

GUIDE TO THE FORM

OF

ORDERS AND JUDGMENTS

(THIRD EDITION)

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(CPLR Articles 50-A and 50-B)**



INTRODUCTION TO THE THIRD EDITION - - EXPEDITING ORDERS AND JUDGMENTS

Although Justices have the power to direct that an order or judgment be settled, the policy of the New York courts and of the Supreme Court, Civil Branch, New York County is that settlement of long form orders and judgments should be avoided whenever possible. That policy is set forth in Uniform Rule 202.8(g), which provides: "Unless the circumstances require settlement of an order, a Judge shall incorporate into the decision an order effectuating the relief specified in the decision." (Emphasis added)

This policy advances a number of important goals. It fosters the interests of our court by limiting the volume of paper that must be received, processed and disposed of and the complexity that these steps entail. This conserves the time of our Justices, Law Clerks and Court Attorneys, permitting them to concentrate on more substantive matters, and frees up Court Clerks for other important tasks. Avoidance of long form orders and judgments benefits litigants by eliminating a deeply frustrating form of delay. Before the First Edition of this *Guide to the Form of Orders and Judgments* was issued in 1994, attorneys practicing in our court often encountered extensive delays in having decisions that had been issued on motions translated into the formality of long form orders. The delay was particularly frustrating because one side would have already prevailed on the motion and yet been barred for a time from effectuating it by the formality of rendering the outcome in the language of an order. The policy relieves counsel of the burden of preparing and submitting proposed long form orders and judgments, the cost of which must be borne by the client or, indirectly, by the attorney.

Our experience since the issuance of the First Edition of the *Guide* has shown beyond dispute that the inclusion of orders in decisions does not tax Chambers; quite the contrary. First, it is usually very easy, requiring the expenditure of only a handful of words and two or three minutes, to turn a decision into a decision and order or judgment. The practice becomes habitual, and the language that is required to deal with the large majority of motions and judgments is comparatively simple and quickly becomes familiar. It is only necessary that we keep in mind a few general principles, which are set out in this *Guide*, and that, as needed,

we consult the *Guide* and the Forms in Appendix B. These forms have been placed on a computer disk, which accompanies this *Guide*, so that the inclusion of the critical language in a short form decision (the “gray sheet”) or at the end of a formal memorandum opinion can be very easily achieved.

Second, a direction to settle an order imposes a toll upon Chambers, not today, perhaps, but certainly tomorrow. This is because the file in question will not reach Chambers with the proposed order or judgment for weeks at best. When the file does arrive, Chambers will be required, at least to some degree, to refresh its recollection about the details of the decision in order to decide with confidence what form of order or judgment to sign.

Thus, a matter should, whenever possible, be resolved by a short form order or judgment. The specific wording necessary to achieve the wishes of the court should be included **either (i) on the “gray sheet” or (ii) in the concluding portion of an accompanying formal decision.**

There is nothing wrong with directing the settlement of an order, and particularly a judgment, when it is necessary to do so. Settlement should be directed when the order or judgment is complicated, or when additional information is needed and has not been supplied by the parties. For example, unless the exact wording of permanent injunctive relief is clear from the moving papers, the court should direct the settlement of a formal judgment. If there is an issue, the lawyers for the parties can argue about the appropriate wording before the judgment is signed and entered. We should use the words “Settle order” or “Settle judgment” when settlement is truly necessary, but not, as was the case 20 years ago, reflexively, as a matter of routine.

To effectuate the goal of including orders and judgments in decisions, please use the accompanying disk, which contains the forms as they appear in Appendix B to this *Guide*. We are also providing an electronic file containing the identical forms incorporated into the format of the gray sheet. Blank gray paper for use with the forms in gray sheet format is available from the Supply Room on the 7th Floor at 60 Centre Street.

In addition to encouraging the issuance of orders and judgments as part of decisions, the *Guide*

attempts to delineate what is and what is not a "final order." Chambers is required to mark the bottom of every gray sheet and the motion folder jacket to indicate finality or not. As explained hereafter, if the marking is omitted or done incorrectly, a case that should be recorded in the court's Civil Case Information System ("CCIS") computer as having been concluded may continue in "active" status in CCIS. This will burden the Justice's inventory, mislead the Justice later on, cause confusion for parties and clerks, and create unnecessary work for the court and Chambers.

The *Guide* is structured as follows:

- - Part I discusses general principles that will assist us to frame orders and judgments as part of our decisions.
- - Part II covers finality markings on gray sheets and motion jackets.
- - Appendix A discusses important and common motions and applications (in alphabetical order) and presents recommendations regarding orders and judgments in those instances.
- - Appendix B contains the Forms of common orders and judgments.
- - Appendix C contains an explanation of the very complicated subject of structured judgments (CPLR 50-A and 50-B) and a form of judgment under each Article.
- - This booklet contains a detailed Table of Contents, and a list of contents at the front of each chapter.

If we will only read this *Guide* and consult it as needed when drafting orders/judgments, we will be able, simultaneously, to reduce the volume of long form orders/judgments that counsel and parties must settle or submit, expedite litigation, minimize expense, limit the burden on our Chambers and staff, and produce orders/judgments that achieve the purposes of our Justices in technically sound language.

May 3, 2010

HON. SHERRY KLEIN HEITLER
ADMINISTRATIVE JUDGE

PART I
GENERAL PROCEDURES REGARDING
ORDERS AND JUDGMENTS

CHAPTER 1 ORDERS AND JUDGMENTS DISTINGUISHED AND EXPLAINED

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- 2. The Role of the County Clerk**

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- 1. Key Elements of the Order**
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C. THE JUDGMENT DEFINED

- 1. What is a Judgment?**
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D. THE LANGUAGE AND FORM OF THE JUDGMENT

- 1. The General Form of the Judgment**
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- 4. An Example of a Judgment**

Orders and judgments in actions of course are not interchangeable. They serve different functions and

therefore are crafted with different language. To avoid confusion it is important that each be framed accurately.¹

The following notes the main elements of, and relevant distinctions in, each type of document.

A. THE ORDER DEFINED

1. What is an Order?

An order is a formal determination of a motion. Every motion in an action is an application for an order (CPLR 2211) and every motion must terminate in an order, in short or long form (CPLR 2219[a]). The order must be in writing and, where it affects a motion made on papers, must contain certain elements, discussed below. Upon request of a party, the Justice must reduce any order or ruling (e.g., regarding deposition questions) to writing or otherwise cause it to be recorded, whether it be one made on written or oral application or sua sponte (Id.). The order must be entered and filed with the Clerk of the Court (CPLR 2220).

An order will contain formal determinations of the issues raised on the motion as explained in the opinion. The order will generally grant or deny the relief sought on the motion.² In resolving the merits of the motion, the order might direct the parties or a party to do certain things (e.g., produce documents or appear for a deposition by a certain date). The order might also direct the County Clerk to take certain action regarding the merits of the case, e.g., to enter a judgment that disposes of some or all claims in the case in a certain way. A second document is required that will actually effectuate the formal disposition of claims; that is, as we will see, the judgment. Where an order directs the County Clerk to enter a judgment, an attorney will prepare a judgment in conformity with the order and present it to the County Clerk, who will sign it and enter the

¹ See Marsh v Johnston, 123 App Div 596, 108 NYS 161 (2d Dept 1908) (paper in dispute, entered in the judgment docket as a judgment, which stated that it was “hereby ordered” that judgment “be entered” in favor of plaintiff and against defendant in a precise sum, and that plaintiff have execution therefor, was not a judgment declaring or awarding relief, but an order that a judgment enter); Concourse Super Service Station, Inc. v Price, 33 Misc 2d 503, 226 NYS2d 651 (Sup Ct 1962) (document labeled Order, Judgment and Decree was merely an order that judgment enter); see also Farkas v Farkas, 11 NY3d 300, 307-08, 869 NYS2d 380-84 (2008).

² An order could, though, be intermediate in effect: e.g., an order marking a motion off the motion calendar, directing the filing of additional papers, referring the case to a Justice who has a related case, or recusing the Justice. An order that does not dispose of the motion in full is usually referred to as an interim order.

judgment if it indeed conforms to the order. Even a motion for summary judgment on all claims that is granted in its entirety does not, in the strict sense, actually end the case; it generates an order directing the County Clerk to enter a judgment and it is the judgment that the County Clerk enters that constitutes the document that formally determines the final status of that case.

An order may set forth directions to the County Clerk with regard to interest, costs, and disbursements, which are addressed hereafter.

An order may require action by the County Clerk (e.g., entry of judgment in favor of a party), a back office (e.g., directing the Trial Support Office (Room 158) to strike a note of issue), or both (e.g., an order directing consolidation of two cases pending in the court). Such an order should provide for service of a copy with notice of entry, by a stated deadline, upon the County Clerk, the back office or, where necessary, both.

2. The Role of the County Clerk

The court determines the rights of the parties. The Clerk of the Court, the County Clerk (CPLR 105 [e]), is a ministerial officer whose function it is to carry out the directives of the court regarding entry of orders and judgments. The County Clerk will enter a judgment when an order on a motion directs him to do so, or when the verdict of a jury or the directives of the court after trial (discussed hereafter) so require. The judgment must follow precisely the directives of the court.³ Entry of a judgment occurs when the County Clerk, after signing it, files it (CPLR 5016[a]). The County Clerk may also enter a judgment by authorization of law without a direction by a Justice in the case of certain defaults pursuant to CPLR 3215 (a) or upon confession (CPLR 3218).

³ Huot v Dworman, 13 Misc 2d 104, 173 NYS2d 58, 60 (Sup Ct 1958), affd 8 AD2d 829, 190 NYS2d 202 (2d Dept. 1959) (“Entry of a judgment is the ministerial act of signing and filing a statement of the pronouncement of the court, thus spreading it upon the record...”); Marc v Pinkard, 133 Misc 83, 230 NYS 765, 766 (Mun Ct 1928) (“The clerk of the court is a mere ministerial officer, who can only act upon the direction of the court, and must find authority in the decision in order to enter judgment. Hence the judgment must follow precisely the direction in the decision.”)

B. THE LANGUAGE AND FORM OF THE ORDER

1. Key Elements of the Order

The form of the order follows in a straightforward way from its nature. The order shall be in writing.

The order on a motion made on supporting papers (see CPLR 2219[a]) should set forth the following:

- - the court and county of the court issuing the order
- - the title of the action or proceeding
- - the nature of the paper
- - the index number⁴
- - an identification of the papers used on the motion⁵
- - “the determination or direction in such detail as the judge deems proper,”⁶ which may consist of a sentence or more on a gray sheet or the conclusion of a formal opinion attached to a gray sheet
- - the signature or initials of the issuing Justice
- - the place and date of the signature

2. Language of the Order

The order will customarily use the formulation “it is ORDERED that,” followed by the disposition, determination or direction made with regard to the issue or issues raised on the motion. If there are multiple decretal paragraphs (e.g., where there are multiple causes of action at issue) the phrase “and it is further ORDERED that,” will introduce each successive paragraph. In the alternative, the order may state “it is ORDERED that:” followed by a series of paragraphs containing the various dispositions, determinations, and directions. An order may state, for example:

⁴ CPLR 2101(c).

⁵ In a long form order this will be done by a recitation that describes the papers submitted. Where the order is incorporated in a gray sheet or in a formal opinion accompanied by a gray sheet, the gray sheet, which contains spaces for this purpose, may be used to identify by number the papers considered on the motion. See Chapter 7 of Part I for further information on identification of papers.

⁶ CPLR 2219 (a).

It is hereby ORDERED that the defendant shall appear for a deposition on July 10, 2010, at 10 AM at the office of the plaintiff.

Or it might direct that action be taken by the Clerk regarding the merits:

It is hereby ORDERED that the plaintiff's motion for summary judgment is granted and the defendant's motion for summary judgment is denied; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff in the amount of \$ 100,000, with interest as calculated by the Clerk at the rate of 10% from January 15, 2008, plus costs and disbursements as taxed by the Clerk upon the submission of a proper bill of costs.

3. Decisions on the Record

A Justice may determine a formal motion on papers on the record and sign a gray sheet reciting, in substance, that the motion is granted or denied to the extent, and for the reasons, set forth on the record. Although this procedure can create difficulties from an administrative perspective and thus should not be employed routinely (ordinarily, the need for unusual expedition is involved), given the liberality of CPLR 2219 (a), such a gray sheet would constitute the short-form order of the court. The record would contain the opinion.⁷ Pursuant to directive of the Administrative Judge, Chambers should await receipt of the transcript from the court reporter and annex it to the gray sheet before forwarding the motion file to the Motion Support Office. The transcript will be produced promptly. The transcript needs to be annexed to the gray sheet so that the record will be clear and complete, the County Clerk's file will be complete, and the decision and order in full will be included in the *Supreme Court Records On-Line Library*.

The Administrative Judge has suggested that the court, when dictating a decision on the record, include a conclusion section at the end containing ordering provisions addressed to each cause of action at issue on the motion and each party involved, paralleling what is done with formal opinions and short-form decisions and

⁷ Corteguera v City of New York, 179 AD2d 362, 577 NYS2d 837 (1st Dept 1992); Siegel, 29 Siegel's Practice Review 4 (Feb. 1995).

orders. This will promote clarity and therefore assist the County Clerk to carry out correctly the intentions of the court.

C. THE JUDGMENT DEFINED

1. What is a Judgment?

A judgment is "the determination of the rights of the parties in an action or special proceeding and may be either interlocutory or final." CPLR 5011. A judgment is directed to the ultimate claims in a case and is the document that formally resolves them. In general, it is the judgment, not an order, that is docketed by the County Clerk, thereby creating a lien on real property.

There can be a judgment awarding money or dismissing claims, a declaratory judgment (CPLR 3001), i.e., one that declares the rights and other legal relations of the parties, a judgment specifically enforcing contractual rights, partitioning real property, dissolving a marriage, or determining a special proceeding, among other things. A permanent injunction is a type of final judgment.⁸

A *final judgment*, of course, resolves all issues. An *interlocutory judgment* leaves some open for subsequent determination or requires that certain steps be pursued before a final judgment can be entered. A judgment that determines certain issues, but provides that an account be taken is an example of an interlocutory judgment.⁹ If all issues are not resolved, there is usually nothing to be gained by entry of an interlocutory judgment. Thus, the interlocutory judgment is a rarity, but it may have utility, for example, where a trial is

⁸ Ryan v McLean, 209 AD2d 913, 914, 619 NYS2d 196 (3d Dept 1994); Byrne Compressed Air Equipment Co. v Sperdini, 123 AD2d 368, 506 NYS2d 593 (2d Dept 1986); Grogan v Saint Bonaventure University, 91 AD2d 855, 458 NY2d 410 (4th Dept 1982); Jones v Board of Education, 6 Misc 3d 1035(A), 800 NYS2d 348, 2005 WL 562747 (Sup Ct 2005), affd as modified, 30 AD3d 967, 816 NYS2d 796 (4th Dept 2006); David D. Siegel, New York Practice § 409, at 693 (4th ed 2005)[hereinafter cited as "Siegel, New York Practice"]; 67A NY Jur 2d, Injunctions § 43, at 112.

⁹ 10 Jack B. Weinstein, Harold Korn & Arthur Miller, New York Civil Practice: CPLR ¶ 5011.03 (2d ed 2009)[hereinafter cited as "10 Weinstein, Korn & Miller"].

bifurcated into liability and damages phases.¹⁰

2. Orders and Judgments - Avoiding Misuse of the One for the Other

A judgment should not be used in an effort to achieve the purposes of an order, and vice versa. If the court does not decide the ultimate merits of the case in their entirety, or decide at least some of the ultimate merits and sever them from the rest of the case, the court should not sign or direct the signing of a judgment.

The court should not, for instance, issue an opinion on a motion directing the addition of a certain person as a party, or permitting amendment of the complaint, or changing the venue of a case and call the opinion "the decision and judgment of the court" or direct the Clerk "to enter a judgment accordingly." The use of the word "judgment" in these contexts would be erroneous since no disposition of the merits, or part thereof, is being made.¹¹ The judgment will typically include the words "that plaintiff have execution therefor." These words should not appear in an order since execution applies only to money judgments, which finally resolve all or part of a case.

The "judgment" must also be distinguished from the decision or opinion of the court, which provides the rationale for judicial action on a motion or after a non-jury trial.

3. Generally, There is One Judgment Per Case

In general, there can be only one document determining the rights of the parties, that is, there can be only one final judgment in a case. An important qualification to this statement is this: there can be more than

¹⁰ Jack Parker Construction Corp. v Williams, 35 AD2d 839, 317 NYS2d 911 (2d Dept 1970); Bank of New York v Ansonia Associates, 172 Misc 2d 70, 656 NYS2d 813 (Sup Ct 1997)(Saxe, J.). See Siegel, New York Practice § 410.

¹¹ See DiMaria v Motor Vehicle Accident Indemnification Corp., 37 Misc 2d 617, 236 NYS2d 443 (Sup Ct 1963)(Gabrielli, J.); Concourse Super Service Station, Inc. v Price, 33 Misc 2d 503, 226 NYS2d 651 (Sup Ct 1962); Marsh v Johnston, 123 App Div 596, 108 NYS. 161 (2d Dept 1908). It should be noted, however, that an order that directs the payment of money, including motion costs, or affects the title to, or the possession, use or enjoyment of, real property, shall be docketed as a judgment at the request of any party. CPLR 2222.

one judgment if the claims are split into separate pieces by the court, that is, severed one from the other (see CPLR 603 [severance of claims or separate trial], 407 [severance of claim or party in a special proceeding]), in which event there can be only one judgment resolving each piece.¹² CPLR 5012 provides that the court “having ordered a severance, may direct judgment upon a part of a cause of action or upon one or more causes of action as to one or more parties.” The pieces cannot overlap or duplicate one another.

D. THE LANGUAGE AND FORM OF THE JUDGMENT

1. The General Form of the Judgment

The required form of the judgment is set forth in terms of some generality in CPLR 5011: the judgment must refer to, and state the result of, the verdict or decision, or recite the default, upon which it is based. It is a matter of considerable importance -- to the parties, to the efficient operations of the court, and to the Appellate Division should an appeal ensue -- that the judgment be as clear as possible, with regard to every single claim, counterclaim, etc., and as to exactly what is being awarded, denied, or declared. This is discussed further below.

However:

No particular form of words is usually considered necessary to show the rendition of a judgment. The record of the judgment is sufficient if the time, place, parties, matter in dispute, and the result, with the relief granted, are clearly stated.¹³

¹² See Bennett v Long Island Lighting Co., 262 AD2d 437, 692 NYS 2d 144, 146 (2d Dept 1999); Marasia v Noyl Coram, Inc., 260 AD2d 607, 688 NYS2d 671 (2d Dept 1999); Conrad v. County of Westchester, 259 AD2d 724, 687 NYS2d 404 (2d Dept 1999); Kriser v Rodgers, 195 App Div 394, 186 NYS 316, 317 (1st Dept 1921); Donner v White, 149 Misc 709, 268 NYS 56, 59-60 (Mun Ct 1933). Another qualification to the general rule, a technical one, is as follows. A special proceeding brought to stay or compel arbitration must end in a judgment. If arbitration is directed, a later application to confirm or disaffirm may be made by motion in the same proceeding. CPLR 7502 (a) (iii). See discussion at p. 48 hereafter.

¹³ 10 Weinstein, Korn & Miller, ¶ 5011.04, at 50-95. “It is not necessary to the validity and effectiveness of a judgment ... that any technical phraseology be used by the court in its rendition ...” 8B Carmody-Wait 2d, Judgments § 63:12, at 214.

2. Key Elements of the Judgment

Though a particular form of words is not generally considered necessary, a judgment should contain or set forth the following:

- The court and the county of the court issuing the judgment (CPLR 2101 [c]);
- The full caption of the case (an abbreviated caption is not allowed in judgments (CPLR 2101 [c]));
- The nature of the document (“Judgment”) and the index number (CPLR 2101 [c]);
- The names and addresses of the judgment creditor(s) and the judgment debtor(s) where a money judgment is involved (CPLR 5018 [name and last known address required for purpose of docketing]);
- A reference to the verdict or decision that forms the basis for the judgment; and
- An adjudication of the rights at issue, that is, a clear, unambiguous statement of the award granted or denied by the judgment or declaration made thereby.¹⁴

A judgment should not contain findings of fact and/or conclusions of law,¹⁵ nor a statement of the theory or theories on the basis of which the award is made or denied.¹⁶

3. Language of the Judgment

The portion of the judgment that adjudicates or determines the rights at issue should generally use the formulation “It is ADJUDGED that,”¹⁷ and that is what we recommend. Attorneys often submit judgments using

¹⁴ Millner v Millner, 60 Misc 2d 122, 301 NYS2d 250, 256 (Sup Ct 1969). A New York court may enter a judgment only in United States currency (Judiciary Law § 27 [a]; 73 NY Jur 2d, Judgments § 17, at 35), except that, where the cause of action is based on an obligation denominated in a foreign currency, a court shall render or enter a judgment in the foreign currency, which shall be converted into U.S. currency (Judiciary Law § 27 [b]).

¹⁵ Porter v International Bridge Co., 200 NY 234, 252 (1910); City Bank Farmers Trust Co. v Cannon, 265 App Div 863, 38 NYS2d 245 (2d Dept 1942); People v Reinforced Paper Bottle Corp., 176 Misc 268, 27 NYS2d 14, 17 (Sup. Ct. 1941).

¹⁶ Brown v Shyne, 123 Misc 851, 206 NYS 310 (Sup Ct 1924).

¹⁷ 73 NY.Jur 2d, Judgments § 16, at 34.

Supreme Court of the State of New York, and a jury, at Part 91 of this court, at the courthouse at 60 Centre Street, New York, New York, on June 1, 2008, and the plaintiff having appeared by counsel, John Adams, Esq., and defendant having appeared by counsel, Alexander Hamilton, Esq., and the jury having rendered a verdict on June 3, 2008 in favor of plaintiff and against defendant awarding damages in the amount of \$ 50,000.00, with interest at the statutory rate from January 10, 2007,

NOW, on motion of counsel for plaintiff, it is

ADJUDGED that plaintiff Robert C. Livingston, residing at 10 George Mason Way, New York, New York, do recover of defendant Benjamin Rush, residing at 127 Madison Place, New York, New York, the sum of \$ 50,000.00, with interest thereon from January 10, 2007 in the amount of \$1,800.00, together with costs and disbursements as taxed by the Clerk in the sums of \$400.00 and \$550.00, respectively, making in all the sum of \$52,750.00, and that the plaintiff have execution therefor.

Judgment signed July 20, 2008

John Jay
Hon. John Jay
Clerk of the Court



CHAPTER 2 SIGNING OF ORDERS - MINIMIZING SETTLEMENT OR SUBMISSION OF LONG FORM ORDERS

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A. WHEN A MOTION IS DENIED - - SETTLEMENT ALWAYS UNNECESSARY

B. WHEN A MOTION IS GRANTED - - SETTLEMENT USUALLY UNNECESSARY

C. DEFAULTS ON MOTIONS AND SPECIAL PROCEEDINGS - - AVOIDING SETTLEMENT WHILE AFFORDING FINAL NOTICE/INTEREST AND COUNSEL FEES

As explained in the Introduction, the practice of this court, directed by Uniform Rule 202.8 (g), is that, unless circumstances require otherwise, an order shall be incorporated into the court's decision on a motion, either in a gray sheet or at the end of a formal opinion attached to a gray sheet. Settlement of an order is usually not necessary and therefore should be avoided.

A. WHEN A MOTION IS DENIED - - SETTLEMENT ALWAYS UNNECESSARY

In every instance in which the court denies a motion in an action, settlement of an order is unnecessary. In these instances, the court need only state as its order that the motion is denied. This can be done either directly on the gray sheet when the decision is a brief one, or by including such ordering language in a formal decision in a concluding sentence or paragraph (which may be marked "Conclusion" or state something such as "For the reasons stated above..."). The gray sheet or formal decision should say, in words or effect: "It is hereby ORDERED that the motion of _____ for _____ is denied."

B. WHEN A MOTION IS GRANTED - SETTLEMENT USUALLY UNNECESSARY

In most instances in which the court grants a motion in an action, a short form order will suffice. Certain

kinds of motions do require particular directives in the order. As stated in the Introduction, Appendix A to this *Guide* contains, for many of the most common motions, recommendations as to how to handle them and Appendix B contains sample form directives to be used in framing short form decisions and orders or incorporating orders into formal decisions. Settlement can be avoided if the decision of the court includes, preferably at the end, the necessary ordering language. The language of these forms can be typed onto a gray sheet or a gray sheet can be generated from the accompanying computer disk. Also, these forms may be used in a formal opinion to frame a "conclusion" or final paragraph that summarizes the court's decision and that provides, in the necessary specific language and as an order, for the disposition of all aspects of the motion as desired by the court. When such a formal opinion is issued, the gray sheet on the motion should state that the motion is "resolved in the accompanying memorandum decision," or words to that effect.

A decision on a discovery motion should not require settlement of a long-form order absent extraordinary circumstances.²²

In some instances -- a small minority of the total -- the complexity of the directives necessarily flowing out of the granting of a motion in an action (as in a foreclosure action) may require the settlement of a long form order or judgment. The principal occasions on which a long form order or judgment is called for are identified

²² Many discovery disputes, moreover, should be resolvable without need for motion practice at all, which causes delay and expense for the parties. It is the court's policy to promote resolution of discovery disputes at conferences whenever possible. Where a drastic penalty will be imposed upon a party for failure to fulfill discovery obligations, prior notice must be provided to that party that such a sanction may be imminent. Postel v New York University Hospital, 262 AD2d 40, 42, 691 NYS2d 468, 470 (1st Dept 1999). It has been held that the penalty of striking a pleading should not be imposed at a conference, but rather should be founded upon a motion on notice. Boyle v City of New York, 269 AD2d 135, 701 NYS2d 896 (1st Dept 2000). In addition, a financial sanction may be in order in such a situation (see Postel supra, 262 AD2d at 42, 691 NYS2d at 471; Salamone v Wyckoff Heights Medical Center, 273 AD2d 117, 709 NYS2d 181 [1st Dept 2000]; Siegel, 92 Siegel's Prac Rev 2 [2000]). Where Part 130 is invoked, Section 130-1.1 (d) requires a written motion or a reasonable opportunity to be heard before the court may assess costs or sanctions against a party. The court may wish to include in a compliance conference order a directive that failure to comply with a particular discovery obligation by a stated deadline may or will lead to imposition of a specific penalty. See Garcia v. Juan Carlos Defex, D.D.S., 59 AD3d 183, 872 NYS2d 454 (1st Dept 2009); Alveranga-Duran v. New Whitehall Apartments, L.L.C., 40 AD2d 287, 836 NYS2d 24 (1st Dept 2007); Santoli v. 475 Ninth Ave Assocs., LLC, 38 AD3d 411, 833 NYS2d 40 (1st Dept 2007); Salamone supra, 273 AD2d at 117 n.l., 709 NYS2d at 182 n.l. See also Postel, supra, 262 AD2d at 42, 691 NYS2d at 470 (absence of any prior notice to plaintiffs that such a sanction might be imminent).

in Appendix A to this *Guide*.

**C. DEFAULTS ON MOTIONS AND SPECIAL PROCEEDINGS - -
AVOIDING SETTLEMENT WHILE AFFORDING FINAL NOTICE /
INTEREST AND COUNSEL FEES**

Upon a default in a special proceeding or on a motion in an action, the court may consider directing settlement of an order or judgment solely for the purpose of affording the defaulting party final notice of the default and a last opportunity to take action. This procedure, however, is not the most efficient means of accomplishing that end. The court can achieve the same result, but save time and labor both for the prevailing party and court clerks by the following simple method: Issue an order on a gray sheet or at the end of an accompanying opinion and direct that the County Clerk enter a judgment on default on proof by affirmation of counsel that, for example, ten or 20 days additional notice was furnished to the defaulting party. Such an order might read:

ORDERED that the defendant's motion to dismiss the complaint is granted on default, and the Clerk is directed to enter judgment in favor of defendant dismissing the complaint in its entirety, with costs and disbursements to defendant, upon submission by affirmation of counsel of proof of service on plaintiff of a copy of this decision and order with notice of entry at least ____ days prior to the entry of said judgment.²³

Despite the general preference of the courts for the inclusion of orders in decisions, convenience and expedition may dictate settlement of an order when the defendant defaults on a motion for summary judgment or summary judgment in lieu of complaint and the plaintiff is seeking interest and counsel fees (e.g., in the case of a promissory note). The court can issue a gray sheet directing the clerk to enter judgment for the principal sum due, interest, and counsel fees in a specific amount. But in some cases, the precise basis for calculation of

²³ As to cases in which a defaulting party appears by counsel, it should be noted that many counsel will receive very expeditious notice of the issuance of the decision. This is because many attorneys today subscribe to lawyers' services that receive downloads of data from the court's computer system several times each day and that provide e-mail notice to counsel about new developments in cases listed with the service. The court system has its own such service, "E-Track," which is free of charge. Attorneys who subscribe to such services will be informed of developments generally the same day they are recorded in the court's computer or early the next day.

interest may not clearly appear in the motion papers or counsel may not adequately detail the work done and time spent to support an award of counsel fees in a particular amount. Rather than direct a time-consuming reference on interest and counsel fees (with or without a severance of the claim for the principal), the Court could direct settlement of a long form order that is to be accompanied by a detailed affidavit justifying the amount of interest and/or counsel fees. Then the court can sign an order directing entry of a judgment that will resolve all aspects of the case promptly and at one time.

CHAPTER 3
SIGNING AND ENTRY OF JUDGMENTS -
THE ROLES OF THE COURT AND THE COUNTY CLERK

CONTENTS OF THE CHAPTER

- A. THE SIGNING OF JUDGMENTS IN GENERAL**
- B. THE SIGNING OF JUDGMENTS FOR EQUITABLE AND DECLARATORY RELIEF**
- C. JUDGMENTS IN SPECIAL PROCEEDINGS**
- D. THE SIGNING OF JUDGMENTS AFTER JURY VERDICTS**
- E. THE SIGNING OF JUDGMENTS IN NON-JURY CASES**
- F. THE SIGNING OF JUDGMENTS ON DEFAULT OR BY CONFESSION**

A. THE SIGNING OF JUDGMENTS IN GENERAL

All *orders on motions* are signed by the Justice. *Judgments*, however, as indicated above, need not be signed by the Justice. The County Clerk, acting ministerially, can sign the judgment where the Justice issues an order so directing (e.g., on summary judgment) or if a decision in a non-jury case specifies the particulars of a judgment and directs the Clerk to enter same. CPLR 5016 (a) provides that “[a] judgment is entered when, after it has been signed by the clerk, it is filed by him.”²⁴

B. THE SIGNING OF JUDGMENTS FOR EQUITABLE AND DECLARATORY RELIEF

With regard to judgments for money or costs only or for denial of relief, the County Clerk can and

²⁴ The filing of a judgment roll (CPLR 5017) and the “docketing” of a judgment so as to make it a lien on real property (CPLR 5018) are separate, subsequent steps taken by the County Clerk.

normally does sign the judgment.²⁵ However, *the Justice* must sign all judgments awarding *equitable or declaratory relief*, such as a permanent injunction or a judgment in an Article 78 proceeding reinstating a police officer. See CPLR 5016 (c), which provides that the Clerk shall enter judgment upon a decision by the court or a referee to determine as directed therein, but that when relief is awarded for other than money or costs only, the court or referee shall determine the form of the judgment. Thus, the court should not sign an order that directs the Clerk to enter a judgment awarding equitable or declaratory relief.²⁶

C. JUDGMENTS IN SPECIAL PROCEEDINGS

Every special proceeding that is not settled or withdrawn must end in a judgment, not an order. (CPLR 411) Judgments in special proceedings are signed by the Justice before they are entered by the Clerk. Whenever the court denies an application in a special proceeding (e.g., Article 75 proceeding), a decision endorsed on the gray sheet or appended thereto as a formal opinion will suffice as a short form judgment if the decision contains at the end the words: "it is hereby ADJUDGED that the petition is denied and the proceeding is dismissed." If the petition is granted, the gray sheet or formal opinion should at its conclusion, after the words "it is hereby ADJUDGED that," make whatever directives are required. Although a special proceeding comes on like a motion and looks like a motion, the application is a distinct proceeding which normally cannot and should not end in an order. Because a judgment is involved, provision for costs and disbursements may be included. There are only a few occasions when an order rather than a judgment will issue on Motion Seq. No. 001 in a special proceeding, including, for example, when the court directs a trial of a factual issue (CPLR 410), but these orders are interim steps and eventually a judgment will be required.

²⁵ 10 Weinstein, Korn & Miller ¶¶ 5016.10, 5016.11.

²⁶ Cornell v Cornell, 7 NY2d 164, 168, 196 NYS2d 98, 101 (1959); Estate of Agliata v Agliata, 155 Misc 2d 385, 389-90, 589 NYS2d 236, 239-40 (Surr Ct 1992); Snell v Snell, 177 Misc 923, 32 NYS2d 485 (Sup Ct 1942); Dailey v Northern New York Utilities, Inc., 129 Misc 183, 221 NYS 52 (Sup Ct 1927); 8B Carmody-Wait 2d, Judgments § 63.20.

D. THE SIGNING OF JUDGMENTS AFTER JURY VERDICTS

A *general verdict* is one in which the jury simply finds in favor of a party (CPLR 4111 [a]); the determinations that underlie the conclusion are not stated: e.g., “we find for the defendant” or “we find for the plaintiff for \$50,000.” A *general verdict accompanied by interrogatories* (CPLR 4111 [c])²⁷ is one in which the jury finds in favor of a party, determines the amount of damages, and answers questions about essential elements of the case (e.g., proximate causation). A *special verdict* is one in which the jury is required to find the facts, leaving it to the court to conclude which party is entitled to judgment thereon (CPLR 4111 [a], [b]). CPLR 5016 (b) provides that judgment on the *general verdict* of a jury after trial by jury as of right shall be entered by the *County Clerk* unless the court directs otherwise. But if there is a *special verdict*, the court shall direct entry of an appropriate judgment.

