

2023 NJSBA Fall Conference

Preparing for Family Law Trials

Be prepared! Experts discuss how to prepare different family law cases for trial. Topics include:

- Preparing your witness for trial
- Trial tips for Family Lawyers: Direct and Cross-Examination
- Know Your Rules of Evidence
- Trial Tips for Family Lawyers

Speakers:

Bruce E. Chase, Esq.

Chase & Chase LLC, Hackensack

Jhanice V. Domingo, Esq.

Pashman Stein Walder Hayden, PC, Hackensack

Barry L. Kaufman, Esq.

Aronsohn Weiner Salerno & Kaufman, PC, Hackensack

FAMILY LAW TRIALS
(Presented in conjunction with NJSBA Family Law Section)

Program Summary

This program will explain the nuts and bolts of a divorce trial – how to prepare witnesses, trial tips for direct and cross examinations, how to effectively use expert testimony, how to give persuasive opening and closing statements, and tips on what to include in your trial brief.

Program Outline

- Why is the case going to trial?
- The unspoken elephant in the room – ANXIETY
- Trial Preparation: “Know your file. Know your file...” (Judge Krafte)
- Trial Briefs
- Opening Statement
- Direct Examination
- Cross Examination
- Expert Testimony
- Closing Statement

Program Materials

- Sample Trial Submission Notice
- Sample Trial Brief

About the Panelists



BRUCE CHASE, ESQ. is a founding Partner of Chase & Chase Law Firm. Bruce has extensive experience representing divorcing and separating spouses in a wide spectrum of family law cases. Bruce was admitted to the New Jersey Bar in 1978, immediately joining his father’s existing legal practice. Bruce’s extensive trial experience serves as a necessary backdrop to his pursuit of fair and reasonable settlements. He has tried many contested divorce cases including those involving child custody, shared residential custody, the valuation and equitable distribution of businesses, alimony, child support and other family law related issues. Bruce regularly appears as a panelist and as a presenter for the New Jersey State Bar’s Institute for Continuing Education. He has appeared many times at the State

Bar's annual meeting, the Family Law Section's annual "Hot Tips in Family Law" and other topical programs. Similarly, he regularly appears as a moderator, presenter and speaker for continuing education programs offered by the Bergen County Bar Association. Bruce has authored many family law related articles for the Bergen Barrister, the official publication of the Bergen County Bar Association, for the New Jersey Family Lawyer, a publication of the New Jersey State Bar Association's, Family Law Section and the American Academy of Matrimonial Attorneys-New Jersey Chapter.



JHANICE V. DOMINGO, ESQ. is a Partner at Pashman Stein Walder Hayden, P.C. in the firm's Family Law, Alternative Dispute Resolution, and Litigation Practice Groups. With more than 20 years of experience, Jhanice focuses her practice on family law and litigation. She is an experienced family law litigator and is also a trained and Court-approved family law mediator, handling both Court-appointed and private mediation. Jhanice serves as co-chair of the Family Law Committee of the Bergen County Bar Association and is a member of the New Jersey State Bar Association Family Law Executive Committee (FLEC). Since 2012, Jhanice also has been a member of the New Jersey Supreme Court Family Practice Committee, Non-Dissolution Subcommittee, and Domestic Violence Working Group. She is a Past President of the National Filipino American Lawyers Association and a Past President of the Asian Pacific American Lawyers Association of New Jersey (APALA-NJ). She is currently the Chair of APALA-NJ's Judicial & Prosecutorial Appointments Committee (JPAC) and works closely with New Jersey's elected officials to identify highly qualified minority candidates for nomination and appointment to the New Jersey State Judiciary. She also serves on the Board of Trustees of Legal Services of New Jersey. Jhanice received her B.A. in Psychology, Minor in Women's Studies at Boston College, and her J.D. from Seton Hall Law School.



BARRY L. KAUFMAN, ESQ. devotes his practice to family law, including Alternate Dispute Resolution (mediation and arbitration), and has been practicing law for more than 40 years. His practice is concentrated on family law matters involving complex financial issues, including valuation of businesses and professional practices, and high conflict child(ren)-related matters. He is committed to giving personal attention to each client and practical solutions in complicated situations, whether through resolution or litigation. As an experienced trial and appellate matrimonial law attorney, Barry prides himself on thorough preparation and attention to detail. Barry serves as a Court-appointed and privately retained mediator/arbitrator and is often selected to mediate or arbitrate difficult or extremely contentious matters. Superior Court judges and fellow attorneys select Barry to arbitrate sensitive family law matters that require an astute understanding of the law. He is a lecturer for the New Jersey Institute of Continued Legal Education in Family Law. Barry served as a Judicial Law Clerk to the Honorable Harold M. Nitto in 1980-1981.

Yolanda Adrianzen
Judge of the Superior Court
Family Division

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April 5, 2023

TRIAL SUBMISSIONS NOTICE

VIA EMAIL ONLY

Bruce Evan Chase, Esq.
Chase and Chase
1 Atlantic Street
Hackensack, New Jersey 07601
BCHASE@CHASEANDCHASE.COM

Case Name:
Docket No:

Dear Counsel:

The above-captioned matter has been scheduled for **TRIAL** on **MAY 25, 2023**, and **MAY 26, 2023**, at **9:00 A.M.** Immediately preceding Trial, a settlement and status conference will be held. **Please note the Trial will be conducted in person.**

Please take notice that each party must submit a **Trial Brief** through Judiciary Electronic Document Submission (JEDS) with a copy delivered to Chambers, five (5) business days before the scheduled Trial date. The **Trial Brief** shall include a brief summary of the case, a list of the settled issues and a recitation setting forth each of the unresolved issues together with a corresponding proposed disposition.

