



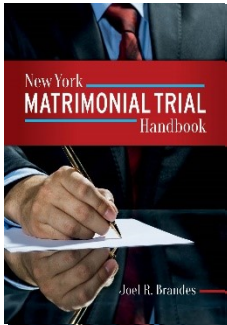
Bits and Bytes™

October 1, 2018

Volume 14, No. 19

Welcome to **Bits and Bytes,™** our electronic newsletter published for the New York divorce and family law bench and bar, by **Joel R. Brandes Consulting Services, Inc.**

[Joel R. Brandes Consulting Services, Inc.](#) is a creative writing and publishing company. We provide expert matrimonial and family law content for client newsletters, law firm websites and attorney and law firm blogs. We also assist lawyers with drafting articles for legal journals and preparing presentations and materials for lectures and seminars.



The **[New York Matrimonial Trial Handbook](#)** by Joel R. Brandes is available in Bookstores and online in the print edition [at the Bookbaby Bookstore, Amazon Barnes & Noble, Goodreads and other online book sellers.](#)

The **[New York Matrimonial Trial Handbook](#)** by Joel R. Brandes is available [in Kindle ebook editions](#) and [epub ebook editions](#) in our [website](#) bookstore. An electronic edition is the perfect assistant” to **bring into the courtroom on your tablet or laptop** for a contested matrimonial trial. It places the **substantive law** and the **rules of evidence** at your fingertips. You can quickly find what you need to know to **lay a foundation** for the introduction of evidence, and **grounds for objecting** to evidence offered by your adversary. Counsel never has to worry about what questions to ask a witness. There are **thousands of suggested questions** for the examination and cross-examination of witnesses dealing with very aspect of the matrimonial trial.

The **[New York Matrimonial Trial Handbook](#)** was reviewed by Bernard Dworkin, Esq., in the New York Law Journal. His review is reprinted on our website at <http://www.nysdivorce.com> with the permission of the New York Law Journal.

[Time Table for Service of Motion Papers](#)

In this issue we have included for counsels reference our updated **2018 Time Table for Service of Motion Papers** which is based upon the provisions of CPLR 2214 (b), CPLR 2215 and CPLR 2103(b). A pdf copy of the timetable may be downloaded from our website at www.nysdivorce.com.

Appellate Division, Second Department

Lack of Contempt Warning and Notice May Be Waived by Contesting Application on The Merits

In *Dalton v Dalton*, --- N.Y.S.3d ----, 2018 WL 4473038, 2018 N.Y. Slip Op. 06078 (2d Dept., 2018) the Appellate Division rejected the defendant's argument that the the Supreme Court was without authority to adjudicate him in contempt because the plaintiff's order to show cause failed to include the notice and warning requirements of Judiciary Law § 756. By contesting the contempt application on the merits without raising this objection, the defendant waived any objections to the validity of the application based upon those requirements.

Family Court Act § 413(1)(a) does not require a third party who is awarded custody, but not a parent to financially support a child.

In *Lozaldo v Cristando*, --- N.Y.S.3d ----, 2018 WL 4344611, 2018 N.Y. Slip Op. 06015 (2d Dept., 2018) the maternal aunt and uncle of the subject children were awarded residential custody of the children after the death of the mother, and shared joint legal custody with the father. After a hearing the father was ordered to pay 100% of the children's unreimbursed medical and educational expenses, and to maintain a life insurance policy in the sum of \$1,000,000, designating the children as irrevocable primary beneficiaries. The Appellate Division observed that Family Court Act § 413(1)(a) provides that "the parents of a child under the age of [21] years are chargeable with the support of such child and, if possessed of sufficient means or able to earn such means, shall be required to pay for child support a fair and reasonable sum as the court may determine". The statute does not require a third party who is not a parent to financially support a child. While Courts have employed the doctrine of equitable estoppel, sometimes in conjunction with that of implied contract, to hold parties responsible for paying child support in the absence of a biological or adoptive connection to the subject child or an established parent-child relationship where, among other things, those parties agreed to adopt the child (see *Matter of H.M. v. E.T.*, 76 A.D.3d 528, 906 N.Y.S.2d 85; *Wener v. Wener*, 35 A.D.2d 50, 312 N.Y.S.2d 815) such circumstances did not exist here. The fact that the petitioners have residential custody and joint legal custody of the children did not relieve the father of his obligation pursuant to Family Court Act § 413(1)(a), as the children's parent, to financially support them.

