to the Defendant Father as previously set forth in the Judgment of Divorce granted by the Hon. <JUDGE> on <DATE GRANTED> and filed in the Erie County Clerk's Office on <DATE FILED> which incorporated by reference but did not merge a written Property Settlement/Separation Agreement between the parties dated <DATE AGREED>.

Should the children decide to return to New York or remain in <NEW ADDRESS> in the event of future litigation, the court will view the children's concerns with significant weight.

**SECOND:** Defendant shall have the following access with the children:

- A. Any time in <NEW ADDRESS> upon 72 hours prior notice to the Plaintiff.
- B. One long weekend each month of the school year to coincide with the children's days off from school. Each Thanksgiving break from school shall constitute the long weekend for the month of November.
- C. Each Christmas Recess from school from its commencement of the recess until December 30<sup>th</sup>.
- D. Each spring recess from school. This recess shall count as the March or April long weekend depending upon the month when the holiday is observed.
- E. Each Father's Day Weekend.
- F. Three weeks in the summer, either consecutively or non-consecutively, at the Defendant's option, upon 60 days prior notice to the Plaintiff.  
Defendant's summer access shall not be exercised during the first or last week of summer school recess.
- G. Any other time to which the parties may agree.

**THIRD:** The parties to this Agreement have been advised of the provisions of Domestic Relations Section 240(1-b), commonly known as the Child Support Standards Act. The parties acknowledge that they have reviewed the provisions of said statute, understand them, and have had a full opportunity to discuss them

with counsel. The parties further understand that in the absence of this Agreement between them, the provisions of the Child Support Standards Act would determine the amount of the child support to be paid by the non-custodial parent to the custodial parent. The parties are aware that the basic child support obligation in the Child Support Standards Act would presumptively result in the correct amount of child support to be awarded. Notwithstanding said statutory provisions, the parties wish to enter into the present agreement relative to child support, and hereby waive application of the provisions of the Child Support Standards Act.

It is the parties' intention that this Agreement be an "opt-out" Agreement pursuant to Domestic Relations Law Section 240(1-b)(h).

The parties hereby acknowledge that calculations of the basic child support obligations under the Child Support Standards Act would result in the following:

1. The children of the marriage entitled to receive parental support are <CHILD> (d/o/b <DATE>) and <CHILD> (d/o/b <DATE>).
2. The income of the Wife who is the joint-custodial parent is approximately <INCOME> a year.
3. The income of the Husband who is the joint-custodial parent is approximately <INCOME> a year.
4. The applicable child support percentage is twenty-five (25%) for two children.

5. The combined parental income is <COMBINED INCOME> per year.

6. The basic child support obligation of twenty-five (25%) of <COMBINED INCOME> and is approximately <OBLIGATION> per year, or <OBLIGATION> per month.

7. The Mother's pro-rata share of the basic child support obligation is .82 of <OBLIGATION> which is <OBLIGATION> or <OBLIGATION> per month.

8. The Father's pro-rata share of the basic child support obligation is .18 of <OBLIGATION> which is <OBLIGATION> or <OBLIGATION> per month.

**FOURTH:** Article VI of the parties' aforesaid Property Settlement Agreement is hereby modified for so long as the Plaintiff has residential custody to terminate the Plaintiff's obligation to pay child support to the Defendant for the support of both children. Additionally, the Plaintiff hereby waives any child support obligations of the Defendant that arise from this agreement.

Furthermore, Defendant hereby suspends any rights to pursue the child support arrears owed to him until such time that the Plaintiff breaches any part of this agreement, or it is found that the Defendant has become delinquent in payments to the Plaintiff. The correct amount of children support arrears that Defendant is holding in abeyance based on the terms and conditions of this modification agreement is <ARREARS>. This amount is based upon a <OBLIGATION> per month obligation based upon a post-tax income of

<INCOME> for the 2004 year at 25% Child Support Standards Act (CSSA) guidelines. The total applicable months is <MONTHS IN ARREARS>, beginning with the date of the Order to Show Cause by the Plaintiff when payments were withheld.

