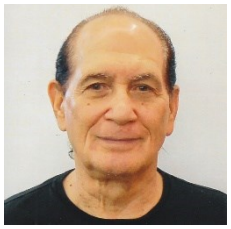
Bits and Bytes™

August 1, 2024 **Volume 21, No. 16**

Welcome to Bits and Bytes, ™ an electronic newsletter written by Joel R. Brandes of The Law Firm of Joel R. Brandes, P.C., 43 West 43rd Street, Suite 34, New York, New York 10036. Telephone: (212) 859-5079, email to: joel@nysdivorce.com. Website:www.nysdivorce.com



Joel R. Brandes is the author of the treatise Law and the Family New York, 2023 Edition (12 volumes) as well as Law and the Family New York Forms 2023 Edition (5 volumes) (both Thomson Reuters) and the New York Matrimonial Trial Handbook (Bookbaby). His "Law and the Family" column is a regular feature in the New York Law Journal.

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

I am proud to announce the publication of a new edition of my legal forms set, Law and The Family New York Forms, 2024 ed. (New York Practice Library*). Law and The Family New York Forms* provides New York state family law attorneys with a complete set of practice-tested forms for the full gamut of family law matters. and is a companion set to my 12-volume treatise, Law and the Family New York 2023 Edition. For more information see https://store.legal.thomsonreuters.com/law-products/c/Law-and-The-Family-New-York-Forms-2024-ed-New-York-Practice-Library/p/107045704

Appellate Division, First Department

An appeal from an intermediate or final order in a case involving abuse or neglect may be taken as of right. The former foster mother lacked standing to seek visitation. However, she

did not seek visitation. Family Court continued the pre-existing order of supervised visitation.

In Matter of AL.C., --- N.Y.S.3d ----, 2024 WL 3363006, 2024 N.Y. Slip Op. 03799 (1st Dept.,2024) the Appellate Division affirmed an order of the Family Court which continued the pre-existing order of supervised visitation with the former foster mother. The Court rejected the argument raised by the attorney for the children that the appeal should be dismissed because the permanency hearing order on appeal was a nonfinal order. Under the Family Court Act, the Appellate Division Court has jurisdiction to hear this appeal because "[a]n appeal from an intermediate or final order in a case involving abuse or neglect may be taken as of right" (see Family Court Act § 1112[a]; see also Matter of Christy C. [Roberto C.], 77 A.D.3d 563, 563, 909 N.Y.S.2d 351 [1st Dept. 2010]]).

The majority agreed with ACS that the former foster mother lacked standing to seek visitation, and was not entitled to the same "solicitude" as a parent in determining a visitation plan in the order. However, the former foster mother did not seek visitation. Family Court continued the pre-existing order of supervised visitation with the former foster mother because the court determined that, contrary to ACS's arguments, and based on the evidence presented at the hearing, doing so was in the children's best interests and would advance the goal of finalizing the children's placement for adoption (Family Court Act § 1089[d]). The dissent argued that the Family Court may only direct visitation with certain persons in a permanency hearing order, citing and relying on Domestic Relations Law §§ 70, 71, and 72 and Family Court Act §§ 1030 and 1081. The majority held that those statutes were not applicable here. Domestic Relations Law § 70 sets forth the procedure for a parent to seek the return of a child wrongfully detained by another parent. Domestic Relations Law §§ 71 and 72 define standing for siblings and grandparents to seek visitation or custody. Family Court Act § 1030 concerns the standing of respondents to seek visitation during child protective proceedings. Family Court Act § 1081 concerns the rights of non-custodial parents and grandparents previously awarded visitation rights to enforce those rights during child protective proceedings and establishes standing to seek sibling visitation for children in foster care. In contrast, Family Court Act § 1089, which governs permanency hearings for children in foster care, does not limit who may be included in a visitation plan as part of a permanency hearing order (Family Court Act §§ 1089[c][2][iv], 1089[d][2][vii][A]). The majority strongly disagreed with the dissent's argument that its holding could somehow create standing for legal strangers to seek visitation in foster care cases, and stated: "We do not so hold." The majority noted that commonly, visitation plans for children in foster care involve parents, grandparents, or siblings, all of whom have standing to commence visitation proceedings. However, in this case, there was no visitation petition or proceeding before the court at the time of the permanency hearing. Rather, the court ordered visitation between the children and the former foster mother to advance the children's "well-being" as it is required to do under Family Court Act § 1086. To accomplish that, the court gave special attention to the unique, undisputed circumstances of these children. It was undisputed that, as the Family Court explained on the record, "there is no legal path where the children end up in [the] care" of the former foster mother. However, the court expressed concern that discontinuing all contact with her at this time would be contrary to their well-being. Under these circumstances, the Family Court's continuation of visitation with the former foster mother was an appropriate exercise of its authority under

Family Court Act § 1089, was tailored to the particular circumstances of these children, and was in keeping with the legislative goal of ensuring foster children's well-being.

