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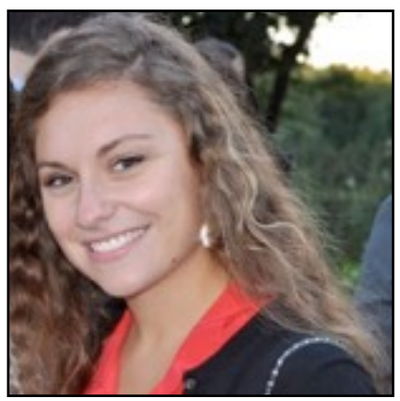

UNCONTESTED DIVORCES IN NEW YORK: TIPS FOR ATTORNEYS AND THE SELF-REPRESENTED

By Delphine Miller, Esq., Michael N. Marks, Esq., and Hon. Gerald Lebovits

When couples agree that it is time to end their marriage by seeking a divorce, they often agree on how to divide their assets and future financial provisions for themselves and their children, and have mapped out custodial, parenting, and support responsibilities for their children under 21. In these cases, the law provides a procedure — filing for an uncontested divorce — to rescue this divorcing couple from the high cost, lengthy, and emotional trauma of bitter, adversarial litigation and a television-style courtroom confrontation. No court appearance is required. Rather, a Justice or Special Referee of the Supreme Court may grant a final judgment of divorce based solely on the allegations stated in the plaintiff's submission of the appropriate papers seeking the uncontested divorce.

Although an uncontested divorce usually reflects the parties' agreement to the divorce and to the terms submitted in the application, the procedure is also appropriately used when the defendant is wholly adverse to the divorce or the proposed terms but refuses to answer a properly served Summons with Notice or Verified Complaint. When the defendant fails to appear in the action, a plaintiff seeking a divorce may use the uncontested-divorce process to obtain a judgment on default.

The submissions required to obtain an uncontested-divorce judgment may be divided into four categories. Each adds different or additional documentation requirements to the previous. The first is a submission in which the defendant provides an affidavit of consent to the divorce as submitted and in which no children are involved. The second is a submission in which no children are involved but the defendant has not answered or appeared in the action and the plaintiff is seeking a judgment on default. The third and fourth categories are the same as the first and second except that a minor child of the marriage is involved. In these cases, the submission must include documents that satisfy the statutory requirements for the child's custody support.

An uncontested-divorce action streamlines the process for the litigants. But it creates a heavy burden on the judiciary, which is expected to order the legal dissolution of a family, often with children, without the benefit of ever hearing from the litigants, observing their demeanor, and judging their sincerity and credibility. Because the judge or referee must rely solely on the documents submitted by a pro se plaintiff or the plaintiff's lawyer for the truth and fidelity of the facts presented, it is no wonder that these submissions are carefully scrutinized, and the court often returns defective submissions for correction. In the case of more severe or jurisdictional defects, the court might even dismiss the entire case.

Practitioners who occasionally rely on CPLR 104 to overcome defective submissions should not be surprised if their uncontested-divorce submission is rejected for what might seem to be a minor or obvious typo, oversight, or omission. From the court's prospective, defective document submissions, where substantial rights of the parties and their children are at stake, cannot be ignored.

The information and several practice tips provided in this article will help you prepare the documentation and navigate the process to obtaining an uncontested divorce in New York.

Requirements for Filing an Uncontested Divorce in New York State

A plaintiff must satisfy the statutory residency requirement to gain the court's jurisdiction over the divorce action. In addition, the action for divorce must be based on one of the seven statutory grounds on which a divorce may be granted in New York.

(1) Residency Requirements

The residency requirements are set forth in DRL § 230. To file for a divorce, the parties must satisfy one of the following four conditions.

First: Either party has been living in New York for a continuous period of at least two years immediately preceding the divorce action and be living in New York when the divorce action is filed. The court will dismiss the divorce action for lack of jurisdiction if the parties' affidavits state that the plaintiff has resided in New York State for two years but lists the plaintiff's address outside New York State.

Alternatively, the plaintiff may be directed to amend the Summons and Complaint to reflect another basis for residence.

The parties' ground for divorce must also be consistent with the situation they choose to satisfy the residency requirement. A plaintiff who sets forth that the plaintiff has resided in New York for a continuous period of more than two years immediately preceding the divorce action may not logically claim abandonment by the defendant somewhere else

than in New York less than two years before commencement of the action.

Second: Either party must have been living in New York for a continuous period of at least one year immediately preceding commencement of the divorce action and the parties were married in New York, or the parties resided as married people in New York.

Third: Either party has been living in New York for a continuous period of at least one year immediately preceding the divorce action and the cause of action arose in New York.

Fourth: Both parties were residents of New York when the divorce action commenced and when the cause of action arose in New York.

In addition to satisfying one of the above residency requirements, the parties must also satisfy one of New York's statutory grounds for divorce.

