

Table of Contents

Dedication

Preface

Acknowledgments

Part 1 Preliminary Matters Prior to the Commencement of Trial, Conduct of Trial, and Rules of Evidence Particularly Applicable in Matrimonial Matters

Chapter 1. Preliminary Matters, Conduct of Trial, and Rules of Evidence

1-1. The Parties - Client's Right to Settle the Case and Participation by Trial Judge in Settlement Discussions

1-2. The Parties - Pro Se Litigants

1-3. The Attorneys - Acts of Attorney during Trial Are Binding upon Client

1-4. The Attorneys - The Attorney for the Child

1-5. The Attorneys - Conflicting Engagements of Counsel

1-6. The Attorneys - Effect of Appearance by Counsel

1-7. The Attorneys - Lawyer as Witness

1-8. The Court - Ex-parte Communications By Counsel and Court Prohibited

1-9. The Court - Recusal

1-10. The Pleadings - In General

1-11. The Pleadings - The Purpose of Pleadings.

1-12. The Pleadings - Use During Trial and Inconsistent, Alternative, and Hypothetical Causes of Action.

- 1-13. The Pleadings - Marked Pleadings.
- 1-14. Preliminary Conference - Stipulation as to Issues - 22 NYCRR 202.16 (f), 22 NYCRR 202.11
- 1-15. Settlement and Pre-trial Conference - 22 NYCRR §202.26.
- 1-16. Settlement Conference Before a Justice Other than the Justice Assigned to the Case.- 22 NYCRR §202.29.
- 1-17. Statement of Proposed Disposition - 22 NYCRR 202.16(h).
- 1-18. Pre-trial Submission of Witness List - 22 NYCRR 202.16 (g) (6)
- 1-19. Scheduling Witnesses - 22 NYCRR 202.37
- 1-20. Pre-Trial Memoranda, Exhibit Book, and Requests for Jury Instructions - 22 NYCRR 202.20-h.
- 1-21. Premarking Exhibits, Memoranda, Exhibit Books - 22 NYCRR 202.16 (m), 22 NYCRR 202.34
- 1-22. Limitations - Preclusion of Fact Witness or Evidence For Violation Of Order To Submit Pre-Trial Witness List And Exhibit List
- 1-23. Pre-trial Disclosure of Expert Witnesses - Expert Witnesses and Other Trial Matters - 22 NYCRR 202.16 (g)
- 1-24 Courts right to appoint own expert witness – 22 NYCRR 202.16(g)
- 1-25. Limitations - Pre-trial Disclosure of Expert Witnesses - Reports - Court - Appointed Witnesses. – CPLR 3101(d) - Photographs, Videos, and Recordings
- 1-26. Disclosure of films, photographs, video tapes or audio tapes - CPLR 3101(i)
- 1-27. Preclusion of Expert Testimony at Trial for Failure to Comply with CPLR 3101(d)
- 1-28. Limitations - Preclusion of Expert Testimony at Trial for Failure to Comply with CPLR 3101(d)

- 1-29. Preclusion of Fact Witness Testimony At Trial for Failure to Comply with Pre-trial Discovery Request Unavailable - CPLR 3126
- 1-30. Preclusion of Fact Witness or Evidence For Violation of Order To Submit Pre-Trial Witness List And Exhibit List
- 1-31. Preclusion for Failure to Produce - 22 NYCRR 202.16 (f) (1-b) (5)
- 1-32. Limitations - Preclusion of Fact Witness Testimony At Trial for Failure to Comply with Pre-trial Discovery Request Unavailable - CPLR 3126
- 1-33. Direct testimony of Party's Witness by Affidavit - 22 NYCRR 202.16 (n)
- 1-34. Direct Testimony by Affidavit – 22 NYCRR 202.20-I
- 1-35. Direct testimony by Experts Report – 22 NYCRR 202.16(g)
- 1-36. Limitations - In Limine Motions
- 1-37. Trial Subpoenas - Necessity for Subpoena
- 1-38. Trial Subpoenas - Service of Trial Subpoena on Party
- 1-39. Trial Subpoenas - Service on Non-Party Witness and Party – Not a disclosure order
- 1-40. Trial Subpoenas - Non-Party Witness and Travel Fees - Excessive Compensation of Fact Witnesses
- 1-41. Trial Subpoenas - Advance Service upon Hospital, Municipal Corporation, or State for Patient Records
- 1-42. Trial Subpoenas - HIPPA Requirements
- 1-43. Trial Subpoenas - Motion For Subpoena for Library or Municipality - CPLR 2307
- 1-44. Trial Subpoenas - Place of Production of Documents and Inspection
- 1-45. Trial Subpoenas - Method of Compliance with Trial Subpoenas

- 1-46. Trial Subpoenas - Remedies for Failure to Comply - Contempt
- 1-47. Trial Subpoenas - Remedies for failure to Comply - Warrant for Arrest
- 1-48. Trial Subpoenas - Motion to quash, fix conditions, or modify a Subpoena - Defenses to Contempt Application
- 1-49. Trial - At Place Other than the courthouse
- 1-50. Trial - Duration of trial
- 1-51 Trial - Reference to Referee
- 1-52. Trial - Reference to Referee - Review by Supreme Court of Referee's Jurisdiction
- 1-53. Trial - Payment for Transcript of Trial - Payment for Transcript of Trial - Trial Before Court and Before Referee to Hear and Report
- 1-54. Trial - Motion to Reopen Case During and After Trial
- 1-55. Trial - Amendment of Pleadings Permissible During Trial
- 1-56. Trial - Motion to Amend Pleadings to Conform to the Proof
- 1-57. Trial - Method of Making Motion to Amend Pleadings to Conform to the Proof
- 1-58. Trial - Motion for judgment during trial - CPLR 4401
- 1-59. Trial - Motion for a Mistrial or Continuance during the Trial - CPLR 4402
- 1-60. Trial. - Requests for findings
- 1-61. Trial - Form of decision
- 1-62. Trial - Time for decision
- 1-63. Affirmation as to the truth wherever made – CPLR 2106
- 1-64. Duty to provide Net Worth Affidavit and Updated financial information

Chapter 2. Rules of Evidence Particularly Applicable to Matrimonial and Family Court Proceedings

- 2-1. Rules of Evidence - In General
- 2-2. Evidence and Proof - Competent and Material
- 2-3. Admissibility of Evidence - General Rule
- 2-4. Burden of Proof - Standards of Proof
- 2-5. Burden of Proof - Fair Preponderance of Credible Evidence - Clear and Convincing Evidence
- 2-6. Burden of Proof - Clear and Convincing Evidence in Matrimonial Actions
- 2-7. Burden of Proof - Presumptions
- 2-8. Standards of Proof for Overcoming Presumptions in Matrimonial Actions
- 2-9. Burden of Proof - "Competent Proof" in Family Court Proceedings
- 2-10. Foundation for Evidence - Fundamental Error and Harmless Error
- 2-11. Foundation for Evidence - Res Judicata
- 2-12. Foundation for Evidence - Collateral Estoppel
- 2-13. Foundation for Evidence - On the Merits and Without Prejudice
- 2-14. Foundation for Evidence - Stare Decisis - The Doctrine of Precedent
- 2-15. Foundation for Evidence - Law of the Case
- 2-16. Foundation for Evidence - Judicial Estoppel
- 2-17. Foundation for Evidence - Rule Against Inconsistent Positions
- 2-18. Foundation for Evidence - Estoppel from Presenting Evidence at Trial Based Upon Contents of Response to Discovery Demand
- 2-19. Foundation for Evidence - Judicial Notice of Law and Facts
- 2-20. Foundation for Evidence - Method of Asking Court to Take Judicial Notice of a Fact