The dissent argued that the Court does not have the power to order visitation between the subject children and a legal stranger.

Appellate Division, Second Department

When an antagonistic relationship exists between the parties who have joint custody, it may be appropriate, to give each party decision-making authority in separate areas. The court providently exercised its discretion in directing the parties to attempt to resolve their differences by consulting with a parental coordinator before filing any future modification petitions

In Narine v. Singh, --- N.Y.S.3d ----, 2024 WL 3514308, 2024 N.Y. Slip Op. 03890 (2d Dept.,2024) the parties, who were never married to each other, had two children, a daughter born in 2010 and a son born in 2013. In an order dated May 12, 2020, issued on consent of the parties, the Family Court awarded the parties joint legal and physical custody of the children and issued a parental access schedule. In March 2022, the mother filed a petition to modify the prior order to award her sole access, and shortly thereafter the father filed a petition to modify the prior order, to award him sole custody of the parties' children. In an order dated August 10, 2023, the court, after a hearing, granted the father's petition to the extent of awarding him educational and extracurricular decision-making authority with respect to the parties' son. The court also directed the parties to work together to engage a family therapist for the father and the daughter and to attempt to resolve any differences with the assistance of a parental coordinator before filing any future modification petitions. The Appellate Division affirmed. It held that when an antagonistic relationship exists between the parties, it may be appropriate, depending upon the particular circumstances of the case, to give each party decision-making authority in separate areas. The division of authority is usually made either somewhat evenly, to maintain the respective roles of each parent in the child's life or, although unevenly, in a manner intended to take advantage of the strengths or demonstrated ability of each parent. It found that there was a sound and substantial basis for the Family Court's determination. It also found that under the circumstances, the court providently exercised its discretion in directing the parties to attempt to resolve their differences by consulting with a parental coordinator before filing any future modification petitions (citing Assad v. Assad, 200 A.D.3d 831, 833, 161 N.Y.S.3d 92; Silbowitz v. Silbowitz, 88 A.D.3d 687, 687–688, 930 N.Y.S.2d 270).

In Silbowitz v Silbowitz, supra, the Second Department held that although a court may properly appoint a parenting coordinator to mediate between parties and oversee the implementation of their court-ordered parenting plan a court may not delegate to a parenting coordinator the authority to resolve issues affecting the best interests of the children.

CPLR 2104 does not require the parties or the court to place on the record an agreement between the parties that is reduced to an order. However, failing to do so makes the agreement open to collateral litigation.

In Matter of Izzo, v. Salzarulo, --- N.Y.S.3d ----, 2024 WL 3351693, 2024 N.Y. Slip Op. 03751 (2d Dept.,2024) during a hearing on their petitions for custody of the children, the parties reached a settlement. The Family Court, without stating the terms of the settlement on the record, allocuted the parties, who both stated that they had reviewed the settlement with their respective attorneys and were agreeing to the settlement voluntarily and freely. In an order dated August 31, 2022, the court, inter alia, awarded the parties joint legal custody of the children, with physical custody and final decision-making authority to the father and certain parental access to the mother (custody order). The mother filed a petition to modify the custody order and then moved to vacate the custody order. In support of her motion, the mother submitted an affidavit in which she averred, inter alia, that she had not consented to the terms of the custody order. Family Court denied the motion without a hearing. The mother appeals. The Appellate Division observed that pursuant to CPLR 2104, an agreement between parties is binding against them where, as here, it was reduced to the form of an order and entered. Since settlement agreements must abide by the principles of contract law, for an enforceable agreement to exist, all material terms must be set forth and there must be a manifestation of mutual assent (Herz v. Transamerica Life Ins. Co., 172 A.D.3d 1336, 1337–1338, 99 N.Y.S.3d 664, quoting Forcelli v. Gelco Corp., 109 A.D.3d 244, 248, 972 N.Y.S.2d 570). CPLR 2104 does not require the parties or the court to place on the record an agreement between the parties that is reduced to an order. However, failing to do so makes the agreement open to collateral litigation. In light of the mother's averment that she did not consent to the terms of the custody order, the fact that the terms of the settlement were not placed on the record, and the fact that there was no writing subscribed by the parties, there was an unresolved issue as to whether there was a manifestation of mutual assent to the terms set forth in the custody order. It remitted the matter to the Family Court, for a hearing on the mother's motion and a new determination thereafter.