(2) Grounds for Divorce

The plaintiff must allege facts that support a claim to at least one of the seven grounds on which the court is authorized under the Domestic Relations Law to grant a judgment to dissolve a marriage. DRL § 170 provides the following seven grounds on which a divorce may by granted. The grounds are quoted below:

"(1) The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental wellbeing of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.

"(2) The abandonment of the plaintiff by the defendant for a period of one or more years.

"(3) The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

"(4) The commission of an act of adultery, . . . hereby defined as the commission of an act of sexual or deviate sexual intercourse, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. . . .

"(5) The husband and wife have lived apart pursuant to a decree or judgment of separation for a period of one or more years after the granting of such decree or judgment, and satisfactory proof has been submitted by the plaintiff that he or she has substantially performed all the terms and conditions of such decree or judgment.

"(6) The husband and wife have lived separate and apart pursuant to a written agreement of separation, subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded, for a period of one or more years after the execution of such agreement and satisfactory proof has been submitted by the plaintiff that he or she has substantially performed all the terms and conditions of such agreement. Such agreement shall be filed in the office of the clerk of the county wherein either party resides. In lieu of filing such agreement, either party to such agreement may file a memorandum of such agreement, which memorandum shall be similarly subscribed and acknowledged or proved as was the agreement of separation and shall contain the following information: (a) the names and addresses of each of the parties, (b) the date of marriage of the parties, (c) the date of the agreement of separation and (d) the date of this subscription and acknowledgment or proof of such agreement of separation.

"(7) The relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath. No judgment of divorce shall be granted under this subdivision unless and until the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce."

The New York legislature added the seventh ground for divorce in 2010. That ground is called New York's no-fault divorce. The irretrievable breakdown in the relationship is the most commonly used ground and the easiest to prove. No proof is needed, other than the plaintiff's affidavit attesting to the irretrievable breakdown of the marriage for at least six months.

The seven grounds for divorce and the facts required to be alleged and proven are clearly explained on the court's Web site on pages two through five of the instructions.

Ground for Annulment under DRL §§ 140 & 144

The plaintiff may also file for judgment of annulment under DRL §§ 140 and 144. This action seeks the nullity of a void marriage or the annulment of a voidable marriage. A plaintiff may commence an action to annul a marriage based on six different grounds.

(a) Former Husband or Wife Living

When two people get married while one of them is already married to someone else, either party may file an action to declare the marriage null. A bigamous marriage is void from its inception. All parties are free to treat the second marriage as a nullity without the court's involvement.

(b) Under the Age of Consent

If one or both parties were under the age of legal consent when they got married, the infant, the infant's parents, or the infant's guardians may file for an annulment. The party who was at the age of legal consent when the marriage occurred may not maintain an action to annul the marriage. A party who continues to cohabit freely with the spouse after reaching the age of consent may not maintain an action to annul the marriage.

(c) Mental Illness

Any relative of a mentally ill person who has an interest to void the marriage may maintain an action to annul the marriage between the mentally ill person and the spouse. The mentally ill person's relative may bring this action anytime during the mental illness. The relative may also file for an annulment after the mentally ill person's death if the spouse is still living.

The mentally ill person may file an action to annul the marriage any time after that person has restored a sound mind. But the former mentally ill person may not file for an annulment if both parties to the marriage freely cohabit as husband and wife after restoration of a sound mind.

A party to the marriage who was unaware that the other party had a mental illness at the time of the marriage may file for an annulment anytime during the continuance of the mental illness.

(d) Physical Incapacity

One party to the marriage may maintain an action to annul the marriage against the physically incapacitated party. The party who is incapacitated may maintain an annulment action against the other party if the incapable party was either unaware of the incapacity at the time of the marriage or did not know it was incurable. The incapable party must commence the annulment action within five years of the marriage.

(e) Consent by Force, Duress, or Fraud

A party may maintain an action to annul the marriage anytime when that party's consent was obtained by force, duress, or fraud. A parent, guardian, or relative of the person whose consent was obtained by force, duress, or fraud may maintain an annulment action during the spouse's lifetime.

An action to annul a marriage on the ground that consent was obtained by fraud must be brought within the time limits for enforcing a civil remedy.

A marriage may not be annulled on the ground of force or duress if both parties to the marriage voluntarily cohabited as husband and wife anytime before the commencement of the divorce action. A marriage may not be annulled on the ground of fraud if the person whose consent was obtained by fraud voluntarily cohabited with the other party as husband and wife after discovering the fraud.

A successful action for an annulment on the ground of fraud might occur when the plaintiff agreed to the marriage based on a lie about the defendant's life or the defendant's aspirations for the future inducing the plaintiff into marrying the defendant based upon the fraud. Lies may include property ownership, parental status, or the desire to have children.

(f) Incurable Mental Illness for Five Years

Either spouse may maintain an action to annul the marriage if one of the parties has been incurably mentally ill for five years or longer.

In addition to satisfying the criteria of one of the situations mentioned above, the plaintiff must meet the two requirements set out by DRL § 144.