With respect to the unresolved issues, the parties shall include, **in a separately tabbed section for each issue**, the applicable factual and legal contentions. Supporting case law, statutes, and other legal authority are to be cited with specificity.

Updated Case Information Statements shall be filed through Judiciary Electronic Document Submission (JEDS) with a copy delivered to Chambers, and exchanged between the parties within 7 days from the date of this letter.



Both parties shall also include a statement specifying any outstanding discovery, procedural matters or evidentiary issues, together with a proposed resolution and supporting legal memorandum.

Please be further advised that:

1. Format shall comply with R. 1:4-9, et seq, including double spacing. Tabs shall conform to R.5:5-4(g).
2. Issues not identified and briefed with specificity are deemed waived.
3. Prior orders, where relevant, must be referenced with specific provisions.
4. Applicable FV and FD files, if necessary, must be obtained via advance notice to the Clerk's office and referenced in the trial brief.
5. Child Support Guidelines calculations must be annexed, with an explanation regarding any variable factors which have not been stipulated, (e.g. income, child care, other child support orders, et al).
6. If there is no agreement with regard to custody and/or visitation (parenting time), a written, comprehensive custody visitation plan (CVP), pursuant to R. 5:8-5, must be submitted.
7. Tax consequences must be addressed, with calculations, regarding alimony, child support and, where applicable, equitable distribution.
8. All stipulations must be listed.
9. Issues that have been settled, previously decided or withdrawn must be stated.
10. Each issue must be **separately addressed in its own section of the Trial Brief** with the applicable facts and law. For example, an alimony claim must address each of the statutory criteria, the applicable law relied upon and the specific factual basis, including, but not limited to, the needs of the petitioner, the gross and disposable income of each party, the needs of the obligor, the tax consequence calculations, and the independent assets of each party.
11. Documents not disputed, and relevant to the Trial (i.e., CIS, income tax returns, cash account and brokerage account documents, retirement documents, etc.) shall be included under a separate tab.
12. Each party shall estimate the time necessary to present their side of the case.

In addition to the Trial Brief, a list of all potential witnesses must be included, together with a summary of the expected testimony of each witness. If an expert is involved, a copy of the expert's report must be annexed unless already filed. Witnesses not previously disclosed in discovery and reports not previously provided may be barred. Therefore, under those circumstances, a memorandum must be provided to support any such application at trial.

All exhibits must be pre-marked and identified, and a summary list provided indicating any stipulations or objections between counsel. Each exhibit must have a short title for the record.

Pursuant to Evidence Rule 1006, when multiple bills are being presented to the Court for consideration, counsel must provide an Excel spreadsheet listing all bills by provider, payment made, and a summary of the total amount of each category of bills.



Counsel fee applications must be supported by a fee certification and adherence to the applicable Rules. Disclose amounts paid-to-date, amount owed and have a copy of the retainer agreement annexed. This section must also include a factual and legal argument in accordance with the applicable statutes and case law, together with a financial analysis, based upon the incomes and assets of the parties from which a legal fee fund could be created.

All of the materials noted above must be filed with the court through Judiciary Electronic Document Submission (JEDS) with a copy delivered to Chambers, five (5) business days in advance of the scheduled trial date. A copy of the brief, witness lists, expert reports, and pre-marked exhibits must also be served on the opposing party at the same time of filing with the Court.

Please be advised that failure to comply with this Trial Submissions Notice may result in the imposition of sanctions.

Very truly yours,



YOLANDA ADRIANZEN, J.S.C.

YA/lr



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RELEVANT DATES

October 21, 1952	Date of Birth, Plaintiff- [REDACTED], age 67
June 5, 1956	Date of Birth, Defendant [REDACTED], age 63
March 5, 1999	Date of Marriage
August 13, 2004	Date of Birth, [REDACTED] and [REDACTED], twins, age 16
February 13, 2013	Date of birth, [REDACTED], age 7
February 9, 2018	Date of filing Complaint Date of filing Answer
August 15, 2018	Date of Separation
December 14, 2018	Consent Order regarding therapy, medical treatment/medication, religious learnings, extracurricular activities and setting parenting time schedule
March 22, 2019	Order on Motion and Cross-Motion regarding compliance with December 14, 2018 Consent Order
June 27, 2019	Protective Order as to Home Investigation Report, Social Investigation Report, Psychological Report, Psychiatric Report, Risk Assessment and [REDACTED] Report of June 27, 2019 restricting release of the reports only to attorneys
July 19, 2019	Order Appointing Guardian Ad Litem
July 26, 2019	Order Appointing [REDACTED] to conduct psychiatric evaluations of the parties
August 2, 2019	Protective Order releasing to Home Investigation Report, Social Investigation Report, Psychological Report, Psychiatric Report, Risk Assessment and two (2) of Dr. [REDACTED] reports Dr. [REDACTED].
August 27, 2019	Order on Motion and Cross-Motion regarding interference with parenting time, retaining custody and parenting time expert

September 10, 2019 Protective Order releasing Home Investigation Report, Social Investigation Report, Psychological report, Psychiatric Report, Risk Assessment and Dr. [REDACTED] report to Dr. [REDACTED]

September 23, 2019 Protective Order releasing Home Investigation Report, Social Investigation Report, Psychological report, Psychiatric Report, Risk Assessment and Dr. [REDACTED] psychiatric evaluation and report to Dr. [REDACTED].

December 20, 2019 Consent Order regarding parenting time, medical insurance and medical expenses, Schedule A expenses, extracurricular expenses and *pendente lite* support

March 3, 2020 Amended Protective Order directing that copies of any expert reports shall not be attached to any pleadings.