Where a parent has repeatedly failed to appear at scheduled court appearances and to comply with the court's directives, the court has the authority to proceed by default. This in no way diminishes the court's primary responsibility to ensure that an award of custody is predicated on the child's best interests upon consideration of the totality of the circumstances, after a full and comprehensive hearing

In Matter of Akaberi v Cruciani, --- N.Y.S.3d ----, 2024 WL 3351785, 2024 N.Y. Slip Op. 03745 (2d Dept.,2024) the parties are the parents of a child born in 2011, who has remained in the care of the mother since birth. In an order dated May 23, 2014, the Family Court awarded the father certain supervised parental access to the child. In October 2021, the father filed a petition to modify the order of supervised parental access. In January 2022, the mother filed a petition for sole legal and physical custody of the child. During court conferences throughout 2022, the Family Court, inter alia, directed the father to undergo a mental health evaluation and prohibited him from bringing recording devices into the courtroom. The father failed to comply with the court's directives, and on April 20, 2022, the father was denied entry to the courtroom after he refused to voucher his recording devices. On June 16, 2022, the father was again denied entry to the courtroom after he refused to voucher his

recording devices, among other things. Upon the father's failure to appear at the scheduled court appearance, in separate orders, each dated June 16, 2022, the court dismissed the father's petition and, without a hearing, granted the mother's petition for sole legal and physical custody of the child, with no parental access to the father. The Family Court thereafter denied his motion to vacate the orders dated June 16, 2022. The Appellate Division observed that where a parent has repeatedly failed to appear at scheduled court appearances and to comply with the court's directives, the court has the authority to proceed by default. This authority, however, in no way diminishes the court's primary responsibility to ensure that an award of custody is predicated on the child's best interests, upon consideration of the totality of the circumstances, after a full and comprehensive hearing and a careful analysis of all relevant factors (Matter of Sims v. Boykin, 130 A.D.3d at 835–836, 13 N.Y.S.3d 514; see Matter of Trammell v. Gorham, 218 A.D.3d at 781, 194 N.Y.S.3d 53). It held that the Family Court erred in rendering a custody determination without conducting a hearing or without the submission of any admissible evidence, seemingly relying upon the hearsay statements of the attorneys. Furthermore, the court failed to make any specific findings of fact regarding the best interests of the child and failed to clearly articulate which factors were material to its determination. Under the circumstances, the court should have granted that branch of the father's motion which was to vacate the order dated June 16, 2022, granting the mother's petition for sole legal and physical custody of the child. However, the Family Court providently exercised its discretion in denying the father's motion to vacate the order dated June 16, 2022, dismissing the father's petition to modify the order of supervised parental access as he failed to establish either a reasonable excuse for his default or a potentially meritorious claim.

The purpose of criminal contempt is to vindicate the authority of the court and to punish the contemnor for disobeying a court order. The imposition of punishment for criminal contempt requires proof beyond a reasonable doubt that the alleged contemnor willfully violated a clear and unequivocal court mandate

In Agulnick v Agulnick, --- N.Y.S.3d ----, 2024 WL 3351669, 2024 N.Y. Slip Op. 03724 (2d Dept.,2024) the plaintiff commenced this action for a divorce in 2018. In an order entered June 23, 2021, the Supreme Court directed an in-patient psychological evaluation of the parties' oldest child, who was then 15 years old. Thereafter, the plaintiff moved, to enroll the child into a therapeutic boarding school located in Maine. In an order dated October 25, 2021, the court granted the motion and directed the defendant to bring the child to court the next day at 9 a.m. and to encourage the child to go with a transport team that was to take him to the school. The next day, October 26, 2021, the defendant initially appeared in court without her attorney and the Supreme Court repeated its instructions to her. Shortly thereafter, that same morning, the case was recalled on the ground that the child was in the defendant's vehicle and had refused to go with the transport team; the defendant's attorney was present when the case was recalled. The court thereafter conducted a hearing during which it heard evidence from members of the transport team who testified that the defendant discouraged the child from cooperating with them. After the hearing, in an order dated October 26, 2021, the court adjudged the defendant to be in criminal contempt of court for willfully disobeying the October 25 order and imposed a penalty of a period of