In the event of a breach by the Plaintiff of this agreement, the <ARREARS> in child support arrears due and owing to the Defendant will become immediately due and payable to the Defendant. Should the Defendant for any reason be liable to pay child support to the Plaintiff or accumulate arrears payable to the Plaintiff, the <ARREARS> will be first used as a credit to offset such payment obligation or arrears to the Plaintiff.

The parties have agreed to opt-out of the Child Support Standards Act and neither party shall have an obligation to pay child support to the other parent at this time. The amount of child support agreed to therein deviates from the basic child support obligation and the parties' reasons for not providing that amount are Defendant's suspension of the Plaintiff's owed child support arrears, Defendant's costs associated with exercising liberal access with the children, Plaintiff's household income is sufficient to meet the needs of both children, and that Defendant is currently unemployed.

The Court having found the parties' stipulation to deviate from the basic child support obligation approves for the reasons cited by the parties for the deviation from the guidelines.

**FIFTH:** The terms of the Judgment of Divorce granted by the Hon. <JUDGE> on <DATE GRANTED> and filed in the Erie County Clerk's Office on <DATE

FILED> which incorporated by reference but did not merge a written Property Settlement/Separation Agreement between the parties dated <DATE AGREED> are modified with respect to the educational trust fund. Both parties agree to make separate arrangements concerning the children's education.

**SIXTH:** Plaintiff agrees to waive contribution from Defendant for all prior fees paid to <LAW GUARDIAN>, Esq., the law guardian, as well as <CUSTODIAL EVALUATOR>, the court appointed psychologist. Plaintiff further agrees to be solely responsible for the law guardian and the court appointed psychologist's bills.

**SEVENTH:**

a. Plaintiff shall be responsible for a maximum contribution of \$125.00 per child per one trip per month. It is the parties' present intention to utilize <TRANSPORT SERVICE>. In the event that this Southwest Airlines flight becomes unavailable at a future date, the parties will renegotiate in good faith this travel provision. In any event, Plaintiff's requirement to contribution to the travel expenses will not fall below \$125.00 per child per trip.

In the event the parties agree that it will be necessary to transport the children by car, the parties will share the driving obligation and meet at a mutually convenient half way point to exchange the children for both the commencement and the end of the visitation period.

b. Additionally, Plaintiff shall reimburse the Defendant for any expenses, up to \$250.00 for one trip per year, incurred when traveling to <NEW ADDRESS> to visit with the children pursuant to this agreement.

**EIGHTH:** Plaintiff shall provide health insurance coverage for the children through her employment. All costs associated with uninsured medical bills are to be divided evenly between the parties. Plaintiff shall provide the Defendant with copies of the bills within 30 days of incurring the expense and Defendant shall remit his one-half obligation within 30 days of his receipt of the bill.

**NINTH:** Article XVI of the parties' Judgment of Divorce granted by the Hon. <JUDGE> on <DATE GRANTED> and filed in the Erie County Clerk's Office on <DATE FILED> which incorporated by reference but did not merge a written Property Settlement/Separation Agreement between the parties dated <DATE AGREED> is hereby modified to require the Defendant to remove the Plaintiff's name from the encumbrance on the former marital residence located at <ADDRESS>, by <MORTGAGE HOLDER>, by either refinance or release of the liability within 90 days of his resumption of employment.

**TENTH:** Plaintiff agrees to ensure that <CHILD> will regularly consult with a Nutritionist and agrees to utilize her best efforts to reduce <CHILD>'s weight to within normal range for his height within two (2) years from the commencement of this agreement.

**ELEVENTH:** Each party shall be responsible for his and her own counsel fees in connection with all matters relating to the issues brought forth by the Plaintiff's Order to Show Cause granted by the Hon. <JUDGE> on <DATE OF OSC>.