May 19, 2020 Amended Protective Order releasing the expert reports prepared by Dr. [REDACTED], Dr. [REDACTED], Dr. [REDACTED], and the Guardian Ad Litem report prepared by [REDACTED] to [REDACTED]

June 23, 2020 Order on Motion and Cross-Motion regarding releasing NJDCP reports, joint legal custody, parenting time, and granting Plaintiff access to the marital home

July 22, 2020 Order on Motion and Cross-Motion denying Defendant's request to release the psychiatric evaluation of the Defendant dated June 21, 2018 conducted by Dr. [REDACTED]

STIPULATIONS

1. Plaintiff's inheritance of \$4,000,000.00 from his parents is not subject to equitable distribution.
2. The fair market value of the property located at 114 Cottage Place Ridgewood, New Jersey is \$950,000 based on the appraisal of [REDACTED]
3. The fair market value of the parties' properties located in Puerto Rico are as follows:

a.	16 Monte Santo, Vieques	\$260,000.00
b.	702 Bastimento SR 200, Vieques	\$300,000.00
c.	655 Villa Borinoven, Vieques	\$200,000.00
d.	653 16 St. Villa Boriquen, Vieques (vacant lot)	\$60,000.00
f.	645 13 St. Villa Boriquen, Vieques (vacant lot)	\$40,000.00
g.	310 Monte Carmelo, Vieques (vacant lot/disputed title)	No Value

ISSUES SETTLED, PREVIOUSLY DECIDED OR WITHDRAWN

1. None

UNRESOLVED ISSUES

1. Custody/Parenting Time
2. Alimony
3. Child Support
4. Equitable Distribution
5. Counsel and Expert Fees

BRIEF STATEMENT OF THE CASE

██████████ (hereinafter “██████████”) is 67 years of age (born October 21, 1952). Defendant ██████████ (hereinafter “██████████”) is 64 years of age (born June 15, 1956). The parties were married on May 3, 1999, and there are three (3) children of the marriage: ██████████ and ██████████ (twins), age 16 (born August 13, 2004) and ██████████, age 7 (born February 9, 2013). ██████████ and ██████████ will be starting 11th grade in September and ██████████ will begin second grade in September, all in the Ridgewood Public School System. ██████████ filed a complaint for divorce on February 9, 2018, and he continued to reside in the former marital home located at 114 Cottage Place, Ridgewood, New Jersey, until August 2018. He currently resides in a three (3) bedroom apartment in Ridgewood, New Jersey. The children and ██████████ continue to reside in the former marital home.

This is the second marriage for both parties. ██████████’s first marriage resulted in a divorce in 1982 and he has two (2) daughters (adopted) from his first marriage who are 51 and 49 years of age and reside in California. He was estranged from his daughters for several years, and he now has limited contact with them. ██████████’ first marriage also ended in divorce in 1993. She has no children from her first marriage.

██████████ is a Licensed Clinical Psychologist with offices in Manhattan and Chestnut Ridge, New York. He is licensed in the State of New York and his application to become licensed in New Jersey is pending. He is currently earning approximately \$40,000.00 per year in his practice. His hours are limited as he is now of retirement age. The accountant who ██████████ hired to place a valuation on ██████████’s business determined that it has no value. ██████████ does not work outside the home.

In addition to his earnings, the family lives on interest and dividends generated from ██████'s inheritance, which are separate funds. First, he inherited approximately \$3,000,000.00 from his father's estate six (6) years ago and then he inherited approximately \$1,500,000.00 from his mother's estate. Two (2) accounts exist at Bank of New York. His earnings have never been deposited to either of these accounts and no other "co-mingling" has occurred. ██████ will also inherit (or has inherited) a 1/6th interest in an LLC that owns properties on Martha's Vineyard, Massachusetts. ██████ has five (5) siblings which is why his interest will be 1/6th. In addition, ██████ will inherit 1/6th of property located in Newtown, Connecticut (14 acres) and additional monies (amount unknown) from his mother's estate.

██████ and ██████ purchased the marital residence in Ridgewood, New Jersey in 2003 in joint names. The purchase price was \$1,000,000.00 and the seller took back a mortgage in the amount of \$600,000.00 that was payable in 2007 (4 years after the home/property was purchased). There was (and is) a first mortgage in the amount of \$400,000.00 (an interest only mortgage so there has been no pay down of principal). ██████ paid the "Seller's" mortgage from an inherited account. The current value of the home and property is \$950,000.00, leaving outstanding mortgages that exceed the value of the home/property.

In addition to the marital residence, the parties own six (6) properties located in Puerto Rico consisting of three (3) single family homes and three (3) lots of land. Five (5) of the properties are in joint names and the sixth, which is a vacant lot, is owned by Tierra Cielo. This is a limited liability company (LLC) and ██████ is the managing member with a 51% interest and ██████ has a 49% interest.

There exists a joint Citibank checking account with a balance of \$_____ and ██████ has an individual Citibank checking account with a balance of \$_____. There also exists three

(3) Citibank accounts; one for the benefit of each child, all of which were funded by Martin's parents.

With regard to child custody and parenting time, ██████ seeks to be appointed the parent of primary residence and to be awarded sole custody of the children. In or around _____, ██████ alleged that ██████ engaged in inappropriate sexual contact with their youngest child, ██████. As a result of the allegations, DCP&P opened an investigation, which ultimately concluded that the allegations were unfounded. Nevertheless, ██████ restricted ██████'s access to the children, particularly ██████, and ██████ engaged in obstructionist behavior. As a result, three mental health experts have conducted an evaluation of the parties in this matter, and a guardian ad litem was appointed for the children. All have concluded there is no evidence of sexual abuse and all have expressed significant concerns regarding ██████' mental health and ability to care for the children. Further, all but one expert, who performed a psychiatric evaluation only, have made recommendations concerning the custody of the children. These recommendations discussed in detail below, are substantially in accord and support ██████'s wishes.