incarceration of 30 days. The Appellate Division held that the purpose of criminal contempt is to vindicate the authority of the court (see Matter of Figueroa–Rolon v. Torres, 121 A.D.3d 684, 685, 993 N.Y.S.2d 348), and to punish the contemnor for disobeying a court order. The imposition of punishment for criminal contempt requires proof beyond a reasonable doubt that the alleged contemnor willfully violated a clear and unequivocal court mandate. Here, the evidence before the Supreme Court was sufficient to support a finding, beyond a reasonable doubt, that the defendant willfully disobeyed the October 25 order, a clear and unequivocal mandate of the court, by discouraging the child from cooperating with the transport team (see Judiciary Law § 750[A][3]). Accordingly, the Supreme Court properly adjudged the defendant to be in criminal contempt of court for willfully disobeying the October 25 order. Nonetheless, under the circumstances of this case, it concluded that the penalty imposed was excessive to the extent indicated herein and remitted the matter to the Supreme Court, Nassau County, for the imposition of an appropriate fine, upon a hearing and determination of the amount to be imposed.

Family Court improvidently exercised its discretion in failing to conduct an in-camera interview of the child, particularly given the child's position, as stated by the attorney for the child, regarding his fear and hatred of the father, his expressed concerns about the father's lifestyle, and his strong wishes not to have parental access with the father.

In Matter of Dionis F. v. Daniela Z.--- N.Y.S.3d ----, 2024 WL 3434406, 2024 N.Y. Slip Op. 03822 (2d Dept.,2024) the parties had one child. The mother filed a petition for sole custody. The father filed a petition for parental access with the child. The parties entered into a stipulation of settlement resolving both petitions on June 22, 2023. The stipulation of settlement provided, inter alia, that the mother would have sole custody of the child and that the father would have "supervised" and "therapeutic" parental access with the child. It stated that when the agency/parents determine that supervised parenting time is no longer necessary, the parties shall mutually agree upon an expansion of the Father's parenting time. When the parties appeared in the Family Court and advised the court that they had reached a resolution, the attorney for the child objected, indicating that the child wished to have no contact with the father. The court so-ordered the stipulation of settlement over the objection of the attorney for the child. The child appealed. The Appellate Division observed that although an appeal may be taken by the attorney for the child, the child does not have full-party status and cannot veto a settlement reached by the parents and force a trial after the attorney for the child had a full and fair opportunity to be heard. However, the decision to conduct an in-camera interview to determine the best interests of the child is within the discretion of the hearing court. It held that under the circumstances of this case, the Family Court improvidently exercised its discretion in failing to conduct an in-camera interview of the child, particularly given the child's position, as stated by the attorney for the child, regarding his fear and hatred of the father, his expressed concerns about the father's lifestyle, and his strong wishes not to have parental access with the father. The record reflected that the child was of such an age and maturity that his preferences were necessary to create a sufficient record to determine what parental access would be in his best interests. While the attorney for the child recounted the child's objections on the record, in the absence of an in-camera interview, the court did not have sufficient information to assess what parental access arrangement would be in the child's best interests. It was unclear from the order what specific type of parental access, therapeutic

or supervised, was agreed to. Under the circumstances of this case, where the child was adamantly opposed to parental access, that portion of the order that permitted the expansion of parental access from "supervised parenting time" upon the parties' consent, alone, was not proper. Although the express wishes of a child are not controlling, they are entitled to great weight, particularly where their age and maturity would make their input particularly meaningful. The child's rights do not evaporate upon the conclusion of the case in the hearing court (see Matter of Newton v. McFarlane, 174 A.D.3d at 72, 103 N.Y.S.3d 445). It reversed and remitted the matter to the Family Court for an in-camera interview with the child to develop a sufficient record concerning parental access, including the basis for the child's fears of having contact with the father, and for a new determination of the issue of parental access.

Appellate Division, Third Department

Funds husband spent on a campaign for District Attorney did not constitute a wasteful dissipation of marital assets. While marital funds were used for the campaign, the wife did not seek credit for the money spent and no such credit was given rendering this issue of no moment.