The first requirement under DRL § 144 is that the plaintiff prove that the parties have not been cohabitating. This requirement is altered for an annulment action on the ground that a party was mentally ill. For this ground, the plaintiff may prove instead that the mental illness still continues.

The second requirement under DRL § 144 is corroboration of the facts in support of an annulment. A declaration by either party is not sufficient; the parties may not include any hearsay statements in their affidavits. Consider, for example, that a plaintiff files for an annulment on the basis of consent by fraud because the plaintiff alleged that the defendant told the plaintiff before getting married that the defendant wanted to have children. To satisfy DRL § 144's second requirement, the plaintiff must submit a corroborating affidavit reflecting a conversation that took place before the marriage during which the defendant said he wanted to have children and narrating a conversation that took place after the marriage, during which the defendant admitted it was a lie.

Additional Requirements if the Parties have Children

When there are children of the marriage, the plaintiff's submission must articulate in the Summons with Notice or Verified Complaint the terms for child custody, child support, and visitation

(1) Child Custody

The court may award custody until the child is 18 years old. There is no presumption of custody. The child's name must be consistent throughout the papers, and the date of birth must be set forth. A child born before the parties' marriage requires one of the following: an acknowledgement of paternity in the form of an affidavit by the father or a birth certificate, a waiver from the defendant, or a Family Court order of filiation. Proof of a DNA test is insufficient proof at this phase of litigation.

The court may award custody only if the child is residing within the State of New York. This is a strict rule. It applies even if the child lives in a state near New York. If the child does not live in New York, the divorce judgment will state: "No determination is made as to custody because the child does not reside in New York."

There are different types of custody. The parents may choose to leave the child in the sole custody of one parent or to have joint physical custody over the child. Generally, the court will not award joint physical custody if one of the parties has a history of domestic violence.

The parties may also decide between sole legal or joint legal custody. For sole legal custody, only one parent makes the decisions regarding the child's health education and welfare. For joint legal custody, the decision-making process is the responsibility of both parents.

An Agreement between the parents is necessary to award joint physical or legal custody. The parties' affidavits are not sufficient. If the parents wish to have joint legal custody, the Agreement must set forth at least in general terms what kind of decisions are subject to joint custody. The type of decisions may include the child's health, education, religion, and general welfare, among others.

Some courts will not grant joint legal custody unless the parties' Agreement includes tie breakers in the event that the parents fail to agree on a particular decision. A tie breaker might be that one parent will always have the final say. Another tie breaker might be that a third person makes the decision. For example, the school principal may make education-related decisions, and a physician might have the final say on health matters. The parents may also agree to divide the decision-making according to zones or spheres of influence. For example, the Agreement might state that the mother will decide health issues while the father will make education-related decisions. Mediation or going to court can be tie breakers. Custody determinations, however, cannot be the subject of an arbitration decision.

If the parents have two or more children, the parents may agree to split custody. The parties must enter into an Agreement stating which parent will have custody of which child or children.

When the parties have unemancipated children, the court will perform a domestic-violence-registry check on both parties as required by DRL § 240. The background check can lead to several possible results. The most straightforward result is when there is no record.

The Section 240 search may yield a few results with the same name or date of birth as the person searched. If there is an affidavit by the person searched denying the record, the court has several options: The court may rely on the affidavit but mention the findings in the judgment, the court may require the person to come to court and answer questions, or the court may request that the parties submit additional documentation.

The last possible result of a background check occurs when there is a record. In this case, the name, date of birth, and the offense committed match the person being searched. The court may mark the papers seeking custody to the offending party as defective even if there is an affidavit denying the record. Additional documents will likely be required, and it is possible that the action may referred for a hearing on the issue to determine custody and visitation.

If the defendant is in default, the court will not award custody to the defendant unless an agreement specifically provides for custody or a Family Court Order awarding custody to the defendant.

(2) Visitation

The court will never sign a judgment that directs "no visitation rights." If the parties do not provide for visitation in the divorce papers, the court may order in the judgment that "Visitation is left to further written agreement of the parties or decision of a court."

(3) Child Support

In the New York State Supreme Court, the award of child support is governed by DRL § 240(1)(b), referred to as the Child Support Standards Act (CSSA). Although both parents are responsible for their share of the total statutory child support requirement, the non-custodial parent must pay his or her pro rata share of the total child support obligation to the custodial parent. If the child(ren) reside with neither parent, both parents must pay their pro rata share of the total child-support obligation to the residential caretaker.

The statute establishes that the presumptively correct amount of child support is calculated as percentage of the parties' total combined adjusted gross income. The percentage is defined by the statute as 17% for one child, 25% for two children, 29% for three children, 31% for four children, not less than 35% for five children, and for more than five children payment is set at the court's discretion. Once the total child support obligation is calculated, each parent's pro rata share of the total child support is calculated by comparing the individual parent's income to the total combined income of both parents. The non-custodial parent is ordered to pay his or her pro rata share of the child support to the custodial parent.

