



## Sample OTSC Pendente Lite Motion

Lawyer for Corporations (Touro College Jacob D. Fuchsberg Law Center)

At an IAS Term, Part \_\_\_ of the Supreme Court of the State of New York, held in and for the County of Suffolk, at the Courthouse located at 400 Carleton Avenue, Central Islip, New York 11722, on the 12<sup>th</sup> day of July, 2021.

P R E S E N T:  
HON.  
J.S.C.

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BETTY BICKERING,

Plaintiff,

**ORDER TO SHOW  
CAUSE**

-against-

Index No.: 21-10987

BOB BICKERING,

Defendant.

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**UPON READING AND FILING** the annexed Affidavit of Plaintiff, BETTY BICKERING, duly sworn to on the 9<sup>th</sup> day of July, 2021, the Affirmation of Alex A. Samaroo, Esq. dated the 9<sup>th</sup> day of July, 2021; and the Affidavit of Counsel with respect to counsel fees, sworn to on the 9<sup>th</sup> day of July, 2021 and the exhibits annexed hereto; and upon all the pleadings and proceedings heretofore had herein,

**LET** the Defendant, BOB BICKERING, or his attorney, show cause before this Court, at the courthouse thereof, located at 400 Carleton Avenue, Central Islip, New York 11772, on the \_\_\_ day of \_\_\_\_\_, 2021, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made and entered:

- A. Awarding the Plaintiff interim custody of the parties' four children, MONICA BICKERING, born 03/05/2006 (age 15), ROSS BICKERING, born 04/15/2007 (age 14), CHANDLER BICKERING, born 05/21/2011 (age 10) and PHOEBE BICKERING, born 02/18/2015 (age 6); and

- B. Awarding the Plaintiff exclusive use and occupancy of the marital residence located at 400 Bliss Street, Huntington, New York, 11721; and
- C. Immediately directing that the Defendant pay the mortgage/property taxes, utilities, and other carrying charges currently in place with respect to the marital residence located at 400 Bliss Street, Huntington, New York, 11721; or in the alternative, awarding the Plaintiff temporary maintenance pursuant to the statutory guidelines, and further directing the Defendant to maintain a pro-rata share of the mortgage and carrying charges associated with the marital residence; and
- D. Immediately awarding temporary child support to the Plaintiff for the benefit of the parties' four children: MONICA BICKERING, born 03/05/2006 (age 15), ROSS BICKERING, born 04/15/2007 (age 14), CHANDLER BICKERING, born 05/21/2011 (age 10) and PHOEBE BICKERING, born 02/18/2015 (age 6), and making said support payable through the Child Support Enforcement Bureau; and
- E. Immediately directing the Defendant to pay 100% of the unreimbursed medical, dental, optical, orthodontic, psychiatric/psychological and pharmaceutical expenses on behalf of the parties' children and the Plaintiff; and
- F. Awarding interim counsel fees to the Plaintiff, in the sum of \$8,000.00; and
- G. Granting the Plaintiff such other and further relief as to this Court may seem just, and proper.

**SUFFICIENT CAUSE APPEARING THEREFORE**, it is hereby

**ORDERED**, that pending the determination of this application or further order of the Court, the Plaintiff, BETTY BICKERING, is awarded temporary custody of the parties four children, MONICA BICKERING, born 03/05/2006 (age 15), ROSS BICKERING, born

04/15/2007 (age 14), CHANDLER BICKERING, born 05/21/2011 (age 10) and PHOEBE BICKERING, born 02/18/2015 (age 6); and

**ORDERED**, that pending the determination of this application or further order of the Court the Plaintiff, BETTY BICKERING, is awarded exclusive use and occupancy of the marital residence located at 400 Bliss Street, Huntington, New York, 11721 during the pendency of this action; and

**ORDERED**, that pending the determination of this application or further order of the Court, the Defendant, BOB BICKERING, shall immediately pay the mortgage, real property taxes, homeowner's insurance, electric, fuel, cable, land line phone, internet bills, the Plaintiff's cellphone, data storage, water, alarm, landscaping, and house cleaning currently in place with respect to the marital residence located at 400 Bliss Street, Huntington, New York, 11721; and

**ORDERED**, that pending the determination of this application or further order of the Court, the Defendant, BOB BICKERING, shall immediately start paying temporary child support, in the sum of \$2580.23 per month for the benefit of the parties' four children: MONICA BICKERING, born 03/05/2006 (age 15), ROSS BICKERING, born 04/15/2007 (age 14), CHANDLER BICKERING, born 05/21/2011 (age 10) and PHOEBE BICKERING, born 02/18/2015 (age 6), to the Plaintiff, BETTY BICKERING, and making said support payable through the Child Support Enforcement Bureau; and

**ORDERED**, that pending the determination of this application or further order of the Court the Defendant, BOB BICKERING, shall immediately pay 100% of the unreimbursed medical, dental, optical, orthodontic, psychiatric/psychological and pharmaceutical expenses on behalf of the parties' children and the Plaintiff.

**SUFFICIENT REASON APPEARING THEREFOR**, let service of a copy of this Order to Show Cause and the papers upon which it is based, upon the Defendant's counsel, Jack Daniels, Esq., pursuant to CPLR 2103(b)(6) on or before the \_\_\_\_ day of July 2021, be deemed sufficient service thereof.

E N T E R:

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J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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BETTY BICKERING,

Plaintiff,

**AFFIDAVIT IN SUPPORT  
OF PLAINTIFF'S ORDER  
TO SHOW CAUSE**

Index No. 21-10987

-against-

BOB BICKERING,

Defendant.

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

BETTY BICKERING, being duly sworn, deposes and says as follows:

1. I am the Plaintiff in the above-captioned matter, and as such, I am fully familiar with the circumstances underlying this matter and all the prior proceedings had herein.