- 2-21. Foundation for Evidence - Judicial Notice of Testimony at Prior Pendente lite Hearing
- 2-22. Admissibility of Evidence - Settlement Offers Not Admissible
- 2-23. Admissibility of Evidence - Admissions and Letters by Party's Attorney Admissible in Evidence
- 2-24. Admissibility of Evidence - Presumption that Only Admissible Evidence Was Considered By the Trial Court.
- 2-25. Admissibility of Evidence – Rule against Hearsay
- 2-26. Admissibility of Evidence - Exceptions to the Rule against Hearsay Applicable in Matrimonial Case
- 2-27. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Verbal or operative acts and State of Mind
- 2-28. Admissibility of Evidence - Exceptions to the Rule against Hearsay - State of Mind
- 2-29. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Present Sense Impression and Excited Utterance/Spontaneous Declaration
- 2-30. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Expressions of Intent
- 2-31. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Evidence of Abuse or Neglect in Custody and Child Protective Proceedings
- 2-32. Admissibility of Evidence - Exceptions to the Rule against Hearsay – CPLR 4549 – Admissibility of an opposing party's statement
- 2-33. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Former Testimony
- 2-34. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Admissions
- 2-35. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Admission of New Spouse

- 2-36. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Past recollection recorded
- 2-37. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Business Records
- 2-38. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Laying a Foundation for and Questions for Offering Business Records into Evidence
- 2-39. Admissibility of Evidence - Exceptions to the Rule Against Hearsay - Business Records - Admission of Hospital bills and Records, Records and Reports of Genetic Marker or DNA tests, and Payment Records
- 2-40. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Admission of Certified Hospital, Library, and Government Records.
- 2-41. Admissibility of Evidence - Exceptions to the Rule Against Hearsay - Admission of Business Records - Other Certification Substitutes for Foundation Testimony.
- 2-42. Admissibility of Evidence - Exceptions to the Rule Against Hearsay - Not Necessary to Lay Foundation For Admission of Certified Non-Party Business Records Produced Pursuant to Subpoena - CPLR 3122-a
- 2-43. Admissibility of Evidence - Exceptions to the Rule Against Hearsay - Admissibility of Medical Reports - Not admissible As Business Records Where They Contain Doctor's Opinion or Expert Proof
- 2-44. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Laying a Foundation for Admission of Business Records and Records of Municipality into Evidence - Summary of Rule
- 2-45. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Questions for Laying a Foundation for and Offering Business and Municipality Records into Evidence

- 2-46. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Method of Laying a Foundation for and Offering into Evidence Certified Records of Business or Municipality
- 2-47. Admissibility of Evidence - Exceptions to the Rule against Hearsay - Business Records Rule - Business Duty
- 2-48. Admissibility of Evidence - Results of Lie Detector Test Inadmissible
- 2-49. Admissibility of Evidence - Expert Report Inadmissible Without Consent
- 2-50. Admissibility of Evidence - Privilege - Testimony of One Spouse against the Other. - Action founded Upon Adultery - In General
- 2-51. Admissibility of Evidence - Privilege - Testimony of One Spouse against the Other- Action Founded Upon Adultery - As to Non-access
- 2-52. Admissibility of Evidence - Privilege - Testimony of One Spouse Against the Other – Actions for Divorce, Separation or Annulment - Confidential Communications.
- 2-53. Admissibility of Evidence - Privilege - Testimony of One Spouse against the Other - Confidential Communications - Waiver
- 2-54. Admissibility of Evidence - Privilege - Confidential Communications - Waiver
- 2-55. Admissibility of Evidence - Privilege - Testimony of One Spouse for the Other - Action founded Upon Adultery
- 2-56. Admissibility of Evidence - Privilege - Confessions and Admissions - Action Founded Upon Adultery.
- 2-57. Admissibility of Evidence - Privilege - Conduct Prior to Marriage - Action Founded Upon Adultery
- 2-58. Admissibility of Evidence - Privilege - Attorney - Client Privilege - Civil Practice Law and Rules § 4501.
- 2-59. Admissibility of Evidence - Privilege - Attorney-Client Communications May Not Be Revealed To Court Absent Waiver

- 2-60. Admissibility of Evidence - Consumer of legal services and a legal or lawyer referral service privilege - Judiciary Law §498
- 2-61. Admissibility of Evidence - Privilege - Psychologist - Patient Privilege - Civil Practice Law and Rules § 4507.
- 2-62. Admissibility of Evidence - Privilege - Physician, dentist, podiatrist, chiropractor and nurse Privilege - Civil Practice Law and Rules § 4507.
- 2-63. Admissibility of Evidence - Privilege - Clergy - Penitent Privilege - Civil Practice Law and Rules § 4505.
- 2-64. Admissibility of Evidence - Privilege - Social worker - Patient Privilege - Civil Practice Law and Rules § 4508(a).
- 2-65. Admissibility of Evidence - Privilege - Rape crisis counselor - client Privilege - Civil Practice Law and Rules § 4510
- 2-66. Admissibility of Evidence - Privilege - Rape crisis counselor - client privilege - Civil Practice Law and Rules § 4510
- 2-67. Admissibility of Evidence - Practice Point - Privilege - Confidential Communications
- 2-68. Admissibility of Evidence - Privilege - Fifth Amendment Privilege against Self-Incrimination
- 2-69. Admissibility of Evidence - Privilege - Method of Making Objection to Question on Fifth Amendment Grounds
- 2-70. Admissibility of Evidence - Privilege - Adverse Inference from Failure of Party to Testify and Failure to Call Favorable Witness - Missing Witness Rule in Civil Case
- 2-71. Admissibility of Evidence - Privilege - New York Privilege against Self-incrimination - Civil Practice Law and Rules §4501.
- 2-72. Admissibility of Evidence - Privilege - Electronic Communication of Privileged Communications - Civil Practice Law and Rules § 4548

- 2-73. Admissibility of Evidence - Evidence Illegally Obtained. – Unlawful Entry, Search and Seizure and Electronic Surveillance of Family Conversations – Exceptions for Custody and Article 10 Cases
- 2-74. Admissibility of Evidence - Suppression of Illegally Obtained Eavesdropping Evidence - Civil Practice Law and Rules § 4506(a) - Vicarious Consent for Child
- 2-75. Admissibility of Evidence - Motion to Suppress Illegally Obtained Eavesdropping Evidence under CPLR § 4506
- 2-76. Admissibility of Evidence - Illegal Interception of Electronic Evidence - Electronic Evidence Defined
- 2-77. Admissibility of Evidence – Authentication
- 2-78. Rebuttable presumption of authenticity of material produced pursuant to Article 31 demand – CPLR 4540-a
- 2-79. Admissibility of Evidence - Social Networking Sites
- 2-80. Admissibility of Evidence - Admissibility of Electronic Evidence
- 2-81. Admissibility of Evidence - Authentication of Instant Message
- 2-82. Admissibility of Evidence - Authentication of Text Message and Questions for Introduction into Evidence
- 2-83. Questions to Lay Foundation for Introduction of text message into evidence
- 2-84. Admissibility of Evidence - Authentication of Blogs and Websites
- 2-85. Admissibility of Evidence - Authentication of email and Questions for Introduction
- 2-86. Questions to Lay Foundation for Introduction of email into evidence
- 2-87. Admissibility of Evidence - Evidence Obtained By Spyware - CPLR 4506
- 2-88. Admissibility of Evidence - Admissibility of Audio and Visual Recordings

2-89. Admissibility of Evidence - Admissibility of Audio and Visual Recordings - Foundation for Admission of Recordings

2-90. Foundation for Admission of Photograph into Evidence

2-91. Questions for Laying Foundation for Admission of Photograph into Evidence

2-92. Questions for Laying Foundation for Admission of Photograph into Evidence by Photographers' Testimony

2-93. Admissibility of Evidence - Questions for Laying Foundation for Admission of Recorded telephone call into Evidence

2-94. Admissibility of Evidence - Questions for Laying Foundation for Admission of Transcript of Sound Recorded telephone call into Evidence

2-95. Admissibility of Evidence - Best evidence rule

2-96. Admissibility of Evidence - Parol Evidence Rule

2-97. Admissibility of Evidence - Spoliation - Unfavorable Inference - Preclusion

2-98. Admissibility of Evidence - Inadmissibility of Evidence Protected by the Health Insurance Portability and Accountability Act

2-99. Admissibility of Evidence - Admissibility of Foreign Language Exhibits and Affidavits and Papers

2-100. Admissibility of Evidence - Authentication of official record of court or government office in the United States

2-101. Admissibility of Evidence - Authentication of Foreign Records and Documents for Use at Trial

2-102. Practice Point - Effect of the Failure of a Party to Deny or Contradict Evidence or Pleadings

2-103. Practice Point - Effect of withholding Evidence in Your Possession, or Failure to Call a Witness

2-104. Practice Point – Testimony about Out of Court Statements Made by Third Party.