The parties' annual adjusted gross income used to calculate child support is defined as the annual gross income minus certain deductions, which include certain expenses for investment income and unreimbursed business expenses that do not reduce personal expenditures, alimony or maintenance actually paid to former spouse if properly drafted and pursuant to a court order, alimony or maintenance paid to the other parent pursuant to a court order or proper Agreement, child support actually paid to other children whom the parent is legally obligated to support, supplemental security income, New York City or Yorkers income or earning taxes actually paid, and Federal Insurance Contribution Act (FICA) taxes.

Child support must be paid until children are emancipated by either reaching the age of 21 or earlier by some other emancipating event such as marriage, death, joining the armed forces, getting a job so as to be economically self-sufficient, or permanently moving out of the marital residence. The court always awards child support, even if unlike an award of custody, the child resides outside New York State. The plaintiff must serve the defendant with the

Child Support Standards Chart (Guidelines), and the defendant's affidavit or the affidavit of service must state that the defendant was served. If the defendant is not served with the Child Support Standards Chart, the court will mark the papers defective.

The correct child support obligation for the non-custodial parent is best calculated by using the Child Support Work Sheet (UD-8.pdf) provided on the court's Web site. This form is accompanied by a full set of clear instructions. The form must be included with the uncontested-divorce submission.

After completing the Child Support Worksheet, the plaintiff must also complete and submit the UCS-111 Child Support Summary Form. This form is not kept with the court file but is used by the State to gather statistical information maintained in confidence. The non-custodial parent may also submit an Application for Child Support Services on form LDSS 4882 and the Support Collection Unit Information Sheet (UD-8a.pdf) as required by DRL § 240(1).

The parties may enter into a Child Support Agreement. The Agreement must acknowledge the Child Support Standards Act, DRL § 240. Just like the Child Support Worksheet, a Child Support Agreement must set forth the presumptively correct child support stating the custodial and non-custodial parents' individual income, the combined parental annual income, and the applicable child-support percentage. The parents must show in their divorce papers how they calculated the child-support amount under the statute to arrive at the presumptively correct support. The parties may deviate from the applicable child-support amount by either an upward or downward deviation, but they must justify the deviation with respect to the best interest of the children. If the amount is low, the court might conduct a hearing or reject the proposed child-support order.

If the non-custodial parent's income falls below the poverty level (currently less than $11,770 a year), the court may not order more than $300 a year ($25 a month) for child support regardless of the number of children. The parties, however, may still enter into an agreement for an upward deviation. If the agreement is bona fide, the court will grant the deviation.

The net income remaining after subtracting the child-support obligation from the party's annual income is called the self-support reserve. In New York, the self-support reserve is currently set at $15,890. If the non-residential parent's net annual income falls below $15,890 but remains greater than or equal to $11,770, the court will order child support in the amount of $600 per year ($50 per month).

Obtaining the Forms

It is strongly recommended that divorcing spouses each separately consult an attorney familiar and with issues related to a legal separation and divorce. But a spouse who files for an uncontested divorce need not always hire an attorney, or engage a paralegal or some travel-agency-style divorce mill, to fill out the paperwork required to get divorced. It is easier than you might imagine to file an uncontested divorce on your own. All the required forms are available in pdf and wpd format on the New York State Unified Court System's Web site at https://www.nycourts.gov/divorce/divorce_withchildrenunder21.shtml.

Thorough instructions provided alongside each form on the Web page explain, line by line, how to enter your information onto the form. The instructions are complete and include examples and practice tips. In addition to the required forms with individual instructions, each step of the uncontested-divorce procedure, from gathering your information onto the form to proceeding with the action, is clearly explained on the court's Web site at https://www.nycourts.gov/divorce/pdfs/Divorce-Packet-Instructions.pdf.

Parties who do not have children under 21, have settled all marital property issues, and are filing for divorce on the no-fault ground that the relationship has broken down irretrievably for at least six months (Domestic Relations Law (DRL) § 170(7)) can use the DIY (do it yourself) online interactive program to prepare the documents for submission. This program is available at https://lawhelpinteractive.org/Interview/GenerateInterview/2427/engine.

Filing Fees

To commence the action, you will need to buy an index number for $210. The Note of Issue together with a Request for Judicial Intervention (RJI) costs $125. Certified copies of the Dissolution of Marriage or the Divorce Judgment require additional fees. A plaintiff who does not

have the means to pay the fees associated with filing for an uncontested divorce may apply to have the fees waived. To request a fee waiver, an applicant must file with the County Clerk's Office an Affidavit in Support of Application to Proceed as a Poor Person and a proposed Poor Person Order along with filing the Summons with Notice or Summons and Verified Complaint. Both these forms are found on the court's Web site.

To qualify for a fee waiver, applicants are required to detail their sources of income and state how much they earn. Applicants must also describe their property and its value and mention any earlier request for the same or a similar relief. They must sign the Affidavit, and the signature must be notarized.