2018 Time Table for Service of Motion Papers*

Service of Motion Papers by Personal Delivery or Facsimile

| Serve Notice of Motion and Affidavits | Serve Answering Affidavits | Serve Reply Affidavits | Serve Notice Of Cross-Motion |
|---------------------------------------|--|--------------------------|---|
| 8 Days Before Return Date | 2 Days Before Return Date | N/A | 3 Days Before Time Motion Is Noticed to Be Heard (plus 3 days, if by mail) (plus 1 “business day”, if by overnight delivery service) |
| 16 Days Before Return Date | 7 Days Before Return Date If Notice Of Motion Demands | 1 Day Before Return Date | 7 Days Before Time Motion Is Noticed to Be Heard If Notice of Motion demands. (plus 3 days, if by mail) (plus 1 “business day”, if by overnight delivery service) |

Service of Motion Papers by Mail

| Serve Notice of Motion and Affidavits | Serve Answering Affidavits | Serve Reply Affidavits | Serve Notice Of Cross-Motion |
|---------------------------------------|--|--------------------------|---|
| 13 Days Before Return Date | 2 Days Before Return Date | N/A | 3 Days Before Time Motion Is Noticed to Be Heard (plus 3 days, if by mail) (plus 1 “business day”, if by overnight delivery service) |
| 21 Days Before Return Date | 7 Days Before Return Date If Notice Of Motion Demands | 1 Day Before Return Date | 7 Days Before Time Motion Is Noticed to Be Heard If Notice of Motion demands. (plus 3 days, if by mail) (plus 1 “business day”, if by overnight delivery service) |

Service of Motion and Cross Motion Papers by Overnight Delivery Service

| Serve Notice of Motion and Affidavits | Serve Answering Affidavits | Serve Reply Affidavits | Serve Notice Of Cross-Motion |
|---------------------------------------|----------------------------|------------------------|--|
| 9 Days Before Return Date | 2 Days Before Return Date | N/A | 3 Days Before Time Motion Is Noticed to Be Heard (plus 3 days, if by mail) (plus 1 “business day”, if by overnight delivery service) |

| | | | |
|----------------------------------|--|--------------------------------|--|
| 17 Days Before Return Date | 7 Days Before Return Date If Notice Of Motion Demands | 1 Day Before Return Date | 7 Days Before Time Motion Is Noticed to Be Heard If Notice of Motion demands. (plus 3 days, if by mail) (plus 1 "business day", if by overnight delivery service). |
|----------------------------------|--|--------------------------------|--|

**This table is based upon the provisions of CPLR 2214 (b), CPLR 2215 and CPLR 2103(b)*

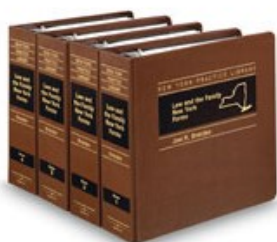
Joel R. Brandes, the President of Joel R. Brandes Consulting Services, Inc. is the author of Law and The Family New York, 2d (9 volumes) (Thomson Reuters Westlaw), and Law and the Family New York Forms (5 volumes) (Thomson Reuters Westlaw).

These sets can be purchased directly from Thomson Reuters Westlaw, 1-800-544-3008. See legalsolutions.thomsonreuters.com.



Law and the Family New York, 2d (New York Practice Library, 9 Volumes) By Joel R. Brandes. (Updated October 2017) by Joel R. Brandes, Bari Brandes Corbin and Evan B. Brandes).

Description: This set is both a treatise and a procedural guide. The usual family law issues are covered such as Formation of the Family Unit, Divorce, Judicial Separation, and Annulments. It presents such vital practical considerations as counsel fees to prosecute or defend an appeal. The text analyzes statutes, discusses cases, and includes authors' notes which present hints, practice pointers, and pitfalls to avoid. It also features a complete discussion of appellate practice and offers step-by-step guidance on how to handle an appeal in each of the state's judicial departments. Research aids annotate the text.



Law and the Family New York Forms, 2d (New York Practice Library, 5 Volumes) By Joel R. Brandes. (Updated August 2017) by Bari Brandes Corbin and Evan B. Brandes)

Description. This set provides you with practitioner-tested forms for a wide variety of family law matters. It includes forms relating to the creation of the marriage relationship, the attorney-client relationship, matrimonial agreements, and matrimonial litigation. Specific topics covered include antenuptial agreements, separation agreements, modification agreements, and matters relating to infants and incompetents, and service of process.

Bits and Bytes,™ is published twice a month by Joel R. Brandes Consulting Services, Inc., 2881 NE 33rd Court, Fort Lauderdale, Florida, 33306, 954-564-9883. Joel R. Brandes Consulting Services, Inc. is not a law firm or a lawyer, and does not give legal advice. Send mail to: joel@nysdivorce.com. Website: www.nysdivorce.com

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Bits and Bytes™ is written by Joel R. Brandes, the author of **Law and the Family New York, 2d**, and **Law and the Family New York Forms, 2d** (Thomson Reuters Westlaw), Bari Brandes Corbin, of the New York Bar, and co-author of **Law and the Family New York, 2d, Volumes 5 & 6** (Thomson-West), and Evan B. Brandes, of the New York and Massachusetts Bars, and a Solicitor in New South Wales, Australia. The authors write the annual supplements to **Law and the Family New York, 2d**, and **Law and the Family New York Forms, 2d**.