2-105. Practice Point - No Client - Expert Privilege.

2-106. Practice Point - Trial Evidence not Limited by Scope of Pretrial Disclosure

2-107. Practice Point - Admissibility of Charts and Summaries

2-108. Practice Point - Difference Between General Objection to Offer in Evidence and Specific Objection

2-109. Recantation

Chapter 3. Conduct of Trial

3-1. Order of Trial - In General

3-2. Order of Trial - Opening and Closing statements: When and how to make them.

3-3. Order of Trial - Motion to Dismiss After Opening Statement

3-4. Conduct of Trial - Right to Call Witnesses for Direct Examination

3-5. Conduct of Trial - Right to Cross-Examination of Witness

3-6. Conduct of Trial - Scope of Cross-Examination - Making Adverse Witness Own Witness

3-7. Conduct of Trial - Redirect Examination

3-8. Conduct of Trial - Redirect Examination - Rule of Completeness

3-9. Conduct of Trial - Re-Cross Examination of Witness

3-10. Conduct of Trial - Motion to Dismiss for failure to establish a Prima Facie Case

3-11. Conduct of Trial - Rebuttal Evidence.

3-12. Conduct of Trial - Courtroom Decorum for Counsel and Court - Addressing the Judge - Approaching the Bench.

3-13. Conduct of Trial - Calling a Witness to the Stand to Testify

- 3-14. Conduct of Trial - Method of Calling a Witness to the Stand - Presenting Witnesses
- 3-15. Conduct of Trial - Requirement that Witness Have Personal Knowledge
- 3-16. Conduct of Trial - Examination of Witnesses - Method of Examination - Improper Questions
- 3-17. Conduct of Trial – Importance of Objections to Inadmissible Evidence or Improper Questions
- 3-18. Conduct of Trial - Method of Making an Objection
- 3-19. Conduct of Trial - Voir Dire to Challenge Foundation for Introduction of Evidence
- 3-20. Conduct of Trial - Leading Questions - What they are and when they are permitted
- 3-21. Conduct of Trial - Method of Making Objection to Leading Question
- 3-22. Conduct of Trial - Refreshing the Witness's Recollection
- 3-23. Conduct of Trial - Questions for Refreshing Witness Recollection
- 3-24. Conduct of Trial - Refreshing Recollection of Witness - Past recollection recorded
- 3-25. Conduct of Trial - Motion for Reconsideration of Prior Ruling
- 3-26. Conduct of Trial - Method of Making Motion to Reconsider Prior Ruling
- 3-27. Conduct of Trial - Motion to Adjourn Trial - Defendant's Objection to proceed with Defense before Plaintiff Rests
- 3-28. Conduct of Trial - Method of Making Motion to Adjourn - Objection to proceed with Defense before Plaintiff Rests
- 3-29. Conduct of Trial - Continuing Objection
- 3-30. Conduct of Trial - Motion to Strike Evidence Improperly Admitted

- 3-31. Conduct of Trial - Motion to Strike Evidence Admitted Subject to Connection
- 3-32. Conduct of Trial - Offer of Proof - What is it?
- 3-33. Conduct of Trial - Method of Making an Offer of Proof
- 3-34. Conduct of Trial - Exclusion of Witnesses from Courtroom
- 3-35. Conduct of Trial - Method of Making Request to Exclude Witnesses
- 3-36. Conduct of Trial - Discretion of Judge to Question Witnesses
- 3-37. Conduct of Trial - Right of Trial Judge to Call own Witness.
- 3-38. Trial Testimony - Right to Confer with Counsel
- 3-39. Conduct of Trial - Right of Court to Compel Testimony
- 3-40. Trial Testimony - Right to Interpreter for Person Who Can Not Communicate with Court
- 3-41. Trial Testimony - Calling the Adverse Party as a Witness
- 3-42. Trial Testimony - Cross Examination - Modes of impeachment
- 3-43. Trial Testimony - Cross - Examination - Impeachment of Witnesses
- 3-44. Trial Testimony - Cross-Examination - Impeachment Limited by Collateral Evidence Rule
- 3-45. Trial Testimony - Cross Examination - Impeachment - Reputation for Veracity
- 3-46. Trial Testimony - Cross Examination - Reputation for Veracity - Laying Foundation for Impeachment Testimony of Bad Reputation for Veracity
- 3-47. Trial Testimony - Cross Examination - Reputation for Veracity - Questions for Impeachment Testimony of Bad Reputation for Veracity
- 3-48. Trial Testimony - Cross - Examination - Impeachment of Witness by Prior Inconsistent Statement and Questions for Introduction

- 3-49. Trial Testimony- Cross - Examination – Inadmissibility of Proof of Prior Arrest, Indictment or Conviction for Petty Crime
- 3-50. Trial Testimony - Cross - Examination - Attempt to Procure False Evidence Competent as an Admission
- 3-51. Trial Testimony - Cross-Examination - Impeachment of Witness by Criminal Conviction
- 3-52. Trial Testimony - Cross-Examination - Impeachment of Witness by Showing Bias, Hostility, or Interest
- 3-53. Trial Testimony - Cross - Examination - Impeachment by Showing Witness Hostile to Party
- 3-54. Trial Testimony- Cross - Examination - Impeachment by Showing Predisposition
- 3-55. Trial Testimony - Questions for Impeaching Witness on Cross - Examination by Showing Hostility
- 3-56. Trial Testimony - Impeaching own Witness
- 3-57. Trial Testimony - Testimony of Child
- 3-58. Trial Testimony - Prior Testimony - Use of Depositions at Trial or Hearing
- 3-59. Trial Testimony - Prior Testimony - Use of Deposition from Prior Action
- 3-60. Trial Testimony - Prior Testimony - Effect of using deposition.
- 3-61. Trial Testimony - Prior Testimony - Use of Deposition Subject to Rules of Evidence
- 3-62 Trial Testimony - Prior Testimony - Questions for Impeaching Witness on Cross Examination by Prior Deposition Testimony
- 3-63. Trial Testimony - Prior Testimony - Use of Answers to Interrogatories
- 3-64. Trial Testimony - Prior Testimony - Use of Answers to Interrogatories from Prior Action

3-65. Trial Testimony - Prior Testimony - Effect of using Answers to Interrogatories.