Submitting the Papers

Parties must submit specific papers to obtain an uncontested divorce in New York State. The information stated throughout the documents submitted must be consistent. If the parties leave any inconsistency unexplained, the Supreme Court Justice or Special Referee reviewing the papers may deem the submission defective and either return the papers for correction or dismiss the entire case.

This section will review the documents submitted in most uncontested-divorce applications. Some documents are mandatory, regardless of the parties' circumstances. Others, such as documents relating to children or to an agreement between the parties, are required only if the circumstances of the case mandate it. All the forms are numbered or titled as they appear on the court's Web site.

The forms do not need to be placed in any specific order within the application, but we advise you to place the papers in the order listed in this article.

(1) Mandatory Papers

(a) Note of Issue (Form UD-9)

The Note of Issue is the first paper the court sees when it opens an uncontested-divorce application. It serves as a sort of cover page for the application. The Note of Issue alerts the court that no more documents will be submitted or issues to be resolved and that the matter is ready to be placed on the uncontested divorce calendar for determination. The plaintiff can fill out the Note of Issue only after serving the papers on the defendant and should state whether the defendant appeared or whether the case can proceed on the defendant's default or on the parties' Agreement.

(b) Request for Judicial Intervention (Form UD-13) **and Addendum** (Form 840M)

The court uses the RJI to assign the parties' case to a Justice or Special Referee for review and judgment. Every application for an uncontested divorce must include an RJI showing that the RJI fee was paid.

An Addendum to the RJI (Form 840M) must be added when the case involves children under 18. The Addendum serves to further identify the children. The Addendum can also be used to provide additional information about the parties, such as prior names and addresses.

(c) Part 130 Certification (Form UD-12)

The application must contain a signed Certification under Rule of the Chief Administrator of the Courts 130-1.1(c) that none of the papers served, filed, or submitted to the court in this divorce action are frivolous.

(d) Summons with Notice (Form UD-1) **or Summons with a Verified Complaint** (Form UD-1a)

The plaintiff commences the action by purchasing an index number at the office of the County Clerk and filing a Summons with Notice or a Summons with a Verified Complaint. The Summons must clearly display "Action for Divorce" or "Action for Annulment."

The Summons with Notice notifies defendants that they are being sued for divorce, the additional relief sought, and that they must respond to the Summons within 20 days. The defendant may not be served on a Sunday but may be served on a holiday. Special rules apply to defendants in the military.

The plaintiff must state the grounds for the divorce in the Summons. If children are involved, the plaintiff must request that the court award child support and custody as ancillary relief. Detailed relief is not required. Simply stating "custody and child support to defendant" is sufficient to provide notice of the relief sought. If the Summons does not seek any relief, the court will ask the plaintiff to prepare and file and serve an amended Summons.

(e) Notice of Automatic Orders

The Notice of Automatic Orders is provided with the list of forms on the court's Web site. The plaintiff need not fill out anything on this form notice. The plaintiff must, however, serve the defendant with the Notice of Automatic Orders. An affidavit of service or defendant's waiver must reflect that service was made.

(f) Notice Concerning Continuation of Health Care Coverage

DRL § 255(1) requires the parties to be notified that they will no longer be eligible for coverage by their spouse's health plan once the divorce judgment is signed. The form text of this notice is provided with the list of forms on the court's Web site. The parties do not need to fill out anything on the Notice Concerning Continuation of Health Care Coverage form, and an affidavit of service or the defendant's waiver must reflect that this notice was served on the defendant.

(g) Verified Complaint (Form UD-2)

The divorce application must contain a Verified Complaint.

In the Verified Complaint, the plaintiff states the basis for the New York State Supreme Court's jurisdiction over the parties and over the divorce action. The plaintiff must also note where and when the parties were married and whether their marriage was performed in a religious or a civil ceremony. The plaintiff must include the parties' addresses. If the parties have children, the plaintiff must identify their names, date of births, and addresses.

The Verified Complaint must contain each party's Group Health Plans. If the parties are not covered by any health plans, the plaintiff must write "Not Applicable." The plaintiff must also indicate the grounds for the divorce and, depending on the grounds, allege the basis in facts to establish the plaintiff's entitlement for a judgment of divorce. At the end of the form, the plaintiff must state the different types of relief sought. The plaintiff must identify the ancillary relief requested. The plaintiff can waive distribution of marital property or check the box indicating that marital property must be distributed according to the parties' stipulation attached to the divorce application. The plaintiff must sign the Verified Complaint under oath before a notary public.

For any form requiring notarization, the notary public must set forth the notary's license number, date of expiration, and the county where the notary is qualified. The county where the document is sworn to and notarized must be printed on the document and may be different from the county where the divorce action is brought.

If an attorney represents the plaintiff, the attorney will draft a Verified Complaint using only relevant information from the form. The attorney may add other requests for relief, including that Family Court has concurrent jurisdiction and that the parties do not require maintenance or payment for counsel and experts' fees. The plaintiff's attorney must also sign the Verified Complaint, but the attorney's signature need not be notarized.