2. I make and submit this affidavit in support of the within Order to Show Cause, seeking an Order: (1) awarding the Plaintiff interim custody of the parties' four children, MONICA BICKERING, born 03/05/2006 (age 15), ROSS BICKERING, born 04/15/2007 (age 14), CHANDLER BICKERING, born 05/21/2011 (age 10) and PHOEBE BICKERING, born 02/18/2015 (age 6); (2) awarding the Plaintiff exclusive use and occupancy of the marital residence located at 400 Bliss Street, Huntington, New York, 11721; (3) immediately directing that the defendant pay the mortgage, real property taxes, homeowner's insurance, utilities, and other carrying charges currently in place with respect to the marital residence located at 400 Bliss Street, Huntington, New York, 11721; or in the alternative, awarding the Plaintiff temporary maintenance pursuant to the statutory guidelines, and further directing the Defendant to maintain

a pro-rata share of the mortgage and carrying charges associated with the marital residence; (4) immediately awarding temporary child support for the benefit of our four children: MONICA BICKERING, born 03/05/2006 (age 15), ROSS BICKERING, born 04/15/2007 (age 14), CHANDLER BICKERING, born 05/21/2011 (age 10) and PHOEBE BICKERING, born 02/18/2015 (age 6);, and making said support payable through the Child Support Enforcement Bureau; (5) immediately directing the Defendant to pay 100% of the unreimbursed medical, dental, optical, orthodontic, psychiatric/psychological and pharmaceutical expenses on behalf of our children and your deponent; (6) awarding interim counsel fees to the Plaintiff; and (7) any other related relief that this Court deems just and proper.

#### **PROCEDURAL BACKGROUND & HISTORY OF THE MARRIAGE**

3. This action for divorce was initiated by the Plaintiff filing a Summons and Verified Complaint on March 01, 2021. Your deponent interposed a Verified Answer on or about May 10, 2021. A copy of the pleadings are annexed hereto as **Exhibit “A”**.

4. Unfortunately, I have been compelled to submit the instant application based upon the Defendant’s serious gambling habits, that not only depleted our joint savings account by at least \$100,000, but also leads to arguments that are so severe that it drove a wedge between us that is impossible to repair. The Defendants conduct in the home creates an environment of destructive conflict that is completely unhealthy for your deponent and our young children. I feel like there is no cooperation between us, as parents, and the Defendant’s absence and unwillingness to help with the children is taking a serious toll on my wellbeing and mental health, as well as the mental of health of our children, particularly our youngest two children: CHANDLER is acting out at school and PHOEBE cries a lot.

5. I am employed part-time as a Registered Nurse at Good Samaritan Hospital, and I earn \$80,000 per year. Because the defendant is not pulling his weight with the children, I am forced to help the children with their homework, attend all their activities, games, PTA meetings, parent/teacher conferences, doctors' appointments, etc. I am responsible for meeting all of our children's basic needs while the Defendant work long hours, and spend his non-working hours gambling. As a result, I am unable to secure a full-time job or take on overtime because I would be unable to tend to our children, leaving both parents unavailable to them.

6. As and for a brief background and history of the marriage, the Plaintiff and I were married on September 01, 2004 in Huntington, New York AT The Saints March In Roman Catholic Church.

7. In or about May 02, 2006, we purchased the marital residence located at 400 Bliss Street in Huntington, NY 11721.

8. We experienced the birth of our first child, MONICA BICKERING, on 03/05/2006; the birth of our second child, ROSS BICKERING, on 04/15/2007; the birth of our third child, CHANDLER BICKERING, on 05/21/2011; and the birth of our fourth child, PHOEBE BICKERING, on 02/18/2015. As previously advised, I am presently employed part-time, and while the Defendant does currently help with the expenses and support of our children, if the situation gets worse and the Defendant stop making these contributions, I would be unable to satisfy these financial burdens with my salary of \$80,000 per year.

9. The Defendant is employed as a Senior Tax Accountant with the IRS, AND HE EARNS \$200,000 per year. The Defendant also has a 401K account worth \$275,000. The Defendant also trade on the stock market and it has a cumulative value of \$10,500. Annexed hereto as **Exhibit "B,"** is a copy of the Defendant's Statement of Net Worth dated June 17, 2021.

10. However, since filing for divorce on March 01, 2021, the Defendant has not been providing me with any funds toward my gas, credit card payments, auto lease, auto insurance and other basic daily living expenses for myself. The Defendant had been providing limited funds for groceries, clothing and extracurricular activities for our children. The Defendant only provides entertainment for the children when the children actually spends time with the Defendant. I have been forced to expend my limited savings to pay for all other expenses. It is my belief that the Plaintiff is withholding payments of support as a control and punishment tactic.

11. To my knowledge, the Defendant has been making the mortgage/property taxes payments on the marital residence. I am forced to pay the remaining monthly carrying charges, such as water and other utilities, cable, phone, and internet.

12. I have not received any direct payments of support from the Defendant, and when I have asked the Defendant for money in the past, he has outright denied my request. Similarly, on or about June 25, 2021, during our last court conference, my attorney requested support for your deponent, but opposing counsel, on behalf of the Defendant, adamantly opposed the request. As such, I am utilizing the money in the savings account, which is not being replenished because my salary is also being used up to care for our children and household. I will not have enough resources to get me through this divorce proceeding.

### **MY REQUEST FOR AN AWARD OF INTERIM CUSTODY**

13. As stated above, the Defendant has placed a financial limit on your deponent and our four children by failing to maintain the status quo. Moreover, your Deponent has been our children's primary care provider since their birth. Although I have worked part-time as a Registered Nurse during our marriage, I still have the responsibility of caring for our children

when I am not at work. Following my decision to file for divorce, I have been the sole care provider for our children as the Defendant is hardly ever available to help with the children since he works long hours, and when he is not working, he is out gambling. Notwithstanding all of this, I have continued to be the parent that our children rely upon to take care of them each day, and especially in the Defendant's absence.