3-66. Trial Testimony - Prior Testimony - Use of Answers to interrogatories Subject to Rules of Evidence

3-67. Trial Testimony - Prior Testimony - Questions for Impeaching Witness on Cross Examination by Answers to interrogatories

3-68. Trial Testimony - Prior Testimony - Admission of Prior Testimony

3-69. Trial Testimony - Prior Testimony - Admission of Prior Testimony Subject to Objection

3-70. Trial Testimony - Prior Testimony - Necessity of Foundation for Admission of Prior Testimony

3-71. Trial Testimony - Prior Testimony - Questions for Impeaching Witness on Cross Examination by Prior Testimony

3-72. Trial Testimony - Method of Marking Documents as Exhibits for Identification and Offering them into Evidence

3-73. Trial Testimony - Method of Offering Exhibit Marked for Identification into Evidence - Standard Questions

3-74. Duty of court to determine equitable distribution, maintenance, child support and custody

Chapter 4. Agreements and Stipulations of Settlement during Trial

4-1. Stipulation of Settlement during Trial – Validity – CPLR 2104

4-2. Requirement of Acknowledged (Prenuptial, Nuptial, Opting-out) Agreement in Matrimonial Actions

4-3. Separation Agreements - Validity - Public Policy - General Obligations Law §5-311

4-4. Requirements for Child Support Agreements - Opting Out of the Child Support Standards Act

4-5. Separation Agreements - Validity - Necessity for Parties to Be Separated or Immediate Separation Contemplated

4-6. Separation Agreements - Abandonment by Reconciliation Renders Agreement Void

4-7. Agreements - Incorporation into Judgment of Dissolution - Presumption of Survival or merger

4-8. Practice Point - Method of Placing Stipulation on the Record

4-9. Direct Examination - Allocution - Questions with regard to Agreement or Stipulation

4-10. Direct Examination of Spouse - Questions to Establish Living Together after Signing Separation Agreement

4-11. Direct Examination of Spouse - Questions to Establish Reconciliation after Signing Separation Agreement

4-12. Direct Examination of Spouse - Questions to Establish to Establish Merger or Survival of Agreement into Divorce Judgment

Part 2 Establishing Grounds for Divorce, Separation and Annulment and Defenses

Chapter 5. Presumptions, Burden of Proof and Proof of Marriage

5-1. In General - Presumptions and Burden of Proof

5-2. Presumptions and Burden of Proof as to Marriage

5-3. Presumption as To Continuance of Marriage.

5-4. Presumption as to Validity of Marriage

5-5. Burden of Going Forward to Prove Invalidity of Marriage

5-6. Presumption as to the validity of Marriage as Between Prior and Subsequent Marriages.

5-7. Presumption of Death of Former Spouse

5-8. Presumption as to Divorce

5-9. Proof of Marriage - In General

5-10. Proof of Marriage - Marriage Records and Other Documentary Evidence.

5-11. Proof of Marriage - Testimony of Parties

5-12. Proof of Marriage - Testimony of Third Persons

5-13. Proof of Marriage - Admissions and Declarations

5-14. Proof of Non-marriage

5-15. Overcoming Presumption of Validity of Marriage

5-16. Overcoming Presumption of Validity of Marriage - Proof of Second Marriage

5-17. Proof of Common-Law Marriage

5-18. Proof of Foreign Marriage.

Chapter 6. Grounds for Divorce and Defenses

6-1. Cruel and Inhuman Treatment

6-2. Proof of Cruel and Inhuman Treatment

6-3. Defenses - Cruel and Inhuman Treatment

6-4. Abandonment

6-5. Proof of Abandonment

6-6. Actual Abandonment

6-7. Constructive Abandonment

6-8. Defenses: Abandonment

6-9. Defenses - Abandonment - Lack of Justification as an Element of the Cause of Action

6-10. Defenses - Abandonment - Reconciliation

6-11. Burden of Proof - Adultery

6-12. Definition of Adultery.

6-13. Proof of Adultery - In General

- 6-14. Proof of Adultery - By Circumstantial Evidence
- 6-15. Proof of Adultery By Testimony of Third Persons - Paramour, Prostitute, Private Detective - Rule of Corroboration in Uncontested Divorce Cases
- 6-16. Proof of Adultery by Proof of Divorce and Remarriage.
- 6-17. Proof of Adultery by Proof of Confessions - Rule of Corroboration
- 6-18. Defenses to Adultery - In General
- 6-19. Defenses to Adultery - Insanity as a Defense
- 6-20. Defenses to Adultery - Statute of Limitations
- 6-21. Defenses to Adultery - Affirmative Defense of Recrimination – (Adultery of the Plaintiff)
- 6-22. Defenses to Adultery - Affirmative Defense of Forgiveness (Condonation)
- 6-23. Defenses to Adultery - Proof of Forgiveness
- 6-24. Revival of Condoned Offense
- 6-25. Defenses to Adultery - Affirmative Defense of Connivance and Procurement
- 6-26. Defenses to Adultery - Collusion
- 6-27. Defenses to Adultery - Distinction between Collusion and Settlement
- 6-28. Burden of Proof - Imprisonment for Three Years
- 6-29. Proof of Confinement in Prison
- 6-30. Defenses - Imprisonment for Three Years - Statute of Limitations
- 6-31. Burden of Proof - Living Apart Pursuant to a Separation Judgment
- 6-32. Burden of Proof - Living Apart Pursuant to Separation Agreement
- 6-33. Burden of Proof - Proof of Living Separate

6-34. Irretrievable Breakdown for a Period of At Least 6 Months

6-35. Irretrievable Breakdown - Defined

6-36. Irretrievable Breakdown - Sufficiency of Proof and Defenses

Chapter 7. Action for a Divorce – Presumptions, Burden of Proof and Sufficiency of Evidence

7-1. Action for a Divorce - Burden of Proof and Sufficiency

7-2. Action for a Divorce - Burden of Proof and Sufficiency - In Case Defendant Defaults

7-3. Action for a Divorce - Burden of Proof and Sufficiency - Proof of Adultery

7-4. Action for a Divorce - Burden of Proof and Sufficiency - Proof of an Existing Valid Marriage.

7-5. Action for a Divorce - Burden of Proof and Sufficiency - Proof of Residence.

7-6. Action for a Divorce - Presumption of Legitimacy of Child of Marriage.

7-7. Action for a Divorce - Admissibility of Evidence and Competency of Witnesses - Action on the Ground of Adultery.

Chapter 8. Trial by Jury.

8-1. Right to Jury Trial

8-2. No Trial by Jury of Economic and Custody Issues

8-3. Waiver of Jury Trial.

8-4. Findings of Jury as Conclusive or Advisory.

8-5. Role of Trial Court

8-6. Selecting a Jury - Composition of Jury

8-7. Selecting a jury - Challenges generally

8-8. Selecting a jury - Peremptory challenges

8-9. Selecting a jury - Challenge for cause to the favor.

8-10. Selecting a jury - Challenge for cause: Disqualification of juror for relationship.

8-11. Request to Charge to the Jury

8-12. Charge to Jury - Testimony of Private Detective

Chapter 9. Direct Examination of Party or Witness - Questions to Establish a Prima Facie Case for a Divorce

9-1. Direct Examination of Party - Questions to Establish A Prima Facie Case for a Divorce - Cruel and Inhuman Treatment - Domestic Relations Law § 170(1)

9-2. Direct Examination of Party - Questions to Establish a Prima Facie Case for Divorce - Abandonment - Domestic Relations Law § 170(2)

9-3. Direct Examination of Party - Questions to Establish A Prima Facie Case for a Divorce - Abandonment - Constructive - Refusal to Have Sexual Relations- Domestic Relations Law §170(2)

9-4. Direct Examination of Party - Questions to Establish A Prima Facie Case for a Divorce - Confinement to Prison for Three Years - Domestic Relations Law §170(3)

9-5. Direct Examination of Party - Questions to Establish A Prima Facie Case for a Divorce - Adultery - Domestic Relations Law §170(4)

9-6. Questions to Private Investigator - Action for Divorce Based on Adultery

9-7. Questions to Nonparty Witness - Action for Divorce Based on Adultery

9-8. Direct Examination of Party - Questions to Establish A Prima Facie Case for a Divorce - Living apart Pursuant to a Judgment of Separation for More than one year- Domestic Relations Law § 170(5)

9-9. Direct Examination of Party - Questions to Establish A Prima Facie Case for a Divorce - Living apart Pursuant to an Agreement of Separation for More than one year- Domestic Relations Law § 170(6)

9-10. Questions for Examination of Witness to Offer Agreement into Evidence

9-11. Direct Examination of Party - Questions to Establish A Prima Facie Case for a Divorce on the Grounds of Irretrievable Breakdown- Domestic Relations Law § 170(7)

Chapter 10 – Grounds for Separation, Annulment and other Actions

10-1. Action for Separation

10-2. Action for an Annulment

10-3. Action for a Declaration of the Nullity of a Void Marriage - Incestuous and Bigamous Marriages

10-4. Action to Annul a Marriage for Incurable Mental Illness

10-5. Actions other than Actions for a Divorce in Which Ancillary Relief Available

10-6. Actions Other than for a Divorce in Which Equitable Distribution Available

10-7. Burden of Proof in Annulment Actions - Generally.