(h) The Defendant's Affidavit (Form UD-7)

An uncontested-divorce application may include an affidavit from the defendant. The defendant's affidavit is the lynchpin of a quintessential uncontested divorce. The defendant's affidavit signals to the court that both parties agree to the divorce and asks the court to issue its final decree and judgment on terms stated in the submissions. The defendant may merely acknowledge the plaintiff's demands or reference the party's Stipulation or a Separation Agreement to be incorporated by the court as the terms for dividing marital property, spousal support, and child custody and support. The defendant should acknowledge the alleged grounds for the divorce and whether the defendant is currently a member of the military service.

Generally, a defendant submitting an affidavit will waive service of all further papers except for a copy of the final judgment of divorce. The defendant, however, may request service of some or all the other documents related to the divorce action, such as Note of Issue, Request for Judicial Intervention, Barriers to Remarriage Affidavit, Proposed Judgment of Divorce, Proposed Findings of Facts and Conclusions of Law, Notice of Settlement, Qualified Medical Child Support Orders, and Qualified Domestic Relations orders, if any. If the parties were married in a religious ceremony, the defendant can waive the requirement that the plaintiff file a Statement of Removal to Barriers to Remarriage.

When the parties have children under 21, the defendant must include additional statements and acknowledgements in the affidavit. Ideally, the defendant should acknowledge the provisions agreed upon for child support. At a minimum, the affidavit must acknowledge service of the Child Support Standard Chart. Receipt of the Child Support Standard Chart may also be acknowledged in a Stipulation or Separation Agreement, if there is one. Defendants who are the custodial parents should also indicate whether they decline or request child-support payments to be processed through New York's Support Collection Unit.

The defendant must also state whether an order of protection has been issued against the defendant or in the defendant's favor, for the children, or for a member of the defendant's household. This must be done even if the order of protection is not related to the plaintiff or the children. The defendant must list all docket numbers and counties that issued the orders. The defendant must also mention whether the defendant, the defendant's children, or the spouse have been named in a child-abuse or -neglect proceeding. The defendant must further state whether the defendant is registered under the New York State Sex Offender Registration Act.

If the defendant includes a statement admitting service of the Summons with Notice or Verified Complaint, the Notice of Automatic Orders, the Notice Concerning Continuation of Health Care Coverage, and any other document such as the Child Support Standard Chart, then submitting a separate Affidavit of Service for these documents is no longer required. The defendant's affidavit serves as proof of service and includes a statement of the date the defendant received service of these documents. If, however, the plaintiff's submission does not contain an affidavit from the defendant, the plaintiff must include an Affidavit of Service of the Summons with Notice or Verified Complaint, Notice of Automatic Orders, Notice Concerning Continuation of Health Care Coverage, and any other document required to establish the court's jurisdiction over the defendant in the event of the defendant's default.

The last page of the defendant's affidavit form also provides helpful notes to help a defendant complete the form.

(i) Affidavit of Service (Form UD-3)

A third party to the divorce action must serve the Summons with Notice or Summons and Complaint along with other required notices and documents on the defendant. The court's Web site provides the Affidavit of Service form that must be filed once service is completed.

The process server must carefully complete the Affidavit of Service and must state expressly which papers were served: the Summons with Notice or the Summons and Verified Complaint and any other papers, such as the Notice of Automatic Orders and the Notice of Continuation of Health Care Coverage. If the parties have children, the defendant must be served with the Child Support Standards Chart. A defendant is in default if the defendant does not answer a Verified Complaint or appear in the action pursuant to the Summons with Notice within 40 days after service is complete.

Process servers must explain how they acquired knowledge of the defendant. Knowledge can come from a personal relationship. For example, the process server might have been friends with the defendant for many years, or the defendant might be the process server's brother or sister-in-law. Process servers may also show knowledge of the defendant by stating that they compared the defendant with a photograph the plaintiff provided. The photograph must be attached to the Affidavit of Service. The plaintiff may accompany the process server and point out the defendant. Another way to prove knowledge is for the process server to ask the defendants whether they are the person named in the Summons and whether they admit to being that person.

The Affidavit of Service must include the description of the person served. The process server must state the defendant's gender, height, and

weight. The process server must also indicate the defendant's skin color, hair color, and any other identifying feature. If the process server identified the defendant using a photograph, the photograph must be attached and be consistent with the defendant's description. Failure to attach the photograph will result in the papers being marked "defective." The process server must also inquire about the defendant's military status.

The process server must sign the Affidavit of Service under oath before a notary public. An affidavit of service may be sworn to after the date of service and in a county different from where service was made.

CPLR 308(1) provides that personal service upon a defendant in a matrimonial action may only be made by "by delivering the summons within the state to the person to be served." Any other method of service of process in a matrimonial action may be made only pursuant to a court order in accordance with DRL § 232(a). In other words, the defendant must be served directly. Service on a person of suitable age and discretion, an agent, or nail and mail are not effective to commence a divorce action without a court order permitting alternative service.