14. Presently, the Defendant and I do not have a set parenting schedule. However, the Defendant spends very little time with the children. If he is not at work, he is out gambling. Sometimes the Plaintiff will take our oldest daughter, GM, out for the day, but then he drops her off at his parents' house and goes out alone instead of spending any time with her. There have also been several occasions when the Plaintiff does not come home, including disappearing for an entire weekend (which just occurred the weekend of May 7, 2021 through May 9, 2021) without calling or texting to inquire on how the children were doing.

15. It is abundantly clear that the Plaintiff is unable and unwilling to care for our children on more than a limited basis. He has not provided them with adequate child support, and he no longer spends time with our daughters on a daily basis, like he once did prior to filing the instant action for divorce. Your deponent will continue caring for our children, and notwithstanding the Defendant's conduct, I will always encourage our children to foster a healthy and loving relationship with the Defendant.

16. Moreover, as is more fully outlined herein below as part of my request for exclusive use and occupancy, the Defendant's gambling and absence in our children's daily lives has created an extremely unhealthy home environment for your deponent and our children. The Defendant becomes very upset when I try to speak to him about how his gambling habits are depleting our accounts. The Defendant also blames work for not pulling his weight with the

children, however, when the Defendant is not working, he chooses to spend his time at Off Track Betting, Atlantic City and Belmont Racetrack instead of tending to the needs of his children. The Defendant has made it abundantly clear that he will place the needs of himself above those of our children, and I think it would be harmful to our childrens' wellbeing if interim custody were not awarded to your deponent.

**MY REQUEST FOR EXCLSUIVE USE AND OCCUPANCY OF THE MARITAL RESIDENCE**

17. During this time of increasing tension between myself and the Plaintiff, since he filed for divorce on March 2, 2021, I am deeply concerned for the safety and well-being of myself and our children.

18. On several occasions from March 2021 through the present, the Plaintiff has verbally and physically abused your deponent. For instance, on March 17, 2021, while the Plaintiff was getting ready for bed, I inquired of him what our plans were for the next day. The Plaintiff started screaming at me that I shouldn't ask him any questions while he is tired. I giggled at his overreaction. I was 37 weeks pregnant at the time and was laying in bed with my back toward the Plaintiff. All of a sudden, the Plaintiff was on top of me, crushing my pregnant belly, and screaming in my ear. I attempted to get the Plaintiff off of me and then I struggled in the bed to get him off of me. I finally freed myself, however, the Plaintiff was screaming and cursing at me for over an hour. When things settled down, I attempted to go to sleep. However, the Plaintiff pulled the cover off the bed, grabbed my cellphone from my hand, grabbed my legs and pushed my knees into my pregnant belly. I was crying and begging the Plaintiff to stop because I felt like I was having contractions, but the Plaintiff did not care. The Plaintiff's words to me were "too bad." He took my diary and read it aloud. He prevented me from

leaving the bedroom and took the baby monitor away from me. I went downstairs to sleep on the couch. The Plaintiff followed me downstairs to yell at me some more.

19. On May 27, 2021, the Plaintiff and I had a disagreement while I was attempting to put our one-month old baby to sleep. The Plaintiff grabbed my cellphone from me and saw that it was recording. He started screaming at me. I went to get the landline phone and started to dial 9-1-1. The Plaintiff grabbed that phone from my hands too and hung up. The Plaintiff was demanding that I erase the recordings of him on my cellphone. So, to placate him and afraid as to what he might do if I did not listen, when he handed me my cell phone back, I erased a few of the recordings. Once I had the cellphone back in my possession, I attempted to call the police again but as it was ringing, I hung up because I got scared of what the Plaintiff was going to do. The Suffolk County Police Department called me back and left a message. I was holding our baby the entire time. The Plaintiff advised that “he wasn’t leaving until he got what he wanted,” which was for me to erase all of my recordings. He tried to take my cellphone away from me countless more times when he saw that I was not erasing the recordings. He screamed so loud that he woke our daughter, GM, up and she started crying. GM called for me. The Plaintiff grabbed the baby monitor from me as I was talking to GM on the intercom. I begged the Plaintiff to allow me to go to GM, he said I could only go after I deleted all of the recordings. The Plaintiff stayed in my room (the Plaintiff and I sleep in different rooms, I sleep in the spare bedroom with our daughter, GGM, and the Plaintiff sleeps in the master bedroom) and read my diary. When he left, he took my diary with him.

20. On June 7, 2021, the Plaintiff screamed at me in front of our children because I asked him for help cleaning up a mess that our 3-yr old daughter made while I was feeding the baby. The Plaintiff attempted to take my cellphone from me multiple times and demanded that I

show it to him. He said to our daughter GM, "Mommy likes to make Daddy angry" among other inappropriate things. He stood over us, yelling that he wanted me out of the house and I wouldn't be living there much longer, while I was huddled on the couch holding both girls.

21. On June 10, 2021, the Plaintiff threw baby clothes at me; he was angry because I put Neosporin on the baby's nose after the Plaintiff accidentally cut her with his fingernail. He laid a dirty burp cloth on my head as I was sitting on the floor with GM. The Plaintiff took the baby while I was trying to leave the house with the girls and said the car seat straps were wrong. The Plaintiff said I could not leave until I took the car seat apart and changed the straps around. The car seat had been the same for at least 10 weeks, before the baby was born. He was only trying to delay me but I did as he said so he would let me take the baby.

22. On June 11, 2021, the Plaintiff screamed at me because I was sleeping with the baby, and he woke the baby up. He threatened to start feeding the baby formula and called me a liar in front of our daughter, GM. He tried to grab my cellphone from me while I was breastfeeding the baby.