10-8. Burden of Proof in Annulment Actions - Physical Incapacity

10-9. Burden of Proof in Annulment Actions- Where Fraud is alleged as Ground.

10-10. Burden of Proof in Annulment Actions - Bigamous Marriages.

10-11. Burden of Proof in Annulment Action - In Case Defendant Defaults.

10-12. Burden of Proof in Declaratory Judgment Action - In Case Defendant Defaults.

10-13. Burden of Proof in Annulment Actions - Rule of Corroboration.

10-14. Burden of Proof in Annulment Action - Corroboration-Amount and Character of Corroboration.

Chapter 11. Direct Examination of Party or Witness - Questions to Establish a Prima Facie Case for Separation, Annulment, and Declaration of Nullity

11-1. Direct Examination of a Party - Questions to Establish a Prima Facie Case - Action for Separation - Actual Abandonment - Domestic Relations Law §200(2)

11-2. Direct Examination of a party - Questions to Establish a Prima Facie Case - Action for Separation - Constructive Abandonment [Lock out] - Domestic Relations Law §200(2)

11-3. Direct Examination Of Party - Questions to Establish A Prima Facie Case for a Separation - Abandonment - Constructive - Domestic Relations Law § 200(2)

11-4. Direct Examination of a Party - Questions to Establish a Prima Facie Case - Action for Separation - Non-Support - Domestic Relations Law §200(3)

11-5. Direct Examination of Party - Questions to Establish a Prima Facie Case - Action for Annulment - Declaration of Void Marriage - Incest - Domestic Relations Law §140(a)

11-6. Direct Examination of Party - Questions to Establish a Prima Facie Case - Action for Annulment - Declaration of Nullity of Void Marriage - Annulment of Bigamous Marriage - Domestic Relations Law §140(a)

11-7. Direct Examination of Plaintiff - Questions to Establish a Prima Facie Case - Action for Annulment of Voidable Marriage - Party under Age of Consent - Domestic Relations Law §140(b)

11-9. Direct Examination of Party - Questions to Establish a Prima Facie Case - Action for Annulment of Voidable Marriage - Consent By Force, Duress or Fraud - Fraud - Domestic Relations Law §140(e)

11-10. Direct Examination of Party - Questions to Establish a Prima Facie Case - Action for Annulment of Voidable Marriage - Consent by Force, Duress or Fraud - Fraud - Misrepresentation as to having children - Domestic Relations Law §140(e)

11-11. Direct Examination of Witness - Questions to Establish a Prima Facie Case - Action for Annulment of Voidable Marriage - Consent By Force, Duress or Fraud - Fraud - Misrepresentation as to having children - Domestic Relations Law §140(e)

11-12. Direct Examination of Party - Questions to Establish a Prima Facie Case - Action for Annulment of Voidable Marriage - Consent By Force, Duress or Fraud - Fraud Misrepresentation of Paternity of a Child - Domestic Relations Law §140(e)

11-13. Direct Examination of Party - Questions to Establish a Prima Facie Case - Action for Annulment of Voidable Marriage - Consent By Force, Duress or Fraud - Force or Duress - Domestic Relations Law §140(e)

11-14. Direct Examination of Party - Questions to Establish a Prima Facie Case - Action for Annulment of Voidable Marriage - Incurable Mental Illness for Five Years - Domestic Relations Law §140(f)

Part 3 – Obtaining Maintenance, Child Support, Exclusive Occupancy and Counsel Fees

Chapter 12. Direct Examination of Client – General Questions to Establish a Prima Facie Economic Case

12-1. Introductory Note, Requirement of Personal Knowledge and Background Information

12-2. Prior Marriages (Self)

12-3. History of Marriage (Self)

12-4. Children (Self)

12-5. Health, Education, Skills, Needs

12-6. Current residence (Self)

12-7. Assets (Self)

12-8. Business or Profession (Self)

12-9. Safe Deposit Box

- 12-10. Collections (Self)
- 12-11. Other Ventures (Self)
- 12-12. Other Assets (Self)
- 12-13. Assets (Spouse)
- 12-14. Business or Profession (Spouse)
- 12-15. Safe Deposit Box (Spouse)
- 12-16. Collections (Spouse)
- 12-17. Other Ventures (Spouse)
- 12-18. Other Assets (Spouse)
- 12-19. Marital Residence
- 12-20. Gross Income (Self)
- 12-21. Employment Benefits (Self)
- 12-22. Employment Contract/deferred Compensation (Self)
- 12-23. Other Income (Self)
- 12-24. Other Sources of Income
- 12-25. Royalty Income (Self)
- 12-26. Legal Settlements (Self)
- 12-27. Gambling, Award, Prize Income (Self)
- 12-28. Trusts (Self)
- 12-29. Guardian (Self)
- 12-30. Gross Income (Spouse)
- 12-31. Employment Benefits (Spouse)
- 12-32. Employment Contract/deferred Compensation (Spouse)
- 12-33. Other Income (Spouse)
- 12-34. Other Sources of Income (Spouse)

- 12-35. Royalty Income (Spouse)
- 12-36. Legal Settlements (Spouse)
- 12-37. Gambling, Award, Prize Income (Spouse)
- 12-38. Trusts (Spouse)
- 12-39. Guardian (Spouse)
- 12-40. Separate Property (Self)
- 12-41. Pre-separation Standard of Living
- 12-42. Contributions to Support (Self)
- 12-43. Liabilities (Self)
- 12-44. Accounts Payable (Self)
- 12-45. Notes Payable (Self)
- 12-46. Installment Accounts Payable (Security Agreements, Chattel Mortgages) (Self)
- 12-47. Brokers Margin Accounts (Self)
- 12-48. Mortgages Payable on Real Estate (Self)
- 12-49. Taxes Payable (Self)
- 12-50. Loans on Life Insurance Policies (Self)
- 12-51. Other Liabilities (Self)
- 12-52. Wage Deduction
- 12-53. Expenses
- 12-54. Contributions to Marital Property (Self)
- 12-55. Assets Transferred (Self)
- 12-56. Assets Transferred (Spouse)
- 12-57. Efforts to Obtain Employment (Self)
- 12-58. Interim Support Arrears and Violation of Automatic Orders (Self)

- 12-59. Need to Reside in Marital Home (Self)
- 12-60. Need for Education or Training and Plans for Future (Self)
- 12-61. Need for Childcare (Self)
- 12-62. Need for Nursery School, Private School, Religious School, College (Self)
- 12-63. Support Requests (Self)
- 12-64. Camp, Teen Tour, Summer Activities (Self):
- 12-65 Health Insurance (Self)
- 12-66 Health Insurance (Spouse)
- 12-67. Health Care for Child Not Covered by Insurance and Cash Medical Support (Self)
- 12-68 Life Insurance (Self)
- 12-69 Life Insurance (Spouse)
- 12-70. Counsel Fee Requirements (Self)
- 12-71. Accountant, Appraisal and Expert Fees (Self)

Chapter 13. Equitable Distribution Factors - Questions for Prima Facie Case

- 13-1. The Fourteen Equitable Distribution Factors - In General
- 13-2. The Fourteen Equitable Distribution Factors - Questions for Direct Examination of Client

Chapter 14. Cross - Examination of Spouse

- 14-1. Cross - Examination of Spouse Regarding Net Worth Affidavit
- 14-2. Questions for Cross Examination of Spouse - Does not remember
- 14-3. Questions for Cross Examination of Spouse - Gross Income
- 14-4. Questions for Cross Examination of Spouse - Expenses paid by Employer
- 14-5. Questions for Cross Examination of Spouse - Reimbursement by employer

14-6. Questions for Cross Examination of Spouse - Reimbursement by employer

14-7. Questions for Cross Examination of Spouse - Money for expenses, Breadwinner, Monied Spouse

14-8. Questions for Cross Examination of Spouse - Capital loss carry over

Chapter 15. Maintenance

15-1. Maintenance Awards – Actions Commenced Between July 19, 1980 and October 12, 2010 - Historical Perspective - Domestic Relations Law §236(B) (6) (a)

15-2. Post-Divorce Maintenance Awards - Actions Commenced Between October 12, 2010, and January 22, 2016 – The 2010 Amendments to Domestic Relations Law § 236 [B] [6] [a]

15-3. Post-Divorce Maintenance Awards - Actions Commenced Between October 12, 2010, and January 22, 2016 - Standard of Living during Marriage.