Thus, on a *general verdict*, the County Clerk will enter judgment without specific instructions from the court unless the court directs otherwise. Unless there is an inconsistency, on a *general verdict plus interrogatories*, the County Clerk shall enter a judgment based on the verdict. On a *special verdict*, the court shall direct the County Clerk how to enter judgment (CPLR 5016[b]).²⁸

The basis upon which the County Clerk will act in the case of a general verdict or general verdict with interrogatories is the extract. CPLR 4112 requires the Part Clerk to record a jury verdict in his/her minutes. The extract is a summary of the verdict taken from the minutes. It will provide the County Clerk with the information needed to enter a judgment in accordance with the general verdict.²⁹ The Part Clerk will transmit the extract to the County Clerk. The steps that are then taken to enter a judgment based thereon are described in Chapter 6

²⁷ Siegel, New York Practice § 399, at 673.

²⁸ 10 Weinstein, Korn & Miller, ¶ 5016.06.

²⁹ The extract should recite the identifying details of the case (full caption, index number, calendar number, Part number, Justice, trial dates) and the outcome. This shall include the outcome of all pretrial and trial motions that resolved claims, counterclaims, cross-claims, and third-party claims and the status of all parties. The extract should account for every claim and every party.

hereof.

Part Clerks will not submit extracts when complex verdicts are involved; rather, the court will ordinarily direct settlement of a judgment instead.

E. THE SIGNING OF JUDGMENTS IN NON-JURY CASES

In decisions after trial by the court, the Justice will usually issue a written decision, which shall state facts deemed essential (CPLR 4213 [b]). If the court dictates a decision into the record, the court should obtain a copy of the transcript from the court reporter, who will produce it promptly and certify it, and the court should then sign it. The County Clerk will need this if directed thereby to enter a judgment. The court in framing its decision may also pass upon and incorporate, in whole or in part, findings of fact and conclusions of law as proposed by the parties (CPLR 4213 [a]). In non-jury cases, the Justice may either direct the County Clerk to enter a judgment in accordance with terms spelled out in the decision or direct settlement or submission of a judgment. In the former situation, of course, the decision must state clearly what is to be done by the County Clerk as to each claim, counterclaim, cross-claim, and third-party claim, interest, and costs and disbursements.

F. THE SIGNING OF JUDGMENTS ON DEFAULT OR BY CONFESSION

The County Clerk can also sign some judgments on default (CPLR 3215 [a]) or on confession of judgment (CPLR 3218), and in a few other situations defined by the CPLR.

CPLR 3215 (a) permits the plaintiff to obtain a judgment of default from the County Clerk if the claim is for “a sum certain or for a sum which can by computation be made certain.” This provision is construed narrowly so as not to infringe upon the prerogatives of the court. Examples that fall into the “sum certain” category are claims for breach of contract for failure to pay the agreed price of goods that were delivered, actions

on money judgments, and actions based on instruments for the payment of money only.³⁰ (The last two actions will often be pursued through a motion for summary judgment in lieu of complaint [CPLR 3213]), and thus the Court would sign the order granting the default). Pursuant to CPLR 3215 (f), the applicant must present proof of service and proof by affidavit of the party of the facts constituting the claim, default and amount due. The Clerk is authorized to sever parties and thus the Clerk can enter a judgment against one of several defendants who defaults (CPLR 3215[a]). If the action is not for a sum certain or one that can be made certain, or if the action involves several claims one of which requires court intervention (e.g., severing a cause of action or awarding attorney's fees),³¹ or if the action seeks equitable relief, the Clerk cannot enter a default judgment. In those instances ex parte applications for a default judgment or an inquest should be submitted to the Ex Parte Office (unless the party wishes to or is required to (CPLR 3215[g]) proceed by motion on notice).³²

The two deficiencies in default submissions that are probably most commonly encountered by the County Clerk are the lack of a non-military affidavit and the failure to submit an affidavit reflecting second mailing (CPLR 3215 [g] [3] & [4]).

³⁰ Siegel, New York Practice § 293, at 477.

³¹ The Clerk is not authorized to sever causes of action or give attorney's fees.

³² Pursuant to CPLR 5003-a, if any settling defendant fails to pay sums due the settling plaintiff in timely fashion the settling plaintiff is entitled to enter judgment without notice, for the amount set forth in the release together with costs and lawful disbursements, with interest on the amount set forth in the release from the date the release and stipulation discontinuing the action were tendered (CPLR 5003-a[e]). This section is construed as authorizing the Clerk to enter such judgment on his own.

CHAPTER 4 PROVIDING DIRECTIVES TO THE CLERK - - SOME KEY PRINCIPLES

CONTENTS OF THE CHAPTER

A. AN ORDER / JUDGMENT MUST BE CLEAR AND COMPLETE

B. IF THE CLERK IS TO ENTER A JUDGMENT, THE COURT SHOULD SPECIFICALLY SO DIRECT

C. TO EFFECT ENTRY OF A JUDGMENT AS TO PART OF A CASE NOW, DIRECT ENTRY AND DIRECT SEVERANCE AND CONTINUANCE AS TO BALANCE OF THE CLAIMS

1. Generally, There is One Judgment Per Case

2. When Should a Severance Be Ordered?

3. Form of Order of Severance

4. A Note of Caution Regarding Certain Default Judgments

D. ORDERING PROVISIONS SHOULD BE PLACED IN A CONCLUSION SECTION AT THE END OF OPINIONS

Since the role of the Clerk in regard to orders and judgments is a ministerial one, the County Clerk is anxious not to trench upon the authority of the court. In order to achieve the correct and efficient implementation of the decisions and determinations of the Justice, it is vital that directions be given to the County Clerk with as much clarity as possible. A few simple, but important principles are involved.

A. AN ORDER/JUDGMENT MUST BE CLEAR AND COMPLETE

Every order/judgment signed by the court and sent to the County Clerk should be clear and complete so that the County Clerk can take the action intended by the court. The document should not

be ambiguous, confusing or inconsistent about the claims and parties covered by it, and, as there are, of course, often multiple claims and parties in cases, it should address each specific portion of the case that the court intends to be affected thereby.

To promote clarity and completeness, it is recommended that when an order is being drafted at the end of a formal opinion or on a gray sheet, the drafter give careful consideration to the number and identity of parties and claims, counterclaims, cross-claims, and third-party claims in the case and those at issue on the motion. The order should be framed in such a way as to delimit precisely, by identifying the number of the cause of action and the name of the party, the action to be taken by the Clerk with respect to each party and cause of action at issue on the motion. In their briefs and affidavits the parties may refer to “the fraud claims” or “the affirmative defenses” and the body of the court’s decision at various points may for convenience use similar terms. But when it comes to the order, the claims or defenses must be specifically identified (e.g., the third, eighth and ninth counterclaims of defendant Elbridge Gerry) if the court wishes the Clerk to take any action in regard to them. The goal of the drafter should be to set out an order that a person not familiar with the case can carry out without uncertainty or possibility of error.

Similarly, the drafter should consider all the steps that would be required to carry out fully the court's intention. If those steps could be taken in different ways, the Clerk should be told how to take them. For example, it is not enough for a short form order to grant a motion to consolidate and direct consolidation of action A with action B. The Clerk needs direction as well as to what the new caption is, which index number the consolidated action shall proceed under, etc.

B. IF THE CLERK IS TO ENTER A JUDGMENT, THE COURT SHOULD SPECIFICALLY SO DIRECT

Similarly, so as neither to usurp, nor appear to usurp, the function of the court, the County Clerk will not enter a judgment unless expressly directed to do so by the Justice. It is recommended that an order not

employ vague or precatory language, such as the Clerk "may enter judgment accordingly," or that "the plaintiff may have judgment," or state that "the defendant has prevailed on its defenses," or "the plaintiff is entitled to a judgment," or the like, nor should an order state only that "the defendant's motion for summary judgment is granted." Rather, the order should contain an unambiguous and unmistakable mandate, for example, that "the Clerk is directed to [shall] enter judgment for plaintiff James A. Garfield in the sum of \$ _____," together with specific directives as to interest (including date and rate, as discussed below), costs and disbursements. If an order strikes some or all affirmative defenses, the Clerk will not assume that a judgment should be entered for the plaintiff for the amount demanded in the complaint. If an order strikes an answer, the court should make clear whether the Clerk is to enter judgment for plaintiff for the sum demanded in the complaint or whether there is to be an inquest, in which event, judgment would not be entered until after the inquest.³³

**C. TO EFFECT ENTRY OF A JUDGMENT AS TO PART OF A CASE NOW,
DIRECT ENTRY AND DIRECT SEVERANCE AND
CONTINUANCE AS TO BALANCE OF THE CLAIMS**

1. Generally, There is One Judgment Per Case

As indicated above, there should be only one final judgment as to the merits of a particular case except where the judgment is intended to resolve finally only part of the case, in which event the case and the judgment normally should be cut into pieces, that is, there must be a severance. Therefore, when an order finally disposes of some claims in a case, or entirely resolves the status of some parties, but other claims or parties remain and the litigation is to continue, the court, if it wishes judgment to be entered now as to the claims or parties disposed of, should sever those claims or parties from the case and direct entry of judgment. "The court, having ordered a severance, may direct judgment upon a part of a cause of action or upon one or more causes of action as to one or more parties" (CPLR 5012). CPLR 5012 applies to all claims, counterclaims, cross-claims and third-party

³³ In theory, one could have an interlocutory judgment here, but in practice that is most unlikely. See the discussion at pp. 7-8 above.

claims.³⁴ CPLR 3212 (e) provides that the court may grant summary judgment as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just.

2. When Should A Severance Be Ordered ?

The decision whether to enter partial judgment now or await resolution of the entire case is a matter within the discretion of the court.³⁵ Professor Siegel says:

A judgment can determine the whole case or only part of it. It can determine one cause of action and leave others for later. It can even decide part of but a single cause of action, or give judgment as to some but not all parties.³⁶

“[W]ide discretion is accorded the lower courts in ordering severance and imposing conditions”³⁷ It may be appropriate to direct the County Clerk to enter a judgment now rather than await the final resolution of the case where doing so would advance the disposition of the case in some practical respect and would not cause injustice, hardship, or confusion.

Where the order frees a party or parties from the case: If several defendants move to dismiss the complaint in its entirety, but the court grants the motion only as to some defendants, the court might wish to direct the County Clerk to enter judgment in favor of the latter only since doing so ends their involvement in the case.³⁸ If the decision, on the other hand, disposes of some claims, but leaves all defendants in the case on claims involving the same alleged damages, there would be no practical benefit to directing entry of judgment now as to some causes of action.

Judgment as to One or More Causes of Action or Part of a Cause of Action: A court on a motion for

³⁴ 10 Weinstein, Korn & Miller, ¶ 5012.05, at 50-249.

³⁵ 10 Weinstein, Korn & Miller, ¶ 5012.03, at 50-245.

³⁶ Siegel, New York Practice at 693 (footnote omitted).

³⁷ 10 Weinstein, Korn & Miller at 50-246.

³⁸ Id. at 50-249. See Stevenson v. Lazzari, 16 AD3d 576, 793 NYS2d 428 (2d Dept 2005).

summary judgment might sever one cause of action, direct the entry of judgment thereon and continue the remaining causes of action. Professor Siegel says that “[t]he needs of the particular case will dictate ...”³⁹ With regard to the discretion to make such determinations, “[t]he only limitation ... is that one or more causes of action should not be severed when the effect would be to leave the remainder of the action in a chaotic condition.”⁴⁰

“Whether judgment on part of a cause of action is appropriate in a given case is a question of practicality.”⁴¹ The standard that has been articulated is this: “Is it possible to divide the claims or cause of action so that an effective judgment can be rendered as to part, without mutilation of the whole ?”⁴² The objective of CPLR 5012 is “to provide an effective way of separating and leaving for independent adjudication two or more claims stated as part of one cause of action, as long as the severance is practical and can be accomplished without confusion ...”⁴³ If this test is met, and “some economic or other practical advantage will accrue, judgment on part of a cause of action should be freely granted.”⁴⁴

In Ivon R. Ford, Inc. v. Sutherland,⁴⁵ for example, the court held that no issues existed as to the validity of a lien and granted judgment as to validity, leaving the action to proceed as to the remaining issues, which involved priorities of other liens against the premises in question.

³⁹ Siegel, New York Practice at 693.

⁴⁰ 10 Weinstein, Korn & Miller at 50-245 (footnote omitted). See 8B Carmody-Wait 2d, Judgments § 63:56; 4 Commercial Litigation in New York State Courts § 48:56 (2d ed R. Haig, 2005). See also Gemstones v. Union Carbide, 47 NY2d 250, 417 NYS2d 905 (1979).

⁴¹ 10 Weinstein, Korn & Miller at 50-246.

⁴² Id. at 50-247 (quoting Lowe v. Lowe, 265 NY 197, 203, 192 NE 291, 293 [1934]).

⁴³ Id.

⁴⁴ Id.

⁴⁵ 142 NYS2d 797 (Sup. Ct. 1955).

If the plaintiff asserts several causes of action on several unrelated loans, there are no counterclaims, and there are no issues of fact as to the causes of action for two of the notes involved, it might be in the interests of justice to grant a motion for summary judgment and direct entry of a judgment for the sums due on those two claims, while severing and leaving for future determination other causes of action as to which the defendant has raised an issue of fact (e.g., as to liability or whether the balance outstanding had already been paid).

If the plaintiff sues on a single note and the court determines on summary judgment that no issue of fact exists with regard to defendant's liability on the note for a particular sum and if there are no counterclaims, but the court has some concern about the proper sum to fix for the attorney's fees allowed by the note and claimed by the plaintiff, the court might grant summary judgment to plaintiff as to the principal amount due and direct entry of judgment therefor, but sever the claim for attorney's fees for further proceedings, for a hearing, a reference to hear and report, or perhaps the submission of further papers. In this situation there would not seem to be the prospect of confusion or disorder caused by the severance.

These examples illustrate considerations involved in the process of deciding whether to direct entry now: if part of the case is distinct from the rest and it would be unjust or burdensome to require a party to await a final resolution of all claims before obtaining a judgment on that part of the case, then a severance and a direction to the Clerk may be in order. Whether a party would be prejudiced is a factor.⁴⁶ "If severance and partial judgment will not adversely affect the trial court's ability to determine the remainder of the litigation and some advantage will be secured thereby, CPLR 5012 should be invoked."⁴⁷

⁴⁶ 10 Weinstein, Korn & Miller ¶ 5012.03.

⁴⁷ *Id.* at 50-246. If there is a legally sufficient counterclaim for an amount equal to or in excess of the amount demanded in the complaint, it has been held that plaintiff's motion for summary judgment should be denied. Illinois McGraw Elec. Co. v. John J. Walters, Inc., 7 NY2d 874, 196 NYS2d 1003 (1959); 6B Carmody-Wait 2d, Summary Judgment § 39:141. If the counterclaim is separable from plaintiff's claims, summary judgment may be granted. Wolosoff v. Wolosoff, 54 AD2d 651, 387 NYS2d 638 (1st Dept 1976); 7 Jack B. Weinstein, Harold Korn & Arthur Miller, New York Civil Practice: CPLR ¶ 3212.17, at 32-209 (2d ed. 2009)[hereinafter cited as "7 Weinstein, Korn & Miller"]. Where a plaintiff is entitled to summary judgment on certain claims, and where there are unrelated counterclaims that must be decided, the plaintiff may be entitled to a severance and entry of summary judgment on the former claims if there would be no prejudice to the defendant, as where there is no evidence that plaintiff would be unable to pay a judgment should defendant later prevail on the counterclaims. See, e.g., Robert Stigwood Org., Inc. v

3. Form of Order of Severance

An order that dismisses in whole or in part a complaint, cause of action, counterclaim, crossclaim, or third-party claim and that directs a severance should:

- (a) state clearly what the disposition is as to the motion in question and as to the pleading in its entirety or as to identified claims;
- (b) if the order will resolve some, but not all, claims and/or the status of some, but not all, parties, and the court wishes judgment to be entered on the portions resolved, sever the remaining parties and claims from those being finally disposed of; and
- (c) direct the Clerk to enter judgment on the portions resolved, described precisely.

An order to the Clerk to enter a money judgment (e.g., on summary judgment) and directing a severance should

- (a) state clearly what the disposition is as to the motion in question;
- (b) identify the party or parties in whose favor judgment is to be entered and the party or parties against whom judgment is to be entered and sever the claims or parties that will remain in the case after entry of the judgment;
- (c) state
 - (i) the amount of the award,
 - (ii) whether interest is to be awarded and, if so, that the Clerk is to calculate it and

Devon Co., 44 NY2d 922, 408 NYS2d 5 (1978); Green Acres Associates v Pergament Distributors, Inc., 143 AD2d 974, 533 NYS2d 583 (2d Dept 1988); Maglich v Saxe, Bacon & Bolan, P.C., 97 AD2d 19, 468 NYS2d 618 (1st Dept 1983); Boro Lumber Co. v S&S Corrugated Paper Machinery Co., 85 AD2d 675, 445 NYS2d 519 (2d Dept 1981); Bethlehem Steel Corp. v Solow, 70 AD2d 850, 418 NYS2d 40 (1st Dept 1979), mod on other grounds, 51 NY2d 870, 433 NYS2d 1015 (1980); Pease & Elliman, Inc. v 926 Park Avenue Corp., 23 AD2d 361, 260 NYS2d 693 (1st Dept. 1965), affd w/o opinion, 17 NY2d 890 (1966); CPLR 3212 (e). See Siegel, New York Practice § 285. Under CPLR 3212 (e), the court is empowered to sever the remaining claims from a cause of action as to which summary judgment is granted or hold entry of summary judgment in abeyance pending determination of any remaining claim. Depending on the circumstances, a plaintiff may be entitled to summary judgment on a main claim, but if there remains a counterclaim for trial, the court could grant summary judgment to plaintiff, but stay entry thereof. Or if the main claim exceeds the counterclaim, the court could grant summary judgment, but stay entry as to the portion that would be offset if defendant were to prevail on the counterclaim. The court could also allow entry, but stay enforcement, which would give the party entitled to judgment a lien in the meantime. Id. at 468-69; 7 Weinstein, Korn & Miller ¶ 3212.17. Professor Siegel states, with regard to the effect a counterclaim has on the grant of summary judgment for plaintiff, that “it all boils down to a simple conclusion: the court can work out whatever seems fair in the particular case.” Id. at 468. See 7 Weinstein, Korn & Miller at 32-209 (“The court has broad discretion”).

- any particulars about how he is to do so, and
- (iii) whether costs and disbursements are to be awarded; and
 - (d) direct that the Clerk enter judgment for and against parties identified exactly as set out pursuant to (b) above.

4. A Note of Caution Regarding
Certain Default Judgments

A note of caution should be sounded as to certain default judgments. The court should not direct entry of a default judgment against one of several defendants who are jointly liable (e.g., members of a partnership) where the case is supposed to continue because claims against all defendants will be merged in the judgment entered against one. If, however, the defendants are jointly and severally liable, or severally liable, the court may direct a severance and entry of a judgment against fewer than all defendants.⁴⁸

**D. ORDERING PROVISIONS SHOULD BE PLACED IN A
CONCLUSION SECTION AT THE END OF OPINIONS**

Directions to the County Clerk in appropriate ordering language should not be buried in the body of a formal opinion, but, for the benefit of the parties and the County Clerk, should (as the County Clerk has specifically requested) be easy to locate, and preferably should be placed at the end of the decision, ideally in a section labeled "Conclusion" or "Conclusion and Order." The same should be done if a judgment is involved, as in the case of a formal opinion that resolves an Article 78 or Article 75 proceeding.

⁴⁸ 10 Weinstein, Korn & Miller, ¶¶ 5012.06, 5012.07; Siegel, New York Practice § 418, at 714.

CHAPTER 5

INTEREST, COSTS AND DISBURSEMENTS

CONTENTS OF THE CHAPTER

A. INTEREST - - THREE CATEGORIES

B. COSTS AND DISBURSEMENTS

The following are key points regarding interest, costs and disbursements.

A. INTEREST - - THREE CATEGORIES

There are three categories of interest: interest (1) to verdict, report or decision (CPLR 5001); (2) from verdict, report or decision to entry of final judgment (CPLR 5002); and (3) from entry of final judgment until payment (CPLR 5003). Interest in the second and third categories shall be awarded as a matter of right on all money judgments, whereas interest in the first category is limited.

Category 2 (To Entry): As to the second category, CPLR 5002 directs the Judgment Clerk to compute the amount of interest and include it in the judgment. Because CPLR 5002 is mandatory, the Clerk will include such interest in the judgment even if the order of the court or the form of judgment signed by the Justice or submitted by counsel is silent on the matter. Since the lapse of time between verdict or decision and entry of judgment is generally brief, this category of interest will often prove of modest practical significance.⁴⁹ Normally (see discussion of the exception below), the rate of interest is the statutory rate, discussed hereafter.

Category 3 (From Entry): Interest in the third category runs from the date of “entry” of each money judgment. Because CPLR 5003 is mandatory and category 3 interest, by definition, does not arise until after the court has concluded action on the case, the order of the court or form of judgment need not include a direction

⁴⁹ Siegel, New York Practice § 411, at 697. Interest under CPLR 5002 shall, by the terms of the section, be calculated on the total sum due, including any interest under CPLR 5001.

as to such interest in order for it to be awarded. A judgment is “entered” when, after having been signed by the Clerk, it is filed by him (CPLR 5016[a]). Upon entry, the judgment will bear a County Clerk “filed” stamp reflecting the date of entry.⁵⁰ Here, too, the rate normally (an exception is discussed below) is the statutory one.

Category 1 (To Decision, etc.): As to the limits of category 1 interest alluded to above, this category is to be awarded as a matter of right in two circumstances and as a matter of discretion in a third. CPLR 5001 (a) provides that interest shall be recovered as of right on awards (i) for breach of contract, or (ii) based upon an act or omission depriving a person of, or otherwise interfering with, title to or possession or enjoyment of property. However, in an action of an equitable nature (e.g., a seller’s action for specific performance, a partnership accounting, a shareholder’s action for corporate dissolution, an action to foreclose on a defaulted mortgage), whether to award interest, and the rate and date thereof, shall be in the court’s discretion. Significantly, category 1 interest is unavailable on claims for punitive damages and in personal injury actions, though it is awarded from date of death in wrongful death actions pursuant to statute (EPTL 5-4.3).

In a contract or property damage case, the possible dates from which interest under CPLR 5001 shall be computed are set forth in CPLR 5001(b). In such a case, and in an equity case in which the court in its discretion decides to award interest, the court shall specify the date in the verdict, report, or decision (CPLR 5001[c]).

The statutory rate of interest is currently (and has been since 1981) fixed at 9% per annum unless a statute⁵¹ provides otherwise. As noted, the statutory 9% rate applies to interest from verdict, report, or decision to entry of judgment and from entry onward (categories 2 and 3). This rate also applies to interest from accrual (category 1) with some exceptions. The first exception is that, in equity cases, again, interest and the rate thereof are discretionary with the court. Second, parties may fix the rate by contract, which is often done. It is well

⁵⁰ Every order that directs the payment of money and that has been docketed as a judgment also bears interest on the judgment (CPLR 5003).

⁵¹ E.g., certain judgments against municipalities (Gen Mun Law § 3-a).

established that if a loan agreement or other contract or instrument provides that interest shall be paid at a particular rate until the principal debt is extinguished, then the rate agreed upon, rather than the statutory rate, will govern.⁵²

Indeed, notwithstanding CPLR 5002 (category 2), if the contract rate provides as much, the contract rate will govern, various authorities hold, after default and until the entry of judgment, when the contract is merged in the judgment.⁵³ There is even authority that, if the contractual language unambiguously and unequivocally so states, the contract rate will apply after entry of judgment (CPLR 5003 [category 3]) and until satisfaction.⁵⁴

In a contract case in which there has been no agreement about a rate of interest and in a property damage case, then, the statutory rate applies to category 1 interest.

An order should make clear to the County Clerk whether there is to be interest to verdict, report or decision (category 1) and, if so, how he or she is to calculate it. If such interest is to be awarded (because there has been a breach of contract or property damage, or because in a case of an equitable nature the court in its discretion decides to award it), there are several approaches to the rate: (i) interest at the statutory rate (for property damage cases, contract cases lacking an agreed rate, and, in the court's discretion, some equitable cases); (ii) at the contract rate if one has specified; and (iii) in some equitable cases, at another rate in the court's

⁵² Morningside Fuel Corp. v Lanius, 244 AD2d 198, 664 NYS2d 30 (1st Dept 1997); Hayduk v Rent-All Uniforms Co., 203 AD2d 104, 610 NYS2d 35 (1st Dept 1994); Secular v Royal Athletic Surfacing Co., 66 AD2d 761, 411 NY2d 615 (1st Dept 1978); Astoria Federal Savings & Loan Assn. v Rambalagos, 49 AD2d 715, 372 NYS2d 689 (2d Dept 1975); Stull v Joseph Feld, Inc., 34 AD2d 655, 309 NYS2d 985 (2d Dept 1970); 10 Weinstein, Korn & Miller, ¶ 5004.01a, at 50-79; 63 Carmody-Wait 2d, Judgments § 63:96.

⁵³ See Bruce Supply Corp. v D & M Plumbing & Heating Corp., 291 AD2d 525, 737 NYS2d 642 (2d Dept 2002); Marine Management, Inc. v Seco Management, Inc., 176 AD2d 252, 253, 574 NYS2d 207 (2d Dept 1991); Citibank, N.A. v Liebowitz, 110 AD2d 615, 487 NYS2d 368 (2d Dept 1985); Bank Leumi Trust Co. v Sanford Ross Mgt., Ltd., 101 AD2d 759, 475 NYS2d 403 (1st Dept 1984); Secular v Royal Athletic Surfacing Co., 66 AD2d 761, 411 NYS2d 615 (1st Dept 1978); Astoria Federal Savings & Loan Assn. v Rambalagos, 49 AD2d 715, 372 NYS2d 689 (2d Dept 1975); Stull v Joseph Feld, Inc., 34 AD2d 655, 309 NYS2d 985 (2d Dept 1970); Siegel, 18 Siegel's Practice Review 4 (April 1994); 4A Commercial Litigation in New York State Courts § 67.95 (2d ed R. Haig, 2008). But see Siegel, New York Practice § 412, at 700 & n.8.

⁵⁴ Retirement Accounts, Inc. v Pacst Realty, LLC, 49 AD3d 846, 854 NYS2d 487 (2d Dept 2008); Banque Nationale de Paris v 1567 Broadway Ownership Associates, 248 AD2d 154, 669 NYS2d 568 (1st Dept 1998); Bank of America, N.A. v Solow, 19 Misc 3d 1123(A), 862 NYS2d 812, 2008 WL 1821877, at 6 (Sup Ct 2008); Siegel, New York Practice § 412, at 700.

discretion.

(1) Statutory Interest: The court should specify in the order that the Clerk enter judgment in the amount of \$ _____ “with interest at the statutory rate from _____, 20 ____ until entry of judgment, as calculated by the Clerk,”

(2) Contract Rate: The court should specify in the order that the Clerk enter judgment in the amount of \$ _____ “with interest at the rate of ____% from _____, 20 __ until the date of this decision and order, and thereafter at the statutory rate until entry of judgment, as calculated by the Clerk, ...” If the contract language clearly so provides, the order should specify that the category 1 interest run “until entry of judgment, as calculated by the Clerk” or “until satisfaction of the judgment, as calculated by the Clerk,....”

(3) Equitable Case Rate: The court should specify in the order that the Clerk enter judgment in the amount of \$ _____ “with interest at the rate of ____% from _____, 20 ____ until the date of this decision and order, and thereafter at the statutory rate until entry of judgment, as calculated by the Clerk,”

Of course, the Justice must fill in these blanks in order to enable the County Clerk to calculate in accordance with these directions the dollar amount of the interest on the main sum and include the interest figure in the total amount of the judgment awarded and to be entered by the Clerk.

Counsel may at various places in papers submitted refer to the principal, interest on the principal up to a certain date, or the two sums combined. When framing the order, staff need to be alert not to use the last of these and also direct that interest on that same sum be provided from date of accrual, thereby providing for category 1 interest on category 1 interest.

Where there are any possible questions about the calculation of interest or an unusual rate is involved, counsel will be well-advised to provide the County Clerk with an affidavit and any necessary supporting documentation to assist the County Clerk in making the calculation.

B. COSTS AND DISBURSEMENTS

As to costs and disbursements, these consist of particular fees paid (such as the index number fee) and specified expenses for which a party may be reimbursed (see CPLR Article 81).

Costs. The party who obtains a favorable judgment is entitled to costs in the absence of a statutory directive or court order otherwise (CPLR 8101). The court may deny costs if it is of the view that an award would be inequitable. In the case of multiple prevailing parties, absent order otherwise, they shall be entitled, in toto, to a single set of costs (CPLR 8105). If the court dismisses a case against a group of defendants, it should consider whether it wishes the plaintiff to pay a single set of costs or separate costs to each defendant. Departure from the general provisions of CPLR Article 81 requires an explicit direction from the court to the County Clerk (CPLR 8108). The costs allowed are set out in CPLR Article 82.⁵⁵

Disbursements. The party to whom costs are awarded is entitled to disbursements, which are certain defined expenditures (CPLR 8301 [a]). This section also allows a party who is not awarded costs to recover disbursements in certain circumstances (CPLR 8301 [c]). Subdivision (a) lists these allowable expenses, which can include such things as publication fees, certification fees, title search expenses, and the prospective charges for entry and docketing of the judgment. Deposition expenses, which, of course, can be very substantial, are included in this list, but the allowable expenses therefor are capped at only \$250 in any one action. The subdivision also authorizes recovery of other expenses where they are reasonable and necessary and are taxable

⁵⁵ Costs for frivolous claims and conduct can be awarded upon order of the court under certain circumstances. See Part 130 of the Rules of the Chief Administrator; CPLR 8303-a.

according to “the course and practice of the court,” by law or by order of the court (CPLR 8301 [a] [12]). The course and practice of the court dictate what counsel need to submit as documentation in support of some disbursements (e.g., steno bills, publishing invoices). The County Clerk can provide information about “the course and practice of the court.” The sheriff’s poundage fee (CPLR 8012 [b]) is not an allowable disbursement, but is the responsibility of the debtor.⁵⁶

Additional Allowances. Additional allowances are authorized in certain actions by CPLR 8302 (e.g., real property foreclosure or partition actions) and 8303. The latter permits the court, inter alia, to award up to \$3,000 to a party in a difficult or extraordinary case where a defense was interposed.

Procedure before the Clerk Regarding Costs and Disbursements: Subject to any particular judicial directives regarding costs and disbursements as explained above, the order should provide that costs and disbursements will be taxed by the Clerk upon presentation of a proper bill of costs. The attorney will then submit to the Judgment Clerk a bill of costs listing the costs and disbursements for which recovery is sought, together with affidavits supporting the requests as necessary and appropriate, and the Clerk will review the bill and "tax" it, that is, will exclude therefrom items that are not properly included and will check the math involved, arriving at a sum that is included by the Clerk in the judgment. If the Justice signs a judgment, spaces for costs and disbursements should be left blank, to be computed and filled in by the Clerk.

Costs and Disbursements in Judgments in Special Proceedings: In a special proceeding, the gray sheet and any accompanying formal opinion will usually constitute a decision and judgment, and therefore should incorporate language proper thereto (“it is hereby ADJUDGED that”). If the court wishes to award costs and disbursements - - and, as noted, the prevailing party is entitled thereto unless the court determines otherwise - - the court should include adjudicatory language in the conclusion of the decision and judgment, such as the following: “it is ADJUDGED that the petition is denied and the proceeding is dismissed and that respondent, having an address at _____, do recover of petitioner X, having an address at _____, costs in the _____

⁵⁶ Siegel, New York Practice § 415, at 711.

CHAPTER 6

THE MECHANICS OF SETTLING OR SUBMITTING PROPOSED ORDERS AND JUDGMENTS AND ISSUING AND ENTERING ORDERS AND JUDGMENTS

CONTENTS OF CHAPTER

A. SETTLEMENT AND SUBMISSION OF LONG-FORM ORDERS AND JUDGMENTS

- 1. “Settle Order” and “Submit Order” Distinguished**
- 2. How Proposed Long-Form Orders
and Judgments Are Presented**
- 3. Deadline for Presentation**
- 4. Submissions Must Be Faithful
To the Decision**
- 5. The Procedures Apply to Judgments**

B. HOW JUDGMENTS ARE ENTERED

C. A CAUTIONARY WORD REGARDING UNFILED JUDGMENTS

A. SETTLEMENT AND SUBMISSION OF LONG-FORM ORDERS AND JUDGMENTS

1. “Settle Order” and “Submit Order” Distinguished

If the court decides that a long form order is essential on a motion, it will generally choose one of two procedures for the presentation of the proposed order - - a direction to “settle order” or a direction to “submit order.” A direction to “submit order” means that the prevailing attorney shall prepare an order in conformity with the decision and present it to the court without prior submission or notice to the adversary; if the order is signed and the adversary disputes its contents, he or she can make a motion to resettle the order after it has been

amount of \$ _____ and disbursements in the amount of \$ _____, making in all a total of \$ _____.”

The court should leave the spaces blank, which will be completed by the Court Clerk. The court should not write “with costs and disbursements as taxed by the Clerk” or “the Clerk is ordered to award costs and disbursements to Y” since the document in which the words are being written is the judgment itself and the latter two examples are proper for an order, but not a judgment.

served. The direction to “settle order,” which is intended to address more complicated situations,⁵⁷ means that the prevailing attorney should work out with the adversary a proposed draft order that conforms to the decision. If the parties agree, the order will normally be signed without difficulty. If the parties disagree, the prevailing party will then present to the court a proposed order and the adversary will normally present a proposed counter-order. Correspondence may be submitted in support of the proposals. The mechanics by which these submissions are made are set out in Uniform Rule 202.48.⁵⁸

2. How Proposed Long-Form Orders and Judgments Are Presented

When settlement of an order is directed, notation of the decision is made in CCIS and the file is transmitted to the Order Section of the Motion Support Office (Room 119) or the Commercial Division Support Office (Room 148) (in Division cases). The settlement process - - the settlement of a proposed order and a proposed counter-order, if any - - takes place there. Rule 202.48 (c) specifies where the return of the proposed order and counter-order is to be noticed and what service provisions apply. The proposed counter-order must note the respects in which it differs from the proposed order (id.). No appearance takes place on the settlement date; this is merely a deadline. After the deadline passes, the court clerk in the Order Section or the Commercial Division Support Office will review the submissions presented there and transmit them with his or her comments or suggestions to the Justice, unless there is some defect in the papers (e.g., no proof of service), in which event

⁵⁷ Siegel, New York Practice § 250, at 426.