(j) Affirmation/Affidavit of Regularity (Form UD-5)

The Affidavit of Regularity is certification that the plaintiff's or the plaintiff's attorney's papers in the final submission are not frivolous as defined Rule 130-1.1(c) of the Rules of the Chief Administrator of the Courts.

The Affidavit of Regularity must state which papers were served on the defendant and whether the process server served the defendant within or outside the State of New York.

The Affidavit of Regularity must indicate whether the defendant has appeared or has defaulted. The Affidavit of Regularity must be dated after the date of the defendant's affidavit or, in the case of defendant's default, after the time given to the defendant to respond. The Affidavit of Regularity may not predate a default.

A self-represented plaintiff must sign the Affidavit of Regularity; the plaintiff's signature must be sworn and notarized. An attorney who represents the plaintiff may sign an affirmation.

(k) The Plaintiff's Affidavit (Form UD-6)

The plaintiff's affidavit essentially mirrors the Complaint. The main difference is that the plaintiff's affidavit is executed after defendant is served, so that the affidavit may address whether defendant appeared in the action, submitted an affidavit, or is in default. In addition, the plaintiff's affidavit may reference the terms of a Stipulation or Separation Agreement the parties executed after the action was commenced. Terms of the divorce that were negotiated after the action was commenced could not have been part of the initial pleadings but may now be presented for incorporation into the court's judgment. As such, the primary function of the plaintiff's affidavit is to convey to the court the plaintiff's sworn statement of the facts upon which the court may find venue and jurisdiction over the parties, statutory grounds on which the court may grant a divorce, and the statutory or stipulated terms to be incorporated into the final judgment relating to such ancillary matters as property division, spousal support, child support, custody, and parenting. The Court's Web site provides detailed instructions to help a plaintiff complete each line item, or field, on the plaintiff's affidavit form and to determine which questions apply to each individual case.

(l) Findings of Fact and Conclusions of Law (Form UD-10)

The factual documents and sworn statements submitted with the uncontested divorce package belong exclusively to the parties. The court may not alter or edit these documents. But the Findings of Fact and Conclusions of Law and the Judgment of Divorce are two documents that belong exclusively to the court. Simply stated, the Findings of Fact and Conclusions of Law is the document in which, after reviewing the plaintiff's entire submission, the Justice or Special Referee sets forth the facts and legal basis found in the submission to justify granting a judgment of divorce and awarding the requested ancillary relief, if any. This document presents the court's reasoning behind its final judgment. The plaintiff is required to submit a proposed draft of this document, which the Justice or the Special Referee may edit and, if the submission is complete and correct, sign.

The Findings of Facts and Conclusions of Law must spell out the facts consistent with the documents submitted. In preparing the Findings of Facts and Conclusions of Law for the court to sign, the plaintiff may

not add new facts not supported by the parties' sworn statements or statutory dictates. If the court cannot find within the submitted document the facts and legal basis required to support its authority to grant the requested judgment, the submission will be found defective and either returned to the plaintiff for correction. If the defect is beyond correction, the case can be dismissed entirely.

Accordingly, careful attention should be given to preparing the proposed Findings of Fact and Conclusions of Law to assure that the proposed facts and law is supported by the other documents submitted. The Findings of Fact and Conclusions of Law are reviewed carefully. If all the requirements of the submission are satisfied, the document will signed by a Supreme Court Justice or a Special Referee.

(m) Divorce Judgment (Form UD-11)

The plaintiff is required to submit a proposed judgment of divorce for the Justice or Special Referee to sign. Based on the Findings of Fact and Conclusions of Law, the judgment is the final decree of the court to dissolve the marriage and the final judgment granting ancillary orders to direct the distribution of marital property, spousal support, child custody and support, and any other relief the court deems just and proper.

The judgment to dissolve the marriage is one in equity and thus must state that it is "Ordered, Adjudged, and Decreed" that the plaintiff's application for divorce against the defendant is granted and that the marriage between the parties is dissolved. The judgment may indicate that the defendant or the plaintiff is authorized to resume use of any prior surname. The judgment must state the ground for divorce.

If the parties have children who reside in New York, the judgment determines custody and provides the children's names, dates of birth, and social-security numbers. The judgment directs payment of child support and may also order visitation for a noncustodial parent. A divorce judgment may not order that there shall be no visitation for the noncustodial parent. If child support applies, the judgment must state the amount one party must pay to the other and the frequency of those payments. The divorce judgment must mention any existing court order regarding custody, visitation, maintenance, or counsel and expert fees. Maintenance, commonly called "alimony" outside New York, will not be awarded without an agreement.

The judgment must also reference any settlement agreement the parties have entered into and the agreement's date. The judgment must order that the parties' Agreement is incorporated into the judgment by reference and that it shall survive and not merge into the judgment. A copy of the agreement must be submitted with the papers.