15-4. Post-Divorce Maintenance Awards – Actions Commenced Between October 12, 2010, and January 22, 2016 - The Twenty Factors

15-5. Post-Divorce Maintenance Awards - Actions Commenced Between October 12, 2010, and January 22, 2016 - Duration of Maintenance

15-6. Post-Divorce Maintenance Awards - Actions Commenced Between October 12, 2010, and January 22, 2016 - Imputed Income

15-7. Post-Divorce Maintenance Awards - Actions Commenced Between October 12, 2010, and January 22, 2016 - Effect of McSparron and Grunfeld Cases

15-8. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - In General – The Fifteen Factors – Income Cap

15-9. Post-Divorce Maintenance Guidelines in Actions Commenced on or after January 23, 2016 – Definitions – Income Cap

- 15-10. Post-Divorce Maintenance Awards -Actions Commenced on or after January 23, 2016 – Mandatory Application
- 15-11. Post-Divorce Maintenance Guidelines in Actions Commenced on or after January 23, 2016 - Determine the Income of the Parties – Inclusions in Income
- 15-12. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 –Determine the Income of the Parties-- Deductions from Income
- 15-13. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - Calculation of the Post - Divorce Maintenance Guideline Amount
- 15-14. Post-Divorce Maintenance Guidelines - Actions Commenced on or after January 23, 2016 - Self-Support Reserve
- 15-15. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - Divorce Maintenance Guideline Obligation Award Unless Unjust or Inappropriate
- 15-16. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - The Fifteen Factors in Domestic Relations Law § 236[B] [6] [e] [1]
- 15-17. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - Required Statement of Factors and Reasons
- 15-18. Post -Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - Duration of Post-Divorce Maintenance and Retirement Factor
- 15-19. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - Retroactivity of Maintenance Awards
- 15-20. Post-divorce Maintenance Awards - Effect of a Barrier to Remarriage - Domestic Relations Law §236 (B) (6) (o).
- 15-21. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - Unrepresented Parties

15-22. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - Opting Out of Domestic Relations Law §236[B] [6]

15-23. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 - Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 -In Case of Default or Where Insufficient Evidence

15-24. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 -Effect of Guidelines upon Modification of Post-Divorce Maintenance

15-25. Post-Divorce Maintenance Awards - Actions Commenced on or after January 23, 2016 -Termination of Post-Divorce Maintenance

15-26. Special Relief - In General

15-27. Special Relief - Life Insurance

15-28. Special Relief - Health Insurance

Chapter 16. Post - Divorce Maintenance Awards - Domestic Relations Law § 236[B] [6] - Questions for Prima Facie Case

16-1. Direct Examination of client - Questions to Establish Prima Facie Case for Maintenance - Actions commenced on or after October 12, 2010 until January 23, 2016.

16-2. Direct Examination of client in actions commenced on or after October 12, 2010, until January 23, 2016 - Gross Income and Additions

16-3. Direct Examination of Client - Actions commenced on or after October 12, 2010, until January 23, 2016 - Self-employment Deductions

16-4. Direct Examination of Client - Actions commenced on or after October 12, 2010, until January 23, 2016 - Imputed income

16-5. Direct Examination of Client - Actions commenced on or after October 12, 2010, until January 23, 2016 - Reduced resources or income

16-6. Direct Examination of Client - Actions commenced on or after October 12, 2010, until January 23, 2016 - Deductions from income

16-7. Direct Examination of Client - Actions commenced on or after October 12, 2010, until January 23, 2016 - Standard of living of the parties established during the marriage

16-8. Direct Examination of Client - Actions commenced on or after October 12, 2010, until January 23, 2016 - The Twenty Factors for Maintenance

16-9. Direct Examination of Client - Actions commenced on or after October 12, 2010, until January 23, 2016 - Effect of a barrier to remarriage - Domestic Relations Law §253 (6).

16-10. Post-divorce Maintenance Guidelines Awards. - Questions to Establish Prima Facie Case for Maintenance - Actions commenced on or after January 23, 2016 - In General

16-11. Direct Examination of Client - Actions commenced on or after January 23, 2016 - Gross Income and Additions

16-12. Direct Examination of Client - Actions commenced on or after January 23, 2016 -Self-employment Deductions

16-13. Direct Examination of Client - Actions commenced on or after January 23, 2016 -Imputed income

16-14. Direct Examination of Client - Actions commenced on or after January 23, 2016 -Reduced resources or income

16-15. Direct Examination of Client - Actions commenced on or after January 23, 2016 -Deductions from income

16-16. Direct Examination of Client - Actions commenced on or after January 23, 2016 - Post - divorce Maintenance Guideline Amount Calculation

16-17. Direct Examination of Client - Actions commenced on or after January 23, 2016 - Post - divorce Maintenance Guideline Obligation – Questions for Anticipated retirement

16-18. Post - Divorce Maintenance Guidelines Obligation - Actions commenced on or after January 23, 2016 - Duration of Post-Divorce Maintenance

16-19. Direct Examination of Client - Actions commenced on or after January 23, 2016 - Self-Support Reserve

16-20. Direct Examination of Client - Actions commenced on or after January 23, 2016 - Effect of a barrier to remarriage - Domestic Relations Law §253 (6)

Chapter 17. Examination of Employment Recruiter

17-1. Direct Examination of Employment Recruiter

Chapter 18. Examination of Employer

18-1. Direct Examination of Employer – Compensation and Bonus

18-2. Direct Examination of Employer - Stock Options

18-3. Direct Examination of Employer - Profit Sharing or Pension Plan

18-4. Direct Examination of Employer - Deferred Compensation Plan

18-5. Direct Examination of Employer - Reimbursement for Business Expenses, Credit Card Use, and Air Miles

18-6. Direct Examination of Employer - Accumulated Sick Days

18-7. Direct Examination of Employer - Accumulated Vacation Days

18-8. Direct Examination of Employer - Investment or Savings Plan

18-9. Direct Examination of Employer - Medical and Other Benefits

18-10. Direct Examination of Employee Benefits and Executive Compensation Evaluator (Restricted Stock units, Preferred Stock units, deferred compensation, severance plan)

Chapter 19. Child Support

19-1. Child Support - Presumption that Basic Child Support Obligation is Correct Amount of Support

19-2. Definition of Income - Determine Combined Parental Income

19-3. The Basic Child Support Obligation - Presumed to meet basic needs

19-4. Definition of Income - Income Defined

19-5. Definition of Income - Investment income

19-6. Definition of Income – Income from Other Sources and Voluntarily Deferred Income

19-7. Definition of Income - “Imputed income”

19-8. Definition of Income - Additions to Gross (total) income in actions commenced on or after January 24, 2016

19-9. Definition of Income - Additions to Income

19-10. Definition of Income - Deductions from Income

19-11. Child Support - Non-Custodial Parent in Joint and Shared custody situations

19-12. Add-ons - Child Care - Domestic Relations Law §240(1-b) (c) (4) and Domestic Relations Law §240(1-b) (c) (6).