⁵⁸ Id.; Siegel, McKinney’s Practice Commentary, CPLR 2220, at 108 (Supp. 2010). See also Funk v Barry, 89 NY2d 364, 653 NYS2d 247 (1996) on the differences between these two directions. A direction to “submit order on notice,” Professor Siegel says, probably is intended to mean “settle order,” since, as stated, the use of the word “submit” connotes presentation without prior notice to the adversary. Siegel, McKinney’s Practice Commentary, CPLR 2220, at 170 (1991). See Funk, 89 NY2d at 367, 653 NYS2d at 249 (the “submit” procedure “typically calls for no notice to the opponent,” in contrast with a direction to “settle order”). See also Siegel, Siegel’s Practice Review No. 52, at 3 (Dec. 1996)(discussing a case in which a direction to submit on notice was used, causing confusion). Professor Siegel writes that Section 202.48 (a) itself muddies the waters by referring to an order “directed to be settled or submitted on notice.” He states that “the rule should reverse the ‘settled’ and ‘submitted’ so that the ‘on notice’ phrase modifies only the settled.” Id. In the interest of avoiding confusion, therefore, it is suggested that the term “submit order on notice” not be used.

the clerk will inform counsel.⁵⁹

If the court's decision directs a party to "submit" an order, the party should prepare the required order and present it to the relevant back office. As indicated, counsel need not serve the proposed order on the adversary. The clerk will review the proposed order and transmit it to the Justice with any comments or suggestions deemed appropriate.⁶⁰

3. Deadline for Presentation

Rule 202.48 (a) provides that proposed orders must be presented for signature, unless otherwise directed by the court, within 60 days from the signing and filing of the decision directing that an order be settled or submitted. Failure to do so in a timely manner shall be deemed an abandonment of the motion or action unless good cause is shown (Rule 202.48 [b]).⁶¹ It is important for Chambers to be aware of these provisions since abandonment is potentially involved and there may well be disputes about good cause for late submission. Also, an attorney might be tempted to try to revive a short-form order by submission of a long-form order granting or denying the same relief, with possible appellate implications.

⁵⁹ Notice of defects is provided to counsel to assist counsel and the Justice. If there is a defect, counsel may well be interested in knowing about it before the papers are presented to the Justice rather than learn of the problem when the Justice rejects the submission. Pursuant to court policy, however, the clerk does not "reject" papers unless a statute or rule specifically so requires (CPLR 2102 [c]). See Uniform Rule 202.5 (d). If counsel insists that the papers be transmitted to the Justice in the form in which they were presented, the clerk will do so, although he or she may inform the Justice of what the perceived problems are.

⁶⁰ The court, on rare occasions, may direct that an order be settled or submitted directly to the Part or Chambers of the Justice. In such a case, the attorney of course must comply.

⁶¹ In Funk, the Court of Appeals clearly held that the 60-day deadline applies any time a court "expressly directs a party to submit or settle an order or judgment." 89 NY2d at 367, 653 NYS2d at 249. The Court pointed out that "the rule serves primarily to address delays in judicial dispositions occasioned by a party's failure to comply with a court's directive to draw and submit a proposed order or judgment." Id. at 368, 653 NYS2d at 249.

4. Submissions Must Be Faithful to the Decision

Counsel who settle or submit a proposed order or settle a proposed counter-order must endeavor to incorporate in the document accurately and completely the precise directives set out in the court's decision and include nothing else therein. As Professor Siegel says, "[a]ny order drawn must of course be faithful in all respects to the decision"⁶²

5. The Procedures Apply to Judgments

When necessary, the court may include in a decision a direction that a judgment be settled or submitted. The same steps are followed as with proposed orders, and Rule 202.48 by its express terms applies.

B. HOW JUDGMENTS ARE ENTERED

If the court has issued an order directing the Clerk to enter judgment or if there is an extract from the Clerk's minutes reflecting a general verdict, with or without interrogatories, or upon a default under CPLR 3215 (a) or a confession of judgment, the prevailing party will prepare a form of judgment and submit it to the Judgment Clerk (Room 141B in the basement of 60 Centre Street), together with information supporting interest calculations, if relevant, including an affirmation if needed, and a bill of costs itemizing costs and disbursements. The attorney will appear in person to assist the Judgment Clerk with regard to interest calculations, to answer any questions the Judgment Clerk may have, and to help create the judgment roll (CPLR 5017), which requires a review of the County Clerk's case file.⁶³ If the judgment is in proper form and in conformity with the order or verdict, the Judgment Clerk will calculate interest, if any, and tax costs and disbursements, include these

⁶² Siegel, McKinney's Practice Commentary, CPLR 2220, at 170 (1991).

⁶³ In matrimonial cases, the County Clerk will enter the judgment on his own, without an appearance by counsel. In electronically-filed cases, a personal appearance is not required; instead, applying counsel shall submit via the e-filing system a Request for Entry of Judgment, a form available on the website of the e-filing system.

figures in the judgment, and sign it.⁶⁴ A judgment roll will be created.

In the case of a special proceeding, the Justice will issue a decision and judgment disposing of the proceeding and forward it to the Motion Support Office, which in turn will deliver it to the County Clerk. As with a judgment in an action, the Clerk will enter it when the prevailing party appears at the Judgment Clerk's desk with the County Clerk's file, which should contain the original signed decision and judgment, together with a bill of costs and disbursements, and a judgment roll will be created.

If there is a decision of the court awarding ultimate equitable relief upon a motion or after non-jury trial, or if a verdict for money is complicated or involves a special verdict, the court will generally direct the prevailing party to submit or settle a judgment. The Justice will sign the judgment, but, if the judgment awards money, interest, costs or disbursements, should leave the relevant spaces blank so that the Judgment Clerk can calculate the interest, tax costs and disbursements, and record a total recovery. The judgment will be transmitted to the County Clerk's Judgment Section.

Except in matrimonial and electronically filed cases, when the Justice signs a judgment, the County Clerk, again, will place it unentered in the file jacket for the case to await the arrival of counsel requesting entry so that interest issues, costs, and disbursements can be addressed, and a judgment roll created.

As noted earlier, a judgment is entered when, after it has been signed by the Clerk, it is filed by him (CPLR 5016 [a]). The fact of entry will be recorded by the Clerk in a judgment book. Distinct from entry is docketing. The latter occurs when the Clerk records the judgment in a docket book, and this makes a money judgment a lien upon the real property of the defendant located in New York County.⁶⁵

⁶⁴ Under some circumstances, the County Clerk may require a proposed judgment to be settled before him.

⁶⁵ Siegel, New York Practice §§ 418, 421.

C. A CAUTIONARY WORD REGARDING UNFILED JUDGMENTS

Because many judgments signed by the court are treated as unfiled judgments and placed in the case file, counsel sometimes conclude erroneously that a signed judgment has been lost. They may then approach the assigned Justice, advise that the original has been lost, and seek execution of a duplicate original of the judgment. This leads to unnecessary work for the Justice and County Clerk staff and produces unwarranted complaints directed at the County Clerk. The County Clerk therefore respectfully requests that Justices sign duplicate original judgments only when asked to do so by the County Clerk. Attorneys who believe that a judgment has been lost should be referred to the County Clerk's staff.

Unfiled judgments are stamped with a notation that clearly identifies them as such and explains that entry requires an appearance at the Judgment Clerk's Desk (Room 141 B) (except in the two categories of case indicated above). Unfiled judgments bearing the notation are included in the *Supreme Court Records On-Line Library (Scroll)*. Counsel who consult *Scroll* will not make the error described.

CHAPTER 7

IDENTIFICATION OF PAPERS CONSIDERED ON A MOTION

Identification of the papers that were considered on a motion is required in a decision and order in case there is an appeal (CPLR 2219 [a]). Papers found in a case file may sometimes have been submitted in violation of the CPLR or directives of the court and may therefore have been ignored by the court, or, on the other hand, the court may have given permission for the submission of papers beyond those normally presented on a motion and may have considered them. The parties and the Appellate Division need to know what the court relied upon in coming to its decision. Although a directive that an order be settled does provide a means by which the parties can identify the papers presented on the motion, it is too inefficient and burdensome a means to be used for this limited purpose.

Papers can be identified as follows. Each paper is marked on its first page with a number. The numbers are then recorded on the short form order sheet in the spaces provided, as follows: (1) the notice of motion; (2) the affirmation(s) or affidavit(s) in support thereof; (3) the notice of cross-motion (if any); (4) the affirmation(s) or affidavit(s) in support of the cross-motion or in opposition to the main motion; and (5) the reply affirmation(s) or affidavit(s) (if any). Memoranda of law are not enumerated since they do not contain items of fact, nor are exhibits to affidavits or affirmations to be enumerated separately since they are appendages to the affidavits/affirmations.

In electronically-filed cases, each document submitted to the New York State Courts Electronic Filing System (“NYSCEF”) will bear a separate number in the NYSCEF list of documents. The documents can be identified using these numbers.

CHAPTER 8

HOW TO GET QUESTIONS ANSWERED

If, after consulting this *Guide*, the reader is in doubt as to whether or not a self-executing order or judgment may be used in a particular matter or how such an order or judgment should be framed, the reader may contact the Order Section of the Motion Support Office (Room 119) or the Commercial Division Support Office (Room 148) (in Division cases). In Article 81 (Mental Hygiene Law) matters, orders/judgments must be settled in the Guardianship and Fiduciary Support Office (Room 148) (646-386-3328). The reason for this is that accountings and other aspects of Article 81 cases are unique matters requiring special expertise, e.g., in such things as the schedules needed in a final accounting. Room 148 is the repository of that expertise.

The Order Sections are available to assist Chambers and Court Attorneys in framing self-executing orders or judgments whenever possible, thereby avoiding unnecessary settlement or submission of long-form orders and judgments.

The staff of the County Clerk's Office (Mr. Joseph Antonelli and Mr. Stephen Kubinec, as well as the Judgment Clerks) are also eager to be of assistance, although efficiency requires that staff consult the Order Section in the first instance. Of course, it is better to have a technical problem obviated in advance of execution of an order/judgment than to confront it afterward.

The County Clerk's Office has extensive familiarity with the intricacies of structured judgments. Appendix C to this *Guide* contains general information on this difficult subject. Those who need more detailed assistance may obtain it from the County Clerk's Office.

PART II
FINALITY OF ORDERS
AND APPROPRIATE MARKINGS

PART II FINALITY OF ORDERS AND APPROPRIATE MARKINGS

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A. NOTATION OF FINAL/NON-FINAL DISPOSITIONS

Each motion folder and short form order sheet transmitted by Chambers or the Part to the Motion Support Office (Room 119) must indicate whether or not the decision/order constitutes a final disposition of the case (not of the motion). Boxes have been placed on the motion jacket and on the gray sheet to permit such indication to be made.

It is very important that the disposition boxes on the motion jacket and on the gray sheet be completed on every motion so that when a decision/order constitutes the final disposition of the case an appropriate entry can be made in the CCIS computer removing the matter from the inventory of active cases. Failure to check the appropriate boxes creates confusion and imposes a burden on the Motion Support Office, which is then required to try to determine on its own whether the decision is final or not. If Motion Support mistakenly enters into CCIS that a case has been finally disposed of when that is not so, confusion and inconvenience to the parties will occur

later on (e.g., the filing of a note of issue will be made impossible). Conversely, failure to record a final disposition of the case will result in its incorrectly continuing to be listed in the computer system as an active case. Errors of this kind deprive Justices of credit for dispositions and generate erroneous workload statistics. Such errors also cause additional work for our Justices and clerks inasmuch as inventory reviews must be conducted in part to cull out such "dead cases" and a notification and calendar-generating process may accompany these reviews.

B. WHAT IS A "FINAL DISPOSITION" ?

(1) The Basic Rule

Decisions are final only if they dispose of all aspects of the case (except for the question of attorney's fees). Determinations that dispose of some but not all claims, that determine the fate of some but not all parties, and that grant judgments of default, but that will be followed by inquests on damages are not final determinations. As to the last of these situations, an inquest requires the filing of a note of issue, which cannot be done in a case that has been marked disposed on a motion for a default judgment.

(2) Finality in Special Proceedings

Particular attention should be paid to the question of finality in special proceedings. A determination on the merits in a special proceeding, one way or the other, disposes of the matter. So does the withdrawal of the application. A determination in certain "pre-action" special proceedings will dispose of the matter (the special proceeding) even though a lawsuit will follow later. That subsequent lawsuit will proceed under a new index number, which will also require the filing of a new Request for Judicial Intervention. An action is different from a special proceeding. Properly recording the disposition of the special proceeding will prevent the improper use of the special proceeding's index number for the subsequent plenary action and the confusion that that misuse will generate. Applications for the following are common special proceedings the resolution

of which will generally constitute a final disposition:

Pre-Action Discovery

Permission to Sue MVAIC

Leave to File Late Notice of Claim

Preserve Police Department Records

Article 78 Proceedings

An exception to this general procedure concerns arbitrations. A special proceeding can be brought to stay or compel arbitration. A decision on either must take the form of a judgment (CPLR 411). If an arbitration will take place, a later application to confirm or disaffirm an arbitration award might be thought to require a second proceeding that would end in a second judgment. So it was held, notwithstanding a contention that CPLR 7502 (a) (iii) was written to avoid that conclusion.⁶⁶ Section 7502 (a) was thereafter revised to overrule the decision in question. Now, even though judgment has been entered in a special proceeding to compel or stay arbitration, a subsequent application, despite CPLR 411, shall be made by motion in the same proceeding. Parties can bring all applications related to an arbitration under the same caption and index number.⁶⁷ For purposes of marking finality, the determination of the initial special proceeding will result in a judgment and should be considered a final disposition.

If the initial application is one to compel arbitration and it is brought in an action (CPLR 7502 [a]), and if the court grants the application, leaving nothing to be tried in court, the matter should be marked final at the time of the initial application. A later application to confirm or disaffirm can be brought in the action even though it has been concluded (CPLR 7502 [a] [iii]).

If an application is not fully decided on the merits, one way or the other (e.g., a framed issue hearing on insurance coverage is directed, or a trial ordered in an Article 78 proceeding), then there has been no final

⁶⁶ Solartechnik v Besicorp Group Ave., 91 NY2d 482, 672 NY2d 838 (1998).

⁶⁷ Siegel, New York Practice § 601, at 1062.

disposition. Decisions of this sort clearly constitute a minority of the special proceedings filed in this court. Each Part normally should have very few special proceedings pending in its inventory after the decision is issued on Motion Sequence No. 001.

(3) Finality in Transferred Cases

The granting of a motion to change venue from New York to some other county, a transfer pursuant to CPLR 325 (d), and the like, result in a final disposition. Although the controversy will continue on its merits, the case is no longer pending in our court and so is considered terminated so far as the records of this county are concerned. The new county or Civil Court will have to enter the case into its computer inventory when it arrives there and a new county will also have to assign it a new Index Number (for which usually no fee will be imposed).

(4) Finality in Article 78 Proceedings --
Administrative Remands and Transfers to the Appellate Division

Whenever the court remands an Article 78 proceeding to an administrative agency, the original application has been resolved and that proceeding is at an end. If the petitioner returns to our court with a grievance, it will concern new administrative facts and therefore require the institution of a new proceeding. In the case of a remand, a gray sheet with opinion will suffice as a short form judgment if the document adjudges that the matter should be remanded. When the court issues an order transferring an Article 78 proceeding to the Appellate Division (CPLR 7804 [g]), the case ceases as far as our county is concerned so the order is a final one.

(5) Finality and Article 81 Matters

Applications for the appointment of a guardian can result in years or even decades of judicial activity. Nevertheless, the purpose of the application is to obtain the appointment, and once that is granted or denied, the proceeding is to be considered disposed; whatever follows will be post-application activity. This will not bar

later motions (e.g., to substitute a guardian, to authorize the making of a gift). If this were not the rule, these applications would remain open, out of compliance with standards and goals, possibly for many years.

APPENDICES

APPENDIX A

KEY MOTIONS AND APPLICATIONS -- RECOMMENDATIONS REGARDING ORDERS OR JUDGMENTS

APPENDIX A

KEY MOTIONS AND APPLICATIONS -- RECOMMENDATIONS REGARDING ORDERS OR JUDGMENTS

GENERALLY APPLICABLE ADMINISTRATIVE AND CASE MANAGEMENT CONSIDERATIONS

With regard to each of the orders/judgments discussed here, two general procedural considerations should be kept in mind. First, whenever a court office and/or the County Clerk needs to change a caption or take other procedural action regarding a case (e.g., striking a note of issue), the order should include a directive that a copy be served on the relevant office, often the Trial Support Office (Room 158), and/or the County Clerk. Second, orders should generally include deadlines by which attorneys should take the action being directed. Experience shows that if no deadline is set, the case, or at least that aspect directly affected by the order, may languish, even for a considerable time.¹

Orders Affecting the Caption: Specifically, when amendments of pleadings or captions, consolidations, severances of parties, interventions and substitutions of parties produce changes in the caption, the order directing such changes must provide for service of a copy of that order on **both** the Trial Support Office (Room 158) **and** the County Clerk so that their records may be altered to reflect the changes. The County Clerk has a database that lists the case caption and our court's computer system, CCIS, has a separate listing of the caption. Trial Support does not receive copies of decisions in the normal course of operations and therefore will be unaware of an order to change a caption unless a party brings it to the Office. The County Clerk of course receives all decisions, but does not have the time to read them in order to locate those that affect the caption (see CPLR 8019[c]). Because of complexities that affect the entire state, the County Clerk's computer does not communicate with the court's CCIS system. That is why an order affecting the caption must contain a provision **directing service upon both Trial Support and the County Clerk.**

Orders Affecting Trial Status: Similarly, whenever an order changes the trial status of a case (e.g., granting a preference, restoring the case to the trial calendar, striking the note of issue) there should be a direction in the order

¹ Whenever a reference to a Special Referee is ordered, Chambers should check off the "Reference" box on the bottom of the gray sheet. This should bring the matter to the attention of the Special Referee Clerks, who will promptly calendar it for the Referee's Part. As a safeguard, however, it is suggested that the order require counsel to serve a copy with notice of entry upon the Special Referee Clerks in Room 119M, together with an Information Sheet available on the court's website (www.nycourts.gov/supctmanh).

requiring service on the Trial Support Office (Room 158). This is the office that administers the trial calendar and a case will sit in its chronologically-allotted spot on that calendar (or on the City Cases Waiting List) until someone alerts Trial Support that there is a reason to move the case to a different position.

A. AMEND PLEADINGS, MOTION TO:

Recommendation: Use order (no settlement of an order is required) if the proposed amended pleading is part of the moving papers before the court. The order should provide that the amended pleading in the proposed form annexed to the moving papers be deemed served upon service of "a copy of this order" with notice of entry on all parties appearing. If the proposed amended pleading is not annexed, counsel should be directed to serve and file the proposed amended pleading within a prescribed time, together with a copy of the order with notice of entry. If the amended pleading requires a responsive pleading (i.e., a complaint or an answer containing counter claims and/or cross claims [see CPLR 3011]), it is recommended that the court direct that a responsive pleading be served within 20 days of service of a copy of the order with notice of entry (CPLR 3012 [a]).

B. ARBITRATION AWARD, APPLICATION TO CONFIRM:

A judgment is required (CPLR 411). Settlement can be avoided by inserting in the short form judgment the following: (1) that the application is granted (or denied) and the award of the arbitrator is confirmed (or disaffirmed); (2) the precise elements of the award (e.g., the sum to be recovered, by whom, with interest of X% from a stated date expressed as the judgment of the court (using the words "It is ADJUDGED, etc.")).

C. ARBITRATION (COMMERCIAL), APPLICATION TO STAY:

Application granted or denied -- Recommendation: Use short form judgment (no settlement of a judgment is required). It should direct that arbitration be permanently stayed or that the parties proceed to arbitration and that a copy be served on the arbitral tribunal.

D. ARBITRATION (UNINSURED MOTORIST), APPLICATION TO STAY:

1. Where a preliminary trial (framed issue) is directed -- Recommendation: Use short form order (no settlement of an

order required). It is sufficient in the short form order to stay the arbitration temporarily and direct the Clerk of the Trial Support Office, upon service of a copy of the order with notice of entry within a stated deadline, to set the issue down for preliminary trial upon the filing of a note of issue and statement of readiness and the payment of appropriate fees. Since a directive for a temporary stay does not finally resolve the merits of the proceeding, the directive should take the form of an order, not a judgment; the judgment should follow the hearing. A framed issue cannot be tried without a calendar number (note of issue and certificate of readiness).

2. Where a permanent stay of arbitration is granted or denied -- Recommendation: Use short form judgment (no settlement of a judgment is required). The short form judgment should provide either that the arbitration is permanently stayed or that the parties are directed to proceed to arbitration. Further, the judgment should provide for service of a copy on the arbitral tribunal.

E. ARTICLE 78 PROCEEDINGS:

1. Application denied -- Recommendation: Use short form judgment (no settlement of a judgment is required). The short form judgment should merely provide that the petition is denied and the proceeding dismissed.

2. Application granted -- Recommendation: Use short form judgment (no settlement of a judgment is required). As noted in Part I of the Guide, the court cannot issue an order directing the Clerk to enter judgment where mandatory relief is being awarded, such as reinstatement of an employee. The short form judgment should provide that the petition is granted, and spell out all the details that the application necessitates.

3. Remand to the agency or transfer of the proceeding to the Appellate Division: Recommendation: Use short form judgment in the former instance (no settlement of a judgment is required). A judgment is required in the former instance because a remand disposes of the application. With a transfer to the Appellate Division, the matter has ended as far as our court is concerned, but the merits obviously remain open so an order must be used (CPLR 7804 [g]).

4. Hearing or Other Interim Steps: An order should be issued in an Article 78 proceeding where the court wishes to direct a hearing or require that other interim steps be taken.

5. Costs and Disbursements: Consideration should be given to whether costs and disbursements should or should not be awarded. When it is the intention of the court to grant costs and disbursements in an Article 78 proceeding, an adjudication should be included in the judgment that costs and disbursements be recovered (e.g., "it is ADJUDGED that

the petition is denied and the proceeding is dismissed and that respondent do recover of petitioner X costs in the amount of \$ _____ and disbursements in the amount of \$ _____, for a total of \$ _____ [to be filled in by the County Clerk]”).

F. ASSESSMENT OF DAMAGES (INQUEST):

Recommendation: Use short form order (no settlement of an order is required). The order sheet should direct the Clerk of the Trial Support Office (Room 158) to place the matter on the appropriate trial calendar for an assessment upon service of a copy of the order with notice of entry, the filing of a note of issue and statement of readiness, and the payment of appropriate fees, if any, all within a stated deadline.

G. ATTACHMENT, MOTION FOR:

1. Settlement of an order is preferable when the motion is granted so that the details of the property to be attached may be set forth clearly and provision may be made for an undertaking, which is mandatory (CPLR 6212 [b]).
2. Confirmation of an attachment does not require settlement of an order.

H. CAPTION, ORDERS AFFECTING THE:

See Generally Applicable Administrative and Case Management Considerations at the outset of this Appendix.

I. CLASS ACTION (CPLR ARTICLE 9), MOTION TO CERTIFY:

A determination declining to certify a class can be made using a short form order. A decision on a motion certifying a class action, however, should always provide for settlement of an order that will spell out technicalities of notice, define the class precisely, etc. (CPLR 902-04, 907).

J. CONSOLIDATION OR JOINT TRIAL, MOTION FOR:

1. Motion denied -- Recommendation: Use short form order (no settlement of an order is required).
2. Motion granted -- Recommendation: Use short form order (no settlement of an order is required). The language contained in the related form in Appendix B must be incorporated in the order that directs consolidation. In employing

the specific directives, attention should be paid to whether both or all the cases being consolidated are pending in this court or whether one or more are located elsewhere. In the latter case, different Clerks must be given directives. Forms are to be found in the Appendix covering both situations. Care must also be taken to distinguish consolidation from joint trial, something not always done by counsel in motion papers. The former results in one case, one index number, one note of issue, one verdict, one judgment, and one bill of costs. In the latter, although cases will be tried together, each case continues to have a separate existence, and a separate index number, note of issue, verdict, judgment, and bill of costs will be required for each.² Although both consolidation and joint trial are dealt with in CPLR 602, which is imprecisely captioned “Consolidation,” it would be an error for the court to issue an order directing that cases be “consolidated for joint trial.” Distinct from consolidation or joint trial is pretrial coordination of related litigation initiated in two or more judicial districts and transferred here pursuant to order of the Litigation Coordinating Panel of New York State (see Uniform Rule 202.69).

It is usual for the Justice to determine in the order of consolidation who has the right to open and close when separate actions are consolidated involving different plaintiffs. The rule is that the right generally belongs to the plaintiff whose action was commenced first regardless of the court in which that action was begun. If more than two actions are consolidated, the plaintiffs will normally be given the right to open and close in the order in which the cases were initiated. When the court orders a joint trial, the order may leave to the trial Justice the determination as to who opens and closes,³ although if the Justice issuing the order will be trying the case or if it otherwise seems appropriate, the Justice may resolve that matter in the order (as is done in the relevant form included in Appendix B).

K. CONTEMPT, MOTION TO PUNISH FOR:

Direct settlement of an order. This is an order that may have severe consequences and that is also technical, requiring provisions such as purging of the contempt, damages, penalties, and the like.

² David D. Siegel, New York Practice § 127, at 220 (4th ed. 2005)[hereinafter cited as “Siegel, New York Practice”].

³ Id. § 128, at 222.

L. COSTS, MOTION FOR:

Part 130 of the Rules of the Chief Administrator empowers the court to award costs to a party or attorney who is the victim of frivolous conduct by the other side and/or to impose sanctions upon the wrongdoer. The Part also allows for an award or sanctions when an attorney, without good cause, fails to appear in court as scheduled. In the former situation, the costs and/or sanctions can be imposed upon the party or the attorney for the party or both. Frivolous conduct is defined in Section 130-1.1 (c). Costs are to be paid to the affected party as reimbursement for expenses that should not have been incurred. Sanctions are a penalty for improper conduct. Sanctions are to be paid to the Commissioner of Taxation and Finance when paid by a party or the Lawyers' Fund for Client Protection when paid by an attorney. Costs or sanctions may be awarded upon motion or on the court's own initiative provided that reasonable opportunity to be heard is provided. A written decision is required or, in the case of a failure of counsel to appear, a statement on the record. The court must set forth the conduct on which the award is based and the reasons why the conduct was frivolous or the failure to appear was without good cause. In the case of a frivolity award, the decision must state why the court found the amount of the costs or sanctions appropriate. See also CPLR 8303-a.

M. DECLARATORY JUDGMENT ACTION:

Recommendation: Use short form judgment where declaration is to be made and it is clear to the court how the declaration should be framed (no settlement is required). If a decision on the merits is made, a declaration one way or the other is required; it is not enough to state that a motion for summary judgment is granted or denied. Thus, if the court reaches the merits, whether it accepts or rejects the declaration proffered by the movant, it is obligated to make an appropriate declaration of the rights at issue unless the court, in the exercise of its discretion, declines to grant a declaratory judgment because to do so would be substantively unfounded (e.g., because there exists a recognized form of action in which the rights of the parties can be determined, or there is no justiciable controversy, in which cases the claim will be dismissed without a declaration). To the extent that a dispositive declaration is made, the document must be a judgment, or, if it also contains ordering language, an order and judgment. For example, a motion for summary judgment might result in a decision that denies the motion as to a cause of action for money damages, but decides another for declaratory relief; an order and judgment would be required..

N. DEFAULT, MOTION TO VACATE:

Motion granted or denied -- Recommendation: No long form order is required in either case. If vacatur is granted and the defaulting party must serve an opposing pleading, the order should so provide and should include a deadline for doing so.

O. DISCOVERY, DISMISSAL (CPLR 3126):

One of the sanctions authorized by CPLR 3126 (3) for discovery non-compliance that sinks to the level of willful, contumacious or bad faith failure to disclose or violation of court orders is dismissal of the complaint. Prior to 2008, if an action was timely commenced and was terminated by, *inter alia*, a dismissal of the complaint for neglect to prosecute, the plaintiff was not allowed by CPLR 205 (a) the six months to commence a new action upon the same transaction or occurrences if the statute of limitations had run. This remains the law, but with an important qualification. In 2008, Section 205 was amended by the addition of the following provision: “Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chapter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.” The inclusion of the words “or otherwise” means that any form of dismissal for neglect to prosecute, not just one under CPLR 3216, would be covered by this provision.⁴ That would include a dismissal under CPLR 3126.⁵ An action that is dismissed for egregious discovery inaction and violations by the plaintiff amounting to willful, contumacious, or bad faith conduct and that would be time-barred otherwise may be recommenced if the court does not make on the record the recitations required by this amendment to Section 205 (a). Therefore, if the court’s intention is to preclude the recommencement of the dismissed matter, the court should include in its order a specification of the conduct of the plaintiff amounting to neglect, which should, of course, overlap with the actions and inactions needed to support a finding of willful, contumacious, or bad faith conduct, and should state that this conduct demonstrates a general pattern of delay.

⁴ Siegel, New York Practice § 52 (Supp. 2010).

⁵ See Andrea v. Arnone, 5 NY3d 514, 806 NYS2d 453 (2005).

P. DISMISS, MOTION TO:

1. Motion denied -- Recommendation: Use short form order (no settlement of an order is required). The order should include a directive to the defendant to serve and file an answer to the complaint (or the plaintiff in the case of a counterclaim, etc.) within 10 days from service of a copy of the order with notice of entry to remind the movant of its obligations under CPLR 3211(f).

2. Motion granted - Recommendation: Use short form order (no settlement of an order is required). The order should clearly direct the Clerk to enter judgment dismissing the action or claims if the court wishes the Clerk to enter a judgment at this point. If the dismissal is partial -- as to fewer than all parties or claims -- care must be taken to specify just what is being dismissed and what is not, and to sever the claims or parties that will remain. If no party is being released from the case, the court may wish to consider whether entry of a judgment should be directed. If a party is being released, the court should direct severance and entry of judgment with regard thereto. If leave to replead is granted, settlement is unnecessary, but the order should provide when the new pleading must be served.

Q. LATE NOTICE OF CLAIM, APPLICATION FOR LEAVE TO SERVE A:

1. Application denied -- Recommendation: Use short form judgment (no settlement of a judgment is required).

2. Application granted -- Recommendation: Use short form judgment (no settlement of a judgment is required). The judgment should provide that the notice of claim in the proposed form annexed to the moving papers is deemed timely served upon service of a copy of such judgment, with notice of entry, on the respondent or agency involved.

R. MENTAL HYGIENE ARTICLE 81 GUARDIANSHIP APPLICATION:

Recommendation: A long form judgment for the appointment of a guardian containing details tailored to the circumstances and in compliance with Article 81 is required. The court has developed a standard form that the Justice may complete or may direct the applicant to complete and submit. This form is included in the Forms in Appendix B and is available on our court's website (www.nycourts.gov/supctmanh) together with other Article 81 forms. If the proceeding seeks the appointment of a guardian, the grant or denial of the application disposes of the case and requires a judgment, although a guardianship, if created, can endure for a considerable period. Other motions within the case (e.g., for

authorization to make a gift) would require an order, not a judgment. If an application to appoint a guardian is denied, the court can issue a short form judgment.

S. PENDENTE LITE RELIEF, ENFORCEMENT, AND MODIFICATION (IN MATRIMONIAL PROCEEDINGS), MOTION FOR:

1. Motion denied -- Recommendation: Use short form order (no settlement of an order is required).
2. Motion granted -- Recommendation: Use short form order (no settlement of an order is required). Whether interim maintenance, child support, exclusive occupancy of the marital residence, custody, injunctive relief, counsel's fees, accountant's fees, appraiser's fees, or similar relief is sought, the court may grant such relief as it deems appropriate in a short form order. This is so whether the relief sought is pursued exclusively by the moving party or whether relief is sought in a cross-motion. Similarly, a subsequent motion for enforcement of relief granted and a cross-motion for modification or vice versa (i.e., a motion for modification and a cross-motion for enforcement) should be resolved in a short form order. Often, time is of the essence in providing such relief.

T. PREFERENCE, MOTION FOR A:

Recommendation: Use short form order (no settlement of an order is required). The order should direct that service of a copy of the order with notice of entry be made on the Trial Support Office (Room 158), which administers the trial calendar. See Generally Applicable Administrative and Case Management Considerations at the outset of this Appendix. A motion for a preference is to be made with or after the filing of the note of issue (CPLR 3403 [b]).

U. PRELIMINARY INJUNCTIVE RELIEF, MOTION FOR:

1. Motion denied -- Recommendation: Use short form order (no settlement of an order is required). If an expedited trial is ordered, the court may wish to consider including a directive for a conference so that a schedule for disclosure can be arrived at promptly. Such a directive is advisable in all cases where the preliminary conference has not already been held or scheduled.
2. Motion granted -- Settlement of a preliminary injunction order will often be required so that the details of the relief can be set forth accurately and fully and account can be taken of the requirement (CPLR 6312 [b]) for an undertaking

prior to the granting of a preliminary injunction. If, however, these details can easily and accurately be set out by the court immediately in a short form order by incorporating the standard language contained in the relevant form in Appendix B, a short form order would be appropriate since, although a TRO may have been granted or can be issued in the interim, expeditious action is obviously often needed in these cases.