**TWELFTH:** Jurisdiction of all matters concerning these parties and their children, including all matters in respect to the Judgment of Divorce granted by the Hon. <JUDGE> on <DATE GRANTED> and filed in the Erie County Clerk's Office on

<DATE FILED> which incorporated by reference but did not merge a written Property Settlement/Separation Agreement between the parties dated <DATE AGREED> shall remain exclusively in New York for so long as either party continues to reside therein.

**THIRTEENTH:** All other provisions of the parties' written Property Settlement Agreement not specifically modified herein shall remain in full force and effect.

AGREED TO

\_\_\_\_\_  
PLAINTIFF

AGREED TO

\_\_\_\_\_  
DEFENDANT

APPROVED BY:

\_\_\_\_\_  
<ATTORNEY>, ESQ.  
ATTORNEY FOR THE PLAINTIFF

APPROVED BY:

\_\_\_\_\_  
<ATTORNEY>, ESQ.  
ATTORNEY FOR THE DEFENDANT

APPROVED BY:

\_\_\_\_\_  
<ATTORNEY>, ESQ.  
LAW GUARDIAN

STATE OF NEW YORK                    )  
COUNTY OF ERIE                    ) s.s:

On this [\_\_\_\_] day of [\_\_\_\_\_], before me, the undersigned, a notary public in and for said state, personally appeared **<PLAINTIFF >**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

---

NOTARY PUBLIC

STATE OF NEW YORK                    )  
COUNTY OF ERIE                    ) s.s:

On this [\_\_\_\_] day of [\_\_\_\_\_], before me, the undersigned, a notary public in and for said state, personally appeared **<DEFENDANT >**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person on behalf of which the individual acted, executed the instrument.

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NOTARY PUBLIC

**CHILD SUPPORT STIPULATION**

STATE OF NEW YORK :  
FAMILY COURT: COUNTY OF ERIE

---

<PETITIONER>,

Petitioner,

VS.

<RESPONDENT>,

Respondent.

**STIPULATION**

Docket No. <NUMBER>

---

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that the Petitioner, <PETITIONER>, will pay the Respondent, <RESPONDENT>, the sum of <CHILD SUPPORT OBLIGATION> per week pursuant to the Child Support Standards Act for the parties' child, <NAME>, born <DATE OF BIRTH>; and it is further

STIPULATED AND AGREED that the petitioner's 2005 income is <INCOME> in wages and <INCOME> in retirement pension, giving the Petitioner a 2005 combined income of <TOTAL INCOME>; and it is further

STIPULATED AND AGREED that after an adjustment for FICA at a rate of 7.65% of gross income, the Petitioner's adjusted gross income for child support purposes is <ADJUSTED GROSS INCOME>, and his child support obligation, calculated as seventeen percent (17%) for one child of adjusted gross income is <OBLIGATION>, or <OBLIGATION> per week; and it is further

STIPULATED AND AGREED that both parties acknowledge that this calculation would be the correct calculation for basic support under the Child Support Standard Act; and it is further

<(STIPULATED AND AGREED that the parties' oldest child, <NAME>, born <DATE> is hereby considered emancipated by reason of achieving the age of Twenty-One (21); and it is further)>

STIPULATED AND AGREED that <CHILD> will be considered emancipated upon her Twenty-First birthday, <DATE OF EMANCIPATION>, for the purposes of the Child Support Standards Act; and it is further

STIPULATED AND AGREED that this stipulation will be retroactive to the date of application for relief by the Petitioner, <DATE OF PETITION>; and it is further

STIPULATED AND AGREED that all child support will be paid through the Support Collections Unit in Erie County, New York.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this [\_\_\_] day of [ \_\_\_\_\_ ].

\_\_\_\_\_  
<PETITIONER>

\_\_\_\_\_  
<RESPONDENT>

STATE OF NEW YORK                    )  
COUNTY OF [\_\_\_\_\_]                ) ss:

On this [\_\_\_\_\_] day of [\_\_\_\_\_], before me personally appeared **<PETITIONER>**, to me personally known and known to me to be the same person described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK                    )  
COUNTY OF ERIE                    ) ss:

On this [\_\_\_\_\_] day of January, 2006, before me personally appeared **<RESPONDENT>**, to me personally known and known to me to be the same person described in and who executed the foregoing instrument, and she duly acknowledged to me that she executed the same.