In Kopko v Kopko, --- N.Y.S.3d ----, 2024 WL 3446834, 2024 N.Y. Slip Op. 03853 (3d Dept.,2024) the Plaintiff (wife) and defendant (husband) were married in 1992 and had one child (born in 1996). In 2019, the wife commenced this divorce action. The husband, a practicing attorney, answered and in June 2022, one month before trial, moved for ancillary relief, including temporary maintenance and interim expert witness and counsel fees. He maintained that he was the less-monied spouse and that his health issues prohibited him from generating sufficient income to effectively litigate the matter. Supreme Court deferred resolution of the husband's motion pending trial given a dispute as to which party had the higher income, but allowed each party to withdraw $8,000 from a jointly-held bank account. In July 2022, the husband moved to recuse the presiding trial judge. Supreme Court denied the motion. After a trial held in July 2022, the court granted the parties a divorce and distributed the marital property. The court denied the husband's request for maintenance, as well as his request for expert witness and counsel fees. A judgment of divorce was entered on February 6, 2023. The Appellate Division affirmed.

The Appellate Division, inter alia, rejected the husband's argument that the Supreme Court improperly applied the pertinent statutory factors in distributing the marital property and inadequately considered the impact of his health on his earning capacity. At the time of trial, the wife was 58 and the husband was 73. During the trial, the husband revealed that, due to serious health issues, he experiences "profound fatigue." While he continued to appear as counsel of record in other matters, he largely did so virtually. He envisioned practicing law until at least the fall of 2023. By comparison, the husband's doctor testified that he should be putting all of his limited energy into improving his health as opposed to maintaining his profession. Supreme Court awarded an $85,000 separate property credit to the husband for a down payment he had made on the parties' prior marital residence in Rhode Island. The court reasonably rejected the husband's undocumented assertion that the appreciation in the value of the Rhode Island property which the parties sold upon

relocating to New York constituted separate property. The court also properly deemed the husband solely responsible for the tax liability arising from a significant contingent fee he earned in 2019, which he admittedly opted not to pay due to concerns over COVID–19. The court then divided the remaining assets "in a substantially equal fashion," while awarding the marital home to the husband at his request. As for maintenance, the court recognized that the husband's health would "likely preclude him from practicing law on a full-time basis," and imputed his income earning potential from the practice of law at 50% of his historical earnings, amounting to $57,772 yearly. Despite this diminished earning capacity and the fact that the husband would no longer obtain medical insurance through the wife's employment following a divorce, the court determined he would still have "sufficient income to be self-supporting" given that he received $42,256.80 per year in Social Security benefits, as well as $8,266.34 in required minimum distributions from a SEP IRA. By comparison, the wife's annual income was $89,501.77. Moreover, each party was able to retain their respective retirement savings. In view of the foregoing, the court denied the husband's maintenance request.

The Appellate Division held that given the long duration of this marriage, the distributive award was fair and reasonable, as was the Supreme Court's determination that the husband was not entitled to maintenance. It rejected the husbands' argument that Supreme Court abused its discretion in finding the wife liable for only 37.4% of the outstanding student loan debt incurred on behalf of their child solely in the husband's name. The wife paid a significant share of the outstanding debt with the income she received after the commencement of the divorce action – i.e., with separate property. It also rejected his argument that the Supreme Court abused its discretion in denying his request for counsel fees, both on an interim basis and after trial. In denying the husband's request, the court noted that the parties had "relatively equal incomes" and that, by virtue of its equitable distribution award, neither party could be considered the less monied spouse. The court considered the parties' relative financial circumstances in declining to award counsel fees and there was no abuse of discretion.

The Appellate Division agreed with the husband that the funds he spent on a campaign for District Attorney in 2020 did not constitute a wasteful dissipation of marital assets, as the Supreme Court erroneously found (see generally Strang v. Strang, 222 A.D.2d 975, 978, 635 N.Y.S.2d 786 [3d Dept. 1995]). While the husband conceded that marital funds were used for the campaign, the wife did not seek credit for the money spent and no such credit was given – rendering this issue of no moment.

The party asserting equitable estoppel must make an initial showing that a genetic marker test would disrupt an existing parent-child relationship. Only then does the burden shift to the petitioner to demonstrate that it would be in the child's best interest to order genetic marker testing. It is the child's justifiable reliance on a representation of paternity that is considered.