19-13. Add-ons - Health Care Not Covered by Insurance - Domestic Relations Law 240(1-b) (c) (5) - Cash Medical Support

19-14. Add-ons - Education Expenses - Domestic Relations Law §240(1-b) (c) (6)

19-15. Child Support - Determining How Much Income to Apply Statutory Percentage to Where Combined Parental Income is in Excess of the Statutory income cap

19-16. Child Support - Based on Actual Need in High-Income Cases

19-17. Child Support - Effect of insufficient evidence to determine gross income

19-18. Child Support - Self-Support Reserve

19-19. Support orders for Adult Dependents - Domestic Relations Law §240-d

Chapter 20. Child Support - Domestic Relations Law §240 (1-b) - Questions for Prima Facie Case

20-1. Child Support - In General

20-2. Direct Examination of Client - Gross Income and Additional Income

20-3. Direct Examination of Client - Self-employment Deductions

20-4. Direct Examination of Client - Imputed income

20-5. Direct Examination of Client - Reduced resources or income

20-6. Direct Examination of Client - Deductions from income

20-7. Direct Examination of Client - Non-recurring payments from Extraordinary Sources

20-8. Basic Child Support Obligation - Unjust or Inappropriate - In General

20-9. Direct Examination of Client - Unjust or Inappropriate Factors

20-10. Direct Examination of Client - Add-on for Child Care for work or education that will lead to employment

20-11. Direct Examination of Client - Add-on for Cost of Childcare for seeking work

20-12. Direct Examination of Client - Add-on for Cost of Post-secondary, private, special or enriched education

20-13. Direct Examination of Client - Add-on for Health Care Not Covered by Insurance and Cash Medical Support

20-14. Direct Examination of Client – Self-Support Reserve

Chapter 21. Exclusive Occupancy of Marital Residence

21-1. Exclusive Occupancy of Marital Home - Burden of Proof - Domestic Relations Law § 234

Chapter 22. Exclusive Occupancy of the Martial Residence - Questions for Prima Facie Case

22-1. Direct Examination of Client

Chapter 23. Counsel Fee Awards

23-1. Counsel Fee Awards - In General

23-2. Counsel Fee Awards - Actions Commenced on or After October 10, 2010

23-3. Counsel Fee Awards - Actions Commenced on or After October 10, 2010 - Domestic Relations Law §237(a) and (d)

23-4. Counsel Fee Awards - Actions Commenced on or After October 10, 2010 - Relevant Case Law – No Counsel fees to Monied Spouse – Sanctions

23-5. Counsel Fee awards – Presumption in favor of counsel fees to less monied spouse – Determining who is monied spouse

23:6. Counsel Fees to Monied Spouse

23-7. Counsel Fee Awards - Right to a Hearing

23-8. Counsel Fee Awards - Time for Application

23-9. Counsel Fee Awards - Effect of Rules of Professional Conduct

23-10. Counsel Fee Awards - Expert Fees

23-11. Stipulation to have the issue of counsel fees determined on affirmations

23-12. Requirement of affidavits from Experts

23-13. Requirement of affidavits from prior attorneys

23-14. Conduct in litigation, obstruction and delaying tactics.

23-15. Hourly rates requested must be reasonable

23-16. Court is expert on value of legal services

23-17. Contingency Fees Barred in Matrimonial Action

Chapter 24. Counsel Fee Awards - Questions for Prima Facie Case

24-1. Direct Examination of Trial Counsel

24-2. Direct Examination of Law Firm Bookkeeper

Part 4 Property Distribution and Evidence of Value

Chapter 25. Property Distribution

25-1. “Property” Redefined - “Marital Property” Defined – Tracing Property to its Source as Marital Property

25-2. Marital Property after Discontinuance of Prior Action

25-3 Equitable Distribution - Professional Degrees and Licenses

25-4. Domestic Relations Law §236[B] [5] [d] [7] - Actions Commenced on or after January 23, 2016 - The Demise of O’Brien

25-5. Equitable Distribution - Appreciation of Separate Property Is Marital Property

25-6. Separate Property Defined - Domestic Relations Law § 236 [B] (1) (d)

25-7. Separate Property - Property Acquired Before Marriage or By Inheritance or Gift

25-8. Separate Property - Compensation for Personal Injury

25-9. Separate Property - Property Acquired in Exchange for Separate Property

25-10. Separate Property - Property Described in Agreement as Separate Property

25-11. Distributive Award Defined - Domestic Relations Law § 236 [B] [5] [e]

25-12. Presumptions - Marital and Separate Property

25-13. Burden of Proof - Value - Effect of Failure to Value

25-14. Property Distribution – Allocation of Marital Assets and Marital Debts – In Kind Distribution

25-15. Property Distribution – Allocation of Marital Assets and Marital Debts – Contingent Distribution

- 25-16. Property Distribution - Appreciation of Separate Property - Burden of Proof - Direct and Indirect Contributions
- 25-17. Property Distribution – Value of Homemaker Services
- 25-18. Property Distribution - Separate Property - Burden of Proof Property Is Separate
- 25-20. Property Distribution - Separate Property Becomes Marital Property - Transmutation and Commingling
- 25-21. Property Distribution - Reducing Enhanced Earnings by Amount of Distributive Award – Actions Commenced on or after January 23, 2016
- 25-22. Property Distribution - Reducing Enhanced Earnings by Amount of Distributive Award – Exception to Rule for tangible income-producing asset
- 25-23. Property Distribution - Valuation Date
- 25-24. Property Distribution - Retirement Benefits, Severance Payments, Stock Plans, Bonuses and Deferred Compensation
- 25-25. Property Distribution - Retirement Benefits, Severance Payments, Stock Plans, Bonuses and Deferred Compensation - Employer Bonuses
- 25-26. Property Distribution - Retirement Benefits, Severance Payments, Stock Plans, Bonuses and Deferred Compensation - Deferred Compensation
- 25-27. Property Distribution - Retirement Benefits, Severance Payments, Stock Plans, Bonuses and Deferred Compensation - Severance payments
- 25-28. Property Distribution - Retirement Benefits, Severance Payments, Stock Plans, Bonuses and Deferred Compensation - Early Retirement Incentive Payments
- 25-29. Property Distribution - Effect of Post Judgment Events Upon Spouses share of Retirement Benefits

25-30. Property Distribution - Restricted stock and stock option benefit plans

25-31. Property Distribution - Burden of Proof -The Fourteen Factors - Domestic Relations Law § 236 (B) (5) (d)

25-32. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (1)

25-33. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (2)

25-34. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (3)

25-35. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (4)

25-36. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (5)

25-37. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (6)

25-38. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (7)

25-39. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (8)

25-40. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (9)

25-41. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (10)

25-42. Domestic Relations Law § 236 (B) (5) (d) - The Fourteen Factors - Factor (11)

25-43. Domestic Relations Law § 236 (B) (5) (d) - The Sixteen Factors - Factor (12) - Wasteful dissipation of assets by either spouse

25-44. Domestic Relations Law § 236 (B) (5) (d) - The Sixteen Factors - Factor (13) - Transfer or encumbrance made in contemplation of a

matrimonial action

25-45. Domestic Relations Law § 236 (B) (5) (d) - The Sixteen Factors
- Factor (14) - Acts of Domestic Violence

25-46. Domestic Relations Law § 236 (B) (5) (d) - The Sixteen Factors
- Factor 15 - Best Interest of Companion Animals - October 25, 2021

25-47. Domestic Relations Law § 236 (B) (5) (d) - The Sixteen Factors
- Factor Sixteen - Any other factor which the court shall expressly find
to be just and proper

Chapter 26. Opinion Evidence and Need for Expert Testimony

26-1. Opinion Evidence - Opinion of Ordinary Witness as to ownership,
intent, belief and value of property or services.

26-2. Opinion Evidence - Admissibility of Expert Testimony - Basis for
Admission of Expert Opinion

26-3. Opinion Evidence – Qualification of Expert and Weight of
Testimony

26-4. Opinion Evidence - Expert Cannot Be Compelled to Testify

26-5. Opinion Evidence - Form of expert opinion

26-6. Opinion Evidence - Cross Examination of Expert Witnesses -
Impeaching the Expert

26-7. Opinion Evidence - Impeaching Your Own Expert Witness.

Chapter 27. Valuation Methodology

27-1. Valuation Methodology - Generally

27-2. Value of Real Property and Marital Residence.