V. PROTECTION, ORDER OF (IN MATRIMONIAL PROCEEDINGS):

Domestic Relations Law §§ 240 and 252 authorize orders of protection in appropriate circumstances. Expedition is always a critical consideration when orders of protection are at issue. Also, it is important that the orders be clear and unmistakable, especially to police officers who may be called upon to enforce them. Furthermore, in 1995, the Legislature established a Registry of Orders of Protection for all such orders issued in New York State, and in 1996 the penalty for violation of such orders was increased and other changes were made. Accordingly, Justices should now employ the standard form orders of protection that are included in the Forms in Appendix B, which were recently updated. If these forms are not utilized, the incorporation of data into the Registry will be imperiled since the forms are formatted to be read by computer at the Registry. Certain data collection forms must accompany the orders. For more information on this vital subject, consult the court's Operations Manual.

W. REARGUMENT/RENEWAL, MOTION FOR:

No settlement of an order is required in most cases. However, such a motion might result in a complex order if reargument or renewal is granted depending upon the nature of the underlying order.

X. RECEIVER, MOTION FOR APPOINTMENT OF A:

Always direct settlement of an order when the motion is granted as the powers of the receiver need to be spelled out and provision needs to be made for the posting of a surety bond or undertaking. Settlement is unnecessary, however, if a mortgagor attaches a proposed order as part of the motion and there is no opposition or the motion is authorized to be made ex parte. In this event, the proposed receiver might be consulted for any changes or additions that the receiver may need.

Y. REFEREE'S REPORT, MOTION TO CONFIRM/DISAFFIRM:

No settlement of an order is generally required. Upon deciding such a motion, the court should address the underlying motion that was held in abeyance pending the reference to hear and report unless it is mooted by the reference.

Z. REFERENCES TO A SPECIAL REFEREE:

Recommendation: Standard form orders have been developed for a reference to hear and report and a reference to hear and determine. These forms, which are included in Appendix B, contain various provisions designed to meet statutory requirements and to ensure efficiency in the processing of these matters. It is recommended that these forms be used.

The power of the court to order references to determine is limited (e.g., on a long account), although the parties, on their own (or with a little encouragement from the court), may stipulate to have a reference determine many issues (CPLR 4317). In such cases, the order or judgment is signed by the referee and appeal therefrom goes to the Appellate Division.

To expedite proceedings and allow the Special Referee Clerk to calendar the matter at an early date for an appearance in the Special Referee Part for assignment to a Referee, the "Reference" box on the bottom of the gray sheet should be checked by Chambers whenever a reference is being directed.

AA. RESETTLE ORDER, MOTION TO:

1. Motion denied -- Recommendation: Use short form order (no settlement of an order is required).
2. Motion granted -- Recommendation: An order can be settled, but it is not critical that that be done. A form of order is included in Appendix B. The order to be settled must recite that the motion is granted and that "the order dated _____ and entered on _____ [the prior order] is resettled to read as follows," after which the entire prior order, heading and caption included, is set out verbatim and unchanged except for that aspect of said order that precipitated the granting of the motion.

BB. RESTORATION OF CASE TO THE TRIAL CALENDAR A case may be "marked off" or stricken from the trial calendar or unanswered on a clerk's calendar call (CPLR 3404). Such an action, if not restored within one year thereafter, is deemed abandoned and shall be dismissed without costs for neglect to prosecute. The clerk is directed by the Rule to

make an appropriate entry without need for an order.⁶ Rule 3404 cannot be used to mark a case off “the calendar” prior to the filing of a note of issue since the Rule is addressed only to cases that have reached the trial calendar (i.e., in which a note of issue has been filed) and there is, in any event, no pre-note calendar from which the case may be marked off.⁷ If a case is marked off the trial calendar pursuant Rule 3404 it may be restored upon an adequate showing of an excuse for its failure to proceed, that the case is a meritorious one, and, according to various cases, that the defendant has not been prejudiced.⁸ If no such motion is made and the action is deemed dismissed, it appears that the plaintiff, if the statute of limitations has run, can nevertheless commence a new action within six months pursuant to CPLR 205(a). An action will typically be marked off without formal judicial action and thus there will be no occasion for the court to set forth the specific finding of a general pattern of delay required by CPLR 205(a).

CC. SANCTIONS, MOTION FOR:

See COSTS, MOTION FOR.

DD. SEALING ORDER, MOTION FOR:

1. Motion denied -- Recommendation: Use short form order (no settlement of an order is required).
2. Motion granted -- Recommendation: Use short form order (no settlement of an order is required). A sealing order should be an order separate from other orders. If a motion seeks a multiplicity of relief, the court should issue two orders: one directed to the sealing aspect and one to the balance of the motion. The order should state that a copy is to be served on the County Clerk. A deadline for such service should be provided since the file will remain open until that is done. If the situation presented is serious enough, the court should have the sealing order “walked through,” that is, the court officer or other appropriate person should carry the file from Chambers to the Motion Support Office (Room 119) for immediate entry in the computer and then carry it to the County Clerk (Law and Equity [Room 141B]), who

⁶ See Okun v. Tanners, 11 NY3d 762, 867 NYS2d 25 (2008).

⁷ See Walker v. City of New York, 46 AD3d 278, 847 NYS2d 173 (1st Dept 2007); Lopez v. Imperial Delivery Service Inc., 282 AD2d 190, 725 NYS2d 57 (2d Dept 2001); Johnson v. Sam Minskoff & Sons, 287 AD2d 233, 735 NYS2d 503 (1st Dept 2001).

⁸ Siegel, New York Practice § 376, at 632.

must be alerted to the existence of the sealing order. Unless the order is brought to the attention of County Clerk staff, the file will go unsealed. The order must also identify persons who may have access to the file despite the sealing, usually the parties, their counsel and persons authorized by those attorneys in writing (e.g., paralegals). Otherwise, the County Clerk will allow no one to inspect the file without a court order. The order must, of course, comply with Part 216 of the Uniform Rules for the Trial Courts.

EE. SECURITY FOR COSTS, MOTION FOR:

Recommendation: Use short form order (no settlement of an order is required). The order should direct payment into court of the sum required (usually \$500, the maximum in New York City, except where otherwise specifically ordered by the court [CPLR 8503]) to be applied to the payment of costs, if any, awarded against the plaintiff, or the posting with the Clerk of an undertaking as security for costs, to be done within 30 days from the date of the order. Payment to the County Clerk must be made in cash, by credit card (Mastercard or Visa), certified check, or bank check; the checks should be payable to the New York County Clerk. The order should also direct that all further proceedings except to review the order be stayed pending compliance (CPLR 8501-8502).

FF. SEIZURE OF CHATTEL (ARTICLE 71), MOTION FOR:

Recommendation: Since this is a technical order and an undertaking is mandatory (CPLR 7102 [e]), it is best that the settlement of an order be directed. Nevertheless, Appendix B contains a form that may provide guidance.

GG. SEVER, MOTION TO:

Recommendation: Whether granted or denied, use short form order (no settlement of an order is required). If the motion is granted, the short form order should provide for service of a copy with notice of entry upon the Clerk and the Trial Support Office (Room 158). See Generally Applicable Administrative and Case Management Procedures at the outset of this Appendix.

HH. SUMMARY JUDGMENT (CPLR 3212 AND 3213), MOTION FOR:

I. Motion denied -- Recommendation: Use short form order (no settlement of an order is required). Note that if a motion

made pursuant to CPLR 3213 is denied, the moving and answering papers are deemed the complaint and answer, respectively, unless the court directs the service of formal pleadings. CPLR 3213. If the court so directs, a deadline for service should be included.

2. Motion granted -- Recommendation: Generally use short form order, except in foreclosure cases. If a money judgment is being awarded, the Justice should direct in the ordering language that the Clerk enter judgment in favor of the movant in a stated amount and, if appropriate, with pre-decision interest at a rate and from a date set by the court in the order (CPLR 5001), plus costs and disbursements. If the motion is granted as to some parties only or in part (e.g., as to some but not all causes of action), the court will need to determine whether a judgment should be entered or not. If no party is being released from the case by the decision, then a judgment may not be appropriate. See the discussion of this topic in Part I of the *Guide*. If the Court concludes that it makes sense and advances justice for a judgment to be entered at this point, a clear statement will be required of the court indicating which portions of the case have been resolved and which not, and in favor of which parties and against which other parties, and a clear direction provided to the Clerk as to exactly what judgment he is to enter with respect to each claim and party. Where a judgment is to be entered on a claim or claims, but one or more remain, language is required severing the claims resolved from those remaining (CPLR 3212 [e]).

II. VENUE, MOTION TO CHANGE:

1. Motion denied -- Recommendation: Use short form order (no settlement of an order is required).

2. Motion granted -- Recommendation: Use short form order (no settlement of an order is required). The order should direct the Clerk to transfer the papers on file to the Clerk of the transferee court after service of a certified copy of the order and payment of appropriate fees. Sometimes the change of venue will involve the transfer of a case out of our court to another court. Other times the transfer will be from another court to our court. Appendix B contains forms covering both situations.

JJ. WITHDRAW AS ATTORNEY, MOTION TO:

Recommendation: Use short form order (no settlement of an order is required). The order should provide for a stay of proceedings to comply with the notice provisions of CPLR 321. Consideration should be given as to whether a

mechanism to resolve promptly a retaining lien issue (e.g., a provision for a bond) is required by the circumstances.

APPENDIX B

APPENDIX OF FORMS

APPENDIX OF FORMS

GUIDE TO THE FORM OF ORDERS AND JUDGMENTS (3d ed.)

The forms that make up this Appendix of Forms to the *Guide to the Form of Orders and Judgments (3d ed.)* fall into two categories: (i) certain printed forms, and (ii) other forms, containing ordering language only, that have been prepared for inclusion in the *Guide*. The subject of each of the latter group of forms, which constitute the large majority of this Appendix, is identified in the lower left-hand corner of the form; each such form is listed here in alphabetical order by subject. Accompanying the *Guide* is a computer disk on which these forms in this same format are reproduced.

A. <u>PRINTED FORMS</u>	<u>Form No.</u>
<u>Discovery Scheduling Forms</u>	
Preliminary Conference Order - - City	1
Preliminary Conference Order - - Commercial	2
Preliminary Conference Order - - General	3
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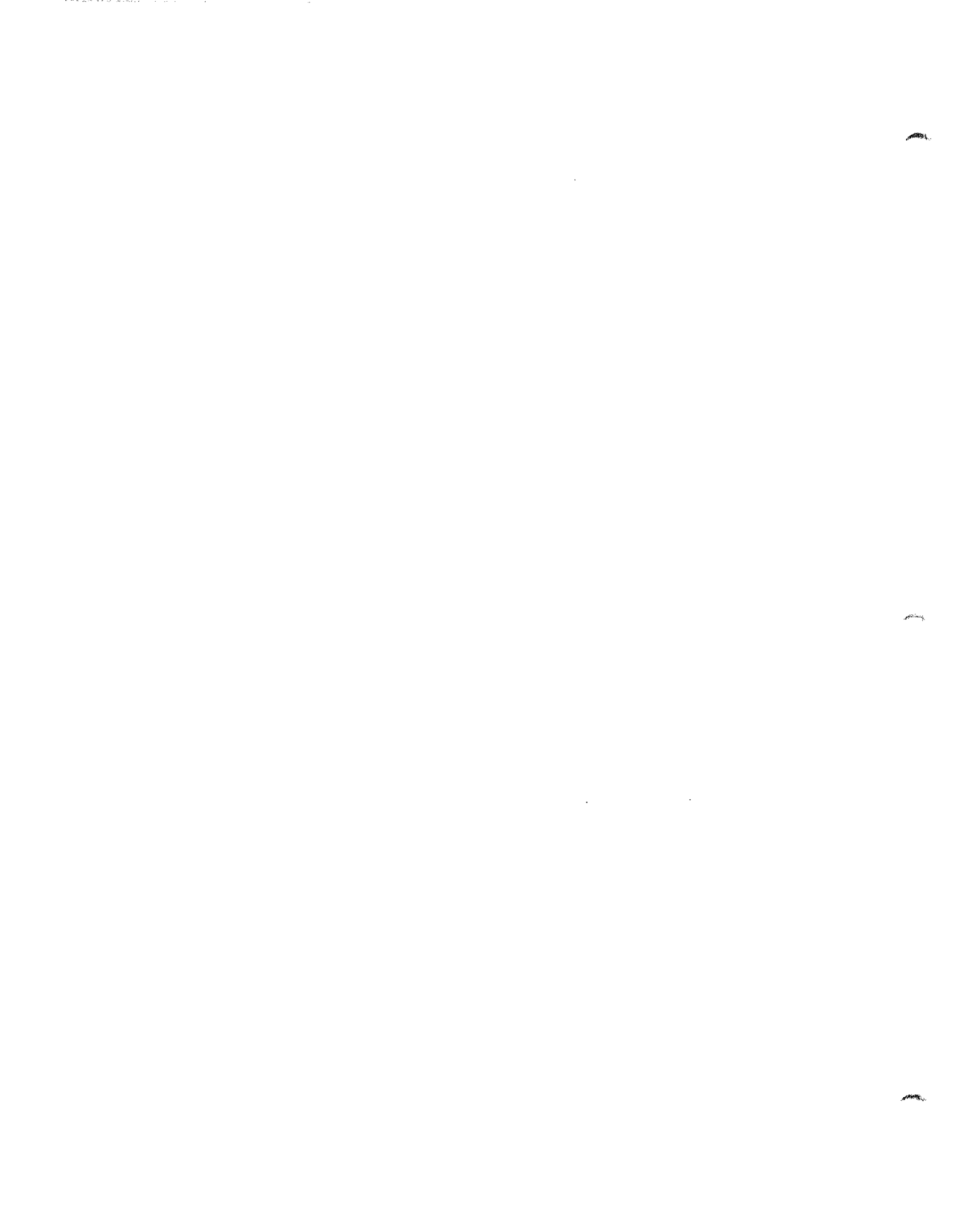
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SUPREME COURT OF THE STATE OF NEW YORK
New York County Courthouse
60 Centre Street
New York, New York 10007

DIFFERENTIATED CASE MANAGEMENT PROGRAM

PRESENT: SMITH, JUSTICE

Part 62 -DCM

Feb 05, 2010

TO: CORPORATION COUNSEL
100 CHURCH STREET, 4TH FLOOR
NEW YORK, NEW YORK 10007
For Defendant

Index Number:
C.C.T.T. No.:

PLAINTIFF

v

DEFENDANT

CASE SCHEDULING ORDER - CITY CASES *

A request for a preliminary conference having been filed or the court having taken action on its own initiative,

IT IS HEREBY ORDERED that this case is designated a Standard matter (Uniform Rule 202.19 (b) and disclosure not already furnished shall proceed in accordance with the deadlines set forth below. However, a party claiming to be prejudiced by this order may seek a modification of the Standard designation or the schedule by contacting the clerk at the Case Management Office (by fax 212-374-1753, or e-mail to YCLELAND@courts.state.ny.us) by **20 DAYS FROM TODAY'S DATE**. That Office will provide an opportunity to the parties to be heard on the request at a court conference and the court will take such action as is appropriate. Failure to contact the office before the conference date shall constitute a waiver of any objection to the designation or schedule. The parties shall not contact the Justice assigned.

1. Mandatory Notification: The attorney who receives a copy of this Order shall, within ten days from receipt, (a) transmit a copy to counsel for all parties who have appeared in the case and to all self-represented litigants and (b) return to the Case Management Office an original by mail or a copy by fax of an affidavit of service or a letter setting forth the dates the parties were served.
2. Insurance Coverage: Within 30 days from the date of this order, defendant City of New York and any other defendant represented by Corporation Counsel, shall state in writing whether it is self-insured or covered by an insurance policy, and all defendant(s), including the City (if applicable), shall furnish to all parties evidence of primary and excess coverage and Certificate of insurance.
3. Bill of Particulars: Any party seeking particulars (including as to affirmative defenses, if any) shall serve a demand for a bill within 21 days from the date of this order. A verified bill of particulars shall be served by any party to whom it is directed within 60 days from the date of this order.

* This is a conformed copy. The original has been signed and has been or will be filed with the County Clerk

4. Medical Reports and Authorizations:

(a) Plaintiff(s) shall provide authorizations to obtain copies of the actual records of all treating and examining health care providers, including diagnostic tests, x-rays, MRIs, EMGs, CT Scans, for injuries specified in the bill of particulars, within 30 days from the date of this order.

(b) Plaintiff(s) shall provide an authorization for collateral source information, if any, within 30 days from the date of this order.

(c) If plaintiff is claiming a loss of income or wages, within 30 days from the date of this order, authorizations for W-2 forms or employment records shall be provided for the year of, year before and year after the date of the alleged accident, as well as for the period of time lost from work as a result of the alleged accident, or IRS records if provided by law.

(d) If plaintiff was a student at the time of the alleged accident, plaintiff shall provide an authorization for school attendance records for the period of time lost from school as a result of the alleged accident, within 30 days from the date of this order thereof.

(e) For cases alleging police assault or false arrest, plaintiff(s) shall, within 30 days from the date of this order, submit an unsealing order, to be "so ordered" by this Court, to obtain a copy of the Criminal Court File. Plaintiff(s) shall also serve the "so ordered" unsealing order upon the Criminal Court and provide Corporation Counsel with a copy of the Criminal Court file provided by that Court to plaintiff(s) in response to said order, within 30 days from the date of this order thereof.

5. Depositions:

(a) The depositions of all parties shall take place on MARCH 29, 2010 at 10:00 a.m. in the Office of the Corporation Counsel, 52 Duane Street, 4th Floor, New York, New York. **Absent prior court approval, any EBT which is not held as scheduled in this order must be immediately rescheduled for a date which is not later than four (4) weeks after the original date.**

(b) Defendant(s)' right to a further deposition of plaintiff(s) is reserved as to any new injuries or damages claimed in any supplemental bill of particulars served by plaintiff(s) following the plaintiff's deposition.

6. PHYSICAL EXAMINATION:

(a) A physical examination of the plaintiff (s) shall be conducted within 45 days after completion of examination before trial of the plaintiff(s).

(b) A copy of the physician's report shall be furnished to plaintiff(s) within 45 after the examination.

(c) Defendant(s)' right to a further physical is reserved as to any new injuries claimed in any supplemental bill of particulars served by plaintiff(s).

7. Other Disclosure:

(a) All parties shall provide the names and addresses of any witnesses to the occurrence and notice witnesses; accident reports; party statements; and photograph taken in the ordinary course of business and/or to be presented at trial, within 90 days from the date of this order.

(b) All parties shall supply expert witness disclosure pursuant to CPLR.

(c) All defendants other than those listed in Item 7(d) hereof shall, within 90 days from the date of this order, provide to all parties copies of maintenance and repair records for 2 years prior to and including the date of the occurrence.

(d) The City of New York and/or other defendants represented by Corporation Counsel, if any, shall provide the following Additional Disclosure to all parties within 90 days from the date of this order, subject to the date and location specified in the notice of claim [comply with below as applicable]:

ADDITIONAL DISCLOSURE ITEM 7(d)

Cases involving allegations of police misconduct:

The City will provide the following within 90 days after receipt from plaintiff of an authorization and "so-ordered" unsealing order described in 4(e) above.

- i. Complaint Report;
- ii. Complaint Follow Up Report;
- iii. Arrest Report;
- iv. Memo Book entries for incident in question;
- v. On-line Booking Sheet;
- vi. Copies of the applicable Patrol Guide shall be made available by the City, for inspection and copying within 90 days from the date of this order.
- vii. Copies of all 911 tapes, if still in existence, and of all sprint printouts for any 911 calls and radio transmissions related to the events of the action.

Inmate assault cases (Department of Correction (DOC):

- i. Department of correction incident report, subject to redaction of privileged information, including any information regarding criminal acts of other inmates and/or personal information regarding DOC employees;
- ii. Injury to inmate report (within 90 days after receipt of an authorization from plaintiff);
- iii. In camera review of redactions to be made upon request of plaintiff's attorney.

Premise liability Cases:

- i. Departmental accident/incident report from respective City agency;
- ii. For non transitory conditions (including recurrent conditions), maintenance and repair records and written complaints regarding the condition complained of for 18 months prior to and including the date of occurrence.
- iii. For transitory conditions, maintenance records and written complaints regarding the condition complained of for one month prior to and including the date of the occurrence.
- iv. If applicable, lease and/or sublease for the City-owned building.

Board of Education Cases:

- i. Board of Education Comprehensive Accident Report for the occurrence, subject to redaction of privileged information pursuant to the Family Education and Privacy Act, 20 U.S. Code Ch 31. Extent and nature of the redaction, if questioned, are subject to motion under the statute.
- ii. Witness statements, subject to redaction of privileged information pursuant to the Family Education and Privacy Act. Extent and nature of the redaction, if questioned, are subject to motion under the statute.
- iii. For non-transitory conditions (including recurrent conditions), maintenance and repair records, written complaints and, to the extent applicable, related contracts for the situs of plaintiff's accident, regarding the condition complained of for 18 months prior to and including the date of occurrence.
- iv. For transitory conditions, maintenance records and written complaints regarding the condition complained of for three months prior to and including the date of the occurrence.

- (e) Surveillance videos to be provided in accordance with CPLR 3101(i).
- (f) Any party who wishes to obtain prior notices of claim, pursuant to GML'50-g, may do so by contacting The Division Chief of Claims Support at (212) 669-4329 to set up an appointment to search the index maintained at 1 Centre Street, New York, New York.
- (g) The New York City Police Department no longer maintains MV-104s beyond 30 days for accidents occurring after April 15, 1995.
- (h) All searches shall be conducted based upon the date and location as described in the notice of claim.
8. Third-party actions/Impleader: Shall be completed within 45 days of the last Examination Before Trial.
9. Compliance Conference: Shall be held on MARCH 18, 2010 in room 103 located at 80 Centre Street, NYC at 2:00 p.m.
10. Note of Issue Date: Shall be determined at a future conference.
11. Plaintiff shall within fifteen days after the note of issue is filed and receipt of a request by defense counsel provide HIPAA compliant authorizations to defense counsel for medical records, to be attached to subpoenas to have those records sent to the courthouse. If there is any dispute, it shall be promptly brought to the attention of the case management coordinator for resolution.
12. Summary Judgment motions shall be filed no later than 60 days after filing the Note of Issue.

If disputes arise about compliance with this Order, the parties shall promptly confer in an effort to resolve them. If that effort fails, the parties or any party aggrieved shall, in advance of deadlines and prior to initiating motion practice, bring the dispute to the attention of the Case Management Office (not the assigned Justice), which will schedule a conference shortly thereafter to resolve the dispute. The parties may adjourn the deadlines set forth in items 5 through 8 above provided that all disclosure called for by this Order is furnished prior to the compliance conference set forth in item 9. The date of the compliance conference may not be adjourned without advance permission of the court. Absent good cause, failure to comply with this Order may result in the imposition of penalties upon the offending party and, where warranted, upon counsel. Such penalties may include waiver of the discovery, preclusion, dismissal, striking of an answer, costs, sanctions, and attorney's fees.

This constitutes the Order of this Court.

Date Feb 05, 2010

Justice: SMITH, KAREN S. (DCM)J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
•
Plaintiff(s)

- against-

Defendant(s)
-----X

Present: _____
Justice
IAS _____
Index No. _____
DCM Track: _____

**PRELIMINARY CONFERENCE
ORDER
COMMERCIAL DIVISION**

APPEARANCES:
Plaintiff(s): _____

Defendant(s): _____

It is hereby ORDERED that disclosure shall proceed as follows:

(1) BILL OF PARTICULARS (See CPLR 3130(1)):
(a) Demand for a bill of particulars shall be served by _____ on or before _____
(b) Bill of particulars shall be served by _____ on or before _____

(2) DOCUMENT PRODUCTION:
(a) Demand for discovery and inspection shall be served by _____ on or before _____
(b) Response to demand shall be served by _____ on or before _____

(3) INTERROGATORIES:
(a) Interrogatories shall be served by _____ on or before _____
(b) Answers to interrogatories shall be served by _____ on or before _____

(4) DEPOSITION ON ORAL QUESTIONS:
 Plaintiff(s) Defendant(s) All Parties
shall be held _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----X

Present: _____
Justice

Plaintiff(s)

IAS _____

- against-

Index No. _____

Defendant(s)

**PRELIMINARY CONFERENCE
ORDER**

-----X

APPEARANCES:

Plaintiff(s): _____

Defendant(s): _____

It is hereby ORDERED that disclosure shall proceed as follows:

(1) BILL OF PARTICULARS (See CPLR 3130(1)):

(a) Demand for a bill of particulars shall be served by _____ on or before _____.

(b) Bill of particulars shall be served by _____ on or before _____.

(2) DOCUMENT PRODUCTION:

(a) Demand for discovery and inspection shall be served by _____ on or before _____.

(b) Response to demand shall be served by _____ on or before _____.

(3) INTERROGATORIES:

(a) Interrogatories shall be served by _____ on or before _____.

(b) Answers to interrogatories shall be served by _____ on or before _____.

(4) DEPOSITION ON ORAL QUESTIONS:

Plaintiff(s) Defendant(s) All Parties

shall be held _____

(7) **End Date for All Disclosure:**

(8) **Impleader:** Shall be completed on or before _____.

(9) **Compliance Conference:** Shall be held on _____.

(10) **Motions:** Any dispositive motion(s) shall be made on or before _____.

(11) **Note of Issue:** _____ shall file a note of issue/certificate of readiness on or before _____. A copy of this order, an affirmation stating that the terms of the order have been complied with, and an affidavit of service of the affirmation and note of issue shall be served and filed with the note of issue on or before said date.

FAILURE TO COMPLY WITH ANY OF THESE DIRECTIVES MAY RESULT IN THE IMPOSITION OF COSTS OR SANCTIONS OR OTHER ACTION AUTHORIZED BY LAW.

SO ORDERED:

Dated:

J.S.C.

ADDITIONAL DIRECTIVES

In addition to the directives set forth above, it is further ORDERED as follows:

Dated:

SO ORDERED:

J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF**

-----X

Plaintiff,

Index No.: _____

- against -

Part No.: _____

Defendant.

-----X

**PRELIMINARY CONFERENCE STIPULATION/ORDER
CONTESTED MATRIMONIAL**

PRESIDING: _____

Justice of the Supreme Court

The parties and counsel have appeared before this Court on _____ at a preliminary conference on this matter held pursuant to 22 NYCRR §202.16.

The Court has received a copy of:

Date Filed or To Be Filed

Plaintiff

Defendant

(1) A sworn statement of net worth as of date of commencement of the action.

(2) A signed copy of each party's attorney's retainer agreement:

A. BACKGROUND INFORMATION:

(1) Attorneys for Plaintiff:

Attorneys for Defendant:

Phone: _____

Phone: _____

Fax: _____

Fax: _____

Email: _____

Email: _____

(2) Summons: Date filed: _____ Date served: _____

(3) Date of marriage: _____

(4) Name(s) and date(s) of birth of child(ren):

(5) There is _____ or is not _____ an Order of Protection issued against _____
_____ from _____ Court. The order is dated
_____ and is / is not currently outstanding. Attach copy of order.

(6) The following other orders are outstanding:
Order: _____
Court Issuing: _____
Issue Addressed: _____
Attach copy of order.

Order: _____
Court Issuing: _____
Issue Addressed: _____
Attach copy of order.

(7) _____ is requesting a translator in the _____
language.

(8) Premarital, Marital or Separation Agreements asserted:
State the nature of each agreement and the date of the agreement _____

Any challenge shall be asserted no later than _____.

B. GROUNDS FOR DIVORCE:

The issue of fault is resolved _____ or unresolved _____.

If the issue of grounds is **resolved**: The parties agree that _____ will
proceed on an uncontested basis to obtain a divorce on the grounds of _____.

If the issue of grounds is **unresolved**: A trial of this issue shall be held on _____
_____, and a jury *is / is not* requested.

C. CUSTODY:

- (1) The issue of custody is resolved _____ unresolved _____.
- (2) The issue of parenting time is resolved _____ unresolved _____.
- (3) The issues relating to decision making are resolved _____ or unresolved _____.

If the issues of custody, including parenting time and decision-making, are resolved:
The parties are to submit a stipulated parenting plan no later than _____.

If any issue related to custody, including parenting time and decision-making is unresolved: Each party is to serve and submit a proposed parenting plan no later than _____.

After receipt of the parenting plans, if the parties do not notify the Court that all issues related to custody are resolved, a conference shall be held on _____ at which time the Court shall determine the need for an attorney for the child / guardian ad litem and/or a forensic evaluation and set a schedule for resolving all issues relating to custody.

Any appointment of an attorney for the child / guardian ad litem or forensic evaluator shall be by separate order which shall designate the attorney for the child appointed, the manner of payment, source of funds for payment and each party's responsibility for such payment.

D. FINANCIAL:

- (1) Maintenance is resolved _____ unresolved _____
- (2) Child Support is resolved _____ unresolved _____
- (3) Equitable Distribution is resolved _____ unresolved _____

E. OTHER:

List all other causes of action and ancillary relief issues that are unresolved.

Any issues not specifically listed in this Stipulation as unresolved may not be raised in this action unless good cause is shown.

Parent Education:

The Court: _____ has provided information as to parent education.
_____ has taken no action with respect to parent education.
_____ hereby orders the parties to attend parent education.

Alternate Dispute Resolution/Mediation:

The parties *are/are not* aware of the existence of alternate dispute resolution methods of resolving their matrimonial action, including, but not limited to, mediation and collaborative lawyering.

F. PENDENTE LITE RELIEF:

With respect to *pendente lite* applications, the Court hereby directs or the parties stipulate that:

G. DISCOVERY:

1. Preservation of Evidence:

- (a) **Financial Records:** Each party shall maintain all financial records in his or her possession through the date of the entry of a judgment of divorce.
- (b) **Electronic Evidence:** For the relevant periods relating to the issues in this litigation, each party shall maintain and preserve all electronic files, other data generated by and/or stored on the party's computer system(s) and storage media (i.e. hard disks, floppy disks, backup tapes), or other electronic data. Such items include, but are not limited to, e-mail and other electronic communications, word processing documents, spreadsheets, data bases, calendars, telephone logs, contact manager information, internet usage files, offline storage or information stored on removable media, information contained on laptops or other portable devices and network access information.

2. **Document Production:**

(a) No later than 45 days after the date of this Order, the parties shall exchange the following records for the following periods:

Check if Needed	Time Period	
_____	_____	Federal, state and local tax returns, including all schedules, K-1's, 1099's, W-2's and similar data.
_____	_____	Credit card statements for all credit cards used by a party.
_____	_____	Joint checking account statements, checks and register.
_____	_____	Individual checking account statements, checks and register.
_____	_____	Brokerage account statements.
_____	_____	Savings account records.
_____	_____	Other: (specify) _____

Absent any specified time period, records are to be produced for the **three years** prior to the commencement of this action through the present. If a party does not have complete records for the time period, the party shall provide a written authorization to obtain such records directly from the source within five days of presentation. Any costs associated with the use of the authorization shall be paid by _____ **OR** reserved for the Court once the amount is determined.

No later than _____, the parties shall notify the Court of all items to be provided above that have not been provided. Failure to comply with the scheduled discovery may result in sanctions, including the award of legal fees.

(b) No later than _____, a notice for discovery and inspection shall be served by plaintiff.

(c) No later than _____, a notice for discovery and inspection shall be served by defendant.

3. **Other Discovery:**

		Plaintiff	Defendant
(a)	Interrogatories	Shall be served no later than _____	_____
(b)	Party Depositions	Shall be completed no later than _____	_____
(c)	3rd-Party Depositions	Shall be completed no later than _____	_____
(d)	Other _____		

Compliance with discovery demands shall be on a timely basis pursuant to the CPLR. **Failure to comply may result in sanctions, including the award of legal fees.**

H. EXPERTS

1. Valuation/Financial Experts and Other Experts:

Check if experts are required to value any of the following:

- (1) Deferred compensation _____
- (2) Retirement assets _____
- (3) Business interest _____
- (4) Professional practice _____
- (5) License/degree _____
- (6) Art, antiques, personal
property, jewelry _____
- (7) Separate property _____
- (8) Residential real estate _____
- (9) Commercial real estate _____
- (10) Stock options, stock plans
or other benefit plan _____
- (11) Intellectual property _____
- (12) Other _____

Identify: _____

The date of valuation shall be _____ for items
_____ and shall be the date of
commencement of this action for items _____.

2. Neutral Experts:

(a) The Court shall appoint a neutral expert for items _____
_____ listed above. Appointment of the expert shall be pursuant
to a separate order which shall designate the neutral expert, what is to be valued,
the manner of payment, the source of funds for payment, and each party's
responsibility for such payment.

(b) The parties may suggest names for the Court to consider appointing. Said
names shall be submitted by letter no later than _____.

(c) The parties shall notify the Court no later than _____ as to
whether any other neutral experts are required.

3. Experts to be Retained by a Party:

Each party shall select his/her own expert with respect to items _____ listed above. The expert shall be identified to the other party by letter with their qualifications and retained no later than _____. If a party requires fees to retain an expert and the parties cannot agree upon the source of the funds, an application for fees shall be made no later than _____. Any expert retained by a party must

represent to the party hiring such expert that he or she is available to proceed promptly with the valuation.

Expert reports are to be exchanged by _____. Absent any date specified, they are to be exchanged 60 days prior to trial. Reply reports are to be exchanged 30 days after service of an expert report.

4. Additional Experts:

If a net worth statement has not been served prior to this order or a party cannot identify all assets for valuation or cannot identify all issues for an expert, the party promptly shall notify the other party as to any valuation or as to which an expert is needed. If the parties cannot agree upon a neutral expert or the retention of individual experts, either party may notify the Court for appropriate action. Timely application shall be made to the Court if assistance is necessary to implement valuation or the retention of an expert.