In Matter of Jacob G v. Antonia H., --- N.Y.S.3d ----, 227 A.D.3d 1329,(3d Dept., 2024) the Appellate Division affirmed an order which, in a proceeding pursuant to Family Ct Act article 5, ordered genetic marker testing to establish petitioner's paternity of a child born to the respondent. The respondent was the mother of a child (born in 2018). The mother and

petitioner were in a romantic relationship in 2018 when the mother became aware she was pregnant with the child. Shortly thereafter, the petitioner was incarcerated, and the parties' relationship dissolved. During the mother's pregnancy, she began a relationship with another man (the paramour), which relationship continued to the present. Following the petitioner's release from custody to parole supervision, the petitioner became involved in the child's life in July 2019. In August 2019, an order of protection was issued against the petitioner in favor of the mother, and the petitioner was re-incarcerated for a parole violation. The petitioner was released from custody in October 2020. Petitioner commenced the proceeding in March 2020, while still incarcerated, seeking to establish paternity. The mother asserted the affirmative defense of equitable estoppel. After a hearing Family Court, concluded that the mother had not met her initial burden to establish that the petitioner should be equitably estopped from claiming paternity and ordered genetic testing. The Appellate Division affirmed. It observed that as the party asserting equitable estoppel, the mother must first make an initial showing that a genetic marker test would disrupt an existing parent-child relationship, and only then does the burden shift to the petitioner to demonstrate that it would be in the child's best interest to order genetic marker testing. The application of the doctrine of equitable estoppel does not involve the equities between adult participants to the paternity proceedings; rather, in the context of a paternity proceeding, it is the child's justifiable reliance on a representation of paternity that is considered and, therefore, the doctrine of equitable estoppel will be applied only where its use furthers the best interests of the subject child. The record supported the Family Court's conclusion. Although the petitioner had minimal contact with the child since his birth, the petitioner, while incarcerated, participated in the child's birth by telephone and attempted to file several paternity petitions. The evidence also showed that the mother and the paramour facilitated the petitioner's relationship with the child by, for example, arranging for the petitioner to see the child while the petitioner was incarcerated and upon his release. The paramour did not hold himself out as, nor did others consider him to be, the child's biological father. The adults in the child's life regarded the petitioner as the child's likely biological father. The child had the petitioner's last name and lived with maternal half-siblings who were also not, nor did they believe themselves to be, the paramour's biological children, suggesting that the child's interests would not be adversely affected by learning that someone other than the paramour is his biological father. The mother failed to show the genetic marker test would disrupt an already recognized and operative parent-child relationship.

Supreme Court

Supreme Court granted the motion of AFC that during the pendency of the proceedings, the mother take down her website about the divorce case and not engage in further posting related to issues in this case.

In M.D.S., v. E.W., Slip Copy, 2024 WL 3515708 (Table), 2024 N.Y. Slip Op. 50947(U), an Unreported Disposition the parties were married and engaged in a contested matrimonial action. They had two children who resided with the mother. The Father was the son of a well-known children's book author. The Mother named her website using the Grandfather's

pen name. The homepage of the website featured a photo of the parties' Children and their grandfather. Within this website, the Mother brought up nearly every issue in the parties' divorce from financial issues to custody. The Court advised the Mother that this website was wholly inappropriate and contrary to the best interests of the Children. Despite multiple warnings, the Mother elected to proceed with her internet onslaught. In light of the hostile nature of the litigation and the clear ongoing threat to the Children's best interests by the Mother's ill-advised "vigilante justice", even after the Court's warning, the Court appointed an attorney for the Children (AFC). Shortly after her appointment, the AFC moved by emergency order to show cause seeking the immediate and final relief of, inter alia, ordering the Mother to take down the website; and for neither parent to disparage the other in the presence of the Children or online in any manner nor interfere with the Children's attorney-client relationship. The Court conformed and granted the interim relief of "(i) directing the Mother to immediately take down all content that reflects or references claims or potential evidence in this proceeding from the website; (ii) prohibiting the Mother from posting, publishing or sharing publicly any blog posts, posts, photographs, videos, audio recordings, text messages, notes, and the like of Plaintiff, Subject Children, paternal relatives, or any other individual or communication related to the claims in this pending litigation or any potential evidence in this action on any social media, websites, newspapers or publications; (iii) directing that neither parent, in the presence of the Children, or online, disparage the other parent or the relatives or partners of the other parent, discuss litigation or litigation-involved professionals, or discuss the Children's relationship or communications with their attorney; and (iv) directing that neither party shall discuss with or interrogate the Children regarding the content of their interviews with their attorney." After the Order was conformed on June 21, 2024, the Mother, posted more information on the website concerning the litigation under a new post. The Mother discussed the AFC's Order to show cause, accused the AFC of aligning with the Father to award him sole custody (a request he had not made before the Court), and questioned this Court's authority. The court found that the case law supported the conclusion that the court had the power, in an appropriate case, to enjoin one or both parents from making statements to a child that are against the "best interests" of the child if the order is narrowly drawn to meet the purpose. It granted the AFC's request for a direction, during the pendency of the proceedings, that the mother take down the website and not engage in further posting related to issues in this case.