23. On June 12, 2021, the Plaintiff's abuse continued when he opened the bathroom door while I was changing. He kept his foot in the door to prevent me from closing it and said I should use a different bathroom.

24. On June 13, 2021, the Plaintiff was angry with me; he blamed me for our daughter, GGM, refusing to take a bottle (inasmuch as I breastfeed her). He followed me to my bedroom and yelled at me while I was feeding the baby. Our daughter, GM, was banging on the door because she wanted to come in. The Plaintiff was yelling and had his hand on the door; preventing me from leaving and GM from coming into the room. He then lunged for my cellphone while I was holding the baby. The Plaintiff prevented me from leaving rooms multiple

times while I was trying to get away from him. The Plaintiff opened the drawer of GM's dresser into my leg, pushing me with it while I was holding the baby, and pretended it was an accident. In front of the girls he said to me "God help you if you try to take my kids away with your stupid recordings." He also said that if I don't take whatever deal he presents to me, the house is going on the market and I'll have to "get all my crap out." He said I have to get my net worth statement done ASAP or he "has ways of making" me get it done. All said in front of our young children.

25. On June 16, 2021, the Plaintiff was yelling at me calling me "lazy" and "disgusting" in front of our children. He physically blocked me from moving between Gwendolyn's bedroom and the bathroom several times. After I got both girls to bed, he yelled at me for an hour about how much he hates me. He was angry, yelling, and hitting the chair while he spoke. I then went to take a shower and he tried to open the locked bathroom door. He then proceeded to bang on the door, louder and louder, while I was showering and the girls were sleeping.

26. On June 19, 2021, the Plaintiff told me I should move out of the house multiple times in front of our daughters. He looked at my cellphone and read text messages between my sister and I. He called me despicable in front of our daughters.

27. On June 20, 2021, while in front of our daughters, the Plaintiff said he wanted me out of the house and told GM that I was making fun of him (untrue). GGM was hungry and the Plaintiff was holding her. I asked him if he would hand her to me so I could breastfeed her. He said he would hand her over when I produced my phone for him and showed it wasn't recording. I said holding the baby hostage for my phone was ridiculous and I went to the bathroom. He opened the bathroom door on me and asked for my phone again. When I came out, the

Plaintiff's dad was in our house holding GGM. The Plaintiff's dad allowed me to take the baby upstairs and feed her.

28. On June 21, 2021, the Plaintiff yelled at me while I was breastfeeding the baby because I did not throw away a cardboard toilet paper tube that I was saving for a craft project. He called me "lazy", said I had "dementia", and said I shouldn't be taking care of a baby. He tried to open the locked bathroom door on me and yelled that I needed to get out so he could use it (even though we have three bathrooms in the house). The Plaintiff continued shouting and pounding on the door while the baby was asleep. The Plaintiff then took my iPad out of my nightstand drawer and put it in a bag which he had packed because he planned to take our children to his parents' house. I explained that it was my iPad, on my separate phone plan, and took it out of the diaper bag. He called Verizon to verify what I told him. He was yelling at me in front of the children and was yelling at the Verizon employee on the phone. I was soothing the baby because she was fussing in her car seat. He grabbed the car seat with his one free hand while he was on the phone and half lifted half dragged her away from me to the other side of the room. I then went over to our daughter, GM, to read a book while he was yelling on the phone. When he was done, he yelled at me some more, and GM started yelling at me too. He took the girls to leave and said "I'm going to remember this. You're going to get a taste of your own medicine." I went to shut the door behind them, but he stayed in the threshold and told me to let go of the door. He closed it behind him and stayed outside with his hand on the doorknob for at least 5-10 seconds so I couldn't open the front door. The Plaintiff did not return for six hours, and during those six hours, GGM drank less than 3 ounces of her bottle. The Plaintiff then left the house without telling me and never came home that night.

29. On August 20, 2018, once again, the Plaintiff tried to open the locked bathroom door on me and demanded to know what I was doing in the bathroom. My cellphone rang and I went outside on the deck to answer it. The Plaintiff came outside and sat down next to me to listen to my call. He frequently denies me privacy to exert control over me. Later, I used the bathroom while the baby was sleeping. He again tried to open the locked door and told me to come out and “deal with Gwen.” In front of the children, he told me to “get out of the house, call your lawyer, and go back to work”. He said no one wanted me there and threatened to give the baby formula instead of breastmilk. He grabbed at my cellphone. He woke up the baby because of all his yelling. I then got ready to take the girls for a walk. The Plaintiff was following me around the house, yelling at me and badgering me about the divorce. As I was walking down the stairs, he came out of the bathroom into the hallway and flicked water at me from his wet hands. The Plaintiff was screaming and cursing at me so bad the dog tried to run away. I couldn’t get the dog back in the house so I had to take the dog for a walk with us. Later that evening, our daughter, Gwendolyn, said to me “Mommy you have to get out of here” and “we’re gonna kick you out.”

30. On June 22, 2021, I was up at 4:00 a.m. with our daughter GM who was sick with a cough. The Plaintiff came home from a night out and tried to step in and take over. The Plaintiff became angry and tried to push me out of the way with the bathroom door. He was talking loudly, interrogating me about how GM got sick. It took me an hour and a half to get Gwendolyn back to sleep after the commotion. Later that morning, the Plaintiff said he was taking GGM out. However, GGM had soiled her car seat the day before so I had taken it apart to wash it. The Plaintiff then told me I needed to put it back together for him. I was busy at the moment and said he could do it. He then became irate, yelling and calling me negative things in

front of the girls. GM told him not to yell at me. Then the Plaintiff said he was leaving without the kids. I suggested that he take GM since her car seat was intact. The Plaintiff then grabbed GM and carried her to the door. I said I wanted to kiss her goodbye and he physically blocked me from her. He carried her outside and I followed, telling her I loved her and everything was going to be okay. The Plaintiff then buckled GM into his car and told me to get away. I said I was just going to kiss her goodbye. GM was crying and yelling “I want to hug and kiss Mommy goodbye!” He shut the door and locked the car without letting me kiss my daughter. He then pushed me away from the car. I asked the Plaintiff where he was taking her but he just backed down the driveway while yelling at me.