I. CONFIDENTIALITY/NON-DISCLOSURE AGREEMENT:

1. Plaintiff / Defendant anticipates the need for a Confidentiality/Non-Disclosure Agreement as to the following issues: _____

2. The party demanding the Agreement shall prepare and circulate the proposed agreement among the parties involved. If the parties cannot agree, or fail to timely respond, the demanding party shall promptly notify the Court. The failure to promptly seek a confidentiality agreement may result in its waiver.

J. HEALTH INSURANCE COVERAGE NOTICE:

I fully understand that upon the entrance of the divorce agreement, I may no longer be allowed to receive health coverage under my former spouse's health insurance plan. I may be entitled to purchase health insurance on my own through a COBRA option, if available, otherwise I may be required to secure my own health insurance coverage.

FURTHER ORDERS:

- 1. **The parties** and **their attorneys** shall appear at a compliance conference to be held on _____ at _____.
- 2. A Note of Issue shall be filed on or before _____. Failure to file a Note of Issue as directed herein may result in dismissal pursuant to CPLR 3216.

THE TRIAL IN THIS MATTER SHALL BE HELD ON:

_____ at _____ am / pm

Plaintiff Defendant

Attorney(s) for Plaintiff Attorney(s) for Defendant

Dated:

SO ORDERED:

Justice of the Supreme Court

INSTRUCTIONS: PLEASE TYPE OR PRINT NEATLY MAKING SURE ALL WRITING IS CLEAR AND LEGIBLE ON EACH COPY

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X IAS PART _____

HON. _____

Plaintiff(s)

-against-

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____

**Preliminary Conference
Stipulation and Order
For Medical, Dental and
Podiatric Malpractice
Actions**

INDEX NO: _____

RJI DATE: _____

Defendant(s)

-----X

BRIEF CASE DESCRIPTION:

APPEARANCES:

Plaintiff:	
Firm:	
By:	
Phone/Fax:*	
E-mail:*	

* not for service purposes

Defendant 1:	
Firm:	
By:	
Phone/Fax:*	
E-mail:*	

* not for service purposes

Defendant 2:	
Firm:	
By:	
Phone/Fax:*	
E-mail:*	

* not for service purposes

Defendant 3:	
Firm:	
By:	
Phone/Fax:*	
E-mail:*	

* not for service purposes

If there are Defendants # 4 or # 5 or others in this case, please insert pages for additional parties.

THIS ACTION having come on for a Preliminary Conference pursuant to Section 202.56 of the Uniform Rules of the New York State Trial Courts in order to establish a schedule for the completion of disclosure and other related matters. The parties stipulate and it is hereby:

ORDERED that the action is entitled to a preference pursuant to CPLR 3403(a)(5), and it is further

ORDERED that there is to be timely compliance with each of the items below within the time set forth unless the time is extended by a *“so-ordered”* OR court-approved written stipulation.

I. INSURANCE INFORMATION

Insurance coverage information shall be provided in writing with respect to each defendant for all applicable periods within 30 (thirty) days as follows [check applicable spaces:]

- ___ Primary coverage, including insurance carrier, policy number(s) and policy coverage periods;
- ___ Excess coverage, including insurance carrier, policy number(s) and policy coverage periods; and
- ___ Declaration sheets.

II. BILL OF PARTICULARS

(a) A further Verified Bill of Particulars shall be served upon each defendant within 20 (twenty) days as to the following items:

(b) Defendant(s) shall serve upon plaintiff a Verified Bill of Particulars as to the affirmative defenses and/or counterclaims in the Answer (when demanded) within 20 (twenty) days.

III. MEDICAL RECORDS AND AUTHORIZATIONS

(a) HIPAA-compliant medical authorizations, *if not already provided with the Bill of Particulars*, shall be furnished to defendant(s) within 20 (twenty) days as to the following health care providers:

(b) Following plaintiff's deposition, plaintiff shall provide HIPAA-compliant authorizations for appropriate records within 10 (ten) days of receipt of a written request from the defendant(s).

(c) Medical records shall be furnished by the defendant(s) within 30 (thirty) days as follows [check where applicable, and identify specifically]:

1. ___ Office records, including reports and correspondence. _____
 2. ___ Hospital chart. _____
 3. ___ Billing records. _____
 4. ___ Autopsy report. _____
 5. ___ Radiology film/report. _____
 6. ___ Curriculum vitae of defendant(s). _____
 7. ___ Hospital rules and regulations. _____
 8. ___ Other. _____
-

(d) If a medical record to be supplied by a defendant is not available, within 30 (thirty) days, an affidavit shall be supplied by defendant, or by a records custodian with personal knowledge, which shall set forth a statement concerning the customary record-keeping practices of the physician/hospital, and the date, nature and location of the search conducted, including all efforts undertaken to locate such records.

(e) If the records described in paragraph (d) above are subsequently located, they shall be promptly supplied to all parties. Any party who fails to produce such items more than 30 (thirty) days after they are located but, in any event, no later than 30 (thirty) days prior to trial shall be precluded from introducing the items into evidence, unless good cause is demonstrated.

IV. DEPOSITIONS

- ★ **All dates listed below are dates certain and may *NOT* be adjourned unless the time is extended by a "so-ordered" OR court-approved written stipulation.**
- ◆ **Inability to obtain medical records prior to the deposition dates shall *NOT* be cause for adjournment of the deposition. If the records subsequently obtained reveal the need for additional information, a further limited deposition may be held by agreement of the parties or by Order of the Court.**

(a) Dates:

Plaintiff(s) on or before: _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

Defendant _____ on or before _____

▶▶ THE DEPOSITION OF EACH DEFENDANT SHALL BE CONDUCTED ON THE DATE SET FORTH ABOVE EVEN THOUGH AN EARLIER SCHEDULED DEPOSITION OF ANOTHER DEFENDANT WAS NOT CONDUCTED.

(b) Deposition of Institutional Defendant(s):

Within 30 (thirty) days after plaintiff's deposition, plaintiff shall serve upon counsel for any institutional defendant(s) a demand for the identification of no more than 5 (five) health care providers who are referred to, or made entries, in the medical records. Within 20 (twenty) days of service of the demand, the institutional defendant(s) shall provide the full name and employment status of each of these individuals, and, if not under the institution(s)' control, the last known address of each individual. Within 5 (five) business days thereafter, plaintiff shall designate the first witness under the institution(s)' control to be deposed and the institutional defendant(s) shall produce said witness. Plaintiff shall then designate additional witnesses under defendant(s)' control for deposition within 5 (five) business days after said EBT. If the institutional defendant(s) do not voluntarily produce the additional requested witnesses within 20 (twenty) days of plaintiff's designation, plaintiff may seek an order compelling additional depositions pursuant to statute.

All of these individuals shall be deposed on or before _____.

(c) Non-Party Witness Depositions:

Plaintiff is to advise defendant(s) within 30 (thirty) days of this Preliminary Conference Order whether the following non-party witnesses will be produced for deposition voluntarily, or whether a subpoena will be necessary. If the latter, plaintiff is to provide the witnesses' last known addresses within 30 (thirty) days of this Stipulation and Order.

Name of Non-Party Witness: _____

Name of Non-Party Witness: _____

(d) Time and Place:

Plaintiff(s)' deposition(s) shall be held at _____, commencing at _____ (a.m.) (p.m).

Defendant(s)' deposition(s) shall be held as follows [List the time and place for each deposition]:

(e) Objections:

- ALL questions asked at any deposition must be answered UNLESS they (a) infringe upon a privilege, (b) bear SOLELY on the negligence of a co-defendant and NOT in any way on the potential negligence of the deponent, or (c) are palpably irrelevant.
- If a party makes an objection as to *form*, the objector shall immediately and succinctly indicate the nature of the defect so as to permit correction. In any event, the witness shall answer the question.
- Depositions shall not be interrupted for an attorney-deponent conference.

- Counsel for the deponent shall NOT engage in coaching during the deposition and shall NOT suggest answers to questions (e.g. "If you know. . ."; "If you remember . . .").

V. PHYSICAL EXAMINATIONS

Defendant(s) who wishes to conduct a physical or mental examination pursuant to CPLR 3121 shall designate in writing an examining physician or other specialist within 30 (thirty) days of plaintiff's deposition. The examination of the plaintiff must be conducted at least 30 (thirty) days before the filing of the Note of Issue.

Specialty: _____

Defendant(s) shall serve upon all parties written reports of any examining physician within 60 (sixty) days after the examination, and at least 30 (thirty) days before trial. Pursuant to CPLR 3121, plaintiff shall provide defendant(s) with a written report by any non-treating examining physician within 60 (sixty) days after an examination, and at least 60 (sixty) days before trial.

VI. OTHER DISCLOSURE *

(a) Witnesses: Parties shall exchange names and addresses of all FACT WITNESSES concerning liability and/or damages (other than expert witnesses) no later than 60 (sixty) days before trial. Parties shall also exchange adverse party statements within that same period.

(b) Photographs and Videotapes: Parties shall exchange all photographs and/or videotapes within 60 (sixty) days after their creation and/or availability but not less than 30 (thirty) days before trial absent a showing of good cause.

(c) Employment: If loss of earnings is claimed, authorizations for plaintiff's employment records (including W-2's, 1099's and/or income tax returns) for a period of ___ years before the claimed malpractice and continuing to date, shall be provided within 30 (thirty) days.

(d) Collateral Sources: Plaintiff shall provide authorizations for the following collateral source providers within 30 (thirty) days:

(e) Discovery Notices: Responses to the following outstanding Discovery and Inspection Notices shall be furnished within 30 (thirty) days:

* This disclosure demand shall be considered ongoing and continuous. If requested items subsequently become available, they are to be supplied immediately upon receipt of the same to all parties to the action.

XII. FURTHER DIRECTIVES: It is

ORDERED that failure to comply with the terms of this STIPULATION AND ORDER may result in sanctions as authorized by CPLR 3126, and it is further

ORDERED that a compliance conference shall be held on _____ at _____ (AM) (PM), and it is further

ORDERED that **ALL prior discovery** orders of this court be brought to any and all subsequent conferences.

Dated: _____

SO STIPULATED:

Plaintiff: _____

Printed Name: _____

Firm Name: _____

Defendant # 1 _____

Printed Name: _____

Firm Name: _____

Defendant # 2 _____

Printed Name: _____

Firm Name: _____

Defendant # 3 _____

Printed Name: _____

Firm Name: _____

Defendant # 4 _____

Printed Name: _____

Firm Name: _____

Defendant # 5 _____

Printed Name: _____

Firm Name: _____

SO ORDERED:

JUSTICE OF THE SUPREME COURT

Supreme Court of the State of New York
New York County Courthouse
80 Centre Street
New York, New York 10013
DIFFERENTIATED CASE MANAGEMENT PROGRAM

PRESENT: HON. PAUL WOOTEN

PART 22-DCM

Feb 04, 2010

To: KELLY RODE & KELLY, ESQS. (For Defendant)
330 OLD COUNTRY ROAD, STE.200
MINEOLA, N.Y. 11501

Index # 0110711/2008

HALPERN, LAURI B. , PLAINTIFF

V

ADAMS, MICHELLE A. , DEFENDANT

CASE SCHEDULING ORDER

A request for a preliminary conference having been filed or the court having taken action on its own initiative,

IT IS HEREBY ORDERED that this case is designated an Expedited matter (Uniform Rule 202.19 (b)) and disclosure not already furnished shall proceed in accordance with the deadlines set forth below. However, a party claiming to be prejudiced by this order may, after consulting opposing counsel, seek a modification of the Expedited designation or the schedule by contacting Tammy M. Harwood, Case Management Coordinator, at the Case Management Office (by phone at 646-386-3682, fax at 212-374 -1842 , or e-mail to Tharwood@courts.state.ny.us) by **April 21, 2009**. That Office will provide an opportunity to the parties to be heard on the request by telephone or court conference and the court will take such action as is appropriate. Failure to contact the Office within the said deadline shall constitute a waiver of any objection to the designation or schedule. The parties shall not in the first instance contact the Justice assigned.

NONE OF THE DATES IN THE ORDER MAY BE EXTENDED WITHOUT ADVANCE APPROVAL BY THE COURT. All requests for extensions shall be directed to the Case Management Office in the first instance.

- (1) Mandatory Notification: The attorney who receives a copy of this Order shall, within ten days from receipt, transmit a copy to counsel for all parties who have appeared in the case and to all self-represented litigants and shall, by **April 14, 2009**, return to the Case Management Office an original by mail or a copy by fax of an affidavit of service or a letter setting forth the dates the parties were served.
- (2) Insurance Information: All parties shall exchange insurance and coverage information by **April 28, 2009**.
- (3) Bill of Particulars: A demand shall be served by **April 21, 2009**. A bill(s) shall be served by **May 05, 2009**.
- (4) Authorizations: Authorizations for **HIPAA compliant** medical records and for employment records for two years prior to the accident shall be served by **April 28, 2009**.

This is a conformed copy. The original order has been or will be filed with the County Clerk .

Index # 0110711/2008 Case of HALPERN, LAURI B. vs. ADAMS, MICHELLE A.

(5) Witness and Other Information: All parties shall exchange statements of opposing parties, photographs, and the names and addresses of all fact witnesses by **April 28, 2009**. If any of these items do not exist, the parties shall serve by that date an affirmation clearly so specifying.

(6) Depositions: All depositions must be completed by **July 21, 2009**. Plaintiff shall be deposed first and defendants shall be deposed in the order in which their names appear in the caption. Within 20 days from service of a copy of this Order, the parties shall confer and agree upon a detailed schedule in compliance with this deadline. If a witness thereafter is unable to appear as scheduled, the parties shall confer and attempt to agree upon a resolution of the problem, including, if necessary, an alternative schedule or order of production. However, absent extraordinary circumstances, the failure of one defendant to appear as scheduled shall not constitute an excuse for the refusal of others to submit to deposition as scheduled and within the deadline fixed above.

(7) Demands for Documents: Demands for documents shall be served no later than 10 days after completion of depositions and shall be responded to within 20 days from service.

(8) Physical Examinations and Reports (Uniform Rule 202.17): Physical examination(s) of the plaintiff shall be completed by **September 08, 2009**. The examining party shall notify all other parties of the identity of the examining physician at least 20 days prior to said examination. Copies of medical reports shall be served by plaintiff at least 15 days prior to said examination. A copy of the report of the examining physician shall be served on all parties within 21 days of said examination.

(9) Other Disclosure: All other disclosure shall be completed by **September 22, 2009**.

(10) Impleader: Shall be completed by **September 22, 2009**.

(11) Mandatory Compliance Conference: Will be held on **September 28, 2009 at 9:30 am at 80 Centre Street , Room 103**.

(12) Note of Issue: Shall be filed on or before **October 05, 2009**.

(13) Summary Judgment Motions: Summary judgment motions shall be made no later than **60 days** after filing of the note of issue (CPLR 3212 (a)).

RESOLUTION OF DISPUTES/PENALTIES FOR NON-COMPLIANCE

If disputes arise about compliance with this Order, the parties shall promptly confer in an effort to resolve them. If that effort fails, the parties shall immediately, in advance of deadlines and prior to initiating motion practice, bring the dispute to the attention of the Case Management Office (not the assigned Justice) and shall participate in any telephonic or court conference that Office may require. Absent good cause, failure to raise discovery problems with that Office immediately, in advance of deadlines, other non-compliance with this Order, or failure to comply with any Disclosure Reminder Notice transmitted by that Office may result in the imposition of penalties upon the offending party and, where warranted, upon counsel. Such penalties may include waiver of the discovery, preclusion, dismissal, striking of an answer, costs, sanctions, and attorney's fees. Counsel should be particularly aware that penalties may be imposed in the event of the failure of a defendant to give notice of, designate a physician for, schedule, or conduct an examination of plaintiff as set forth herein, the failure of said defendant to serve a report as set forth herein, the failure of plaintiff to appear at an examination as required, and the failure of a party to schedule or attend a deposition.

Hon. Paul Wooten
J.S.C.

Feb 04, 2010

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

INDEX NO. _____

-against- *Plaintiff(s),*

IAS PART _____

**COMPLIANCE CONFERENCE
ORDER**

Defendant(s).

On _____, 20____, a conference was held in this case. The parties appeared as follows:

Plaintiff(s) _____ by _____

Defendant(s) _____ by _____

The Court has determined that the Court's Case Management Order of _____, 20____
has not been complied with in that _____

Accordingly, it is ORDERED that _____

Enter:

J.S.C.

Dated: _____

Present:

Hon. _____,
Justice

-----X
In the Matter of the Application of

_____,
Petitioner,
for the Appointment of a Guardian for
_____,
An Alleged Incapacitated Person.

At IAS Part _____ of the Supreme Court of the State of New York, County of New York, at the courthouse thereof, 60 Centre Street, New York, New York, on the _____ day of _____, 200_____

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT AND SHORT FORM COMMISSION (To be executed by the County Clerk)

INDEX NO. _____

-----X

A petition in the above-captioned matter, verified on the __ day of _____, 20__ by the petitioner therein named having been duly presented to this court seeking the appointment of a guardian for the Alleged Incapacitated Person pursuant to the Mental Hygiene Law, and the Court, by Order to Show Cause dated _____, 20__ , having required that notice of presentation of petition be given to the Alleged Incapacitated Person and to _____

_____, and proof of service on each of the above named persons having been duly filed; and the court having considered the petition and the proof submitted in support thereof, and a hearing having been held on _____, 200__ ; and upon the evidence presented at the hearing;

Choose the applicable phrase or provision. Delete the phrase or provision that does not apply.

JURISDICTION AND SERVICE

In this guardianship proceeding pursuant to Article 81 of the Mental Hygiene Law ("MHL"), the Court, having been satisfied that at the commencement hereof the Alleged Incapacitated Person was a resident of this State or nonresident of the State present in the State,

or nonresident of this State, not present in the State, with property in the State (MHL § 81.18), and having been satisfied that the Alleged Incapacitated Person was served with the order to show cause and petition by personal delivery at least 14 days prior to the return date, and that all other persons required to be served under MHL §81.07 were timely served with the order to show cause and petition, and having appointed a/an

■ Court Evaluator: _____, [Name]

■ Attorney for the Alleged Incapacitated Person: _____, [Name]

HEARING

and having scheduled a hearing for this proceeding, at which time:

- the Alleged Incapacitated Person appeared personally or
- the Alleged Incapacitated Person was absent [*choose one, delete others*]
 - ▶ because it was determined that he/she was not present in the State. or
 - ▶ the Alleged Incapacitated Person appeared by counsel, who waived his/her appearance and entered a consent to the petition and the appointment of a guardian. or
 - ▶ the Alleged Incapacitated Person appeared by counsel and a hearing was conducted. or
 - ▶ because it was determined by clear and convincing evidence that the Alleged Incapacitated Person was completely unable to participate in the trial or no meaningful participation would result from his/her presence at the trial. [Specify reasons]: _____

FINDINGS OF FACT

NEED FOR GUARDIAN

It has been established that the Alleged Incapacitated Person has the following functional limitations:

■ Physical (Specify): _____

■ Mental (Specify): _____

and as a result is in need of a guardian to provide for

■ personal needs, including [*choose all that apply, delete others*]

- ▶ food ▶ clothing ▶ shelter ▶ health care ▶ safety ▶ activities of daily living
- ▶ other _____)

■ financial and property management, including [*choose all that apply, delete others*]

- ▶ collection of income ▶ payment of bills ▶ protection and investment of assets
- ▶ other _____)

It has been established

■ that no other available resources exist *or*

■ that other available resources appear to exist [*choose all that apply, delete others*]

- ▶ Power of Attorney ▶ Health Care Proxy ▶ Volunteer Service from Community
- Organization ▶ Other [Specify]: _____

but are insufficient, unreliable, or invalid because [*choose all that apply, delete others*]

- - the Power of Attorney or Health Care Proxy were improperly given, *or*
- - the Attorney in Fact or Health Care Agent have violated their fiduciary duties *or*
- - the Power of Attorney fails to contain powers sufficient to meet current needs *or*
- - the volunteers are not sufficiently skilled *or*
- - Other [Specify]: _____

It has been established that the powers herein granted are necessary to provide for the needs of the Alleged Incapacitated Person and that without the grant of these powers such needs would not be met.

DURATION OF GUARDIANSHIP

It has been established that the guardianship of the person is required for

■ an indefinite duration *or*

■ a period of [specify time] _____

the guardianship of the property is required for

- an indefinite duration or
- a period of [specify time] _____

CONSENT-INCAPACITY

As to the appointment of a guardian:

- It is made upon the consent of the Alleged Incapacitated Person; or

- It has been established by clear and convincing evidence upon the documentary proof and testimony presented that the Alleged Incapacitated Person lacks understanding and appreciation of the nature and consequences of the functional limitations set forth above and it is likely that the Alleged Incapacitated Person will suffer harm because of these functional limitations and the inability to understand adequately and appreciate the nature and consequences of such limitations.

GUARDIAN

It has been established that _____

_____ is/are eligible for appointment as a Guardian/co-Guardian under MHL § 81.19 and is/are best suited to exercise the powers necessary to assist the Alleged Incapacitated Person, because:

- of the family relationship [specify: _____] of said person(s) with the Alleged Incapacitated Person and/or,
- of another relationship (e.g., friend) [specify: _____] of said person(s) with the Alleged Incapacitated Person and/or,
- of the nomination by the Alleged Incapacitated Person and/or,
- of education and experience and/or,
- said person(s) is/are the best choice among others proposed and/or,
- no one was proposed and the Court had to choose from the Fiduciary List or,
- the person is a non-profit organization not on the list but expert in this field or,
- Other [Specify]: _____.

PROPERTY OF ALLEGED INCAPACITATED PERSON

It has been established that the approximate total value of the Alleged Incapacitated Person's assets (excluding real property) is \$ _____, and his/her total monthly income is \$ _____.

CONCLUSIONS OF LAW

The Court has jurisdiction in this proceeding as to subject matter and person. The Alleged Incapacitated Person, _____, residing at

Name

Address

City

State

Zip

Phone

is a person in need of the appointment of a guardian.

As set forth above, the Alleged Incapacitated Person has consented to the appointment of a Guardian or has been found to be an incapacitated person in accordance with MHL § 81.02.

The powers granted in this judgment are the least restrictive means of intervention consistent with the Alleged Incapacitated Person’s functional limitations.

ORDER AND JUDGMENT

GUARDIANS

IT IS HEREBY ORDERED AND ADJUDGED that, for the period(s) set forth above, the following is/are appointed:

Guardian of the Property: _____

Name

Address

Phone

Guardian of the Person: _____

Name

Address

Phone

Co-Guardian of the Property: _____

Name

Address

Phone

Co-Guardian of the Person: _____

Name

Address

Phone

ORDERED AND ADJUDGED that the Guardian and Co-Guardian (if any) of the Property shall

■ serve without bond or

■ file a bond in the amount of \$_____.

ORDERED AND ADJUDGED that the said Guardian(s)/Co-Guardian(s) shall file with the Clerk of this Court, within fifteen days of the date hereof, a designation of the Clerk for service of process, in the form attached hereto, and a bond, if required, and, upon the filing thereof, the Clerk of this Court shall execute and issue a commission, in the form attached hereto, and this commission shall constitute the sole warrant of the Guardian(s)/Co-Guardian(s) to act;

ORDERED AND ADJUDGED, that, within ten days from the date hereof, the attorney for the petitioner shall serve by first class mail a copy of this document, the petition, other pertinent pleadings, and the Court Evaluator's report, if any, on the Guardian(s)/Co-Guardian(s) herein appointed and on the designated Court Examiner and affidavits of service shall be filed within five days after service with the New York County Clerk, and a copy of the commission shall be served by the attorney on the Court Examiner promptly after its issuance; further, the attorney for the petitioner shall assist the Guardian(s)/Co-Guardian(s) with the preparation of the commission, the oath and designation and the obtaining of the bond, if required, and shall assist the Guardian(s)/Co-Guardian(s) in obtaining the certified and executed commission from the Clerk of the Court;

IF THE COURT FOUND THAT A POWER OF ATTORNEY OR HEALTH CARE PROXY WAS IMPROPERLY GIVEN OR THE AGENTS HAD VIOLATED THEIR FIDUCIARY DUTIES, the following shall be completed with the requested information and marked accordingly. Otherwise, the following shall be left blank and mark "Y" below, indicating that the entire box does not apply.

ORDERED AND ADJUDGED that the following is/are revoked:

the Power of Attorney, executed on _____, appointing _____ as
Date Name
Attorney-in-Fact.

the Health Care Proxy, executed on _____, appointing _____
Date Name
Health Care Agent.

[] This entire box does not apply.

DUTIES OF GUARDIAN(S) GENERALLY

ORDERED AND ADJUDGED, that pursuant to MHL § 81.20, the Guardian(s)/Co-Guardian(s) shall:

1. Exercise only those powers that the guardian is authorized to exercise by Court Order;
2. Exercise the utmost care and diligence when acting on behalf of the incapacitated person;
3. Exhibit the utmost degree of trust, loyalty and fidelity in relation to the incapacitated person;
4. File initial and annual reports in accordance with Sections 81.30 and 81.31 of the Mental Hygiene Law;
5. Visit the incapacitated person not less than four times a year or more frequently if so specified by the court;
6. If given authority with respect to property management for the incapacitated person, shall:

(i) Afford the incapacitated person the greatest amount of independence and self-determination with respect to property management in light of that person's functional level, understanding and appreciation of his/her functional limitations and personal wishes, preferences and desires with regard to managing the activities of daily living;

(ii) Preserve, protect and account for such property and financial resources faithfully;

(iii) Determine whether the incapacitated person has executed a will, determine the location of any will, and the appropriate persons to be notified in the event of the death of the incapacitated person, and in the event of the incapacitated person's death, notify those persons;

(iv) Use the property and financial resources and income available therefrom to maintain and support the incapacitated person, and to make application to this Court to maintain and support those persons dependent upon the incapacitated person;

(v) At the termination of the appointment, deliver such property to the persons legally entitled to it, pursuant to Court Order;

(vi) File with the recording officer of the county wherein the incapacitated person is possessed of real property an acknowledged statement to be recorded and indexed under the

name of the incapacitated person identifying the real property possessed by the incapacitated person, and the tax map numbers of the property, and stating the date of adjudication of incapacity of the person regarding property management, and the name, address, and telephone number of the guardian and the guardian's surety;

(vii) Perform all other duties required by law.

7. A Guardian who is given authority relating to the personal needs of the incapacitated person shall afford the incapacitated person the greatest amount of independence and self-determination with respect to personal needs in light of that person's functional level, understanding and appreciation of that person's functional limitations, and personal wishes, preferences and desires with regard to managing the activities of daily living.

POWERS OF GUARDIAN OF THE PROPERTY

ORDERED AND ADJUDGED that the Guardian/Co-Guardian of the Property shall have the following powers with regard to the property of the incapacitated person;

1. Marshal his/her income and assets and establish bank, brokerage and other similar accounts in the name of the Guardian and Co-Guardian (if any) for the incapacitated person, and endorse, collect, negotiate and deposit all negotiable instruments drawn to the order of the incapacitated person, including but not limited to government entitlement checks; invest funds with the same authority as a trustee pursuant to New York EPTL §11-2.3; inventory personal belongings, and store or dispose as appropriate; and inventory any safe deposit box in the presence of a representative of the bank and in the presence of the Surety, if any, and the Guardian/Co-guardians shall promptly file an inventory of the contents of the safe deposit box with the Court and await further order as to the disposition of its contents.

2. Pay such bills as may be reasonably necessary for the maintenance and care of the incapacitated person;

3. Make gifts as specifically authorized by the court in advance;

4. Provide support for persons dependent upon him/her as follows:

Name

Address

Relationship	Yes/No	Amount of Support
<p>5. Enter into contracts subject to the following conditions: (a) contracts for the sale or purchase of assets (e.g., cars, safety equipment, etc.) and contracts for construction or repairs must be approved by the court; (b) the terms of contracts for the sale of real property must be approved by the court prior to the closing of title upon submission of a copy of the fully executed contract and a written appraisal of the value of the property, provided that the property is listed for sale with a New York State licensed real estate broker; and (c) ALL PURCHASES OF REAL ESTATE and COOPERATIVE APARTMENTS shall require PRIOR court approval upon proof of a PROPOSED contract of purchase and a written appraisal of the value of the property;</p>		
<p>6. Establish an irrevocable prepaid funeral trust and a personal allowance account in accordance with Medicaid regulations from resources only and not from income.</p>		
<p>7. Engage in Medicaid and estate planning, except that court approval is required in advance as provided in MHL § 81.21 (b) of all proposed transfers of a part of the incapacitated person's assets to or for the benefit of another person;</p>		
<p>8. Apply for government and private benefits;</p>		
<p>9. Prosecute and defend civil proceedings, including administrative proceedings, and settle and compromise all matters related to such proceedings.</p>		
<p>10. Sign and file income tax returns and all other tax documents for any and all tax obligations and appear before federal, state and local taxing authorities on all claims, litigation, settlements and other matters related thereto;</p>		
<p>11. Authorize access to or release of confidential/medical records;</p>		
<p>12. Apply to the court for appointment of an attorney or an accountant, or other professional (e.g. a geriatric care manager, financial adviser), pursuant to Part 36 of the Rules of the Chief Judge. If the request is for the appointment of an attorney or accountant, a name of an individual practitioner should be supplied, not a firm name. A guardian who is an attorney may not serve as his or her own attorney;</p>		
<p>13. Pay professional fees upon court approval, subject to the submission of an affidavit of services and pursuant</p>		

to Parts 36 and 26 of the Rules of the Chief Judge;

14. Pay the funeral expenses of the incapacitated person out of any funds remaining in the guardianship estate at death, to the extent that a prepaid funeral trust, if any, is insufficient to pay for same;
15. Pay such bills after death if incurred prior thereto and if authority to pay same would have otherwise existed;
16. And any other powers which the court in its discretion shall deem appropriate to meet the property management needs of the incapacitated person.

POWERS OF GUARDIAN OF THE PERSON

ORDERED AND ADJUDGED that the Guardian and Co-Guardian (if any) of the Person shall have the following powers with regard to the personal needs of the incapacitated person;

1. Determine who shall provide personal care or assistance for him/her;
2. Make decisions regarding social environment and other social aspects of his/her life;
3. Determine whether he/she should travel;
4. Determine whether he/she should possess a license to drive;
5. Authorize access to or release of confidential/medical records;
6. Make decisions regarding education;
7. Apply for government and private benefits (unless a Guardian of the Property has been so empowered above);
8. Choose the place of abode, upon further order of the Court

provided that the incapacitated person shall not be placed in a skilled nursing facility or residential care facility, as defined by Public Health Law §2801, without further order of the

court.

including placement or continued placement in a skilled nursing facility or residential care facility, as defined by Public Health Law §2801, provided that no consent shall be given to the voluntary formal or informal admission of the incapacitated person to a mental hygiene facility under MHL Article 9 or 15 or to an alcoholism facility under MHL Article 21.

9. Consent to or refuse generally accepted routine or major medical or dental treatment (including the power to consent to an “Order Not to Resuscitate,” as a surrogate, pursuant to Public Health Law §2965 [2][a][I]), provided that treatment decisions are made consistent with the findings of MHL § 81.15 and in accordance with the standards set forth in MHL § 81.22 (a)(8),

10. [Other] _____

_____.

COMPENSATION OF GUARDIAN(s)

ORDERED AND ADJUDGED that

■ unless an alternate plan is submitted and approved by court order, the Guardian/Co-Guardian of the Property and Person shall be compensated pursuant to Surrogate’s Court Procedure Act [Specify one]

▶ § 2307

▶ § 2309

■ the Guardian/Co-Guardians of the Person shall be compensated pursuant to a plan to be submitted and approved by court order.

ORDERED AND ADJUDGED that the Guardian/Co-Guardians shall take no commissions for any year until that year’s annual account is filed, reviewed by the Court Examiner designated by the Appellate Division, and approved by the court.

FILING OF REPORTS BY GUARDIAN(s)

ORDERED AND ADJUDGED, that, pursuant to MHL § 81.30, no later than ninety days after the date on which the commission is issued, the Guardian/Co-Guardian shall file the initial report, in the form prescribed by the court, with proof of completion, if required, of the Guardian's education requirements, with the Guardianship and Fiduciary Support Office, located at New York County Supreme Court, 60 Centre Street, Room 148, New York, N.Y. 10007, and shall serve a copy of said initial report upon the designated Court Examiner by regular mail; and, in the event of the Guardian/Co-Guardian's failure to file said report in a timely manner, the Court Examiner shall PROMPTLY serve the Guardian with a demand letter by certified mail, and, upon the Guardian's failure to comply, shall move the court by order to show cause to remove the Guardian.

ORDERED AND ADJUDGED that, pursuant to MHL § 81.31, between JANUARY 1 and MAY 31 of each year, the Guardian/Co-Guardian shall file with the Guardianship and Fiduciary Support Office at the address listed above an annual report in the form prescribed by the Court and required by Section 81.31, and shall serve a copy of said report upon the designated Court Examiner by regular mail.

ORDERED AND ADJUDGED that the Guardian/Co-guardians shall serve a copy of the annual report upon all persons entitled to notice of all further proceedings.

PAYMENT OF BOND PREMIUM(s)

ORDERED AND ADJUDGED, that, if a bond has been directed herein, the guardian shall pay the bond premium(s) from the funds of the incapacitated person to the surety or its agent within 60 (sixty) days after qualifying, and it is further

ORDERED AND ADJUDGED, that the guardian of the property shall pay the renewal premium(s) from the funds of the incapacitated person to the surety or its agent within 60 (sixty) days after the bond renews, and it is further

ORDERED AND ADJUDGED, that the surety or its agent may bring a motion in this Court to collect unpaid premiums if the guardian of the property fails to pay the bond premiums timely.

DEATH OF INCAPACITATED PERSON

ORDERED AND ADJUDGED that, pursuant to MHL § 81.33, no later than sixty days after the death of the incapacitated person, the Guardian/Co-Guardian shall move for judicial settlement of a final account, in

the form prescribed by the Court, on such notice that the Court shall direct and shall serve same by regular mail on all persons entitled to notice of all further proceedings.

TRANSFER OF ASSETS

ORDERED AND ADJUDGED that no portion of the Guardianship Estate shall be transferred to any person, Court or entity without prior order of the Court.