LEGAL ARGUMENT

I. CUSTODY/PARENTING-TIME

The court's primary concern in determining custody is the best interests of the children. See Wilke . Culp, 196 N.J. Super. 487 (App. Div. 1984) cert. den. 99 N.J. 243 (1985); Pogue v. Pogue, 147 N.J. Super. 61 (Ch.Div.1977). The court has no higher calling than to preserve and protect the best interests and welfare of a child. M. v. K., 186 N.J. Super. 363, 371 (Ch. Div. 1982). Indeed, "[our] law in a cause involving the custody of a child is that the paramount consideration is the safety, happiness , physical, mental and moral welfare of the child." Fantony v. Fantony, 21 N.J. 525, 536 (1956).

In making an award of custody, a court is directed to consider the following factors set forth in N.J.S.A. 9:2-4(c): the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children.

Currently, the parties have joint legal custody of their three (3) unemancipated children who are ages 17 and 7, and the parenting time schedule in place allows each party time with the children on an approximately 50/50 basis.

However, the issue of custody and parenting time has been in dispute since the initiation of this litigation and is currently a contested issue before this court. ██████ alleged that ██████ engaged in inappropriate sexual contact with the youngest child, ██████. As a result of the allegations, DCP&P opened an investigation, which ultimately concluded that the allegations were unfounded. Nevertheless, ██████ restricted ██████'s access to the children, particularly ██████, and ██████ engaged in obstructionist behavior.

As a result of the allegations and contested custody dispute, four experts have evaluated the parties and submitted reports to the court to assist in the determination of child custody and parenting time. The Court appointed Dr. ██████, a mental health expert, to conduct

psychiatric evaluations of the parties. His report is dated August 25, 2019. Dr. [REDACTED] is the jointly selected/Court Appointed mental health expert who prepared a report dated December 10, 2018. He issued an updated report dated June 27, 2019, and a final report dated February 20, 2020. [REDACTED] privately retained an expert, Dr. [REDACTED], who submitted his report February 18, 2020. The Court also appointed Guardian Ad Litem, [REDACTED], Esq., to assist in this matter and make findings and recommendations on behalf of the children. She prepared a report dated March 21, 2020.

The Court has entered Amended Protective Orders that restrict the release of reports (Dr. [REDACTED]'s reports, Dr. [REDACTED]'s report, Dr. [REDACTED]'s report, and the Guardian Ad Litem's reports) and provides that copies of those reports are not to be provided to the parties and shall not be attached to any pleadings. Additionally, neither the reports nor any confidential information contained in the reports shall be disclosed to any other person without the written permission of the Court. Therefore, we have not included the reports or the recommendations of the experts and the Guardian Ad Litem in this trial brief. However, the written reports are being separately and confidentially filed with the court and shall be received by the court as direct evidence of the facts contained therein pursuant to Rule 5.8-4.

Notably, [REDACTED]'s position regarding custody and parenting time is largely consistent with the experts' and the guardian/s recommendations. More specifically, [REDACTED] contends that residing with [REDACTED] is causing the children harm and that he should be awarded sole custody of the children upon entry of a Final Judgment of Divorce. He seeks to be awarded sole custody of all three (3) children. As such, any and all major decisions affecting the health, education or welfare of the children shall be made by him upon notice to [REDACTED]. [REDACTED] has no objection to consulting with her, but these decisions shall be made by him. He also seeks to be the Parent of

Primary Residence. With regarding to the parenting schedule, [REDACTED] will agree to a 50/50 timeshare arrangement. [REDACTED] also requests that whenever [REDACTED] is in [REDACTED]' care on an overnight basis, either or both Lewis and Isabel must be present, which is consistent with the expert's recommendations. To provide the Court with a more detailed parenting schedule, [REDACTED] respectfully requests that the Court consider the proposed Custody and Parenting Time Schedule submitted contemporaneously herewith.

In addition to the experts' recommendations, consideration of the statutory factors set forth in N.J.S.A. 9:2-4(c) that guide child custody determinations also weigh in favor of awarding [REDACTED] sole custody and determining that he is the parent of primary residence. Those factors are discussed in detail below.

Factor One: The parent's ability to agree, communicate and cooperate in matters relating to the children.

The parties are unable to agree, communicate and cooperate in almost any matter relating to the children. In fact, [REDACTED] has demonstrated a severe unwillingness to co-parent or even communicate positively with the Defendant. She has withheld information about the whereabouts of the children, including when any child participates in any appointments. [REDACTED] simply does not have a relationship with [REDACTED] and refuses to cooperate with him in connection with the children.

Factor Two: The parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse.

[REDACTED] has refused to allow [REDACTED] parenting time on many occasions. Further, she has challenged professional and court directives, interfered with or disallowed contact with [REDACTED], and discouraged holiday or vacation time with [REDACTED]. She uses her residential custody to control

access to the children. [REDACTED] even requests that household staff avoid communication with [REDACTED].

Factor Three: The interaction and relationship of the child with its parents and siblings.