31. Once again, on June 25, 2021, as I was about to leave the house, the Plaintiff said “GGM’s car seat straps are incorrect” and I was not allowed to leave. I advised the Plaintiff that I hadn’t changed the straps, however, he could fix them if he thought they were wrong. The Plaintiff then started screaming at me and taking pictures of the car seat. GM started to cry and crawled into a laundry basket. I then took GM upstairs to shield her from the Plaintiff’s abuse and to calm her down. However, the Plaintiff followed us upstairs and continued to yell at me in GM’s room; saying very disparaging things to me. GM asked “is Daddy going to call the police?” Later that night, the Plaintiff called GM on the phone and she told him “You were yelling in my and GGM’s face.” The Plaintiff then sent me a barrage of bullying texts about the car seat, the living situation, the divorce, and just general insults.

32. The Court should note that on June 27, 2021, the Plaintiff dropped our daughter, GM off at his at his parents’ house (even though we were both at home and didn’t have to leave the house for several hours, we were scheduled to have a four-way settlement conference). I started to tell him about child care arrangements for the baby, but he started yelling at me to

leave him alone and called me a “scared little twat” when I left the room. He then followed me into another room to continue yelling at me and woke the baby up from her nap. Later that day, the Plaintiff’s attorney canceled the four-way meeting scheduled for that afternoon. The Plaintiff became very angry and cursed out his attorney’s staff over the telephone and started hitting the garbage pail storage container several times.

33. On June 28, 2021 while I was getting our daughter, GM, ready for school, the Plaintiff was furious because I didn’t make GM’s lunch yet. He started yelling at me in front of the children, accusing me of trying to delay him taking her to school. He stormed into GM’s room and yanked her arm away from me as I was trying to put her jacket on. He picked her up and carried her away from me because he said I was “poison.” I took the baby downstairs and again tried to put on GM’s jacket, but the Plaintiff physically blocked me from her. He said he didn’t want me near her and was taking her out of this “toxic house.” I repeatedly asked him to stop yelling. I said goodbye to GM and picked up GGM to take her upstairs for a nap. The Plaintiff then tried to grab the baby out of my arms. He said to GGM that he was taking her out of here too. I reassured GM that everything was okay and went upstairs with GGM. Later in the day, I came home with the girls from running errands. The Plaintiff was in the driveway when we got home. He tapped on my car window, opened the car door, and took the baby out of my car. He immediately tried to discuss buying me out of the house in front of GM. I then let GM play with the iPad while I was getting GGM ready for bed. The Plaintiff came in and started yelling at me about the iPad use. He put his face down close to GGM while I had her on the changing table to impede me. He smacked my hands away from the baby as I was changing her.

34. On June 29, 2021, the Plaintiff had been eating cereal for breakfast. When he finished, I tasted the cereal because it was new; I had bought it but never tried it. He saw me and freaked out, grabbed the spoon from the bowl, and flicked it at my face, spraying me with milk while he was holding the baby. I wiped my face and he put his face close to mine and through gritted teeth cursed at me and told me to never do that again or I'd be sorry. The Plaintiff said he was taking the girls on Thanksgiving from 12:00 PM through 8:00 PM. I said we should split the day. The Plaintiff raised his voice and demanded that I call my attorney and schedule another four-way settlement conference or he would have the girls on Thanksgiving. The Plaintiff grabbed at my cellphone in my shirt pocket while I was holding the baby. He yelled at me in front of the girls for over an hour, in and out of my bedroom. I sent the Plaintiff an email invitation for another co-parenting app but he said he wasn't interested. He kept telling the girls how much fun they were going to have on Thanksgiving. He was looking at me the entire time he was addressing the girls; it was really creepy and intimidating. He kept coming into my room and closing the door because I had asked him to leave it open so I could hear GM. I had to get up four separate times to open it.

35. As the Court can see from the above, the Plaintiff's physical and verbal abuse upon your deponent and our children has become intensively worse. I am in fear of my safety as well as the safety of our children. The Plaintiff's behavior is negatively impacting our children and your deponent. Most importantly, I worry about the effect that this kind of dysfunction is having on our children. The marital strife is at its peak, and I cannot stand by while our children become the collateral damage of the Plaintiff's choices.

36. Accordingly, I am respectfully requesting that this Court award me temporary exclusive use and occupancy of the marital residence located at 9 Wind Drive, Mastic Beach, New York.

**MY REQUEST FOR THE DEFENDANT TO PAY THE MORTGAGE AND ALL EXISTING CARRYING CHARGES ON THE MARITAL RESIDENCE**

37. As a result of our present financial circumstances, and the tremendous disparity in our incomes and the fact that I am presently on Maternity Leave from my employment, I am requesting that the Plaintiff be directed to pay all of the existing monthly household carrying charges, including but not limited to, the mortgage, real property taxes, homeowner's insurance, electric, fuel, cable, phone, internet bills, cellphone, data storage, water, alarm, landscaping, and house cleaning. The Court should note that I am reserving on any request for interim maintenance at this time, and instead just ask that the Plaintiff be directed to maintain the cost of all of the existing carrying charges on the marital residence. It is not feasible for your deponent to maintain these expenses, as I am currently on Maternity Leave and not receiving any income and do not expect to return to work until September, 2021. Therefore, I cannot afford to maintain our household without the Plaintiff's contributions as the family's breadwinner.