\_\_\_\_\_  
Notary Public

## CORRESPONDING TO SETTLE AN ORDER OR AGREEMENT

Once there is an agreement or decision of the court as to the post-divorce modification action and the documents have been drafted both parties must approve the documents before they can either be executed or delivered to the court for signature.

Below are some samples of typical correspondence you may draft or receive while a proposed order or agreement is being reviewed by all the parties.

### *LETTER REQUESTING A REVIEW OF A PROPOSED ORDER*

Enclosed please find our proposed <ORDER/STIPULATION>, based upon the <DATE> <COURT APPEARANCE/CONFERENCE/ETC.>. Please review this attached document and indicate whether your client accepts or objects to the language by <DATE THE OPPOSING SIDE MUST REVIEW THE DOCUMENT>. If we do not hear from you by <DATE THE OPPOSING SIDE MUST REVIEW THE DOCUMENT>, we will assume your acceptance of this proposed <ORDER/STIPULATION> and forward it to the Court for signature.

Thank you for your anticipated courtesies. We look forward to hearing from you soon.

Very truly yours,  
ESQ.

cc: <CLIENT>

<ANY - Request Review of Order or Stipulation Form Letter.doc>

### *LETTER OBJECTING TO A PROPOSED ORDER*

Dear <MR. OR MS. OPPOSING COUNSEL>:

Please be advised that we object to the proposed <ORDER/STIPULATION> enclosed within your <DATE> letter received <DATE LETTER WAS STAMPED RECEIVED>.

Specifically, <NATURE OF OBJECTIONS AND CHANGES>.

Please make the above mentioned changes to the proposed <ORDER/STIPULATION> and re-submit it to this office for review.

Thank you for your anticipated courtesies.

Very truly yours,  
ESQ.

cc: <CLIENT>

<ANY - Objection of Proposed Order or Stipulation Form Letter.doc>

## **LETTER TO THE COURT REQUESTING A CLARIFICATION**

Dear <JUDGE>:

In response to <OPPOSING COUNSEL>'s letter to this Court, dated <DATE>, it is this office's belief that this Court <GRANTED RELIEF/DID NOT GRANT RELIEF/ETC>.

It is <ATTORNEY>'s recollection, whom appeared in Court that <CORRECT RULING>.

Please advise us at your earliest convenience as to whether this relief was, in fact, <GRANTED/DENIED/ETC> by the Court.

Very truly yours,  
ESQ.

cc: <CLIENT>

<ANY - Clarification of Ruling from Court Form Letter.doc>

## **LETTER APPROVING A PROPOSED ORDER**

Dear <MR. OR MS. OPPOSING COUNSEL>:

Please be advised that we are in receipt of your correspondence dated <DATE> and its enclosed proposed <ORDER/STIPULATION>. We have no objections to this <ORDER/STIPULATION> as it was presented.

<(Please forward a signed, filed copy of the order as soon as it is available. Thank you for your time and attention to this matter.)>

<(Enclosed please find three (3) original separation and property settlement agreements, with each page initialed by <CLIENT> and <HIS/HER> notarized signature on page <PAGE NUMBER> of each copy.>

*Please return one original to this office when the agreement is signed and executed. Thank you for your time and attention to this matter.)>*

Very truly yours,  
ESQ.

cc: <CLIENT>

<ANY - Approval of Proposed Order or Stipulation Form Letter.doc>

**SECTION THREE – SAMPLE POST-DIVORCE DECISION**

STATE OF NEW YORK  
 FAMILY COURT : COUNTY OF ERIE

\*\*\*\*\*  
 James [REDACTED], \*  
 Petitioner \*  
 V. \*

DOCKET NO. F-[REDACTED]