[REDACTED]'s interaction with all three of the children is detrimental to them. First, she has communicated inappropriate information to her children, specifically about alleged sexual behavior of [REDACTED] toward [REDACTED]. She also isolates them and discourages any social activity. She avoids social activity herself and reinforces this behavior in the children. [REDACTED] also has frequent secretive conversations with the children. She has coached [REDACTED] on how to interact and behave, and what to say when [REDACTED] is visiting with her own therapist, actually encouraging her to lie and provide false information. She has even offered incentives for their deceit. One of [REDACTED]'s behaviors that is most harmful to the children is her need to infantilize them, particularly [REDACTED], who was still wearing diapers and not toilet trained when in kindergarten. She was also sleeping in a crib and using a baby bottle until _____. Similarly, the twins were kept in a crib until they were 6 or 7. [REDACTED] also has an excessive need to chaperone the children, particularly [REDACTED] and [REDACTED], even though [REDACTED] is 16 years old.

While [REDACTED] has been described as having a detached demeanor, he is also described as being intelligent, attentive to the children, participatory in the children's activities, and a reliable caretaker for the children.

Factor Four: The history of domestic violence, if any.

[REDACTED] has made accusations concerning sexual abuse of [REDACTED] by [REDACTED]. However, neither a DCP&P investigation nor evaluations by three mental health experts and a guardian ad

litem, substantiated any of the allegations. There is simply no support for the existence of the event, nor any emotional, physical, or behavioral symptoms evidenced by [REDACTED].

Factor Five: The safety of the child and the safety of either parent from physical abuse by the other parent.

There are substantial concerns about the children's safety when they are with [REDACTED], particularly with regard to [REDACTED] who has been verbally and physically reprimanded by [REDACTED] for wanting to spend time with [REDACTED]. [REDACTED] has yelling outbursts at [REDACTED] and has become physical and has hit her.

Factor Six: The preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision.

Both [REDACTED] and [REDACTED] are 16 years old and have sufficient capacity to verbalize a preference with regard to custody. Both have taken a distant position from the issues concerning custody and their preference is to remain in the marital residence no matter which parent is the parent of residence. [REDACTED] has agreed that he will allow the older children to choose to stay with [REDACTED] at their discretion.

Factor Seven: The needs of the child.

The children have special educational needs and learning disabilities that [REDACTED] has refused to acknowledge. Specifically, she has claimed that she knew nothing of the children's learning disabilities, although [REDACTED] has been classified in the past and both [REDACTED] and [REDACTED] have continued to need ongoing educational support. [REDACTED] in particular has extreme deficits in processing and short-term memory. [REDACTED] acknowledges that [REDACTED] is tutored at home but could not say why. These needs are better addressed by [REDACTED].

Factor Eight: The stability of the home environment offered.

██████ has mental health issues and an inability to sufficiently care for her home, including a habit of hoarding. There is no question that ██████ will offer the children a more stable home environment and that he is in a better position to guide and assist the children in all regards.

Factor Nine: The quality and continuity of the child's education.

All three of the children have been attending public school in Ridgewood New Jersey and they will continue to do so. There are no indications that the school system is not meeting their needs, and, in fact, the schools are working with the children with regard to their learning disabilities.

Factor Ten: The fitness of the parents.

██████ mental health is clearly an issue. She has been diagnosed by ██████ with a schizoid personality disorder, and she demonstrates a pattern of detachment from social relationships, which has resulted in ██████ and ██████ duplicating her lack of social skills. ██████ does not facilitate social interactions for them, and both are socially isolated with no close friends. Simply put, she has an inability to function as an effective parent and there are concerns about her being able to function independently as a parent as well.

Factor Eleven: The geographical proximity of the parents' homes.

The parties have indicated that they will both live in Ridgewood, New Jersey, and will, therefore, be in close proximity to each other's homes.

Factor Twelve: The extent and quality of the time spent with the child prior to or subsequent to the separation.

██████ has been deprived of significant quality time with the children. ██████ has actively interfered with his parenting time, in particular with regard to ██████.

Factor Thirteen: The parents' employment responsibilities.

██████ is a part-time psychologist and ██████ is unemployed. Neither of the parents' employment situations will interfere with their parenting time.

Factor Fourteen: The age and number of the children.

The parties have three children of the marriage, two are age 16 and one is age 7.

Factor Fifteen: Any special circumstances or needs of the children.

Based on the foregoing factors and expert recommendations, all of the experts agree that there are significant concerns regarding ██████ dysfunctional emotional, social, and behavioral actions, and major functional deficits. Importantly, all of the experts also concur that there is no evidence of sexual abuse by either party. They also agree that the parties' youngest daughter should only be permitted to spend an overnight with ██████ provided one or both of the twins are with her.

Therefore, it is respectfully requested that the Court determine that ██████ be the parent of primary residence and that he be awarded sole custody, with parenting time afforded to ██████ as described above and in the proposed Custody and Parenting Time Schedule submitted herewith.

II. ALIMONY

Statutory Criteria for Alimony

In all actions for divorce, the court may award one or more of the following types of alimony: permanent alimony, rehabilitative alimony, limited duration alimony, or reimbursement alimony to either party. N.J.S.A.2A:34-23(b). The purpose of alimony in appropriate circumstances is to "provide the dependent spouse with level of support and standard of living generally commensurate with the quality of economic life that existed during the marriage" and "to continue the standard of living that the parties enjoyed prior to their separation." See Koelbe

v. Koelbe, 261 N.J. Super. 190, 192-93 (App. Div. 1992), Mahoney v. Mahoney, 91 N.J. 488, 501-02 (1982), Lepis v. Lepis, 83 N.J. 139, 150 (1980).