A default judgment must include an order directing service of the judgment upon the defendant, such as: "Ordered and adjudged that the defendant shall be served with a copy of this judgment, with notice of entry, by the plaintiff within 20 days of entry, and the plaintiff shall file proof of such service with the County Clerk."

If the court marks the papers defective, the matrimonial support office will advise the parties by a postcard that must be included when filing the papers. If the case is transferred to the contested calendar, the transfer order will usually set forth that the payment of fees is waived so that the parties do not have to pay twice to file for the same divorce action.

Attorneys make common mistakes by including extraneous language when they draft a client's divorce judgment. For example, some proposed judgments set forth that the Supreme Court has exclusive jurisdiction over the matter. The court will strike this statement because Family Court also has jurisdiction over many post-judgment issues. Another common mistake is to state that the County Clerk should seal the divorce file. Divorce files are not sealed, although they are protected from view by the general public. The court will cross out this statement.

The divorce judgment is dated and signed by a Supreme Court Justice or a Special Referee.

(n) New York State Department of Health Certificate of Dissolution of Marriage

The New York State Department of Health Certificate of Dissolution of Marriage form is available on the court's Web site. The plaintiff

must complete the form and submit it to the County Clerk's Office along with the other papers in the submission.

The plaintiff is not required to fill out the section entitled "Confidential." This section includes such information as the parties' race, number of marriages, and education level.

(o) Postcard

The plaintiff or the plaintiff's attorney must submit a postcard with the filed divorce papers. The postcard form is available on the court's Web site. The court uses the postcard to notify the plaintiff of the case status. The postcard must be self-addressed and properly stamped. The postcard must also include the name of the case and the index number.

(2) Additional Papers

An uncontested divorce application may contain additional papers, depending on the parties' situation.

(a) Separation Agreement

If the parties entered into a separation agreement before filing for divorce, or have a prenuptial agreement that resolves some or all the parties' issues, the plaintiff must attach the document to the papers submitted to the court. The separation agreement must be signed and acknowledged by both parties in the presence of a notary public in a manner that allows a deed to be recorded.

(b) Child Support Worksheet (Form UD-8)

If there is no agreement between the parties, the plaintiff must submit a Child Support Worksheet when the parties have unemancipated children.

The plaintiff must fill out the different amounts listed on the Child Support Worksheet, including the plaintiff's and the defendant's respective gross income and any additional income they may receive. Once completed, the Child Support Worksheet calculates the amount of child support the non-custodial parent must pay the custodial parent.

A complete explanation and examples of how child support is calculated in the "Computation" section of "Child Support" is provided in the form's instructions found on the court's Web site.

(c) Support Collection Unit Information Sheet (Form UD-8a)

This form is available to the custodial parent to request the help of the New York Child Support Collection Unit to administrate the collection of child support from the noncustodial parent.

(d) Qualified Medical Child Support Order (Form UD-8b)

The Qualified Medical Child Support Order is available on the Court's web site. This order mandates that one of the parents enroll the parties' children under that person's health-insurance plan.

The person legally responsible for providing health insurance to the children must serve a copy of the Qualified Medical Child Support Order on his or her employer.

(e) Family Court Order

The parties must submit any Family Court Order with their divorce application papers. A Family Court Order can be issued on many matters, including child custody, child-support computation, and ancillary issues. The Order must be certified. Any Order with respect to support may not be more than three years old.

(f) Statement of Removal of Barriers to Remarriage (Form UD-4)

If the parties were married in a religious ceremony by a clergymember, minister, or a leader of the society of ethical culture, the plaintiff must file a sworn Statement of Removal of Barriers to Remarriage and an Affidavit of Service (Form UD-4a). By this statement, plaintiffs swear that they have taken all the steps within their power to remove all barriers to the defendant's remarriage or that the defendant has waived that requirement in writing.

(g) Notice of Entry (Form UD-14)

This document need not be submitted. The plaintiff may mail a Notice of Entry to the defendant to notify the defendant that the court has entered the divorce judgment between the parties. The plaintiff must attach a copy of the divorce judgment to the Notice of Entry and indicate in which county the divorce judgment was entered and on what day.

(h) Child Support Summary Form (UCS-111)

If the parties have children, the Child Support Summary Form is a mandatory form the plaintiff must complete and submit with the rest of the divorce papers. The Unified Court System is required by law to collect child support data in divorce actions. The information the plaintiff provides in the Child Support Summary Form is used for statistical purposes only. The Child Support Summary Form is available on the court's Web site.

CONCLUSION

For many, going through a divorce is one of life's most difficult events. Filing for an uncontested divorce, especially a no-fault divorce, is far easier, less costly, much quicker, and less traumatic than litigating in court. The forms and informative instructions provided on the New York State Court's Web site will help pro se litigants and attorneys properly complete the form documents required to file for an uncontested divorce. The authors hope that this article offered some insights and much encouragement to consider filing for an uncontested divorce as a beneficial process for parties seeking to dissolve an unhappy marriage that might otherwise culminate in a bitterly contested divorce.

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