Michelle [REDACTED] \*  
 Respondent \*

**DECISION**

\*\*\*\*\*  
 Michelle [REDACTED] \*  
 Petitioner \*  
 V. \*

DOCKET NO. F-[REDACTED]

James [REDACTED] \*  
 Respondent \*

There are two petitions pending before the Court for these parties. The first was filed by James [REDACTED] and therefore he will be referred to as the Petitioner throughout the course of the Decision. The second one was filed by Michelle [REDACTED] and she will be referred to as the Respondent throughout the course of this Decision. The Petitioner filed his petition on January 30, 2006 and the Respondent filed her petition on February 23, 2006. The parties first appeared before the Court on March 2, 2006 and the matter was adjourned for a hearing date until May 9, and then ultimately was scheduled June 27, 2006, at which time the Court reserved decision. The Petitioner was represented throughout these proceedings by attorney Mark Grisanti and the Respondent is represented by attorney Catharine Venzon.

Specifically the Petitioner alleges in his petition that there has been a change in circumstances since the prior Order of support and that he has only had the ability to work part-time since the current orders have been put into place. He claims he can pay 17% of his wages as specified by New York State which, based upon his calculations, is \$37.50 per week.

The Respondent files an enforcement petition alleging that there was an Order of this Court dated April 19, 2002 wherein he was ordered to pay \$80.00 per week to her. This \$80.00 per week child support order is for the parties' child, Brianna. She further alleges that upon information and belief, Mr. [REDACTED] has wilfully failed to comply with the Order of Supreme Court in Erie County and that he has unilaterally reduced his child support payments from \$80.00 per week to \$37.50 per week. At the time of the filing of the Petitioner, it is alleged that Mr. [REDACTED] is in arrears \$250.00 in child support.

### FACTS

Petitioner, James [REDACTED] testifies on his own behalf. He claims that since the year 2001 he has worked for a company called Metro Source USA. He claims this is a specialty retail company in which he sells cellular phone accessories. He claims to be the general manager of stores which are locally placed in multiple retail shopping malls. He claims that he works in every location. The company is owned by a James Mesmer. He testifies that he worked full time in the year 2001 at the time of the parties' divorce and he was earning \$10.80 an hour and receiving a total of \$216.00 per week for what translates to \$11,232.00 per year. He claims he is only working part-time at this job because he cannot afford child care. He claims that day-care or after school child care for when the child is with him at his house is \$100.00 per week.

In 2001 he was a sales associate earning \$7.00 per hour. He claims to have looked for a full-time job specifically one that would allow him to work overnights so combined with his current job he would have full-time hours. However he has been unsuccessful. He provides no proof of any job search efforts.

He then testifies that his employer drives him to all the different locations. He works four

hours per location.

He currently resides at [REDACTED], with another adult. He claims that his adult partner works three jobs. The Petitioner claims to pay the utilities in the house while his partner pays the rent. They split the car insurance although he does not own the car. He claims that he is listed as a driver on his partner's car. He testifies that the rent costs \$725.00 per month which includes heat. He claims that the parties had to move to this apartment which is now cheaper, to reduce costs. The Court notes that no financial affidavit was ever submitted by the Petitioner.

He testifies that he only works part-time and that he supports his daughter when his daughter is with him. He claims that his partner has been paying the support for him. He claims that he submitted two applications for a job within the last week. One was with Mobil and one was with Sunoco Mini Marts.

Petitioner then underwent cross examination. Respondent's "A" in evidence contains the Petitioner and Respondent's 2001 joint tax return as well as the Respondent's tax returns until 2004. He admits that on the parties' joint tax return, the sole source of income was his. He admits that the Respondent did not work. The Court notes that in the year 2001 the Petitioner's adjusted gross income was \$9,186.00. For the year 2002, he had gross wages of \$3,910.00. For the year 2003, he had gross wages of \$1,406.00. For the year 2004, he had gross wages of \$8,979.00. For the year 2005, there is no tax information provided. However, Respondent's "B" are photocopies of his paychecks from the current year, all indicating a pay rate of \$10.50 an hour for 20 hours a week for a total of \$210.00 per week gross wages. This projects out to an annual income of \$10,920.00.