The Court must consider each of the factors set forth in N.J.S.A.2A:34-23(b) in light of the facts proven at trial to determine whether or not any form of alimony is appropriate. The factors enunciated in the statute are not the only factors a court may consider, but rather they serve as criteria for the Court to consider in determining an alimony award, if appropriate, and if so, to also determine the amount and length warranted. Pursuant to the statutory factors are as follows:

Factor One: The abilities of the parties to pay

It is understood that [REDACTED] has a present need for alimony as she is not employed outside the home during the parties' marriage. At the same time, [REDACTED] is employed on a part-time basis in his own psychology practice and earns only \$40,000 per year. He has reached "normal retirement age" and does not intend to return to work on a full-time basis

Factor Two: The duration of the marriage

This is a marriage of 19 years and 11 months. The parties were married on March 5, 1999. The Complaint was filed on February 9, 2018. As such, this is "open duration" alimony case. However, [REDACTED] has reached "normal retirement age".

Factor Three: The age, physical and emotional health of the parties

[REDACTED] is 67 years old and [REDACTED] is 64 years old. As demonstrated by the expert reports, [REDACTED] is in both good mental and physical health. [REDACTED], the court appointed expert who performed psychological evaluations of the parties, has expressed significant concern about [REDACTED] mental health.

Factor Four: The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living

During the marriage, the family met its expenses by utilizing income attributable the approximately \$4,000,000.00 [REDACTED] inherited from his parents. It is presumed that [REDACTED] will not be able to maintain the standard of living that was enjoyed during the marriage after they are divorced because the parties will be living in two separate households.

Factor Five: The earning capacities, educational levels, vocational skills, and employability of the parties

The earning capacity of both parties is limited. [REDACTED] does not have educational or vocational skills and she has not been employed outside the home. [REDACTED], while highly educated and possessing a license to practice psychology, works part-time and has reached retirement age.

Factor Six: The length of absence from the job market of the parties seeking maintenance

[REDACTED] has been absent from the job market for many years.

Factor Seven: The parental responsibilities for the children

Should the Court award [REDACTED] sole custody of the children as requested, he will bear the majority of responsibility, and expenses, for the children and their needs. To date, even without sole custody, [REDACTED] has been a highly involved caretaker for the parties' children. He supervises their education, including [REDACTED]'s schooling from Monday through Friday; takes [REDACTED] to her therapist ([REDACTED]) and her extracurricular activities (such as swimming and camp). He assists [REDACTED] with computer projects, takes the children to cultural events (pre-pandemic), and takes the children to church, among other things.

Factor Eight: The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the

availability of training and employment and the opportunity for future acquisitions of capital assets and income

The parties are not expected to acquire additional education or training at their current ages.

Factor Nine: The history of the financial or non-financial contributions to the marriage or civil union by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities.

██████ has been responsible for the financial contributions to the marriage and primarily responsible for the care and education of the children. ██████ has not interrupted or passed up any personal career or opportunity as a result of the marriage or child-care responsibilities.

Factor Ten: Equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just, and fair

It is not anticipated that there will be any payout on equitable distribution that will come from current income.

Factor Eleven: The income available to either party through investment of any assets held by that party

There presently exists an approximate \$2,800,000.00 balance from the funds inherited by ██████, which are maintained at BNY. Ascribing a five (5%) percent rate of return per year will yield approximately \$142,000.00 of income (taxable).

Factor Twelve: The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment

Factor Thirteen: The nature, amount, and length of pendente lite support paid, if any

None

Factor Fourteen: Any Other Factors that the Court May Deem Relevant

Trial courts are afforded significant discretion in awarding alimony, but any award must be based upon "the circumstances of the parties and nature of the case." Mahoney v. Mahoney, 91. N.J. 488, 502 (1982) interpreting M.J.S.A. 2A:34-23.

Alimony is neither a form of economic punishment, nor a reward. Alimony is not intended to be a windfall for a party in a divorce action. Aronson v. Aronson, 245 NJ Super. 354, 364 (App. Div. 1991). It is well settled that a court dealing with an economically dependent spouse should consider the dependent spouse's needs, his or her ability to contribute to the fulfillment of those needs, and the supporting spouse's ability to maintain the dependent spouse at the former standard of living. Crews . Crews, 164 N.J. 11, 22 (2000); Miller v. Miller, 160 N.J. 408, 420-21 (1999); Cox v. Cox, 335 N.J. Super., 465, 473-74 (App. Div. 2000). The goal is to assist the supported spouse in achieving a lifestyle "reasonable comparable" to the one enjoyed during the marriage. Steneken v. Steneken, 183 N.J. 290, 298-99 (2005). Here, it is not possible for the parties to maintain the same standard of living they maintained during the marriage as they will need to pay for and maintain separate households. However, at this point, the parties have been living in separate households for two years and their standard of living has naturally been adjusted based on the ability of [REDACTED] to pay support to [REDACTED], which has allowed each party to maintain a reasonable standard of living.

Based upon the parties' current circumstances, their limited ability to earn, their ages, including that fact that [REDACTED] is of retirement age, their realistic needs, and the proposed child support obligations, it is respectfully submitted that [REDACTED] pay \$36,000.00 per year (\$3,000.00

per month) to Defendant as and for alimony. Alimony shall terminate upon the earliest of: the death of Plaintiff; or the death of Defendant; or Defendant's remarriage; or ██████'s retirement.

III. CHILD SUPPORT

In view of the custody and parenting time recommendations by two mental health experts and the Guardian Ad Litem, the Court should consider that ██████ will be the primary caregiver. As the primary caregiver, he will be shouldering the responsibility for the vast majority of the children's needs, including non-guideline expenses. This includes all extracurricular activities, transportation, clothing, food, special occasion clothing, birthday parties, gifts for peers, gifts for professionals (such as teachers and childcare providers), general spending money, sporting/athletic equipment and uniforms, school supplies, school photos etc. summer camp, religious ceremonies/parties, auto insurance, cell phones and monthly cell phone plans, unreimbursed medical expenses and out-of-pocket medical expenses.