38. Pursuant to my Statement of Net Worth, annexed hereto as **Exhibit "C,"** our mortgage costs \$1,722.79 per month, our real estate taxes cost \$1,215.94, and our homeowner's insurance costs \$ 109.92. Our utilities total approximately \$913.00 per month. I am therefore, asking that this Court direct the Plaintiff to continue paying all of our household expenses and carrying charges for the pendency of this action.

39. Alternatively, should the Court deny my request for the Plaintiff to maintain the household expenses, then I would request that the Court award me interim maintenance, pursuant

to the statutory calculations, and further, direct the Plaintiff to pay his pro-rata share of the mortgage and household carrying charges. Attached hereto as **Exhibit “D,”** is the maintenance and child support online calculator. The Plaintiff’s maintenance obligation is \$3,066.67 per month. However, this amount is unfair and unjust, therefore, I am requesting that the Court apply maintenance above the \$192,000.00 cap or direct the Plaintiff pay his pro-rata share of all of the carrying charges associated with the marital residence in addition to his maintenance obligation.

**AN AWARD OF TEMPORARY CHILD SUPPORT IS REQUESTED PURSUANT TO  
THE CHILD SUPPORT STANDARDS ACT**

40. My attorney informs me that our children, GM and GGM are entitled to child support based upon their status as unemancipated children of the marriage, and as such, I specifically request that the Court grant an order directing the Plaintiff to pay weekly child support utilizing the guidelines set forth in the Child Support Standards Act (CSSA) and representing 25% of the Plaintiff’s gross income for the purposes of such calculations.

41. Again, the Plaintiff earned \$299,144.65 per year and your deponent earned \$87,905.81 in 2020 (when I am working, but again I am currently on Maternity Leave). Furthermore, inasmuch as the Plaintiff is unquestionably the monied spouse, an award of interim child support would be appropriate to meet the needs of our three (3) year old daughter and our six (6) month old daughter. The Plaintiff’s child support obligation is \$4,545.03 per month. Attached as **Exhibit “D,”** is the maintenance and child support online calculator, which I am requesting be made payable through the Child Support Enforcement Bureau, via an income deduction order.

**MY REQUEST FOR THE DEFENDANT TO PAY UNREIMBURSED MEDICAL**

42. I am asking that this Court direct the Defendant to pay for 100% of all unreimbursed and/or uncovered medical expenses including, but not limited to, medical, dental, optical, orthodontic, psychiatric/psychological and pharmaceutical.

**MY REQUEST FOR AN AWARD OF INTERIM COUNSEL FEES**

43. This application was necessary as a result of the Plaintiff's failure to provide your deponent with any amount of regular support, adequate to meet our children's and our household's needs. Since, at or near the time of the birth of our second daughter, your deponent has been left with the full financial responsibility of maintaining our home and supporting our children.

44. The Plaintiff has proven that he has no intention of supporting your deponent or our children by paying our household bills, and as such, I have no choice but to seek a Court Order deeming the Plaintiff legally responsible for the timely payment of same. I do not trust that the Plaintiff will maintain the household carrying charges absent a Court Order that imposes that obligation and responsibility. My primary concern is maintaining the home for our children during the pendency of this proceeding so that our children, GM and GGM, are afforded the stability that they deserve.

45. I am, therefore, requesting an award of counsel fees to be paid to my attorney, Danielle I. Schwager, Esq., as and for interim counsel fees pursuant to DRL § 237(a), in the amount of \$10,000.00. My attorney has explained to me that an award of interim counsel fees permits the parties to litigate on an even playing field, thereby enabling me to procure and maintain competent legal representation, while also preventing the monied-spouse (the Plaintiff), from exploiting an unfair legal advantage over me due to his access to substantially greater

income. Further, I am aware that the statutory law addressing counsel fees in a matrimonial action provides a presumption that the non-monied spouse is entitled to an award of counsel fees.

46. Inasmuch as the Plaintiff is the monied-spouse and completely dominates our monetary assets, the Plaintiff should be directed to pay interim counsel fees directly to my attorney to ensure equality in our respective abilities to litigate this matter. For the Court's reference, copies of my billing sheets for the work performed to date by my attorney is annexed hereto as **Exhibit "E"**.

47. My retainer payment of \$6,500.00 consisted of money I had saved over the years when I was working and earning a salary. As previously stated, I am currently on Maternity Leave and am not earning a salary. Accordingly, I am asking this Court to exercise its discretion in providing me with an award of counsel fees sufficient to carry on in this matrimonial action.

48. No prior application for the relief sought herein has been submitted to any other Court or Judge, except as otherwise stated. A Request for Judicial Intervention has been filed, and IAS Acting Justice Glenn A. Murphy has been assigned to this matter.

**WHEREFORE**, your Deponent respectfully requests that each and every branch of the relief sought in the annexed application, by Order to Show Cause, be in all respects granted, together with such other, further and difference relief as, in this Court's discretion, justice and equity demand.

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KM

Sworn to before me this  
1<sup>st</sup> day of July, 2021

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Notary Public

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X

BETTY BICKERING,

Plaintiff,

**AFFIRMATION IN  
SUPPORT OF  
DEFENDANT'S ORDER  
TO SHOW CAUSE**

Index No. 21-10987

-against-

BOB BICKERING,

Defendant.

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ALEX A. SAMAROO, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms, pursuant to CPLR §2106, the following statements to be true, except as to those matters stated upon information and belief and as to those matters, as your Affirmant believes them to be true, under the penalties of perjury:

1. I am the attorney of record for the Plaintiff, and as such I am familiar with the facts and circumstances underlying the above-captioned matter.
2. I make and submit this Affirmation in support of Mrs. BETTY BICKERING's annexed application, by Order to Show Cause, *inter alia*, counsel fees.