The Petitioner testifies that to the best of his knowledge, his partner earns \$22,599.00 per

year and will earn more, possibly in the range of \$28,000.00 from M&T Bank. Additionally he works for Mobil Corporation and he has total income of approximately \$40,000.00 per year. In February, 2006, the Petitioner testified that Supervising Family Court Judge Michael Griffith heard them on the issue of custody and visitation. Petitioner indicated that he wanted to be able to transport the child before and after school from his home. He claims that the child can take a bus from his mother's home. He admits that he requested to have visitation during the school week, but was not granted it. He admits that the mother picks up the child on Sundays after visitation and he has to transport the child for all other visitation.

He has applied for two jobs within walking distance from his home. He believes the starting wages are \$7.00 to \$8.00 per hour and believes full-time will be available. He testifies that he is a manager now, but he feels that he does not have the ability to be a manager at a convenience store such as Sunoco or Mobil because he does not have a business degree. He admits that his approximate household income including his partner is about \$50,000.00 per year while at the time of the parties' divorce he was earning \$9,000.00. He admits that he did not supply the Court or opposing counsel with a financial affidavit. He claims he simply cannot afford to pay the child support any more. He claims he is willing to do anything, but he cannot continue to pay her the money. He claims that he chooses to stay at home with his daughter so she has a mother and a father. The Respondent's attorney then made a Motion to dismiss the case and the Court reserved decision. Respondent's attorney argues that there is nothing preventing the Petitioner from working full-time and in fact, even by his own admission he is on scale to earn more money now in 2006 than he was at the time of the entry of the Divorce in 2001. She further alleges that he submits no financial affidavit and therefore is unable to verify and prove all the expenses regarding his living

arrangements with his partner. The Petitioner admits that he voluntarily reduced his payments by \$42.50 per week over the 23 week period from up through June 27, 2006. The total amount that has not been paid is \$977.50. The Petitioner does not dispute the fact that he has failed to pay this money and has voluntarily reduced the amount.

#### DISCUSSION

The party seeking to modify a support order has the burden of proving changed circumstances. See Klapper v. Klapper, 204 A.D.2d 518 (2<sup>nd</sup> Dep't 1994). Domestic Relations Law §236B (9)(b) states "Upon application by either party, the court may annul or modify any prior order or Judgment as to maintenance or child support, upon a showing of recipients' inability to be self supporting or a substantial change in circumstance . . .". According to the First Department of O'Brien v. McCann, 249 A.D.2d 92 (1<sup>st</sup> Dep't 1998), "Family Court Act §461 (b) states that the Family Court may . . . (ii) entertain an application to modify such order on the ground that changed circumstances require the modification." The movant bears the "burden of proving a substantial change in circumstances warranting a downward modification of child support. See Id. citing Anonymous C. v Anonymous V., 180 A.D.2d 457 (1<sup>st</sup> Dep't. 1992) ; Matter of Steinberg v. Steinberg, 18 N.Y.2d 492 (N.Y. 1966). The Court goes on to say that the movant must demonstrate that the lack of income is unavoidable in order to justify a decrease in support and that the determination to reduce support must be based on movant's capacity to generate income, not on his current economic status. Id. citing Hickland v. Hickland, 39 N.Y.2d 1; (N.Y. 1976), Fries v. Price-Yablin, 209 A.D.2d 1002 (4<sup>th</sup> Dep't. 1994), Yepes v. Fichera, 230 A.D.2d 803 (2<sup>nd</sup> Dep't 1996) and David W. v. Julia W., 158 A.D.2d 1 (1<sup>st</sup> Dep't. 1990).