Court of Appeals Rules Amended

The Court of Appeals has amended its Rules of Practice relating to amicus curiae relief, effective May 8, 2024. Amendments to the timing requirements for amicus curiae motions (Rule 500.23[a]) apply to all matters pending as of May 8, 2024, except for normal course appeals and certified questions where the filing date for appellant's reply brief has passed or is on or before June 7, 2024. For such normal course appeals and certified questions, motions for amicus curiae relief must be served by July 8, 2024 and noticed for a return date that complies with Rule 500.21. The Rules of Practice of the Court of Appeals (22 NYCRR Part 500) and the Rules for Review of Determinations of the State Commission on Judicial Conduct (22 NYCRR Part 530) were amended, by deleting the bracketed material and adding the

underlined material to sections 500.llG); 500.12(e); 500.23; 500.23(a)(l)(iii), (a)(2), (a)(3), (b)(l); and 530.8(c) to read as follows:

500.11 .Alternative Procedure for Selected Appeals.
G) Amicus curiae relief. The Attorney General of the State of New York may file, no later than 30 days after the filing date set for respondent's submission, an original and two copies of an amicus curiae submission without leave of the Court, with proof of service of one copy on each party. Any other proposed amicus curiae shall request amicus curiae relief pursuant to subsection 500.23(a)(2) of this Part.

500.12 Filing of Record Material and Briefs in Normal Course Appeals.
(e) Amicus curiae briefs. The Attorney General of the State of New York may file, no later than 30 days after the filing date set for [respondent's brief] appellant's reply brief or, in the case of cross-appeals, cross-appellant's reply brief, and in addition to the submission in digital format required by subsection (h) of this section, an original and nine copies of an amicus curiae brief without leave of the Court, with proof of service of three copies on each party. Any other proposed amicus curiae shall request amicus curiae relief pursuant to subsection 500.23(a)(l) of this Part.

500.23 Amicus Curiae Relief.

Any nonparty other than the Attorney General seeking to file an amicus brief on an appeal, certified question or motion for leave to appeal must obtain permission by motion. Amicus curiae relief will be denied where acceptance of the amicus curiae submission may cause the recusal or disqualification of one or more Judges of the Court. Potential amici seeking information are encouraged to contact the Clerk's Office by telephone during business hours. Information on the [calendar] briefing status of appeals and certified questions[, Court session dates] and appropriate return dates for amicus motions also is available on the Court's web site.

(a) **Motions for amicus curiae relief.**

(1) **Amicus curiae relief on normal course appeals and normal course certified questions.**

(iii) Unless otherwise directed or permitted by the Court. [T]the motion shall be served no later than 30 days after the filing date set for appellant's reply brief or, in the case of cross-appeals. cross-appellant's reply brief, and the motion shall be noticed for a return date that complies with section 500.21 of this Part. [noticed for a return date no later than the Court session preceding the session in which argument or submission of the appeal or certified question is scheduled. When an appeal or certified question is scheduled for argument or submission during the Court's January or September session, the motion shall be noticed for a return date no later than the first Monday in December or the first Monday in August, respectively.]

(2) **Amicus curiae relief on appeals and certified questions selected for review by the alternative procedure. In addition to the submission in digital format required by subsection 500.23(c) of this section,**

movant shall file an original and one copy of its motion, accompanied by an original and one copy of the proposed submission, with proof of service of one copy on each other party. Unless otherwise directed or permitted by the Court, [T]the motion shall be served no later than 30 days after the filing date set for respondent's submission and the motion shall be noticed for a return date that complies with section 500.21 of this Part. [noticed for a return date no later than the filing date set for respondent's submission on the appeal.] The proposed submission shall conform to the word and page limits set forth in subsection 500.l l(m) of this Part and the requirements of section 500.1 of this Part.