**COUNSEL FEES ARE WARRANTED PURSUANT TO DOMESTIC RELATIONS LAW  
§237(a).**

3. Effective October 12, 2010, subparagraph (a) of Domestic Relations Law §237 was amended to provide that "[t]here shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse." (*emphasis added*). The aforementioned subparagraph was

further amended to provide that “[i]n exercising the court’s discretion, the court shall seek to assure that each party shall be adequately represented, and that where fees and expenses are to be awarded they shall be awarded on a timely basis, pendente lite, so as to enable adequate representation from the commencement of the proceeding.” Moreover, “[a]pplications for the award of fees and expenses may be made at any time or times prior to final judgment.” Accordingly, based on the reforms cited hereinabove, it is the Plaintiff’s burden to establish that an award of interim counsel fees to the Defendant would be unjust or inappropriate.

4. In addition to the legislature’s amendment of Domestic Relations Law §237(a), it remains true that “[a]n award of interim counsel fees is designed to create parity in divorce litigation by preventing a monied spouse from wearing down a non-monied spouse on the basis of sheer financial strength.” *Meltzer v. Meltzer*, 63 A.D.3d 702, 703 (2<sup>nd</sup> Dep’t. 2009); *see also*, *O’Shea v. O’Shea*, 93 N.Y.2d 187, 193 (Ct. App. 1999); *Wald v. Wald*, 44 A.D.3d 848 (2<sup>nd</sup> Dep’t. 2007). Moreover, the “non-monied spouse” is not required to exhaust her own capital in order to qualify for interim counsel fee award in divorce proceeding. *See, Mitzner v. Mitzner*, 288 A.D.2d 483 (2<sup>nd</sup> Dep’t. 1996).

5. Here, the Defendant stands in an unquestionably superior financial position in that he presently is the primary breadwinner of the family, earning far more than the Plaintiff. Moreover, as expressed through my client’s annexed affidavit, the Plaintiff is responsible for meeting the needs of the parties four children, maintaining the household and, as a result, is employed part-time.

6. As demonstrated by the Plaintiff’s annexed Statement of Net Worth, the Plaintiff possesses little “capital” of which she is capable of “exhausting” as this matter proceeds. In fact, as noted in the Plaintiff’s annexed affidavit, the Defendant has a serious gambling problem that

depleted the parties' joint savings accounts. There are outstanding debts that needs to be paid, along with monthly expenses such as property taxes, utilities, cable/phone/internet, groceries, auto lease, auto insurance, gas, clothing and personal grooming products for the children as well as my Client, the children's extracurricular activities, entertainment, miscellaneous expenses, credit cards etc. The ballpark average for my client's monthly expenses is \$6290. Again, as stated above, my Client is presently employed part-time and is tasked with the responsibility of raising the party's four children. Therefore, this is insufficient to support the household and the lifestyle that she and the parties' children enjoyed throughout the course of the parties' marital relationship.

7. Based upon all of the foregoing, an award of counsel fees in the amount of \$8,000.00 is entirely justified, particularly in consideration of my Client's limited financial resources, as well as the parties' relative financial circumstances and the work I expect my law firm to perform in connection with this matrimonial proceeding. In fact, I anticipate the totality of the charges to be greater than the \$8,000.00 sum requested, but, will defer a request for additional fees until such time that a supplemental award of counsel fees becomes necessary.

8. I am asking this Court to address the issue of counsel fees to facilitate a prompt determination on the issue and to enable the Plaintiff to litigate on an equal footing with the Defendant. In *Prichep v. Prichep*, the Second Department emphatically addressed the inequity that results in having litigation go forward where a party without income or assets would otherwise have to await the conclusion of a trial before having the issue of counsel fees addressed, stating:

When an action for a divorce is commenced, it is often the case that most of the marital assets available for the payment of legal fees are possessed or controlled by one of the spouses, usually the husband. In order to ensure that the parties will have equal access

to skilled legal representation, the Domestic Relations Law authorizes awards of interim counsel fees to the nonmonied spouse during the course of the litigation. Because of the importance of such awards to the fundamental fairness of the proceedings, we hold that an application for interim counsel fees by the nonmonied spouse in a divorce action should not be denied-or deferred until after the trial, which functions as a denial-without good cause, articulated by the court in a written decision. 52 A.D.3d 61, 62 (2nd Dept. 2008) (*emphasis added*).

9. The matter before the Court clearly requires an application of the reasoning set forth by the Appellate Division in *Prichep*. The Plaintiff is seeking equitable relief from the Court in the context of an application for counsel fees sufficient to maintain experienced legal counsel and refusing to grant that relief at the outset of the action, particularly in light of her significant financial disadvantage, would be patently subversive to the non-monied spouse's ability "to carry on...the action or proceeding as, in the Court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties." *See, O'Shea*, 93 N.Y.2d at 190.

10. In the case before this Court, the Plaintiff entered the litigation in the disadvantageous and untenable position as the non-monied spouse. Thus, the only manner by which the intent of Domestic Relations Law §237(a) can be achieved in the instant matter is by and through a timely and appropriate award of substantial counsel fees.

11. Based upon the foregoing, I respectfully urge this Court to follow the guidance of Justice Prudenti's discussion of counsel fees as set forth in the *Prichep* matter and grant the requisite and appropriate counsel fees in the sum of \$8,000.00.

#### **APPLICABLE LAW**

12. The Court's attention is respectfully directed to the case of *Miller v. Cole*, 68 Misc.2d 8 (Fam. Ct., N.Y. Co., 1971) which sets forth the criteria for fixation and determination

of legal fees quoting extensively from an article entitled, "*Fee Schedules Should Be Abolished*", Richard J. Arnold and Robert N. Corley, in the American Bar Association Journal of July, 1971, page 655, at page 658:

1. Time involved;
2. Nature of the difficulty and novelty of the problem;
3. Amount of money or other interests involved;
4. Attorney's professional standing;
5. Benefits sought for client;
6. Attitude of the profession toward the type of litigation;
7. Attorney's opportunity costs;
8. Responsibility assumed by attorney in the case;
9. Probability of success for the client;
10. Necessity of the counsel's services;
11. Client's ability to pay.