Chapter 28. Proof of Value of Personal Property

28-1. Value of Personal Property

28-2. Value of Personal Property - Market reports - CPLR 4533

28-3. Value of Personal Property - Use of Statistical Tables

Chapter 29. Valuation of a Business, Corporation or Partnership

29-1. Valuation of a Business, Corporation or Partnership - Recognized Valuation Concepts-Rev Rul 59-60 - Amodio

29-2. Valuation of a Business, Corporation or Partnership - Recognized Valuation Concepts - Capitalization of Earnings Method.

29-3. Valuation of a Business, Corporation or Partnership - Recognized Valuation Concepts - Capitalization of Dividends Method.

29-4. Valuation of a Business, Corporation or Partnership - Recognized Valuation Concepts - Liquidation Method.

29-5. Valuation of a Business, Corporation or Partnership - Recognized Valuation Concepts - Adjusted Book Value Method.

29-6. Valuation of a Business, Corporation or Partnership - Recognized Valuation Concepts - Excess Earnings (Formula) Method

29-7. Valuation Methodology - Value to Owner Method

Chapter 30 Professional Degrees, Licenses and Academic Degrees

30-1. Distribution of a Professional License, Professional Practice and Maintenance Award – Demise of O’Brien

Chapter 31. Methodology of Valuation of Law Practice

31-1. Valuation of Law Practice

Chapter 32. Methodology of Pension Valuation

32-1. Pension Valuation

Chapter 33. Methodology of Real-Estate Valuation

33-1. Market Value

33-2. Three Approaches to Value.

33-3. Highest and Best Use.

33-4. Land Value.

33-5. Application of the Three Approaches.

33-6. Sales Comparison Approach.

33-7. Cost Approach.

33-8. Income Capitalization Approach.

33-9. Reconciliation of Value Indications.

Chapter 34. Examination of Real Estate Appraiser

34-1. Direct Examination - Qualification as Expert

34-2. Direct Examination of Real Estate Appraiser - Valuation of Real Estate

34-3. Direct Examination of Real Estate Appraiser - Annotated

Chapter 35. Examination of Accountant - Valuation of Close Corporation

35-1. Direct Examination of Accountant - Qualification as Expert

35-2. Direct Examination - Valuation of Corporation

Chapter 36 Examination of Pension Expert

36-1. Direct Examination - Qualification as Expert

36-2. Direct Examination - Valuation of Pension

Part 5 Trial of a Custody Case |

Chapter 37. Jurisdiction to Determine Custody or Visitation

37-1. Custody Jurisdiction - In General

37-2. Initial Child Custody Jurisdiction

37-3. Continuing Jurisdiction of Original Decree State

37-4. Jurisdiction for Modification of Child Custody Determination of Court of another State

37-5. Preemption of Jurisdiction by Parental Kidnapping Prevention Act of 1980

37-6. Information to be submitted to court - Domestic Relations Law § 76-h

37-7. Blind Persons Right to Parent - Domestic Relations Law § 75-m

Chapter 38. Custody Litigation

38-1. Custody Proceedings – Custody, Joint custody and Visitation Defined

38-2. Custody Proceedings - Presumption in favor of visitation

38-3. Custody Proceedings - Zones of Decision Making

38-4. Custody Proceedings - Role of the Court - CPLR 4213 (b)

38-5. Custody Proceedings - Burden of Proof - Best Interests of the Child

38-6. Custody Proceedings - Burden of Proof - Effect of Domestic violence

38-7. Custody Proceedings - Presumption as to custody

38-8. Custody Proceedings - Totality of the circumstances - Factors Considered

38-9. Factors Considered - Availability and ability of the Parents

38-10. Factors Considered - Interference with the relationship between child and non-custodial parent

38-11. Factors Considered - “Friendly parent” concept

38-12. Factors Considered - Psychological factors and Expert Opinions

38-13. Factors Considered - Home environment, material resources and logistics

38-14. Factors Considered - Continuity of stable environment

38-15. Factors Considered - Child’s preference

38-16. Factors Considered - Keeping siblings together

38-17. Factors Considered - Parents Lifestyle, sexual orientation

38-18. Factors Considered - Primary caretaker

38-19. Factors Considered - Economic Status

38-20. Factors Considered - Child Care Arrangements

- 38-21. Factors Considered - Parental Lifestyle and Religion.
- 38-22. Factors Considered - Illicit Sex
- 38-23. Factors Considered - Abandonment of the Child
- 38-24. Factors Considered - Mental Illness of a Parent
- 38-25. Custody Proceedings - Evidence - Admissibility of Hearsay
- 38-26. Custody Proceedings - Evidence - Use of Experts, Evaluations, and Reports
- 38-27. Court ordered forensic evaluations—Domestic Relations Law §240(1)(a-3)
- 38-28. Custody Proceedings - Evidence - Investigations
- 38-29. Custody Proceedings – Evidence - In-camera and Lincoln interviews
- 38-30. Custody Proceedings – Evidence - In-camera and Lincoln interviews - Duty to Check Accuracy
- 38-31. Custody Proceedings – Evidence - Confidential communications - Waiver in Custody Cases
- 38-32. Custody Proceedings - Evidence - Child Permitted to Assert Psychologist - Patient Privilege
- 38-33. Custody Proceedings - Evidence - Admissibility of child abuse reports
- 38-34. Custody Proceedings - Evidence - Child as a Witness

Chapter 39. Psychological Tests, Guidelines for Child Custody Evaluations and The Diagnostic and Statistical Manual of Mental Disorders

- 39-1. Psychological Testing - In General
- 39-2. Parenting Assessment Tests
- 39-3. Intelligence Tests
- 39-4. Academic tests
- 39-5. Neuropsychological tests

- 39-6. Personality tests
- 39-7. Rating scales and inventories
- 39-8. Story-telling tests
- 39-9. Sentence-completion tests
- 39-10. Projective drawings
- 39-11. Other assessment methods
- 39-12. Impeachment of Forensic - In General
- 39-13. Impeachment of Forensic Expert - Authoritative Scientific Texts
- Guidelines for Child Custody Evaluations
- 39-14. The Diagnostic and Statistical Manual of Mental Disorders
(DSM-5 TR)
- 39-15. The Diagnostic and Statistical Manual of Mental Disorders -
Caution for Use of DSM-5 TR in a Forensic Setting

Chapter 40. Direct Examination of Party - Prima Facie Custody Case

- 40-1. Custody Jurisdiction
- 40-2. Children
- 40-3. History
- 40-4. Upbringing of child
- 40-5. Living accommodations
- 40-6. Employment
- 40-7. School
- 40-8. Grandparents and relatives
- 40-9. Typical day
- 40-10. Child's friends
- 40-11. Religion, drug and medical
- 40-12. Daycare, babysitter

40-13. Other relationships

40-14. Interim background and pendente lite order and visitation

40-15. Inappropriate behavior/domestic violence

40-16. Love your child

Chapter 41. Examination of Psychiatrist and Psychologist

41-1. Direct Examination of Psychiatrist - Qualification as Expert

41-2. Direct Examination of Psychologist - Qualification as Expert

41-3. Questions for Direct Examination of Psychiatrist Appointed By Court

41-4. Questions for Direct Examination of Court Appointed Psychologist

Chapter 42. Cross examination of Psychiatrist and Psychologist

42-1. Questions for Cross Examination of Psychiatrist or Psychologist

42-2. Cross Examination of Court Appointed Psychiatrist Who Recommends Custody to Father

42-3 Cross Examination of Psychologist - Failure to Follow APA Guidelines

Chapter 43. Redirect Examination of Psychiatrist

43-1 Redirect Examination of Court appointed psychiatrist

43-2 Redirect Examination of Psychiatrist for Mother

Chapter 44 Preserving the Right to Appeal

44-1. In General

44-2. Failure to appeal an issue

44-3. Acceptance of benefits

44-4. Failure to preserve Issues by failing to request or object to Relief

44-5. Participation in proceedings without objecting

44-6. Issues which could have been raised on prior Appeal

44-7. Issues or Arguments raised for the first time in reply or reply brief

44-8. Failure to address issues in brief

44-9. Failure to provide an adequate record