It is also proper for the Court to consider sums of money which an obligee receives from his

parents as income for the purposes of determining the amount of his support obligation.( See Domestic Relations Law Sec. 240 [1-b][b][5][iv][D] (money, goods, or services provided by relatives and friends); Matter of Collins v. Collins, 241 A.D.2d 725, 659 N.Y.S.2d 955 Testler v. Testler, 228 AD 2d 491, 644 N.Y.S. 2d 316; Lapkin v. Lapkin, 208 AD 2d 474, 617 N.Y.S.2d 327). Emery v Bond, 269 AD 2d 832, 703 N.Y.S. 2d 788 Income was imputed to Respondent in the amount of \$1,811.67 per month. The Court noted he failed to provide any medical evidence supporting his contention that medical problems prevented him from working. The Court also rejected the argument that the Hearing Examiner improperly shifted his child support obligation to his fiancée because his expenses are paid by her.

“A Court need not accept a parties’ account of his or her finances when that account is not believable. Furthermore, a Court has considerable discretion to attribute or impute an annual income to a parent based upon his or her ability to earn sufficient means to pay child support particularly where the inability to establish that parent’s income is directly attributable to inaccurate financial records for which he was responsible.” See Blaise v. Blaise, 241 AD2d 680, 659 N.Y.S. 2d 926 See also Blaise v. Loreman, 257 AD 2d 976, 684 N.Y.S. 2d 354

In the matter of Mobley-Jennings v. Dare, 226 AD 2d 730, 642 N.Y.S 2d 41 the Court found that the Hearing Examiner was justified and disregarding the income figure reported on the Respondent’s most recent tax return and in concluding that the Respondent was earning at least \$30,000.00 per year based on his ability to meet his personal and business needs. See Emery vs. Bond, *supra*.

The Court finds on the Petitioner’s modification petition that he has failed to sustain his burden of proof as suggested by the above mentioned case and statutory law. The fact that he is

currently on scale to earn more this year in 2006 than he earned at the time of the parties' divorce is only one small factor in this Court's decision. The Petitioner feels as if he is entitled to special treatment because he wants to be with his daughter and stay home with her as much as possible. This Court feels that this could probably be said for many parents who work full-time jobs, if not more, on a regular basis. The Petitioner has the ability to earn more money, however he chooses to work only part-time at a job where he is given a ride back and forth to work, where he is required to only work 20 hours per week so as not to interfere with the visitation he has with his daughter. He claims he has tried to look for other employment, such as overnight positions on a part-time basis to supplement his income, however he has failed to provide any proof to this Court. He fails to provide any proof whatsoever what his expenses are and what the arrangement is he has with his current domestic partner. He admits that his partner would pay his child support obligation. He also admits that his partner earns approximately \$40,000 per year while he earns \$10,000 per year and therefore this provides him the ability to only work part-time so he can be off on the days when he wants to be with his daughter. The Court notes that the child is of school age and that the Petitioner elects to only work while the child is in school because he claims he cannot afford to pay daycare. He claims all this is creating a financial burden on him and he cannot afford to pay the child support any longer and therefore that is the reason why he, on his own, decided he would reduce his child support obligation from \$80.00 per week to \$37.50 per week. He admits he did this and does not dispute that, if found in arrears, the outstanding figure is \$977.50 as of June 27, 2006.

#### DECISION

The petition for modification filed by James [REDACTED] Docket No. F [REDACTED], is dismissed with prejudice for the above stated reasons. The enforcement petition filed by Michelle

██████████ Docket No. F-01767-06/06B, is granted based upon the Petitioner, Mr. ██████████, admissions that he purposely stopped paying the full amount of child support and started paying a lower amount, resulting in arrears as of June 27, 2006 of \$977.50. The Court finds Mr. ██████████ is in arrears for that amount and will enter a Money Judgment in favor of Ms. ██████████ as of June 27, 2006, in the amount of \$977.50. The prior Order of support dated February 19, 2002 is hereby continued through the Erie County Support Collection Unit.

Dated: August 11, 2006  
NJB/mg

  
NEIL J. BERNHOLZ  
SUPPORT MAGISTRATE