In that regard, although he will bear the responsibility of financially supporting the children, he does not seek any child support from ██████ and he respectfully requests that he not be required to pay child support to ██████.

IV. EQUITABLE DISTRIBUTION

Pursuant to N.J.S.A. 2A:34-23(h), "[i]n all actions where a judgment of divorce or divorce from bed and board is entered, the court may make such award or awards to the parties, in addition to alimony and maintenance, to effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage. However, all property, real, personal, or otherwise, legally or beneficially acquired during the marriage by either party by way of gift, devise or intestate, succession, shall not be

subject to equitable distribution except that interspousal gifts shall be subject to equitable distribution.”

As set forth in N.J.S.A. 2A:34-23.1, the court shall make specific findings of fact on the evidence relevant to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, as delineated in this statute:

1. The duration of the marriage.
2. The age and physical and emotional health of the parties.
3. The income or property brought to the marriage by each party.
4. The standard of living established during the marriage.
5. Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution.
6. The economic circumstances of each party at the time the division of property becomes effective.
7. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for the children, and the time and expenses necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonable comparable to that enjoyed during the marriage.
8. The contribution by each party to the education, training or earning power of the other.
9. The contribution of each party to the acquisition, dissipation, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker.
10. The tax consequences of the proposed distribution to each.

11. The present value of the property.
12. The need of parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects.
13. The debts and liabilities of the parties.
14. The need for creation, now or in the future, of a trust to secure reasonably foreseeable medical or education costs for a spouse or children.
15. Any other factors which the court may deem relevant.

The statute further provides that it shall be a rebuttable presumption that each party made a substantial financial, or nonfinancial, contribution to the acquisition of income and property while the party was married.

During the marriage, the parties acquired their marital residence, six (6) properties in Puerto Rico, and one vehicle, all of which are subject to equitable distribution. [REDACTED] also inherited from his parents \$4,000,000.00, which is deposited in two New York Bank bank accounts. The parties have stipulated that this inheritance is not subject to equitable distribution.

A. Real Estate:

Marital Residence

The parties jointly own the marital residence located at 114 Cottage Place, Ridgewood, New Jersey. This property was acquired during the marriage and was utilized by the parties as their marital residence. [REDACTED] left the marital residence in August 2018, and [REDACTED] has continued to reside at the residence with the parties' three (3) children.

It is estimated that the fair market value of the marital residence is \$950,000 by real estate appraisers [REDACTED]. The parties have an outstanding mortgage on the property of \$400,000. Therefore, there is approximately \$550,000 in equity in the marital

residence. (█████'s use of \$600,000 from his line of credit with the Bank of New York to pay the "Seller's Mortgage" in 2007 has not been deducted from the value of the residence and he is not seeking a credit for same).

With regard to equitable distribution of the marital residence, █████ proposes that he move back into the marital residence immediately, based upon the experts' and Guardian Ad Litem's recommendations regarding custody and parenting time, and that pay to █████ the sum of \$275,000 for the her share of the marital residence. This amount shall be offset, however, by his advancement of funds to █████ to enable her to relocate from the marital home and her share of the professional fees paid by █████, both discussed more fully below.

Upon █████'s relocation into the marital residence █████ may move into his apartment in Ridgewood if she desires, through the expiration of the lease (September 30, 2020). He will also continue to pay rent and expenses associated with that rental unit.

█████ will advance funds (\$20,000.00) to enable █████ to assist with her move from the marital residence to his apartment or to enable her to obtain an apartment/home. █████ seeks reimbursement from █████ of \$20,000.00 from her share of the proceeds of sale of martial home.

Properties in Puerto Rico

The parties jointly own six (6) properties in Puerto Rico that are subject to equitable distribution. The total, aggregate value of these properties is approximately \$860,000.00. There are no mortgages encumbering these properties. The location and values of each property is as follows:

- | | | |
|----|--------------------------------|--------------|
| a. | 16 Monte Santo, Vieques | \$260,000.00 |
| b. | 702 Bastimento SR 200, Vieques | \$300,000.00 |
| c. | 655 Villa Borinoven, Vieques | \$200,000.00 |

- d. 653 16 St. Villa Boriquen, Vieques (vacant lot) \$60,000.00
- f. 645 13 St. Villa Boriquen, Vieques (vacant lot) \$40,000.00
- g. 310 Monte Carmelo, Vieques (vacant lot/disputed title) No Value

To equitably distribute the Puerto Rico properties, [REDACTED] proposes the following:

He will retain the following four (4) properties with a collective value of \$360,000.00:

- a. H-16 Monte Santo, Vieques, Puerto Rico (\$260,000.00)
- b. 653 16 St. Villa Boriquen, Vieques, Puerto Rico (\$60,000.00)
- c. 645 13 St. Villa Boriquen, Vieques, Puerto Rico (\$40,000.00)
- d. 310 Monte Carmelo, Vieques, Puerto Rico (no value).

[REDACTED] will receive and retain the following two (2) properties with an aggregate value of \$500,000.00

- a. 702 Bastimento SR 200, Vieques, Puerto Rico (\$300,000.00)
- b. 655 Villa Borinoven, Vieques, Puerto Rico (\$200,000.00).

To equalize the value of these properties, [REDACTED] will pay to [REDACTED] the sum of, \$70,000.00 (1/2 of \$140,000.00) from her share of the proceeds from the sale of the marital residence.