APPOINTEES - COMPLIANCE WITH STATUTE AND RULES

ORDERED AND ADJUDGED that any appointee shall comply with Section 35-a of the Judiciary Law and Parts 36 and 26 of the Rules of the Chief Judge and no fee shall be paid to such appointee until the appointee has filed the Notice of Appointment and Certification of Compliance (the Unified Court System form (UCS) No. 872) **and** the Statement of Approval of Compensation (the Unified Court System form (UCS) No. 875) with the Office of the Fiduciary Clerk (Room 148, 60 Centre Street, New York, New York) and said forms have been approved by the court.

COMPENSATION OF COURT EVALUATOR AND OTHERS

ORDERED AND ADJUDGED that compensation is approved for the following in the following amounts (but, in the cases of the Court Evaluator and the Court-Appointed Attorney, subject to the filing of a Statement of Approval of Compensation form (UCS form 875)):

<u>Court Evaluator:</u>	\$ _____		
	Amount	Name	Address
<u>Court-Appointed Attorney:</u>	\$ _____		
	Amount	Name	Address
Petitioner's Attorney	\$ _____		
	Amount	Name	Address
Expert Witnesses (<u>Specify</u>):	\$ _____		
	Amount	Name	Address
Other: _____	\$ _____		
	Amount	Name	Address

Compensation to the _____ shall be approved in a separate order, upon submission of affidavits of services.

OTHER PROVISIONS

ORDERED AND ADJUDGED that upon appointment of a Guardian for personal needs or property management, prior to judgment, a Notice of Pendency must be filed if real property or interest therein is or may

be affected by the proceeding.

ORDERED AND ADJUDGED that the Guardian/Co-Guardians

■ shall be required

■ shall not be required

to complete a training program, as mandated by MHL § 81.39, no later than ninety days after issuance of the commission and obtain proof that the training was completed.

ORDERED AND ADJUDGED that the Guardian/Co-Guardian shall fully cooperate with the Court Examiner designated by the Appellate Division to examine the condition, care and finances of the incapacitated person, and this court has been advised that the designated Court Examiner is

Name	Address	
------	---------	--

Phone	Fax	Email
-------	-----	-------

and that, in the event that there is a change of Court Examiner, the name of any designated successor Court Examiner shall be obtainable through the Guardianship and Fiduciary Support Office, 60 Centre Street, Room 148, New York, N.Y., 10007, telephone number 646-386-3328.

ORDERED AND ADJUDGED that for the purposes of Section 9-I of the Banking Law and for the purposes of Section 238 of the Banking Law, this Order shall be deemed a declaration of incompetence and no banking institution or savings bank shall impose any penalty for the repayment of a time deposit prior to maturity.

ORDERED AND ADJUDGED that the Guardian/Co-guardians may not alienate, mortgage, lease or otherwise dispose of real property without special direction of the Court obtained upon proceedings taken for that purpose as prescribed in Article 17 of the Real Property Actions and Proceedings Law, provided, however, that without instituting such proceedings, the Guardian/Co-guardians may, with the authorization of the Court, lease real property for a term not exceeding five years and may, without further authorization of the Court, lease a primary residence for the incapacitated person for a term not to exceed three years.

ORDERED AND ADJUDGED that all persons are directed and commanded to deliver to the Guardian/Co-guardians, upon demand and presentation of a certified copy of the commission, all property of the

incapacitated person, of every kind and nature, which may be in their possession or under their control.

SERVICE

ORDERED AND ADJUDGED that the following shall be served with notice on all further proceedings in this matter:

Incapacitated Person

Guardian/Co-Guardian

Mental Hygiene Legal Service

Court Examiner

Other [Specify] _____

ORDERED AND ADJUDGED that a copy of this document shall be served on the incapacitated person in accordance with MHL § 81.16(e), and, by regular mail, upon all persons who appeared in this proceeding, within 10 days of the date hereof; affidavits of service shall be filed within five (5) days after service with the New York County Clerk.

ENTER:

J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X

In the Matter of the Application of

Index No.: _____

_____,
Petitioner,

for the Appointment of a Guardian for

**OATH AND DESIGNATION
OF CLERK TO RECEIVE
PROCESS**

_____,
An Incapacitated Person,

-----X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, _____ [Guardian], having been appointed Guardian for the Person
and/or Property of _____ [IP], by order of Hon. _____,
Justice of the Supreme Court, made in this proceeding and entered in the Office of the Clerk of the County of New
York on the _____ day of _____, 20____, do depose and say:

I am a resident of the State of New York residing at _____
[Address in full]. I am a citizen of the United States, and over 21 years of age. I hereby state and swear that I will
faithfully and honestly discharge my duties as Guardian of _____ [IP], an
Incapacitated Person.

Further, I do hereby designate the Clerk of the County of New York, or his/her successor in office, as a person
on whom may be made service of any process issuing from said Court in this proceeding or in any other proceeding
which shall affect the personal needs and/or property management of said Incapacitated Person, in like manner and with
like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York
after diligence is used.

Dated: _____, 20____

[Signature]

[Name of Guardian]

[Address of Guardian]

[City, State]

On this _____ day of _____, 20____,
before me personally appeared the within named
_____ to me known
and known to me to be the individual(s) described in and
who executed the foregoing and acknowledged that he (she)
executed the same.

Notary Public

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
In the Matter of the Application of

Index No. _____

_____,
Petitioner,

for the Appointment of a Guardian for

_____,
an Incapacitated Person.
-----X

COMMISSION TO GUARDIAN(S)

THE PEOPLE OF THE STATE OF NEW YORK, TO ALL TO WHOM THESE
PRESENTS SHALL COME, GREETING.

WHEREAS, an Order and Judgment (a copy of which is annexed hereto), dated _____
_____, was issued and filed in the matter captioned above appointing the following
person(s) as Guardian(s) of the incapacitated person named above:

and (1) a bond having been filed or waived; and (2) a designation of the Clerk to accept service of
process upon each such Guardian(s) above appointed having been filed on
_____, 20_____.

NOW, THEREFORE, KNOW YE THAT WE HAVE GRANTED, GIVEN AND
COMMITTED, AND DO GIVE, GRANT AND COMMIT UNTO THE ABOVE-NAMED
GUARDIAN(S) THE POWERS SET FORTH ABOVE.

By the Court this _____ day of
_____, 20_____

Clerk of the County of New York

ORI No: _____
Order No: _____
NYSID No. _____

At a _____ Term (IAS Part) _____ of the Supreme Court, State of
New York, County of _____, at the Courthouse at _____

PRESENT: Hon. _____

**In the Matter of a Proceeding under
Section (240) (252) of the Domestic Relations Law**

Plaintiff/Petitioner
Date of Birth: _____

v.

Defendant/Respondent
Date of Birth: _____

**ORDER OF PROTECTION
D.R.L. §§ 240, 252**

Index No. _____
(Check one)
 Upon Default
 Both Parties Present In Court

**NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST, AND
CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR
CRIMINAL CONTEMPT, AND/OR MAY SUBJECT YOU TO SUPREME COURT PROSECUTION AND PENALTIES
FOR CONTEMPT OF COURT.**

Whereas a determination has been made in accordance with section 240 252 of the Domestic Relations Law,
and the Respondent having been [check applicable box]: present in Court and advised of the issuance and contents of
this Order not present in Court, and good cause having been shown,

Now, therefore, it is hereby ordered that [specify first name, middle initial and last name]: _____
_____ observe the following conditions of behavior:

(Check Applicable Paragraphs and Subparagraphs)

- [01] Stay away from [A] [name(s) of protected persons] _____, and/or from the
[B] home of _____, [C] school of _____,
[D] business of _____, [E] place of employment of _____,
[F] other [specify location] _____;
- [14] Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or any other
means with [specify protected person(s)]: _____;
- [02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, disorderly conduct,
criminal mischief, sexual abuse, sexual misconduct, forcible touching intimidation, threats or any criminal offense against
[specify protected person(s) and/or members of protected person's family or household and/or person(s) with custody of
child(ren)]: _____;
- [15] Refrain from intentionally injuring or killing without justification the following companion animal(s) (pet(s)) [specify type(s)
and, if available, name(s)]: _____;
- [11] Permit [specify individual]: _____ to enter the residence during [specify date/time]:
_____ with [specify law enforcement agency, if any]: _____ in order to remove personal
belongings not in issue in litigation [specify items]: _____;
- [04] Refrain from [indicate acts]: _____
that create an unreasonable risk to the health, safety, or welfare of [specify child(ren), family or household members]:
_____;
- [05] Permit [specify individual]: _____, entitled by a court order,
separation or other written agreement, to visit with [specify child(ren)]: _____
during the following periods of time [specify]: _____
under the following terms and conditions [specify]: _____;

- [07] Custody of [specify child(ren)]: _____ shall be awarded to [specify individual]: _____ under the following terms and conditions [specify]: _____;
- [12] Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following [specify]: _____ and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but no later than [specify date/time]: _____ at [specify]: _____;
- Pay or provide access to health or medical insurance for necessary medical care and treatment arising from the incident or incidents forming the basis of the order [specify beneficiary of treatment and coverage]: _____;
- Pay counsel fees and/or any costs associated with the order to [specify person and terms] _____;
- Participate in an educational program, (and pay the costs thereof)[(specify program) _____];
- Participate in a batterer's education program designed to help end violent behavior (and pay the costs thereof)[specify program]: _____;
- Pay to the petitioner/victim(s) restitution, as follows [specify terms and amount up to \$10,000]: _____; and
- [99] Observe such other conditions as are necessary to further the purposes of protection [specify conditions]: _____

It is further ordered that the license of the person against whom this order is issued to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby [13A] suspended or [13B] revoked, (note: final order only) and/or [13C] the person against whom this order is issued shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes).

It is further ordered that this order of protection shall remain in force until and including [specify date]: _____.

The Domestic Relations Law provides that the presentation of a copy of this Order of Protection to a police officer or peace officer acting pursuant to his or her special duties shall authorize, and sometimes requires, such officer to arrest a person who is alleged to have violated the terms of the order and to bring him or her before the Court to face penalties authorized by law.

Federal law requires that this order must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person against whom the order is sought is an intimate partner of the protected party and has or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. §§ 2265, 2266).

It is a federal crime to:

- cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty) ; and
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired.. (18 U.S.C. §§922(g)(8), 922(g)(9), 2261, 2261A, 2262).

Dated:

JUSTICE
COURT (COURT SEAL)

Check Applicable Box(es):

- Party against whom order was issued was advised in Court of issuance and contents of Order
- Order personally served in Court upon party against whom order was issued
- Service directed by other means [specify]: _____
- [Modifications or extensions only]: Order mailed on [specify date and to whom mailed]: _____
- Warrant issued for party against whom order was issued [specify date]: _____
- Additional service information [specify]: _____

ORI No: _____ At a _____ Term (IAS Part) _____ of the Supreme Court, State of
Order No: _____ New York, County of _____, at the Courthouse at _____
NYSID No: _____

PRESENT: Hon. _____

In the Matter of a Proceeding under
Section (240) (252) of the Domestic Relations Law

TEMPORARY
ORDER OF PROTECTION
D.R.L. §§ 240, 252

Index No. _____

Plaintiff/Petitioner _____

Date of Birth: _____

v.

(Check one)

Ex parte

Both Parties Present In Court

Defendant/Respondent _____

Date of Birth: _____

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CRIMINAL CONTEMPT, AND/OR MAY SUBJECT YOU TO SUPREME COURT PROSECUTION AND PENALTIES FOR CONTEMPT OF COURT. IF YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

Whereas a determination has been made in accordance with section 240 252 of the Domestic Relations Law, and the Respondent having been [check applicable box]: present in Court and advised of the issuance and contents of this Order not present in Court, and good cause having been shown,

Now, therefore, it is hereby ordered that [specify first name, middle initial and last name]: _____

observe the following conditions of behavior:

(Check Applicable Paragraphs and Subparagraphs)

[01] Stay away from [A] [name(s) of protected persons] _____, and/or from the [B] home of _____, [C] school of _____, [D] business of _____, [E] place of employment of _____, [F] other [specify location] _____

[14] Refrain from communication or any other contact by mail or by telephone, e-mail, voice-mail or other electronic or any other means with [specify protected person(s)]: _____

[02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching intimidation, threats or any criminal offense against [specify protected person(s) and/ or members of protected person's family or household, and/or person(s) with custody of child(ren)]: _____

[15] Refrain from intentionally injuring or killing without justification the following companion animal (s) (pet(s)) [specify type(s) and, if available, name(s)]: _____

[11] Permit [specify individual] _____ to enter the residence during [specify date/time] _____ with [specify law enforcement agency, if any]: _____ in order to remove personal belongings not in issue in litigation [specify items]: _____

[04] Refrain from (indicate acts) _____ that create an unreasonable risk to the health, safety, or welfare of [specify child(ren), family or household members]: _____

[05] Permit [specify individual] _____, entitled by a court order or separation or other written agreement, to visit with [specify child(ren)]: _____

during the following periods of time [specify]: _____; under the following terms and conditions [specify]: _____;

[07] Temporary Custody of [specify child(ren)]: _____ shall be awarded to [specify individual]: _____ under the following terms and conditions [specify]: _____;

[12] Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following: _____ and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but not later than [specify date/time]: _____ at [specify]: _____;

Pay counsel fees and/or any costs associated with the order to [specify person and terms]: _____;

[99] Observe such other conditions as are necessary to further the purposes of protection [specify conditions]: _____;

It is further ordered that the license of the person against whom this order is issued to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby [13A] suspended [13B] revoked, and/or [13C] the person against whom this order is issued shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes).

It is further ordered that this order of protection shall remain in force until and including [specify date]: _____.

The Domestic Relations Law provides that the presentation of a copy of this order of protection to a police officer or peace officer acting pursuant to his or her special duties shall authorize, and sometimes requires, such officer to arrest a person who is alleged to have violated the terms of the order and to bring him or her before the Court to face penalties authorized by law.

Federal law requires that this order must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person against whom the order is sought is an intimate partner of the protected party and has or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. §§ 2265, 2266).

It is a federal crime to:

- cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty) ; and
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired.. (18 U.S.C. §§922(g)(8), 922(g)(9), 2261, 2261A, 2262).

Dated:

JUSTICE
COURT (COURT SEAL)

Check Applicable Box(es):

- Party against whom order was issued was advised in Court of issuance and contents of Order
- Order personally served in Court upon party against whom order was issued
- Service directed by other means [specify]: _____
- [Modifications or extensions only]: Order mailed on [specify date and to whom mailed]: _____
- Warrant issued for party against whom order was issued [specify date]: _____
- Additional service information [specify]: _____

and it is further

ORDERED that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR unless otherwise indicated as follows:

the powers of the JHO/Special Referee shall be limited as follows [*specify each particular limitation*]: the powers of the JHO/Special Referee shall be limited in that (1) _____

and (2) _____

and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/suptctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to determine as specified above, and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part, and it is further

[ORDERED that the plaintiff(s)/petitioner(s) shall serve a proposed accounting [pre-hearing memorandum] within 24 days from the date of this order and the defendant(s)/respondent(s) shall serve objections to the proposed accounting [a pre-hearing memorandum] within 20 days from service of plaintiff(s)/petitioner's(s') papers and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above, and it is further]

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part, and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion.

Dated: _____, 20_____

ENTER:

J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Present: Hon. _____, Justice
-----X

Plaintiff(s)/Petitioner(s). Index No. _____

- - against - -

**ORDER OF REFERENCE
TO HEAR AND REPORT**

Defendant(s)/Respondent(s).
-----X

This matter having come on before the Court on _____, 20____, on motion of the _____
_____ for _____ [at a conference], and the plaintiff(s)/petitioner(s) having
appeared by _____, Esq., and the defendant(s)/respondent(s) having appeared by _____
_____, Esq., and, pursuant to CPLR 4212, the parties having consented to [the _____ having moved
for] [the Court having on its own motion determined to consider] the appointment of a referee to hear and report, and
it appearing to the Court that an appointment on consent is appropriate [an exceptional condition requiring said
appointment in this case exists] [a matter of account has been presented], it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report
to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such
purpose [*specify each particular factual issue referred*]:

(1) the issue of [as to whether] _____

(2) the issue of [as to whether] _____

(3) the issue of [as to whether] _____

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited further than as set forth in the
CPLR unless otherwise indicated as follows:

the powers of the JHO/Special Referee shall be limited as follows [*specify each particular
limitation*]: the powers of the JHO/Special Referee shall be limited in that (1) _____
_____ and (2) _____

and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/suptmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above, and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part, and it is further

[ORDERED that the plaintiff(s)/petitioner(s) shall serve a proposed accounting [pre-hearing memorandum] [in a matrimonial case, the required documentation and information] within 24 days from the date of this order and the defendant(s)/respondent(s) shall serve objections to the proposed accounting [a pre-hearing memorandum] [in a matrimonial case, the required documentation and information] within 20 days from service of plaintiff(s)/petitioner's(s') papers and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above, and it is further]

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part, and it is further

ORDERED that, the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320 (a))(the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion, and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts, and it is further

ORDERED that, unless otherwise directed by this Court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this Court thereon.

Dated: _____, 20_____

ENTER:

J.S.C.

At IAS Part _____ of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, _____ Street, New York, New York on the _____ of _____, 20 ____

PRESENT: HON: _____
JUSTICE

Plaintiff,

INDEX No. _____

- against -

ORDER

Defendant.

A motion having duly come on to be heard on the _____ of _____, 20 ____,
for an order to [for] _____,

NOW, on reading and filing the following papers submitted to the Court,

_____, and upon the Court's decision thereon dated
_____, it is hereby

ORDERED that the motion is granted, and it is further

ORDERED that _____

ENTER:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. _____, Justice PART _____

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

- v -

The following papers, numbered 1 to _____ were read on this motion to/for _____

Papers Numbered

Notice of Motion/Order to Show Cause - Affidavits - Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is

Dated: _____, J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE SETTLE/SUBMIT ORDER/JUDG.

Form 16: Standard Form Order (Gray Sheet)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S): _____

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

-----x

Plaintiff/Petitioner,

- against -

Index No. _____

Defendant/Respondent.

-----x

**CERTIFICATE REQUESTING ENTRY OF JUDGMENT
IN ELECTRONICALLY-FILED CASE**

To: The County Clerk, County of _____

I, _____, an attorney admitted to the Bar of the State of New York and counsel for _____ in the above-captioned electronically-filed case, do hereby request that judgment be entered in this case based upon the _____, dated _____ and entered on _____. Pursuant to CPLR 5017 (a), I do hereby certify that the following documents shall constitute the Judgment Roll for this Judgment. Each document is identified by title of the paper, the date filed with the electronic filing system, and the number of the paper as listed on the New York State Courts Electronic Filing ("NYSCEF") List of Papers Filed.

<u>Title of Document</u>	<u>Number of Paper On NYSCEF List of Papers</u>	<u>Date Filed</u>
1) _____	No. _____	_____
2) _____	No. _____	_____
3) _____	No. _____	_____
4) _____	No. _____	_____
5) _____	No. _____	_____
6) _____	No. _____	_____
7) _____	No. _____	_____
8) _____	No. _____	_____
9) _____	No. _____	_____

10) _____

No. _____

The documents listed above are available on the electronic filing website and may be downloaded and printed as needed.

Dated: _____

_____ (Signature)

_____ (Name)

_____ (Firm Name)

_____ (Address)

Attorney for _____

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

-----X

Plaintiff/Petitioner,

- against -

Index No. _____

Defendant/Respondent.

-----X

**NOTIFICATION FOR SEALING
IN ELECTRONICALLY-FILED CASE**

To: County Clerk, County of _____

_____, an attorney admitted to the Bar of the State of New York and counsel for _____ in the above-captioned case filed with the New York State Courts Electronic Filing System ("NYSCEF"), respectfully submits this notification that an order of this court, a copy of which is annexed, requires that the document(s) identified below be sealed. Except in instances in which the order requires sealing of the entire file, each document to be sealed is identified by its title, the date filed with the NYSCEF system, and the number of the document as listed on the NYSCEF List of Documents Filed.

Sealing of Entire File Ordered _____ [Initial here] Or

Sealing of the Document(s) Identified Below Ordered:

<u>Title of Document</u>	<u>Number of Document On NYSCEF List of Documents</u>	<u>Date Filed</u>
1) _____	No. _____	_____
2) _____	No. _____	_____
3) _____	No. _____	_____
4) _____	No. _____	_____
5) _____	No. _____	_____

Dated: _____

_____ (Signature)

_____ (Name)

_____ (Firm Name)

_____ (Address)

ORDERED that _____, Esq. is permitted to appear and to participate in this action on behalf of _____, and it is further

ORDERED that he/she shall at all times during this action be associated with counsel who is a member in good standing of the Bar of the State of New York and is attorney of record for the aforesaid party in question; and it is further

ORDERED that all pleadings, briefs, and other papers filed with the court shall be signed by the attorney of record, who shall be responsible for such papers and for the conduct of this action; and it is further

ORDERED that, pursuant to Section 520.11 of the Rules of the Court of Appeals and Section 602.2 of the Rules of the Appellate Division, First Department, the attorney hereby admitted pro hac vice shall abide by the standards of professional conduct imposed upon members of the New York Bar, including the rules of the courts governing the conduct of attorneys and the Rules of Professional Conduct; and it is further

ORDERED that he/she shall be subject to the jurisdiction of the courts of the State of New York with respect to any acts occurring during the course of his/her participation in this matter; and it is further

ORDERED that said counsel shall notify the court immediately of any matter or event in this or any other jurisdiction that affects his/her standing as a member of the bar.

Dated: _____

ENTER:

J.S.C.

ORDERED that the plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20 ____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the plaintiff's motion for leave to amend the complaint is granted, in part, as follows: leave is granted to amend the first, second, and third causes of action and to this extent the amended complaint in the form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry; and it is further

ORDERED that leave to amend the complaint is denied with respect to the proposed fourth, fifth and sixth causes of action and those causes of action are stricken; and it is further

ORDERED that the defendant shall answer the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20 __, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

[SET FORTH FULL CAPTION HERE]

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the additional parties.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted and the amended complaint in the form annexed to the moving papers shall be deemed to have been served upon service by movant of a copy of this order with notice of entry; and it is further

ORDERED that defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days of said service; and it is further

ORDERED that the deadline for filing of the note of issue heretofore fixed for _____ shall be extended by 60 days to _____; and it is further

ORDERED that counsel are directed to appear for a status conference in Room _____, _____ Street, on _____, 20 ____, at _____ AM/PM; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry upon the Trial Support Office (Room 158).

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of plaintiff for leave to amend the summons herein to correct a misnomer by changing the name of defendant in the summons from [e.g., Stephen A. Moore, Jr. to Stefan A. Moore, Jr.] is granted; and it is further

ORDERED that movant shall, within 30 days from service of a copy of this order with notice of entry, serve the summons so amended upon defendant and file same with the County Clerk with proof of service; and it is further

ORDERED that movant shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein.

Dated: _____

ENTER:

J.S.C.

ADJUDGED that the petition is granted and the award rendered in favor of petitioner and against respondent is confirmed; and it is further

ADJUDGED that petitioner _____, having an address at _____, do recover from respondent _____, having an address at _____, the amount of \$ _____, plus interest at the rate of ____% per annum from the date of _____, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____, and that the petitioner have execution therefor.

Dated: _____

ENTER:

J.S.C.

ADJUDGED that the petition to stay the subject arbitration is denied in all respects, and the petition is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that the parties shall proceed to arbitration forthwith and respondent's counsel shall serve a copy of this judgment upon the arbitral tribunal; and it is further

ADJUDGED that respondent, having an address at _____, do recover from petitioner, having an address at _____, costs and disbursements in the amount of \$ _____ as taxed by the Clerk, and that respondent have execution therefor.

Dated: _____

ENTER:

J.S.C.

ORDERED that defendant's motion to compel arbitration and to stay this action is granted; and it is further

ORDERED that plaintiff _____ shall arbitrate [his/her/its] claims against defendant _____ in accordance with the [contract/insurance policy/etc.]; and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration.

Dated: _____

ENTER:

J.S.C.

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that respondent, having an address at _____, do recover from petitioner, having an address at _____, costs and disbursements in the amount of \$ _____, as taxed by the Clerk, and that respondent have execution therefor.

Dated: _____

ENTER:

J.S.C.

ADJUDGED that the petition is granted as follows:

(1) The determination of respondent New York City Police Department, dated _____, 20____, terminating petitioner as a probationary police officer, is vacated and annulled and petitioner is reinstated to said position with back pay from _____, 20____, the date of termination, and the balance of petitioner's probationary period shall commence to run upon said reinstatement.

(2) Petitioner, having an address at _____, do recover from respondent New York City Police Department back pay in the amount of \$_____, with interest at the rate of ____ % per annum from the aforesaid date of termination, plus costs and disbursements in the sum of \$_____ as taxed by the Clerk, making in all the sum of \$ _____, and petitioner have execution therefor.

Dated: _____

ENTER:

J.S.C.

ORDERED that, pursuant to CPLR 7804 (g), the application by petitioner seeking to vacate and annul a determination by respondent is respectfully transferred to the Appellate Division, First Department, for disposition, pursuant to CPLR 7804(g). This proceeding involves an issue as to whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction of law, is, on the entire record, supported by substantial evidence (CPLR 7803 [4]).

Petitioner is directed to serve a copy of this order with notice of entry upon the County Clerk (Room 141B), who is directed to transfer the file to the Appellate Division, First Department.

Dated: _____

ENTER:

J.S.C.

ORDERED that an assessment of damages against defendant [defendants
_____ and _____] is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the Trial Support Office (Room 158), who is directed, upon the filing of a note of issue and a statement of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed.

Dated: _____

ENTER:

J.S.C.

ORDERED that the plaintiff's motion for an order of attachment is granted, and it is further

ORDERED that the amount to be secured by this order of attachment, inclusive of probable interest, costs and Sheriff's fees and expenses, shall be \$ _____, and it is further

ORDERED that the plaintiff's undertaking is fixed in the sum of \$ _____ conditioned that the plaintiff shall pay to the defendant an amount not exceeding \$ _____ for legal costs and damages which may be sustained by reason of the attachment, and up to and not exceeding \$ _____ to the Sheriff for allowable fees, if the defendant recovers judgment or if it is decided that the plaintiff is not entitled to an attachment of the property of the defendant, and it is further

ORDERED that the Sheriff of the City of New York, or the Sheriff of any County of the State of New York, shall levy within his jurisdiction, at any time before final judgment, upon such real and personal property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy \$ _____, the amount of plaintiff's demand, together with probable interest, costs, and the Sheriff's fees and expenses, [if specific property sought to be attached is known, add: including the following property: (describe property; if bank account, include name and address of the banking institution, title and number of account)] and that the Sheriff proceed herein in the manner and make

his return within the time prescribed by law.

Dated: _____

ENTER:

J.S.C.

[Plaintiff's Attorney]

Address]

Telephone Number]

ORDERED that, a bifurcated trial is hereby directed; and it is further

ORDERED that the issues of liability and damages shall be severed and the issue of liability shall be tried first; and it is further

ORDERED that, if the jury returns a verdict in favor of plaintiff on the liability phase of the case, the damage phase shall be conducted immediately thereafter before the same Justice and jury unless the Justice presiding over the trial, for reasons stated on the record, finds such procedure to be impracticable; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Trial Support Office (Room 158).

Dated: _____

ENTER:

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

-----x

Plaintiff,

INDEX NO. _____

- against -

COMMISSION

Defendant.

-----x

THE PEOPLE OF THE STATE OF NEW YORK:

TO: _____

GREETING:

KNOW YE, that we, with full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you to examine _____, residing at _____, as a witness in the action captioned above pending in our Supreme Court of the State of New York, New York County, upon oral examination under oath pursuant to Article 31 of the Civil Practice Law and Rules of the State of New York.

We therefore request of you, or any other duly authorized person who may administer oaths pursuant to the laws of the State of _____, that at a certain time and place to be by you appointed, you do cause the aforesaid witness, by proper and usual process, to come before you, or some competent person by you appointed for that purpose, and to be then and there placed under oath and to answer the questions and the

cross-questions put to the said witness by the attorneys for the parties hereto; that the testimony of the witness be reduced to writing, subscribed by the witness, and certified to be correct and proven before you and that any exhibits produced and proven before you be annexed to said transcript; and that you return the transcript of the testimony and any exhibits to the Clerk of the Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, New York, 10007 by certified or registered mail with all convenient speed. And you are to be governed in the premises by the applicable law of the State of New York.

WITNESS, the Hon. _____, one of the Justices of our Supreme Court, this ____ day of _____, 20____.

BY THE COURT:

J.S.C.

ORDERED that, pursuant to CPLR 3108, a commission issue in this action to _____ of the _____ Court, State of _____, or any other authorized person who may administer oaths pursuant to the laws of that state, to take the deposition upon oral questions of _____ of _____ [address] as witness on behalf of plaintiff [defendant] in this action and that he [she] return the transcript of the testimony subscribed by the witness, certified to be correct, annexed to said commission, with any exhibits produced and proved before him [her], to the Clerk of the Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, New York, by certified or registered mail, with all convenient speed.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with _____ vs. _____, Index No. _____ (_____ County) under New York County Index No. _____ and the consolidated action shall bear the following caption:

Plaintiffs,
-against-

Defendants,

And it is further

ORDERED that the Clerk of _____ Court, _____ County, shall transfer the papers on file under Index No. _____ to the Clerk of this Court upon service of a certified copy of this order and payment of the appropriate fee, if any; and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the County Clerk (Room 141 B), who shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation, and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room ____, _____ Street, on _____, 20____, at _____AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted and the above-captioned action is consolidated in this Court with _____ vs. _____, Index No. _____, under Index No. _____, and the consolidated action shall bear the following caption:

Plaintiffs,

-against-

Defendants,

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the County Clerk (Room 141 B), who shall consolidate the papers in the actions hereby



consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

The court having determined that _____, Esq., counsel for plaintiff [defendant], has engaged in frivolous conduct as defined in Section 130-1.1 (c) of the Rules of the Chief Administrator as set forth above [or set forth the conduct here and the reasons why it is frivolous] and that costs should be awarded, and having found that the amount of costs to be awarded is appropriate as set forth above [or set forth the reasons here], it is now therefore

ORDERED that defendant's [plaintiff's] motion for costs is granted and _____, Esq., counsel for the plaintiff [defendant], shall, without charge to his [her] client, reimburse defendant [plaintiff] for actual expenses reasonably incurred and reasonable counsel fees in the total amount of \$ _____ ; and it is further

ORDERED that payment of these costs shall be delivered to counsel for defendant [plaintiff] and written proof of such payment shall be provided to the Clerk of Part ____ within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that timely payment is not made, the Clerk of the court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the defendant [plaintiff] and against said counsel in the aforesaid sum.

Dated: _____

ENTER:

J.S.C.

The court having determined that plaintiff [defendant] has engaged in frivolous conduct as defined in Section 130-1.1 (c) of the Rules of the Chief Administrator as set forth above [or set forth the conduct here and the reasons why it is frivolous] and that costs should be awarded, and having found that the amount of costs to be awarded is appropriate as set forth above [or set forth the reasons here], it is now therefore

ORDERED that defendant's [plaintiff's] motion for costs is granted and the plaintiff [defendant] shall reimburse defendant [plaintiff] for actual expenses reasonably incurred and reasonable counsel fees in the total amount of \$ _____ ; and it is further

ORDERED that payment of these costs shall be delivered to counsel for defendant [plaintiff] and written proof of such payment shall be provided to the Clerk of Part ____ within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that timely payment is not made, the Clerk of the court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the defendant [plaintiff] and against plaintiff [defendant] in the aforesaid sum.

Dated: _____

ENTER:

J.S.C.

ORDERED that the branch of defendant's motion which seeks a declaratory judgment with respect to the subject matter of the complaint's first cause of action is granted with costs and disbursements to defendant as taxed by the Clerk ; and it is further

ADJUDGED and DECLARED that defendant [set forth declaration in detail]; and it is further

ORDERED that the branch of defendant's motion which seeks dismissal of the complaint is granted to the extent that the second and third causes of action are dismissed; and it is further

ADJUDGED that the second and third causes of action are dismissed; and it is further

ADJUDGED that defendant, _____, having an address at _____, do recover from the plaintiff, _____, having an address at _____, costs and disbursements in the sum of \$ _____ as taxed by the Clerk, and defendant have execution therefor.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of plaintiff for summary judgment on its first cause of action seeking a declaration that it is not obliged to provide a defense to, and provide coverage for, the defendant _____ in the action of _____ vs. _____, Index No. _____, _____ County, is granted; and it is further

ADJUDGED and DECLARED that plaintiff herein is not obliged to provide a defense to, and provide coverage for, the defendant _____ in the said action pending in _____ County; and it is further

ADJUDGED that plaintiff _____, having an address at _____, do recover from the defendant _____, having an address at _____, costs and disbursements in the sum of \$ _____ as taxed by the Clerk, and plaintiff have execution therefor.

Dated: _____

ENTER:

J.S.C.

ORDERED that defendant's motion to vacate its default herein is denied and the matter shall be set down for an assessment of damages; and it is further

ORDERED that, upon the filing by the plaintiff with the Trial Support Office (Room 158) of a copy of this order with notice of entry and a note of issue, and the payment of the fee therefor by the plaintiff, the Clerk shall place this matter upon the trial calendar for an assessment of damages.

Dated: _____

ENTER:

J.S.C.