(3) **Amicus curiae relief on motions for permission to appeal in civil cases. In addition to the submission in digital format required by subsection 500.23(c) of this section, movant shall file an original and one copy of its papers, accompanied by an original amicus brief, with proof of service of the motion and one copy of the brief on each other party. Unless otherwise directed or permitted by the Court, [T]the motion shall be served no later than 15 days after the return date of the motion for permission to appeal to which it relates and shall be noticed for a return date that complies with section 500.21 of this Part. [noticed for a return date as soon as practicable after the return date of the motion for permission to appeal to which it relates.] The granting of a motion to appear amicus curiae on a motion for permission to appeal does not authorize the movant to appear amicus curiae on the subsequent appeal. A new motion for amicus curiae relief on the appeal must be brought pursuant to subsection (a)(l) or (2) of this section.**

(b) **Amicus curiae filings by the Attorney General.**

(1) **Amicus curiae relief on motions for permission to appeal in civil cases. In addition to the submission in digital format required by subsection 500.23(c) of this section, the Attorney General shall file an original and one copy of the submission with proof of service of one copy on each other party. The submission shall be filed without leave of the Court no later than 15 days after[on or before] the return date of the motion for permission to appeal.**

530.8 Motions

(c) **Amicus curiae relief. Movant shall file an original and one copy of its motion papers, accompanied by an original amicus brief, with proof of service of one copy of the motion and one copy of the brief on each other party. If the motion is granted, nine copies of the brief shall be filed, with proof of service of two copies on each party, within the time set by the Court's order. Unless otherwise directed or permitted by the Court, the motion shall be served no later than 15 days after the filing date set for petitioner's reply. [The motion shall**

be noticed for a return date no later than the Court session preceding the session in which argument or submission of the request for review is scheduled. When the request for review is scheduled for argument or submission during the Court's January or September session, the motion shall be noticed for a return date no later than the first Monday in December or the first Monday in August, respectively.] Amicus curiae relief will be denied where acceptance of the amicus curiae submission may cause the recusal or disqualification of one or more Judges of the Court. Potential amici seeking information are encouraged to contact the Clerk's Office by telephone during business hours. Information on the briefing [calendar] status of requests for review[, Court session dates] and appropriate return dates for amicus motions also is available on the Court's web site. A motion for amicus curiae relief shall [demonstrate that]:

(i) **demonstrate that the parties are not capable of full and adequate presentation and that [the] movant could remedy this deficiency; the movant could identify law or arguments that might otherwise escape the Court's consideration; or the proposed amicus curiae brief otherwise would be of assistance to the Court;**

(ii) **[the movant could identify law or arguments that might otherwise escape the Court's consideration; or] include a statement of the identity of ovant and the movant's interest in the matter; and**

(iii) **[the proposed amicus curiae brief otherwise would be of assistance to the Court.] include a statement indicating whether:**

(a) **a party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner;**

(b) **a party or a party's counsel contributed money that was intended to fund preparation or submission of the brief; and**

(c) **a person or entity, other than movant or movant's counsel, contributed money that was intended to fund preparation or submission of the brief and, if so, identifying each such person or entity.**

Family Court Act 121 and 131 Amended Effective: July 17, 2024

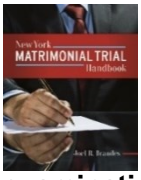
The number of Family Court judges in the City of New York has been increased from sixty-three to sixty-seven. Family Court Act § 121 was amended to provide as follows:

Family Court Act § 121. Number of judges

The family court within the city of New York shall consist of sixty-seven judges, effective January first, two thousand twenty-five. There shall be at least one family court judge resident in each county of the city of New York. (L.2024, c. 204, § 1, eff. July 17, 2024.)

Family Court Act § 131 was amended to add subdivision (x) providing that there shall be an additional family court judge for each of the following counties: Cayuga, Chenango,

Cortland, Erie, Jefferson, Rensselaer, Rockland and Westchester. Moreover, there shall be two additional family court judges from the county of Suffolk and there shall be two additional family court judges from the county of Nassau. The compensation of each such additional family court judge shall be the same as the compensation paid to each existing family court judge in such county or, if there is no separately-elected family court judge in such county, the same as the compensation paid to a judge of the county court in such county. (L.2024, c. 204, § 3, eff. July 17, 2024.)



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

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

Bari Brandes Corbin is counsel to The Law Firm of Joel R. Brandes, P.C. She is the co-author of Law and the Family New York, Second Edition, Revised, Volumes 5 & 6 (Thomson-Reuters). She concentrates her practice on post-judgment enforcement and modification of orders and judgments and serves as counsel to attorneys on all aspects of matrimonial litigation.

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 are contributors to this publication.

Notice: This publication was created to provide authoritative information concerning the subject matter covered. However, it was not necessarily written by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal advice and this publication is not intended to give legal advice about a specific legal problem, nor is it a substitute for the advice of an attorney. If legal advice is required the services of a competent attorney should be sought.

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. Send mail to divorce@ix.netcom.com.**