B. Bank Accounts

The parties join Citibank account with a value of \$ _____

C. Personal Property

There are nominal furniture and furnishings in the home, which the parties can divide outside of court intervention. [REDACTED] also owns a 2004 Toyota Sienna that he seeks to retain without ascribing value to that vehicle.

C. Psychology Practice

owns a psychology practice that was valued by forensic accountants, (). Her accountants have indicated that there is no value to his practice.

V. Other Issues

Health Insurance

Each party shall be responsible to maintain health insurance for themselves and to pay any and all uninsured health related expenses incurred by them or on their behalves.

Counsel and Expert Fees

New Jersey Court Rule 5:3-5(c) permits the Court to award counsel fees under various circumstances in a family court proceeding. Pursuant to the Rule, the Court must consider the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own counsel fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders to compel discovery; and (9) any other factor bearing on the fairness of an award.

Based on the circumstances of this litigation, it is fair that share responsibility for the extraordinary sum of legal and expert fees incurred by , which largely resulted from refusal to act in good faith in this matter. has refused to abide by Court Orders, has been found in violation of litigant's rights, attempted to sabotage relationships with the children, and has engaged in obstructionist conduct as reported by the GAL and by in their respective reports. has paid attorneys' fees and fees for her forensic accountants, (amounts to be supplied); (jointly

retained/Court appointed expert) (amount to be supplied); [REDACTED] (Defendant's mental health expert) (amount to be supplied); and [REDACTED] GAL (approximately \$27,000.00). As such, [REDACTED] seeks a credit/payment of \$35,000.00 from [REDACTED] to be paid from her share of the net proceeds from the sale of the Ridgewood, New Jersey home.

We thank you for your consideration of the foregoing.

Respectfully submitted,

ARONSOHN WEINER SALERNO & KAUFMAN, P.C.

BARRY L. KAUFMAN

About the Panelists...

Bruce E. Chase, Certified as a Matrimonial Law Attorney by the Supreme Court of New Jersey, is a Member of Chase & Chase LLC in Hackensack, New Jersey. For more than 35 years he has appeared regularly in family law-related matters at the trial level, and he has extensive experience representing divorcing and separating spouses in family law cases including contested divorces, child custody, shared custody, equitable distribution of property, palimony, the ability of a malingering spouse to earn income and the right of an underemployed spouse to seek alimony from a higher-salaried spouse. He also handles many commercial transactions involving the purchase and sale of small businesses, commercial buildings and business leasing, and advises business clients.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the United States Supreme Court, Mr. Chase is Co-Chair of the Bergen County Bar Association Family Law Committee, is Past President of the Association and a Fellow of the American Academy of Matrimonial Lawyers (AAML), where he has served as President of the New Jersey Chapter. He serves as Chair of an Early Settlement Panel that dedicates its time to review settlement proposals and meet with litigants and their attorneys in an effort to resolve contested divorce cases. He is a member of the Executive Committee of the New Jersey State Bar Association Family Law Section and a former Trustee of the Association.

Mr. Chase is the author of numerous family law articles which have appeared in *The Barrister* and *New Jersey Family Lawyer*. He has lectured for ICLE, the Association of Trial Lawyers of America, the AAML and the Bergen County Bar Association, and is the recipient of several honors.

Mr. Chase received his B.A., *magna cum laude*, from American University, attended George Washington University Law Center and received his J.D. from Rutgers University School of Law.

Jhanice V. Domingo is a Partner in Pashman Stein Walder Hayden, P.C. in Hackensack, New Jersey, and a member of the firm's Family Law, Alternative Dispute Resolution and Litigation Practice Groups. With more than 20 years of experience, she concentrates her practice in family law and litigation. She is also a trained and Court-approved mediator, and handles both Court-appointed and private mediation.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Ms. Domingo is Co-Chair of the Bergen County Bar Association Family Law Committee and a member of the New Jersey State Bar Association Family Law Executive Committee (FLEC). Since 2012 she has been a member of the New Jersey Supreme Court Family Practice Committee, Non-Dissolution Subcommittee and Domestic Violence Working Group. Past President of the National Filipino Lawyers Association, Ms. Domingo is Past President of the Asian Pacific American Lawyers Association of New Jersey (APALA-NJ) and Chair of APALA-NJ's Judicial & Prosecutorial Appointments Committee (JPAC), which works closely with New Jersey's elected officials to identify highly qualified minority candidates for nomination and appointment to the New Jersey State Judiciary. She also serves on the Board of Trustees of Legal Services of New Jersey.

Ms. Domingo received her B.A. from Boston College and her J.D. from Seton Hall Law School.

Barry L. Kaufman is a Partner in Aronsohn, Weiner, Salerno & Kaufman, P.C. in Hackensack, New Jersey. His practice includes litigation, appellate practice, and the mediation and arbitration of family law cases including alimony, child support, custody and parenting time, equitable distribution, prenuptial agreements and domestic violence.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, Mr. Kaufman is Past Chair of the Bergen County Family Law Early Settlement Panel, a member of the Bergen County Bar Association and a former member of the Association's Judicial Selection Committee. He is a member of the New Jersey State Bar Association and Past Chair of the South Bergen District Fee Arbitration Committee. A lecturer for ICLE, he is also a Master of the North Jersey Family Law American Inn of Court and the recipient of several honors.

Mr. Kaufman received his B.A., *cum laude*, from Ithaca College and his J.D. from Seton Hall University School of Law. He was Law Secretary to the Honorable Harold M. Nitto, Superior Court, Chancery Division, Family Part, Passaic County.