ORDERED that defendant's motion to vacate its default herein is granted on condition that defendant serve and file an answer to the complaint herein, or otherwise respond thereto, within 20 days from service of a copy of this order with notice of entry; and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry on the County Clerk (Room 141B) and upon the Trial Support Office (Room 158); and it is further

ORDERED that counsel are directed to appear for [preliminary] [status] conference in Room _____, _____ Street, on _____, 20 ____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

The defendant having failed to appear at a compliance conference in Part _____ on _____, at _____ AM/PM that was scheduled in a prior order of this Court and the defendant having without reasonable excuse failed to appear at a previous compliance conference in this Part and having failed and refused to produce documents and a witness for deposition as directed by the previous order of this Court, it is hereby

ORDERED that, pursuant to Uniform Rule 202.27, the defendant is in default and the answer of defendant is stricken; and it is further

ORDERED that, on or before _____, 20 _____, plaintiff shall serve a copy of this order upon, and file a note of issue and statement of readiness with, the Trial Support Office (Room 158); and it is further

ORDERED that, upon said filing and the payment of the appropriate fee, the Clerk of the Trial Support Office shall place this matter upon the trial calendar for an inquest as to damages.

Dated: _____

ENTER:

J.S.C.

ORDERED that plaintiff's motion to compel is granted; and it is further

ORDERED that defendant shall produce to plaintiff on or before _____, 20 ____
the following documents_____
_____;

and it is further

ORDERED that defendant shall, within 30 days from production of the aforesaid documents, produce [John Jones or a witness with knowledge of the facts] for deposition, at the office of counsel for plaintiff, on a date and at a time convenient for the parties, and it is further

ORDERED that counsel are directed to appear for a status conference in Room _____, _____ Street, on _____, 20 ____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

The plaintiff having established that defendant has willfully failed to provide discovery as directed in the preliminary conference order of this court in that

_____;

it is hereby

ORDERED that plaintiff's motion is granted and the answer of defendant _____ is stricken unless, within 30 days from service of a copy of this order with notice of entry, defendant shall produce _____ [John Jones or a person with knowledge of the events at issue herein] for deposition at the office of counsel for plaintiff at a date and time convenient for the parties; and it is further

ORDERED that, counsel shall appear for a status conference in Room _____, _____ Street, on _____ 20 ____ at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

The plaintiff having established that defendant has willfully failed to provide discovery as directed in the preliminary conference order of this court in that

_____ ;

it is hereby

ORDERED that plaintiff's motion is granted and the answer of defendant _____ is stricken unless, within 30 days from service of a copy of this order with notice of entry, (i) defendant produces _____ [John Jones or a person with knowledge of the events at issue herein] for deposition at the office of counsel for plaintiff on a date and at a time convenient for the parties, and (ii) counsel for defendant, without any charge to his client, pays to plaintiff the sum of [e.g., \$ 2,500] to reimburse plaintiff for counsel fees and expenses incurred by plaintiff upon this motion and due to defendant's failure to produce a witness as heretofore directed by this court; and it is further

ORDERED that counsel, are directed to appear for a status conference in Room _____, _____ Street, on _____, 20 _____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

Defendant having established that plaintiff has willfully and contumaciously failed to provide discovery as directed in [e.g., the preliminary conference order of this court and three subsequent orders dated _____, respectively] in that plaintiff has failed and refused, despite specific directives in said orders, and without good cause, to produce documents [e.g., regarding ownership of the property in dispute], and to appear for deposition on the dates directed therein, it is hereby

ORDERED that the motion of defendant to strike the plaintiff's pleading and dismiss this case is granted, and it is further

ORDERED that the complaint is stricken and the action is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendant, with costs and disbursements to defendant as taxed by the Clerk.

Dated: _____

ENTER:

J.S.C.

ORDERED that the plaintiff's motion is granted; and it is further

ORDERED that defendant, having refused to comply with orders of this court dated _____ and _____, is hereby precluded from offering any evidence in opposition to the plaintiff's claim of liability unless the following documents [list documents to be produced with as much detail as possible] are received by plaintiff's counsel within 30 days from service of a copy of this order with notice of entry and an affirmation of compliance by defendant's counsel is filed with the Clerk of the Part and a copy thereof is served upon counsel for plaintiff; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the plaintiff's motion is granted; and it is further

ORDERED that defendant, having failed to comply with orders of this court dated _____ and _____, is hereby precluded from offering any evidence in opposition to the plaintiff's claim of liability on the first cause of action unless, within 30 days from service of a copy of this order with notice of entry, a detailed statement under oath by the defendant's president [or other person with appropriate authority and personal knowledge] explaining the inability to produce [describe missing documents] is served upon plaintiff's counsel and a copy is filed with the Clerk of the Part as proof of compliance.

Dated: _____

ENTER:

J.S.C.

Plaintiff having established that defendant has willfully failed and refused to provide discovery as directed [e.g., in the preliminary conference order of this court and two subsequent orders dated _____ and _____, respectively] in that defendant has, without reasonable justification, failed and refused to produce documents [e.g., bearing upon notice of an unsafe condition (or specifying particular documents)] and to produce for deposition a witness with knowledge of the facts at issue herein, it is hereby

ORDERED that the motion of plaintiff is granted; and it is further

ORDERED that defendant is precluded from offering proof in opposition to plaintiff's claim of [e.g., notice of an unsafe condition on defendant's part]; and it is further

ORDERED that counsel shall appear in Room _____, _____ Street, on _____, 20 ____ at _____ AM/PM to set a date for trial on the remaining issues in the case; and it is further

ORDERED that plaintiff shall file a note of issue and statement of readiness with the Trial Support Office (Room 158) on or before _____, 20 ____.

Dated: _____

ENTER:

J.S.C.

The plaintiff having established that defendant has willfully and contumaciously failed and refused to provide discovery as directed in the preliminary conference order of this court, and in the orders dated _____ and _____, in that defendant has _____

[specify acts of willful non-compliance]; it is hereby

ORDERED that the motion of plaintiff is granted as follows; and it further

ORDERED that the issue of [e.g., notice of an unsafe condition on defendant's part] shall be deemed to be resolved in favor of plaintiff unless, within 30 days from service of a copy of this order with notice of entry, the defendant (i) produces for deposition a witness with knowledge of the facts [or John Jones] at the office of counsel for plaintiff on a date and at a time convenient for the parties, and (ii) counsel for defendant, without any charge to his client, pays to plaintiff the sum of [e.g., \$2,500] to reimburse plaintiff for counsel fees and expenses incurred by plaintiff on this motion and due to defendant's willful failure to provide discovery in compliance with previous orders of this court as set forth above; and it is further



ORDERED that counsel are directed to appear for a status conference in Room _____,
_____ Street, on _____, 20 _____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

The court having determined that the conditions precedent set forth in CPLR 3216 (b) have been satisfied and the plaintiff having failed to serve and file a note of issue within the ninety-day period set forth in said subdivision, and the plaintiff having failed to offer a justifiable excuse for the delay or demonstrate the existence of a meritorious cause of action; and further

The court having determined that the plaintiff has failed to [e.g., comply with multiple demands for discovery and the provisions of the preliminary conference order of October 10, 2009 and the compliance conference order of May 10, 2010], and having found that such conduct and the failure to serve and file a note of issue in response to the demand therefor constitute a neglect to prosecute this action, which failures demonstrate a general pattern of delay in proceeding by plaintiff, it is now therefore

ORDERED that the defendant's motion to dismiss this action is granted and the Clerk is directed to enter judgment in favor of defendant dismissing this action, together with costs and disbursements to defendant, as taxed by the Clerk upon presentation of a bill of costs.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of defendant to dismiss this action on the ground that New York is an inconvenient forum is granted on condition that defendant [e.g., stipulate to accept service of process in the event that this action is commenced in _____ (the alternative forum), stipulate to waive the defense of the statute of limitations in the event that this action is commenced in _____]; and it is further

ORDERED that, within 30 days from service of a copy of this order with notice of entry, defendant shall file proof of compliance with the above condition with the Clerk of the Part and with the County Clerk (Room 141B), together with a copy of this order with notice of entry and proof of service of the foregoing on counsel for plaintiff; and it is further

ORDERED that, upon the timely filing of the foregoing, the County Clerk shall enter judgment dismissing the action; and it is further

ORDERED that in the event of non-compliance, counsel are directed to appear for a status conference in Room _____, _____ Street, on _____, 20 _____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of defendant _____ to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein.

Dated: _____

ENTER:

J.S.C.

It appearing to the court from affidavits submitted in opposition to the motion to dismiss of defendant _____ that facts essential to justify opposition may exist, but cannot now be stated, it is

ORDERED that the motion shall be held in abeyance pending the submission of additional papers as hereinafter set forth; and it is further

ORDERED that plaintiff shall serve and submit to the court further affidavits directed to the issue of _____ by no later than 60 days from service of a copy of this order with notice of entry; and it is further

ORDERED that the plaintiff may take the deposition of _____ limited to the issue of _____, provided that said deposition shall be completed by no later than 21 days from service of a copy of this order with notice of entry; and it is further

ORDERED that the moving defendant may submit papers in reply to the further opposition papers allowed hereby and shall serve and submit such papers to the court no later than 10 days after service of the opposition papers.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted and the _____ affirmative defense [third affirmative defense] of defendant _____ is dismissed; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion to dismiss is granted and the _____, _____,
and _____ causes of action of the complaint are dismissed; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20
days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference
in Room _____, _____ Street, on _____, 20____, at _____AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the defendant's motion to dismiss is granted and the complaint is dismissed; and it is further

ORDERED that plaintiff is granted leave to serve an amended complaint so as to replead the _____ cause[s] of action within 20 days after service on plaintiff's attorney of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that plaintiff fails to serve and file an amended complaint in conformity herewith within such time, leave to replead shall be deemed denied, and the Clerk, upon service of a copy of this order with notice of entry and an affirmation/affidavit by defendant's counsel attesting to such non-compliance, is directed to enter judgment dismissing the action, with prejudice, and with costs and disbursements to the defendant as taxed by the Clerk.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion to disqualify counsel for [plaintiff/defendant] is granted and _____, Esq., is hereby disqualified from representing [plaintiff/defendant] in this matter, and it is further

ORDERED that the action is stayed for 30 days from service of a copy of this order with notice of entry upon the parties and upon [plaintiff/defendant], who shall, within said period, retain another attorney in place of the attorney named above; and it is further

ORDERED that the new attorney retained by [plaintiff/defendant] shall serve upon all parties a notice of appearance and file same with the Clerk of the Trial Support Office (Room 158), and the Clerk of the Part within said 30-day period; and it is further

ORDERED that in the event that [plaintiff/defendant] intends to proceed pro se pursuant to CPLR 321, [he/she] is directed to notify the Clerk of the Part in writing within said 30-day period; and it is further

ORDERED that counsel are directed to appear for a conference in Room _____, _____ Street, on _____, 20____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted, and it is further

ADJUDGED that plaintiff is entitled to possession of _____, New York, New York as against defendant _____, and the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place plaintiff in possession accordingly; and it is further

ADJUDGED that immediately upon entry of this Order and Judgment, plaintiff may exercise all acts of ownership and possession of _____, New York, New York, including entry thereto, as against defendant _____; and it is further

ORDERED that the branch of the above-entitled action relating to recovery of damages is severed and continued; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20 ____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the petition to stay arbitration is granted to the extent that a trial is directed of the preliminary issue[s] as to coverage [cancellation of the policy, timely notification of the police, etc.], and the arbitration is stayed pending such trial; and it is further

ORDERED that the Clerk of the Trial Support Office (Room 158) is directed to assign this matter to an appropriate Part for trial upon receipt of a copy of this order with notice of entry, the filing of a note of issue and a statement of readiness, and the payment of appropriate fees, if any; and it is further

ORDERED that petitioner is directed to serve a copy of this order with notice of entry within 20 days of entry upon the attorneys for the respondent, the arbitrator, the County Clerk, and the Clerk of the Trial Support Office (Room 158); and it is further

ORDERED that petitioner is directed to serve a copy of this order with notice of entry, together with copies of all papers previously served in the proceeding, upon _____, who upon such service shall be added as a party respondent, and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of said additional party respondent and the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), upon service by petitioner on each of them of a copy of

this order with notice of entry, shall mark their records to reflect the amendment.

Dated: _____

ENTER:

J.S.C.

A petition [notice of motion] dated _____, 20____ having been filed and served by the parent and natural guardian of the infant petitioner [or plaintiff] seeking judicial approval of the settlement of a claim of the infant [an action commenced by the infant] and the petitioner [movant] having submitted in support of the petition [motion] an affidavit of the representative of the infant setting forth the nature and extent of the damages sustained, the terms of the proposed settlement and other relevant information, an affidavit of the attorney for the infant, the medical report of _____, a physician, all in compliance with CPLR 1208, and notice of hearing on the petition [motion] of at least five days by hand or ten days by mail having been supplied to all persons interested [all parties to the action] and on the hearing the infant having attended along with his [her] representative _____, and attorney, _____, Esq., and the infant and his [her] representative having been examined on the record at said hearing, and an opportunity having been furnished to any interested person [party] to respond to the application, and

It appearing to the court that it would be in the best interests of the infant under the circumstances present here to approve the settlement of the aforesaid claim [causes of action] against the respondents [defendants] for the sum of \$ _____;

NOW, on motion of the attorney for the petitioner [plaintiff], _____, Esq.,
it is

ADJUDGED [ORDERED] as follows:

1. _____, the parent and natural guardian of the infant, the petitioner [plaintiff], is hereby authorized to compromise and settle the claim of petitioner [the causes of action of plaintiff] for and on behalf of petitioner [plaintiff] against the respondents [defendants] in the amount of \$ _____ provided that the conditions hereinafter set forth are complied with in their entirety.

2. From the proceeds of the settlement, the following sums shall be paid by respondents [defendants] to the persons and institutions listed to cover medical services and costs of rehabilitation:

3. From the proceeds of the settlement, the sum of \$ _____ shall be paid by respondents [defendants] to _____, Esq., attorney for petitioner [plaintiff], as full compensation for the services of said attorney, and all fees and disbursements in connection with petitioner's claim [plaintiff's causes of action].

4. The balance of the proceeds of the settlement shall be paid by respondents [defendants] to the representative of petitioner [plaintiff] and jointly to an officer of the _____ Bank for deposit to an interest-bearing savings or money market account

to be used exclusively for the maintenance, welfare and benefit of the infant petitioner [plaintiff] and to be disbursed only in accordance with the following procedures:

_____.

Petitioner [plaintiff] is directed to serve a certified copy of this judgment [order] on the _____ Bank.

Dated: _____

ENTER:

J.S.C.

Property Damage Case:

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$ _____, with interest from _____, 20 ____, at the statutory rate until entry of judgment, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk.

Equitable Case:

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$ _____, with interest at the rate of ____% from _____, 20 ____, until the date of this decision and order, and thereafter at the statutory rate until entry of judgment, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk.

Contract Case (No Rate Specified in Contract):

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$ _____, with interest from _____, 20 ____, [date of the breach] at the statutory rate until entry of judgment, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk.

Contract Case (Rate Specified in Contract)

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$ _____, with interest at the rate of ____% from _____, 20 _____,

[date of the breach] until the date of this decision and order, and thereafter at the statutory rate until entry of judgment, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk.

**Contract Case (Contract Rate
Until Entry of Judgment as
Specified in the Contract):**

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$ _____, with interest at the rate of ____% from _____, 20 ____, until the entry of judgment, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk.

**Contract Case (Contract Rate
Until Satisfaction of Judgment,
as Specified in the Contract):**

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$ _____, with interest at the rate of ____% from _____, 20 ____, until satisfaction of the judgment, as calculated by the Clerk, together with costs and disbursements, as taxed by the Clerk.

ORDERED that the motion is granted, and that _____ be permitted to intervene in the above-entitled action as a party defendant; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding _____ thereto as a party defendant and listing _____ as the last defendant in the caption; and it is further

ORDERED that _____ serve his [her/its] answer upon the attorneys for the plaintiff and the defendant, or move with respect to the complaint in the above-entitled action, within 20 days from service of a copy of this order with notice of entry; and it is further

ORDERED that the attorney for the intervenor shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and upon the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20 __, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of _____ is granted and the above-captioned action shall be jointly tried with _____ v _____, Index No. _____, _____ County; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a certified copy of it upon the Clerk of the Supreme Court of _____ County, who, upon payment of the proper fees, shall transfer to the Clerk of the Supreme Court, New York County, all of the papers on file in the action/proceeding _____ v _____, Index No. _____; and it is further

ORDERED that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry, shall, without further fee, assign an index number to the matter transferred pursuant to this order; and it is further

ORDERED that, within 45 days from entry of this order, counsel for the movant shall serve a copy of it with notice of entry upon the Clerk of the Trial Support Office (Room 158), together with a Request for Judicial Intervention, for which the Clerk shall not charge a fee; and it is further

ORDERED that the Clerk of the Trial Support shall assign the transferred matter to the undersigned; and it is further

ORDERED that upon payment of the appropriate calendar fees and the filing of notes of issue and statements of readiness in each of the above actions, the Clerk of the Trial Support Office shall place the aforesaid actions upon the trial calendar for a joint trial; and it is further

ORDERED that at said joint trial plaintiff _____ in the _____ action shall
have the right to open and close before the jury.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of _____ is granted and the above-captioned action shall be jointly tried with _____ v _____, Index No. _____, pending in this court; and it is further

ORDERED that, within 30 days from entry of this order, the plaintiff in _____ v. _____ shall file and pay the fee for a Request for Judicial Intervention, to which shall be attached a copy of this order, and the Clerk shall assign said action to the undersigned Justice; and it is further

ORDERED that, within 30 days from entry of this order, counsel for the movant shall serve a copy of it with notice of entry upon the Clerk of the Trial Support Office (Room 158); and it is further

ORDERED that upon payment of the appropriate calendar fees and the filing of notes of issue and statements of readiness in each of the above actions, the Clerk of the Trial Support Office shall place the aforesaid actions upon the trial calendar for a joint trial; and it is further

ORDERED that at said joint trial plaintiff _____ in the _____ action shall have the right to open and close before the jury.

Dated: _____

ENTER:

J.S.C.

**ADJUDGED that the petition for leave to serve a late notice of claim is granted; and
it is further**

**ORDERED that [petitioner/claimant] shall commence an action and purchase a new
index number in the event a lawsuit arising from this notice of claim is filed.**

Dated: _____

ENTER:

J.S.C.

ORDERED that the Clerk, upon service of a copy of this order with notice of entry, shall enter a money judgment in plaintiff's favor against defendant in the sum of \$_____, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that the defendant shall post security with the Clerk in the form of certified check, cash or security bond in the sum of \$_____, to assure payment of arrears and sums that may come due in the future; in the event that the defendant fails to post security as directed herein, plaintiff may, without further notice, settle an order providing for the sequestration of defendant's income and assets and the appointment of a receiver; and it is further

ORDERED that plaintiff's application to punish defendant for contempt is denied with leave to renew upon a showing that the plaintiff has been unable to effect collection of the arrears due her through the relief granted herein; and it is further

ORDERED that the defendant's application for a modification of maintenance is denied.

Dated: _____

ENTER:

J.S.C.

ORDERED that the plaintiff [defendant] is awarded \$ _____ per week temporary maintenance which shall [shall not] be income to the plaintiff [defendant] and shall [shall not] be deductible to the defendant [plaintiff] for taxation purposes; and it is further

ORDERED that pending final determination of this action, the plaintiff [defendant] is directed to pay all rent, insurance, and utilities, such as gas and electricity, on the marital residence; and it is further

ORDERED that the defendant [plaintiff] is directed to pay the sum of \$ _____ per week as and for interim child support; and it is further

ORDERED that the defendant [plaintiff] is directed to maintain and continue in full force and effect all presently existing policies of life, medical, and dental insurance in behalf of plaintiff [defendant] and the parties' children and to pay all unreimbursed, non-elective pharmaceutical, medical, and dental expenses for them; and it is further

ORDERED that the award at the rate of \$ _____ in addition to the award of pendente lite relief is retroactive to the original date of service of this application; retroactive sums due by reason of this award shall be paid in their entirety within 20 days from service of a copy of this order with notice of entry. Defendant [plaintiff] may take credit for sums voluntarily paid for maintenance and support for this period for which he [she] has cancelled checks or other similar proof of payment; and it is further

ORDERED that the first weekly payment hereunder shall be made _____ days after service of a copy of this order with notice of entry, and payments shall continue on a weekly basis thereafter; and it is further

ORDERED that the plaintiff [defendant] is awarded interim counsel fees in the sum of \$_____ to be paid by defendant [plaintiff] to plaintiff's [defendant's] attorney within 20 days after service of a copy of this order with notice of entry. This award is made without prejudice to an application by plaintiff [defendant] for additional counsel fees, if necessary; and it is further

ORDERED that the plaintiff [defendant] is granted [denied] exclusive occupancy of the marital residence; and it is further

ORDERED that the defendant [plaintiff] may remove his [her] personalty from the marital residence on a date and at a time to be agreed to by the parties, in the presence of their respective counsel or designees. This shall take place no later than _____ days after service of a copy of this order with notice of entry. Defendant [plaintiff] shall furnish plaintiff [defendant] with a list of the personalty to be removed no later than _____ days prior to the date scheduled for removal of same; and it is further

ORDERED that the plaintiff [defendant] is awarded interim custody of the parties' minor child [children]. The parties within 20 days after service of a copy of this order with notice of entry shall settle an order fixing an appropriate schedule of interim visitation. In the event that the parties are unable to settle such an order, the matter of determining a schedule of interim visitation that shall serve the best interest of the minor child [children]

is referred to a Special Referee to hear and report with recommendations on an expedited basis; pending receipt of the report, should a hearing be necessary, final determination of the matter of interim visitation is held in abeyance; and it is further

ORDERED, that the parties are enjoined from selling, transferring, conveying or otherwise disposing of assets pending further court order, except for ordinary and routine living and business expenses, in order to maintain the status quo for possible equitable distribution upon the plenary trial of this action. The exception for "ordinary and routine living and business expenses" contemplates that payment of these expenses be made from current income unless current income is clearly insufficient to meet the reasonable needs of the parties. The parties are cautioned that any unauthorized invasion of assets for any purpose may result in a finding of contempt if it is later found that current income was not exhausted prior to invasion of assets; and it is further

ORDERED that all relief sought in this consolidated application which is not specifically granted herein shall be deemed denied. A copy of this order with notice of entry shall be served on the Special Referee Clerk in the Motion Support Office (Room

119M), together with a completed Information Sheet,¹ for the purpose of obtaining a calendar date, if such a hearing on interim visitation shall become necessary.

Dated: _____

ENTER:

J.S.C.

Form 70: Matrimonial Case, Pendente Lite Relief, including Maintenance, Child Support, Custody, Injunctive Relief, Counsel Fees, etc. (cont'd)

¹ Copies are available in Room 119M at 60 Centre Street and on the Court's website at www.nycourts.gov/supctmanh (under the "References" section of the "Courthouse Procedures" link).

ORDERED that the motion is granted and the plaintiff shall, within 20 days from service of a copy of this order with notice of entry, serve an amended complaint setting forth a more definite statement of plaintiff's claims and allegations; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days of service of said pleading; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20 __, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the defendant's motion to vacate the note of issue and strike the case from the trial calendar is denied, but the defendant shall be permitted to take a further deposition of plaintiff limited to the issue of _____ provided that the deposition is completed within 30 days from service of a copy of this order with notice of entry; and it is further

ORDERED that plaintiff shall appear for a deposition at the office of counsel for defendant within said 30-day period on a date and at a time convenient to both sides.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted and the note of issue is vacated and the case is stricken from the trial calendar; and it is further

ORDERED that all further discovery in this matter shall be completed within 60 days from the date hereof; and it is further

ORDERED that the parties shall appear for a conference in Room _____, _____ Street, on _____, 20 ____ at _____ AM/PM ; and it is further

ORDERED that, within 15 days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that, within 15 days from completion of discovery as hereinabove directed, the plaintiff shall cause the action to be placed upon the trial calendar by the filing of a new note of issue and statement of readiness and payment of the fee therefor.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted on the ground that the plaintiff [defendant] is/has reached the age of 70 years [is terminally ill]; and it is further

ORDERED that counsel for the movant, shall within 15 days from entry of this order, serve a copy of this order with notice of entry on all parties and upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to place this case on the trial calendar at the head of said calendar except for actions in which a preference was previously granted.

Dated: _____

ENTER:

J.S.C.

Due deliberation having been had, and it appearing to this Court that a cause of action exists in favor of the plaintiff and against the defendant and that the plaintiff is entitled to a preliminary injunction on the ground that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in the aforesaid decision [the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff, as set forth in the aforesaid decision], it is

ORDERED that the undertaking is fixed in the sum of \$ _____ conditioned that the plaintiff, if it is finally determined that he [she/it] was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that defendant, his [her/its] agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendant, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendant or otherwise, any of the following acts:

[Set forth in detail all specific actions being enjoined]

and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference
in Room _____, _____ Street, on _____, 20 ____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of defendant for leave to reargue its motion for summary judgment is denied.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of defendant for leave to reargue its motion for summary judgment on the third, eighth and tenth causes of action is granted; and it is further

ORDERED that, upon reargument, the Court vacates its prior order, dated _____, 20____, and grants defendant's motion for summary judgment as to the said three causes of action; and it is further

ORDERED that the third, eighth and tenth causes of action are dismissed.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of defendant for leave to reargue its motion for summary judgment on the third, eighth and tenth causes of action is granted; and it is further

ORDERED that, upon reargument, the Court adheres to its Decision and Order, dated _____, 20____, denying said motion for summary judgment in its entirety.

Dated: _____

ENTER:

J.S.C.

ORDERED that the New York City Department of Finance, Treasury Division, Client Services, located at 1 Centre Street, Rm. 2200, New York, N.Y. 10007, is directed, upon receipt of a certified copy of this order, a Certificate of Deposit duly issued by the Department of Finance, and any other forms required by the Department, to turn over to defendant _____ the funds deposited with that Department by said defendant in Account No. _____, totaling \$ _____, as reflected in the Certificate, less the fee of the Department.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of defendant for leave to renew its motion for summary judgment is denied.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of defendant for leave to renew its motion for summary judgment on the third, eighth and tenth causes of action is granted; and it is further

ORDERED that, upon renewal, the Court vacates its prior Order, dated _____, 20____, and grants defendant's motion for summary judgment in all respects; and it is further

ORDERED that the third, eighth and tenth causes of action are dismissed.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of defendant for leave to renew its motion for summary judgment on the third, eighth and tenth causes of action is granted; and it is further

ORDERED that, upon renewal, the Court adheres to its Decision and Order, dated _____, 20____, denying said motion for summary judgment in its entirety.

Dated: _____

ENTER:

J.S.C.

ORDERED that the Order of this Court dated _____, 20____, is resettled as follows:

[Set forth the original order as entered, including the entire caption and the body through and including the signature line, except the portion to be changed, and substitute the new provision for the portion to be changed.]

Dated: _____

ENTER:

J.S.C.

ORDERED that plaintiff's motion to restore the case to the trial calendar is granted upon condition that plaintiff file a new note of issue and pay the appropriate fee therefor; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff file a note of issue and statement of readiness with, and serve a copy of this order with notice of entry on, the Trial Support Office (Room 158), along with proof of payment of the appropriate fee; and it is further

ORDERED that upon receipt of the foregoing, the Clerk of the Trial Support Office shall restore the case to the trial calendar.

Dated: _____

ENTER:

J.S.C.

**ORDERED that plaintiff's motion to restore the case to the trial calendar is granted;
and it is further**

**ORDERED that, within 20 days from entry of this order, plaintiff serve a copy of this
order with notice of entry on the Clerk of the Trial Support Office (Room 158), who is
directed to restore the case to the trial calendar under the original calendar number.**

Dated: _____

ENTER:

J.S.C.

The court having determined that _____, Esq., counsel for plaintiff [defendant], has engaged in frivolous conduct as defined in Section 130-1.1 (c) of the Rules of the Chief Administrator as set forth above [or set forth the conduct here and the reasons why it is frivolous] and that sanctions should be awarded, and having found that the amount of sanctions to be awarded is appropriate as set forth above [or set forth the reasons here], it is now therefore

ORDERED that defendant's [plaintiff's] motion for sanctions is granted and plaintiff's [defendant's] counsel _____, Esq., without any charge to his [her] client, is hereby sanctioned in the amount of \$ _____, payable to the Lawyer's Fund for Client Protection, 119 Washington Avenue, Albany, New York 12210; and it is further

ORDERED that written proof of the payment of this sanction be provided to the Clerk of Part _____ and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that such proof of payment is not provided in a timely manner, the Clerk of the court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the Lawyer's Fund and against said counsel in the aforesaid sum; and it is further

ORDERED that, in accordance with 22 NYCRR 130-1.3, a copy of this order will be sent by the Part to the Lawyer's Fund for Client Protection.

Dated: _____

ENTER:

J.S.C.

The court having determined that plaintiff [defendant] has engaged in frivolous conduct as defined in Section 130-1.1 (c) of the Rules of the Chief Administrator as set forth above [or set forth the conduct here and the reasons why it is frivolous] and that costs should be awarded, and having found that the amount of sanctions to be awarded is appropriate as set forth above [or set forth the reasons here], it is now therefore

ORDERED that defendant's [plaintiff's] motion for sanctions is granted and the plaintiff [defendant] is hereby sanctioned by this court in the amount of \$ _____, and shall deposit said amount with the County Clerk (Room 141 B), together with a copy of this order, for transmittal to the New York State Commissioner of Taxation and Finance; and it is further

ORDERED that written proof of the payment of this sanction shall be provided to the Clerk of Part ___ and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that such proof of payment is not provided in a timely manner, the Clerk of the court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the Commissioner and against plaintiff [defendant] in the aforesaid sum.

Dated: _____

ENTER:

J.S.C.

The court, upon its own motion, having determined that _____, Esq., counsel for plaintiff in this action, failed to appear for a compliance conference on March 1, 2010 at 9:30 AM, and that such failure was without good cause, and counsel for plaintiff having been afforded an opportunity to be heard and having submitted an affirmation dated April 15, 2010, and the explanation offered by counsel therein having been found to be wholly inadequate, and counsel having been informed of such conference in the preliminary conference order of this court dated October 1, 2009 and by communication from counsel for defendant dated February 15, 2010, and counsel for plaintiff having failed to advise the court or counsel for defendant of an intention not to appear and having failed to send a substitute or submit an affirmation of actual engagement, and the failure of counsel to appear having defeated the purpose of the conference and wasted the time of the court and counsel for defendant, it is now therefore

ORDERED that _____, Esq. shall, without any charge to his [her] client, pay to defendant the sum of \$ 500 as costs to compensate the defendant for the attorney's fees incurred by it by reason of its attorneys' having attended said conference to no purpose; and it is further

ORDERED that written proof of the payment of this sanction be provided to the Clerk of Part ___ and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that such proof of payment is not provided in a timely manner, the Clerk of the court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a

judgment in favor of defendant and against said counsel in the aforesaid sum; and it is further

ORDERED that _____, Esq. is hereby sanctioned by this court in the amount of \$ 200, payable to the Lawyer's Fund for Client Protection, 119 Washington Avenue, Albany, New York 12210; and it is further

ORDERED that written proof of the payment of this sanction be provided to the Clerk of Part ___ and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that such proof of payment is not provided in a timely manner, the Clerk of the court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the Lawyer's Fund and against said counsel in the aforesaid sum; and it is further

ORDERED that a copy of this order will be sent by the Part to the Lawyer's Fund for Client Protection.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted and plaintiff shall, within 10 days from service of a copy of this order with notice of entry, serve an amended complaint which shall not include the scandalous matter set forth in the original complaint (i.e., paragraphs 10, 15, and 21 thereof); and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days of service of such pleading; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference
in Room _____, _____ Street, on _____, 20 _____, at _____ AM/PM.

and it is further

ORDERED that the [motion] by [defendant] [plaintiff] heretofore marked off by order of this court is restored to [this Court's] [the Motion Support Office Courtroom (Room 130)] calendar for _____, 20 ____, at _____AM/PM; and it is further

ORDERED that [plaintiff] [defendant] shall serve and file opposition papers so as to be received by the Court and moving counsel on or before _____, 20 ____ and that [defendant] [plaintiff] serve and file reply papers so as to be received by the Court and opposing counsel on or before _____, 20 _____.

As explained above [in the accompanying memorandum opinion], the court, pursuant to and in accordance with Part 216 of the Uniform Rules for the Trial Courts, having determined that good cause exists for the sealing of the file in this action and the grounds therefor having been specified, it is now

ORDERED that the County Clerk is directed to seal the file in this action in its entirety upon service on him of a copy of this order; and it is further

ORDERED that thereafter, or until further order of the court, the County Clerk shall deny access to the file to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party, and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from said counsel.

Dated: _____

ENTER:

J.S.C.

As explained above [in the accompanying memorandum opinion], the court, pursuant to and in accordance with Part 216 of the Uniform Rules for the Trial Courts, having determined that good cause exists for the sealing in part of the file in this action and the grounds therefor having been specified, it is now

ORDERED that the County Clerk, upon service on him of a copy of this order, is directed to seal [e.g., Exhibit C to the affidavit of John Jay, sworn to August 2, 2008, submitted in support of the motion to dismiss of defendant in this action] and to separate these papers and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the County Clerk shall deny access to the said sealed papers to anyone (other than the staff of the County Clerk or the court) except for counsel of record for any party to this case, a party, and any representative of counsel of record for a party upon presentation to the County Clerk of written authorization from said counsel.

Dated: _____

ENTER:

J.S.C.

ORDERED that, within 30 days from the date of service of a copy of this order with notice of entry, the plaintiff either (i) pay into the Court the sum of \$500.00 (payable in cash, credit card (Mastercard or Visa), certified check or bank check) to be applied to the payment of costs, if any, awarded against the plaintiff, or (ii), at his [her/its] election, file with the County Clerk (Room 141 B) an undertaking with sufficient surety in a like amount to be applied to the payment of costs, if any, awarded against the plaintiff in this action; and it is further

ORDERED that, within said 30-day period, plaintiff serve upon the attorneys for the defendant a written notice of the aforesaid payment or of the filing of such undertaking; and it is further

ORDERED that all further proceedings, except to review this order, are stayed for 30 days from the date of service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____ 20____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted; and it is further

ORDERED that the Sheriff of any county of the State of New York wherein the chattel is found, upon service upon him or her of a certified copy of this order, the papers on which this order was granted, and the undertaking approved by this Court in the amount of \$ _____, which is not less than twice the value of the chattel, and payment of the proper fees, is directed to seize the chattel at issue, to wit:

[set forth detailed description of chattel sufficient for Sheriff to identify and seize the chattel]

and for that purpose, if the chattel is not delivered to him or her, to break open, enter, and search for the chattel in the place specified in the supporting affidavit, namely,

and to hold the chattel pursuant to CPLR Article 71.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted and the plaintiff shall, within 20 days from service of a copy of this order with notice of entry, serve an amended complaint setting forth plain and concise statements in consecutively numbered paragraphs, each of which shall contain, as far as practicable, a single allegation; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from service of said pleading; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20 ____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that, pursuant to CPLR 603, in furtherance of convenience to the parties and to avoid any prejudice, there shall be a separate trial of the plaintiff's third cause of action, which shall take place prior to the trial of the other claims in this case.

Dated: _____

ENTER:

J.S.C.

ORDERED that the action is severed as to defendant _____, and is continued as to the remaining defendants; and it is further

ORDERED that further proceedings in this action are stayed as to defendant _____, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of, or vacatur of the stay issued by the Bankruptcy Court in, the proceeding known as _____ v. _____, pending before the United States Bankruptcy Court for _____, Action No. _____; and it is further

ORDERED that movant is directed to serve a copy of this order with notice of entry on the Trial Support Office (Room 158).

Dated: _____

ENTER:

J.S.C.

ORDERED that that portion of the plaintiff's action that seeks the recovery of attorney's fees is severed and the issue of the amount of reasonable attorney's fees plaintiff may recover against the defendant _____ is referred to a Special Referee to hear and report; and it is further

ORDERED that counsel for the plaintiff shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,¹ upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date.

Dated: _____

ENTER:

J.S.C.

Form 99: Severance of Claim for Attorney's Fees, Reference to Special Referee, Order Directing [See Printed Form Order of Reference]

¹ Copies are available in Rm. 119M at 60 Centre Street and on the Court's website at www.nycourts.gov/suptctmanh under the "References" section of the "Courthouse Procedures" link).

ORDERED that the motion to dismiss is granted to the extent of staying further proceedings in this action, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the action/proceeding known as _____ v. _____, Index No. _____, pending before the _____; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the Trial Support Office (Room 158).

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of _____ to quash or modify a subpoena returnable in this court, served upon it on _____, 20 ____, is granted to the extent that the movant need not, and shall not, produce the portion of the [medical/business/employment/educational/etc.] files in its possession identified in the affidavit of _____, sworn to on _____, 20 ____, submitted in support of the motion, and the remainder of the items sought shall be produced within 10 days from service of a copy of this order with notice of entry.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted, and that _____, as guardian [receiver, transferee of interest, successor public official] of _____, incapacitated person [corporation in receivership, predecessor in interest, predecessor public official], be substituted as plaintiff in the above-entitled action in the place and stead of the plaintiff, _____, without prejudice to any proceedings heretofore had herein; and it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended by substituting the name of _____, as guardian [receiver, transferee of interest, successor public official] of _____, incapacitated person [corporation in receivership, predecessor in interest, predecessor public official], as plaintiff in the place and stead of said originally-named plaintiff, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted, and that _____, as executor of the estate of _____, deceased, be substituted as plaintiff in the above-entitled action in the place and stead of the plaintiff, _____, without prejudice to any proceedings heretofore had herein; and it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended by substituting the name of _____, as executor of the estate of _____, deceased, as plaintiff in the place and stead of said decedent, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein.

Dated: _____

ENTER:

J.S.C.

ORDERED that defendant's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: _____

ENTER:

J.S.C.

**ORDERED that the motion for summary judgment in lieu of complaint is denied; and
it is further**

**ORDERED that plaintiff shall serve a formal complaint upon defendant's attorney
within 20 days of service on plaintiff's counsel of a copy of this order with notice of entry
and defendant shall move against or serve an answer to the complaint within 20 days after
service thereof.**

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion for summary judgment in lieu of complaint is denied; and
it is further

ORDERED that the plaintiff's moving papers, consisting of _____, are
hereby deemed the complaint in this action and the defendant's answering papers,
consisting of _____, are hereby deemed the answer; and it is further

ORDERED that counsel are directed to appear for [preliminary] [status] conference
in Room _____, _____ Street, on _____, 20____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion for summary judgment on the complaint herein is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$ _____, together with interest at the rate of _____% per annum from the date of _____ until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Dated: _____

ENTER:

J.S.C.

ORDERED that the plaintiff's motion for summary judgment on the complaint herein is granted on default, and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the sum of \$ _____, with interest at the rate of _____% per annum from the date of _____, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk.

Dated: _____

ENTER:

J.S.C.

It appearing to the court from affidavits submitted in opposition to [plaintiff's/defendant's] motion for summary judgment that facts essential to justify opposition may exist, but cannot now be stated, it is

ORDERED that [defendant/plaintiff] may take the deposition of _____ limited to the issue of _____, provided that said deposition shall be completed no later than 30 days from service of a copy of this order with notice of entry; and it is further

ORDERED that [defendant/plaintiff] serve and file with the Clerk of the Part further affidavits so as to be received in hand no later than 60 days from service of a copy of this order with notice of entry; and it is further

ORDERED that the moving [plaintiff/defendant] may submit papers in reply to the further opposition papers, with such papers to be served and filed with the Clerk of the Part so as to be received in hand no later than 15 days after service of the opposition papers; and it is further

ORDERED that the motion shall be re-calendared on the motion calendar of the Part for argument on _____, 20 ____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

It appearing to the court that plaintiff is entitled to judgment on liability and that the only triable issues of fact arising on plaintiff's motion for summary judgment relate to the amount of damages to which plaintiff is entitled, it is

ORDERED that the motion is granted with regard to liability; and it is further

ORDERED that an immediate trial of the aforesaid issues of fact shall be had before the court; and it is further

ORDERED that plaintiff shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the Trial Support Office (Room 158) and shall serve and file with said Clerk a note of issue and statement of readiness and shall pay the fee therefor, and said Clerk shall cause the matter to be placed upon the calendar for such trial.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion for summary judgment is granted to the extent of granting partial summary judgment in favor of plaintiff and against defendant as follows:

1. Plaintiff is granted judgment on the first cause of action in the amount of \$_____, together with interest at the rate of ____% per annum from the date of _____, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs, the first cause of action is severed, and the Clerk is directed to enter judgment accordingly;

2. Defendant is found liable to plaintiff on the second cause of action and the issue of the amount of a judgment to be entered thereon shall be determined at the trial herein; and it is further

ORDERED that the action shall continue as to the second through fifth causes of action; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room ____ on _____, 20 ____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion is granted and the plaintiff shall, within 15 days from service of a copy of this order with notice of entry, serve upon defendant a supplemental demand setting forth the total damages to which the pleader deems himself [herself] entitled.

Dated: _____

ENTER:

J.S.C.

ORDERED that, it appearing that the Civil Court of the City of New York does not have jurisdiction to grant the full relief to which the parties are entitled in the case of _____ v. _____, No. _____, the motion of plaintiff herein to remove said action to this court is granted; and it is further

ORDERED that movant is directed to serve a certified copy of this order upon the Clerk of the Civil Court, who shall, upon such service and the payment of any fees, transfer to this court all of the papers heretofore filed in said action; and it is further

ORDERED that the said Civil Court action shall be consolidated with this action under the index number of this action; and it is further

ORDERED that the caption of the consolidated action shall be the following:

Plaintiffs,

v.

Defendants.

and it is further

ORDERED that the papers heretofore filed in the said Civil Court action and in this action shall stand as the papers in the consolidated action; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who shall mark their records to reflect this consolidation.

Dated: _____

ENTER:

J.S.C.

ADJUDGED that the petition is granted, and it is further

ORDERED and ADJUDGED that the _____ Bank is directed, upon receipt of a certified copy of this order and judgment, to turn over to the petitioner, _____, funds in the account of _____, judgment debtor, held in said Bank under account number _____, up to a maximum amount of \$ _____; and it is further

ADJUDGED that upon such turn-over of funds, the respondent _____ Bank shall be discharged of all liability on this account to the extent of payment made.

Dated: _____

ENTER:

J.S.C.

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of _____, and upon service by movant of a copy of this order with notice of entry and payment of appropriate fees, if any, the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of _____.

Dated: _____

ENTER:

J.S.C.

ORDERED that the venue of this action is changed from the _____ Court, County of _____, to this Court and the Clerk of the _____ Court, County of _____, is directed to transfer the papers on file in this action (Index No. _____) to the Clerk of the Supreme Court, County of New York, upon service by movant of a certified copy of this order and payment of the appropriate fee, if any; and it is further

ORDERED that the Clerk of the Supreme Court, New York County, upon receipt of a copy of this order with notice of entry, shall, without further fee, assign a New York County index number to the file transferred pursuant to this order; and it is further

ORDERED that counsel are directed to appear for a [preliminary] [status] conference in Room _____, _____ Street, on _____, 20____, at _____ AM/PM.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of _____, Esq. to be relieved as attorney for _____ is granted without opposition upon filing of proof of compliance with the following conditions; and it is further

ORDERED that said attorney serve a copy of this order with notice of entry upon the former client at his [her/its] last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by regular mail; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of mailing the notice and the client shall comply therewith, except that, in the event [plaintiff/defendant] intends instead to proceed pro se, he/she shall notify the Clerk of the Part in writing within said 30-day period; and it is further

ORDERED that any new attorney retained by [plaintiff/defendant] file a notice of appearance with the Clerk of the Trial Support Office (Room 158) and the Clerk of the Part within 30 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court for a period of 30 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that [defendant's/plaintiff's] motion to/for _____ is adjourned to _____, 20 ____ in Room _____, _____ Street, at ____ AM/PM, and [plaintiff/defendant] is directed to serve and submit opposition thereto 25 days prior to said date and [defendant/plaintiff] may serve and file a reply thereto no later than 10 days prior to said date.

Dated: _____

ENTER:

J.S.C.

ORDERED that the motion of _____, Esq. to be relieved as attorney for _____ is granted without opposition upon filing of proof of compliance with the following conditions; and it is further

ORDERED that said attorney serve a copy of this order with notice of entry upon the former client at his [her/its] last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by regular mail; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of mailing the notice and the client shall comply therewith, except that, in the event [plaintiff/defendant] intends instead to proceed pro se, he/she shall notify the Clerk of the Part in writing within said 30-day period; and it is further

ORDERED that any new attorney retained by [plaintiff/defendant] file a notice of appearance with the Clerk of the Trial Support Office (Room 158) and the Clerk of the Part within 30 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court for a period of 30 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further

ORDERED that the issue of the reasonable value of legal services rendered and disbursements paid by movant is severed and referred to the Special Referee Clerk for

assignment to a Special Referee to hear and report pursuant to the accompanying Order of Reference and, pending receipt of the report and a motion pursuant to CPLR 4403, final determination of that branch of the motion is held in abeyance; and it is further

ORDERED that counsel shall turn over the file pertaining to this case upon the fixing of the value of his [her] services and the payment thereof (Yaron v. Yaron, 58 A.D.2d 752) or the posting of a bond for the payment thereof; and it is further

ORDERED that counsel for the movant shall, within 30 days from the date of this order, serve a copy of this order with notice of entry and the accompanying Order of Reference, together with a complete Information Sheet,¹ upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date subsequent to the conclusion of the stay fixed above.

Dated: _____

ENTER:

J.S.C.

Form 118: Withdraw as Counsel, Order on Motion to, With Reference Re Retaining Lien (cont'd) [See Printed Form Order of Reference]

¹ Copies are available in Room 119M at 60 Centre Street and on the Court's website at www.nycourts.gov/supctmanh (under the "References" section of the "Courthouse Procedures" link).

APPENDIX C

STRUCTURED JUDGMENTS

APPENDIX C

STRUCTURED JUDGMENTS - -

(CPLR ARTICLES 50-A AND 50-B)

EXPLANATION AND INSTRUCTIONS

Structured judgments, those issued under Articles 50-A and 50-B of the CPLR, are a subject of extraordinary, indeed, byzantine, complexity. The court should certainly direct settlement of any such judgment in a case covered by either Article rather than attempt to craft a judgment on its own in the first instance. A proposed judgment and any proposed counter-judgment should be submitted directly to the Part or Chambers. Because of the complexity inherent in these judgments, attorneys often make errors in drafting them and these judgments thus present a significant challenge for Chambers. The following information and forms are provided with the goal of rendering this subject less obscure and permitting Chambers to identify, and correct as appropriate, defective proposed structured judgments or counter-judgments.

In addition, Chambers should be aware that the County Clerk's Office has extensive familiarity with structured judgments. If doubts or questions arise about proposed judgments of this type, Chambers can find assistance by contacting Joseph Antonelli, Clerk-in-Charge, or Stephen Kubinec, Deputy Clerk-in-Charge, of the Law and Equity section of the County Clerk's Office (Room 141B).

It is necessary, for reasons which will become apparent, to delve into some history. The law regarding structured judgments was introduced in the 1980's as part of reforms addressed to perceived problems in the medical malpractice field, including soaring insurance rates. In 1985, Article 50-A was enacted covering medical, dental and, later, podiatric malpractice actions. In brief, Article 50-A required that future damages be paid over time. Periodic payment of judgments in actions for personal injury, injury to property, and wrongful death might have been (should have been), but were not, included in Article 50-A. Instead, in 1986, Article 50-B was enacted for that purpose. The two articles were substantially similar. Over the years, various lacunae and other problems in these statutes became evident and these were worthy of remedy. Important changes to this regime were enacted in 2003 in response to a decision of the Court of Appeals¹

¹ Desiderio v. Ochs, 100 NY2d 159, 761 NYS2d 576 (2003). Also, in 2002, a Structured Settlement Protection Act (G.O.L. § 5-1701 et. seq.) was enacted to provide greater protection to individuals entering into a structured settlement agreement or negotiating to sell or transfer a periodic payment thereunder.

Unfortunately, this development resulted in even greater complexity. Two overlapping statutes that really should have originally been one were now not consolidated into one, but rather transformed into two non-uniform ones: Article 50-B was not changed, but 50-A was altered dramatically.²

As a consequence of this history, the court may face the structured judgment problem in three different, headache-inducing contexts:

- (i) Art. 50-A in its pre-2003 form must be applied to any medical, dental, or podiatric malpractice action that was commenced prior to July 26, 2003.³
- (ii) The current version of Art. 50-A must be applied to any medical, dental, or podiatric malpractice action, including any action for malpractice wrongful death, commenced on or after July 26, 2003.
- (iii) Art. 50-B (again, unchanged in 2003) must be applied to actions for personal injury, injury to property, and wrongful death in general.

Since, we trust, almost all the judgments that will be presented to the court in medical, dental or podiatric malpractice actions (hereinafter referred to as “medical malpractice actions”) in 2010 and thereafter should arise in actions that were commenced on or after the effective date of new Art. 50-A, our discussion will concern the current version of the statute. That version resolved some of the problems that had plagued the original Art. 50-A.⁴ The current Art. 50-A, however, is, unfortunately, even more complicated than its predecessor and is characterized by a commentator as “general anesthesia” for the mind.⁵ In order to avoid the formidable difficulties otherwise presented, parties may stipulate to terms different from those set forth in the statute. For the same reason, the court will not want to discourage

² A knowledgeable commentator aptly described the resulting 50-A and 50-B as the “‘The Non-Uniform, New York Economists’ Full Employment Acts.’” Gleason, Practice Commentary to CPLR Art. 50-A, at 599 (McKinneys 2007) [hereinafter “Gleason”].

³ Laws 2003, ch. 86, § 4 (effective date of July 26, 2003).

⁴ See, e.g., Desiderio v. Ochs, supra.

⁵ Gleason, at 601.

such settlements.⁶

PREPARING A JUDGMENT UNDER CURRENT ARTICLE 50-A

1. Adjusting the Verdict

If a judgment is presented in a case under current Art. 50-A, the court will apply to the findings of past and future damages any applicable rules regarding additurs and/or remittiturs and adjust the verdict accordingly (CPLR 5031[a]). Note that CPLR 4111 regarding elements of the verdict provides for findings required for 50-A (and 50-B) calculations.

2. Setting Forth Lump Sum Amounts

Next, pursuant to subparagraph (b) of Section 5031, the judgment shall set forth lump sum amounts as specified in the jury verdict for all past damages, all damages for future loss of services, all damages for future loss of consortium, all damages in medical malpractice wrongful death cases, and damages for future pain and suffering of \$500,000 or less. In any case in which all damages are to be paid in lump sums, the judgment shall be entered on the total, without other regard to Section 5031.

3. What the Remainder of Section 5031 Applies To

The remainder of Section 5031 will be applied to (i) all malpractice cases (wrongful death excluded) in which findings have been made of future economic and pecuniary damage, and (ii) any case in which there is an award of pain and suffering over \$500,000. The Section reaches a far broader array of cases than its predecessor because, unlike the prior statute, it applies to the former class of cases.

4. Calculating Pain and Suffering Damages for the Judgment

Pursuant to CPLR 5031(c), as to a pain and suffering award in excess of \$500,000, the judgment should provide for a lump sum payment of the greater of 35% of such damages or \$500,000. The balance of the award for this form of damages shall be paid in a stream of future payments, arrived at by dividing the remaining damages by the number of

⁶ Id. at 601-02. This is so even though the new Art. 50-A omitted a provision that had appeared in its predecessor (CPLR 5031[f]) that the court could enter judgment on consent for future damages without regard to provisions of Art. 50-A. This omission was made presumably through inadvertence or because the language was considered unnecessary (generally, litigants can chart their own course), rather than because of any legislative intent to bar such settlements. Id. at 602. No legislature would be so cruel to litigants, attorneys, County Clerks and their staff, Judges, and court staff.

years found by the jury or by eight years, whichever is less. This yields a figure that constitutes the periodic payment for the first year. The payments for the following years are determined by adding 4% to the prior year's payment. Then, the present value of the stream of payments is calculated by applying a discount rate to the stream of payments. The discount rate is based upon U.S. Treasury Bond rates (see Section 5031[e]).⁷ This process may require professional assistance or the aid of reliable computer software.

5. Calculating Covered Future Economic and Pecuniary Damages for the Judgments

The judgment must include future payment streams for future economic and pecuniary damages (except for those in malpractice wrongful death cases) based upon the jury's findings (Section 5031[d]). For each type of damages, the growth rate is applied to the annual amount in current dollars for the period of years, as determined by the jury. It appears that the annual amount in current dollars is used for the first year's payment.⁸ Then the annual growth rate percentage is applied to that figure to yield the second year's payment, and that process is repeated for each succeeding year. Next, the present value of the stream of payments for each type of damages will be determined by application of the discount rate. Thus far, the calculation resembles that in Item 4.

Thirty-five percent of the present value shall be paid as a lump sum. The streams of payments shall be proportionately reduced. These amounts will be paid over time as explained below.

6. Adjustments for Attorney's Fees And the Like

Deductions shall be made from the lump sums and the present values of payment streams previously determined (Section 5031[f]). Any set-offs for comparative negligence and settlements (CPLR Arts. 14-A and 16 and GOL § 15-108) shall be deducted proportionately and thereafter the streams and their present values shall be adjusted accordingly. The same process must be followed for litigation expenses and attorneys' fees, which are to be paid in lump sums. As to attorneys' fees, see Judiciary Law § 474-a. In calculating the fee, consideration has to be given to the lump sums of damages recovered and the payment streams of damages, and the present values of those streams should presumably be

⁷ As to a potential problem in the calculation for lengthy payment streams, see Gleason, at 606-07.

⁸ Gleason, at 604.

used in the calculation.⁹ The fees are to be deducted proportionately from each item of the remaining damages awards and thereafter the streams of payments and their present value shall be adjusted accordingly. Section 5031(f)(3).

Liens not the subject of a separate award shall next be deducted proportionately from each item of the remaining damages awards and the streams and their present value again adjusted accordingly. Section 5031(f)(4).

Subdivision (g) requires the defendants and their insurance carriers to offer and guarantee the purchase and payment of an annuity contract to make annual payments in equal monthly installments of the payment streams as adjusted (that is, after the deductions and adjustments described above). The payments shall run from the date of the verdict (unless the verdict specifies otherwise) for the period of time decided upon by the jury (except for the streams for future pain and suffering, which shall not exceed eight years), or the life of the plaintiff, whichever is shorter. Awards for lost earnings, however, shall be paid for the full term of the awards as decided by the jury; payments for economic or pecuniary damages found to be permanent shall continue for the plaintiff's life.

Judgment shall be entered on the lump sum payments and the present value of the payment streams. Subdivision (h).

7. Some Remaining
Complicated Questions

Despite the level of detail in Article 50-A, there appear to remain some uncertainties. These have to do with the possible jury determination of the present value of lump sum awards for future damages for malpractice wrongful death, loss of consortium, and loss of services, as well as the lump sum portion of damages for future pain and suffering.¹⁰

⁹ Gleason, at 605.

¹⁰ These issues are extremely complicated. For an explanation, see Gleason, at 607-12.

**A FORM OF JUDGMENT UNDER
CURRENT ARTICLE 50-A
(NON-WRONGFUL DEATH CASE)**

At IAS Part ____ of the Supreme Court
of the State of New York, County of New York,
at the courthouse thereof, _____,
New York, N.Y., on the ____ day of _____,
20 ____.

PRESENT: HON: _____,
Justice

Plaintiff(s),

Index No. _____

- against-

JUDGMENT

Defendant(s).

The matter captioned above having come on for trial on _____, 20 ____ in IAS Part ____ before the Hon. _____, Justice of the Supreme Court, and a jury, and the plaintiff and defendant having appeared by their respective attorneys, _____, Esq. and _____, Esq., and the jury having found, on _____, 20 ____, in favor of plaintiff _____, residing at _____, and against defendant _____, residing at _____, as set forth in detail hereinafter, and

WHEREAS the jury having awarded the sum of \$ _____ for all past damages, the sum of \$ _____ for future loss of consortium, the sum of \$ _____ for future loss of services, and, pursuant to CPLR 5031(b), each such sum shall be paid to plaintiff by defendant in a lump sum, and

WHEREAS, the jury having awarded damages for future pain and suffering of \$750,000 and determined that the time over which such pain and suffering would be incurred would be ten years, and

WHEREAS, pursuant to CPLR 5031(b), the sum of \$500,000 shall be paid to the plaintiff by the defendant as lump sum damages for future pain and suffering, and

WHEREAS, pursuant to CPLR 5031(c), the sum of \$250,000 for future pain and suffering shall be paid in a stream of payments over eight years and the first year of such stream shall be in the sum of \$ _____ and the payment due in each succeeding year shall be increased by four percent and the present value of this stream of payments

is \$ _____, and

WHEREAS the jury having found as to future economic and pecuniary damages that an item of such damages in the form of lost wages would be incurred in the annual amount of \$ _____ for the period of _____ years at a growth rate of ____ %, yielding a stream of payments, the present value of which is \$ _____, and

WHEREAS, pursuant to CPLR 5031(d), 35% of that present value, or \$ _____, shall be paid in a lump sum, and the stream of payments for such item of future economic and pecuniary damages shall be proportionately reduced and the present value thereof shall be proportionately reduced to \$ _____, and

WHEREAS the jury having found plaintiff to have been 10% comparatively negligent, and

WHEREAS, pursuant to CPLR 5031(f) (1), the lump sum payments set forth above for past damages, future loss of consortium, future loss of services, \$500,000 for a lump sum for future pain and suffering, the lump sum payment for future economic and pecuniary damages set forth above, and the present value of a stream of payments for future pain and suffering as set forth in the amount of \$ _____ and the present value of the item of future economic and pecuniary damages as set forth above in the amount of \$ _____ shall each be reduced by 10% in accordance with such finding of comparative negligence, and the said payment streams shall be adjusted accordingly and the present value of those streams shall be adjusted accordingly, yielding respective present values of \$ _____ and \$ _____, and

WHEREAS, pursuant to CPLR 5031(f)(2), the litigation expenses of plaintiff's attorney in the amount of \$ _____ shall be deducted proportionately from each remaining item of the damages awards, including the several lump sums and the present values of the payment streams set forth, as adjusted, in the immediately preceding paragraph, and such expenses shall be paid in a lump sum, and after such deductions, the aforesaid streams of payments and their present values shall be adjusted accordingly, yielding respective present values of \$ _____ and \$ _____, and

WHEREAS, pursuant to CPLR 5031(f)(3), attorney's fees shall be awarded based upon the remaining damages awards, including the several lump sums and the present values set forth in the immediately preceding paragraph, and such fees shall be deducted proportionately from each item of the remaining damages awards and such fees, in the amount of \$ _____, shall be paid in a lump sum, and after such deductions the aforesaid streams of payments and their present values shall be adjusted accordingly, yielding respective present values of \$ _____ and \$ _____

_____,

NOW therefore, on motion of counsel for the plaintiff, it is hereby

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, as and for all past damages suffered by the plaintiff, calculated and adjusted in the manner set forth above, and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, for damages for all future loss of services, calculated and adjusted in the manner set forth above, and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, for damages for all future loss of consortium, calculated and adjusted in the manner set forth above, and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$410,000 for damages for future pain and suffering to be paid in a lump sum, calculated and adjusted in the manner set forth above, and it is further

ADJUDGED that the plaintiff recover of the defendant the sums of \$ _____ and \$ _____, representing litigation expenses and attorney's fees respectively, as calculated in the manner set forth above, and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, for damages for future pain and suffering in excess of \$500,000 representing the present value of an annuity contract, in the form set forth below, that will provide for the payment of a stream of payments for damages for such future pain and suffering over eight years, calculated and adjusted in the manner set forth above, and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, for damages for future economic and pecuniary damages to be paid in a lump sum, as calculated and adjusted in the manner set forth above, and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, in the form set forth below, that will provide for the payment, for the period of time found by the jury, of a stream of payments for damages for future economic and pecuniary damages, as calculated and adjusted in the manner set forth above, and it is further

ADJUDGED that the defendant and its insurance carrier, _____, shall offer and guarantee the purchase and payment of an annuity contract that will make annual payments in equal monthly installments of the streams of payments set forth herein, as calculated and adjusted above, which payments shall run from the date of the verdict for the period of years determined by the jury (exclusive of the stream for future pain and suffering, which shall run for eight

years) or the life of the plaintiff, whichever is shorter, except that the award for lost earnings shall be paid for the full term as determined by the jury, and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, representing interest from the date of verdict to entry of this judgment at the statutory rate, together with interest after judgment at the statutory rate.

ENTER:

J.S.C.

Judgment Entered
this _____ day of _____ 20 ____

Norman Goodman
County Clerk

PREPARING A JUDGMENT UNDER ARTICLE 50-B

As noted, the 2003 amendments radically altered Article 50-A and the related provisions of CPLR 4111, but left 50-B and the related 4111 provisions unchanged. Certain problems that had been identified in the structured judgment regime prior to 2003 and that had not been resolved by judicial decision continue to afflict Article 50-B. Attorneys may wish to agree to apply the new 50-A answers to these problems in 50-B cases (e.g., when it comes to determining what discount rate to use), or settle on other terms that avoid the problems..

As with Article 50-A, Article 50-B requires that damages, here in personal injury, property damage, and wrongful death actions (other than medical, dental, or podiatric malpractice actions and malpractice wrongful death actions) be divided into past and future damages, with the latter to be paid over time. Sections 5041 and 4111 provide the basic procedures to be followed in this process. Note that the jury is to be instructed not to reduce damages to present value, that calculation being left to the court (CPLR 4111[f]).

1. Adjusting the Verdict

Section 5041(a) requires that, in determining past and future damages, the judgment shall adjust the jury findings for comparative negligence, set-offs, credits, and other applicable rules of law.

2. Calculating a Lump Sum for Certain Damages

Next, the judgment shall provide for payment in a lump sum of the adjusted past damages, future damages of \$250,000 or less, and certain other damages, fees and costs (Section 5041[b]). Specifically, litigation expenses, attorney's fees related to past damages, and attorney's fees related to the portion of future damages payable in a lump sum are to be paid in a lump sum. So, too, is the portion of counsel fees related to the future damages that are to be paid over time; this figure is to be calculated based on the present value of the annuity contract (CPLR 5041[c]).

The calculation of attorney's fees presents one of the problems identified in Article 50-B. To determine the fees, the judgment must calculate the amount of future damages to be structured, but to determine the amount to be structured,

the judgment must first reflect the amount of the fees.¹¹ Also, the fees need to be calculated on the discounted future payment stream in order to avoid overcompensation.

The solution to these problems is to calculate the present value of the payment stream, figure the fees attributable thereto, and calculate the fees that are to be paid as a lump sum. After all lump sums, including that one, are deducted, the judgment should then recalculate the future payment stream as contemplated by Section 5041(e).¹²

3. Calculating the Annuity Contract

After the judgment has provided for payment of the various lump sums required, it must provide for payment of the future damages over time by means of the annuity contract. The judgment should provide for the award of the present value of a contract that will provide a future payment stream for future damages in excess of \$250,000.

Section 5041(e) states that present value is to be determined in accordance with generally accepted actuarial practices by applying the discount rate in effect at the time of the award to the full amount of the remaining future damages. Article 50-B does not identify a particular discount rate and so disputes ensued.¹³ As noted, parties now should probably use the Article 50-A rate.

The statute does not specifically address this, but the jury may have found that some forms of future damages may be payable over different periods of time. The jury determines the periods of time except that CPLR 5041(e) provides that the period of time for future pain and suffering damages shall be the lesser of ten years or the period fixed by the jury.

For each item of future damages, a first year's payment should be calculated. The payment for each year thereafter is arrived at by adding 4% to the payment of the year before (CPLR 5041[e]). The present value of each payment stream is computed next. The attorney's fee attributable to the future damages must be deducted for payment as a lump sum, as explained above, and the future damages adjusted and recalculated. Unless otherwise agreed, the

¹¹ Gleason, at 634 (citing Rohring v. City of Niagara Falls, 84 NY2d 60, 67, 614 NYS2d 714 (1994) and Desiderio, supra).

¹² Gleason, at 634.

¹³ E.g., Desiderio, supra; Bryant v. New York City Health & Hospitals Corp., 93 NY2d 592, 600, 695 NYS2d 39 (1999).

annual sum to be paid shall be paid in equal monthly installments and in advance (Id.).

**A FORM OF JUDGMENT UNDER CURRENT ARTICLE 50-B
(NON-WRONGFUL DEATH CASE)**

At IAS Part ____ of the Supreme
Court of the State of New York,
County of New York, at the courthouse
thereof, _____, New York,
N.Y., on the ____ day of _____,
20 ____.

PRESENT: HON: _____,
Justice

Plaintiff(s),

Index No. _____

- against-

JUDGMENT

Defendant(s).

The matter captioned above having come on for trial on _____, 20 ____ in IAS Part ____ before the
Hon. _____, Justice of the Supreme Court, and a jury, and the plaintiff and defendant having appeared
by their respective attorneys, _____, Esq. and _____, Esq., and the jury having found, on
_____, 20 ___, in favor of plaintiff, _____, residing at _____, and against defendant,
_____, residing at _____, as set forth in detail hereinafter, and

WHEREAS the jury having determined that plaintiff was comparatively negligent to the extent of 10% and the
damages awarded by the jury having been reduced herein in accordance with that determination, and

WHEREAS after the deduction set forth above, the jury having awarded the sum of \$ _____ for
all past damages and the sum of \$750,000 for all future damages, and

WHEREAS the jury having determined that said sum for future damages is to be awarded in the amounts of
\$ _____ for future loss of earnings, \$ _____ for future medical expenses, and \$ _____ for future
pain and suffering and that the periods of years over which such future damages shall be incurred are, respectively, 15

years, seven years, and 15 years, and

WHEREAS the sums set forth in the immediately preceding paragraph having been adjusted in accordance with CPLR 5041(e),

NOW THEREFORE, on motion of counsel for the plaintiff, it is hereby

ADJUDGED that the plaintiff do recover of the defendant the lump sum of \$ _____, as and for all past damages suffered by the plaintiff, as calculated and adjusted in the manner set forth above, and it is further

ADJUDGED that the plaintiff do recover of the defendant the lump sum of \$225,000, as and for the portion of future damages payable as a lump sum pursuant to CPLR 5041 (b), as calculated and adjusted in the manner set forth above, and it further

ADJUDGED that the plaintiff do recover of the defendant \$ _____, as and for all litigation expenses incurred in connection with the action as follows:

and it is further

ADJUDGED that the plaintiff do recover of the defendant the lump sum of \$ _____, as and for attorney's fees, which sum consists of attorney's fees related to past damages, attorney's fees related to future damages that are, as set forth above, to be paid as a lump sum, and attorney's fees related to future damages that are, as set forth below, to be paid periodically over time, as calculated and adjusted in accordance with CPLR 5041(c), and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, representing the present value of an annuity contract, in the form set forth below, that will provide for the payment for the period of time found by the jury of a stream of payments for damages for future loss of earnings, as calculated and adjusted in the manner set forth above and in accordance with CPLR 5041(e), and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, representing the present value of an annuity contract, in the form set forth below, that will provide for the payment, for the period of time found

by the jury, of a stream of payments for damages for future medical expenses, as calculated and adjusted in the manner set forth above and in accordance with CPLR 5041(e), and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, representing the present value of an annuity contract, in the form set forth below, that will provide for the payment, for ten years, of a stream of payments for damages for future pain and suffering, as calculated and adjusted in the manner set forth above and in accordance with CPLR 5041(e), and it is further

ADJUDGED that the defendant, and its insurance carrier, shall offer and guarantee the purchase and payment of an annuity contract that shall provide for the annual payments, in equal monthly installments and in advance, of the future payment streams over the periods of time required, as set forth above, and it is further

ADJUDGED that the plaintiff do recover of the defendant the sum of \$ _____, representing interest from the date of verdict to entry of this judgment at the statutory rate, together with interest after judgment at the statutory rate.

ENTER:

J.S.C.

Judgment Entered
This ___ Day of _____, 20

Norman Goodman
County Clerk