13. In the matter entitled *In Re Pott's Estate*, the Appellate Division stated the areas of proper inquiry in determining a claim for fees award:

In general, the court, in determining the justice and reasonableness of an attorney's claim for services, should consider the time spent, the difficulties involved in the matters in which the services were rendered, the nature of the services, the amount involved, the professional standing of the counsel, and the results obtained. (*citation omitted*) "The value of an attorney's services cannot be limited to specified and detailed bills of particulars with a specified amount for each item, as in the case of goods sold, or mere manual services rendered" (*citation omitted*). 213 A.D. 59, 62 (1<sup>st</sup> Dep't. 1925), *affm'd*. 241 N.Y. 593.

The Standard by which the value of such services measured is, however, the fair and reasonable value of the services rendered after considering the various elements referred to. I do not think items as to time actually employed in work on the case are of much importance. It is the ability of the attorney and his capacity and success in handling large and important matters and in commanding large fees therefor, the amount involved, and the result obtained, which are of prime importance in determining what constitutes a just and reasonable charge (*citation omitted*). *Id.*

**MATRIMONIAL EXPERIENCE OF PLAINTIFF'S ATTORNEY**

14. Your Affirmant has been practicing law for over fifteen (15) years. I am a graduate of Touro College School of Law, a recipient of the American Excellence Award for Family Law and Evidence, and a member of the Law Review. I am a member in good standing of the Suffolk County Bar Association.

15. The overwhelmingly vast majority of my practice is devoted to family and matrimonial law matters. I have been engaged in extensive litigation in connection with matrimonial matters. I have conducted numerous hearings, trials and made various motions with respect to the area of matrimonial law. I am current with recent developments and legal education in the family and matrimonial law field. I am an active participant in the Suffolk County matrimonial bar mentoring of pro bono attorneys' program.

21. Your Affirmant's associate, Danielle I. Schwager, Esq., has been employed by my firm since May 2019, and was admitted to the Appellate Division, Second Department, on October 22, 2000. She received her Juris Doctor from Touro College Jacob D. Fuchsberg Law Center in May 1998. Mrs. Schwager has over two decade's worth of experience as a trial attorney, much of which came from her work as a former Assistant District Attorney for Suffolk County, being a Litigator for prior Law Firms, and operating her own Law Practice for over a decade with an emphasis on Family Law. Mrs. Schwager also has experience as a member of the Attorney for the Child Panel and the Suffolk County Family Court 18(b) Panel, and her practice specialized in abuse, neglect and termination of parental rights cases as well as custody,

visitation, and juvenile delinquency. Mrs. Schwager practiced in Family Court as well as matrimonial cases in Supreme Court, and she appeared regularly before the Appellate Division Second Department in her representation of children. Additionally, she is a co-author of the treatise on New York Matrimonial Practice, which is updated yearly and published by Thomson-Reuters. Mrs. Schwager is in good standing as a practicing attorney, and is currently a member of the New York State Bar Association, Suffolk County Bar Association, and Suffolk County Matrimonial Bar Association.

22. Based on the foregoing, together with the Plaintiffs's Affidavit, the instant request for an award of counsel fees in the amount of \$8,000.00 should be in all respects granted.

23. No prior application for the relief sought herein has been made to any other Court or Judge, except as otherwise stated.

24. A Request for Judicial Intervention has been filed, and IAS Acting Justice Glenn A. Murphy has been assigned to this matter.

**WHEREFORE**, based on the foregoing, your Affirmant respectfully requests that each branch of the Plaintiff's annexed application be in all respects granted together with such other, further and different relief as, in this Court's discretion, equity and justice demand.

Dated: Islandia, New York  
July 12, 2021

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ALEX A. SAMAROO, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X

BETTY BICKERING,

Plaintiff,

**AFFIDAVIT OF  
COUNSEL IN SUPPORT  
OF COUNSEL FEE  
REQUEST**

Index No. 21-10987

-against-

BOB BICKERING,

Defendant.

-----X

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

ALEX A. SAMAROO, ESQ. being duly sworn, deposes and says as follows:

1. I am the principal of the Law Office of Alex A. Samaroo, P.C., attorneys for the Plaintiff in the above-captioned matter.

2. I make and submit this Affidavit pursuant to Domestic Relations Law, sections 237 & 238, as amended by chapter 329 of the 2010 Legislation, effective October 13, 2010.

3. The Plaintiff herein retained the Law Office of Alex A. Samaroo, P.C., on or about February 20, 2021, in connection with her matrimonial difficulties and paid an initial retainer of \$4,000.00.

4. Pursuant to the February 20, 2021 Retainer, the Plaintiff has agreed to the hourly rate of \$275.00 for legal services rendered by Alex A. Samaroo, Esq; \$250.00 per hour for services rendered by my associate, Danielle I. Schwager, Esq. As set forth in the Retainer Agreement, the Plaintiff is billed on an hourly basis against her retainer, and once the retainer is

depleted, the Plaintiff is required to make additional payments for services rendered in excess of the retainer. See **Exhibit “C”** for a copy of said Retainer Agreement (attached to the Plaintiff’s Statement of Net Worth).

5. The Plaintiff has been provided with a copy of all billing statements. As of July 12, 2021, the Plaintiff has a credit balance of \$1,897.90. Copies of my firm’s billing entries were previously annexed hereto at **Exhibit “E”**.

6. Your affiant does not have any arrangement with a third party with respect to paying the remainder of the Plaintiff’s legal expenses.

**WHEREFORE**, your deponent respectfully requests that the Plaintiff’s application be granted in its entirety, together with such other and further relief as to this Court’s discretion, justice and equity demand.

Dated: July 12, 2021  
Huntington, New York

\_\_\_\_\_  
ALEX A. SAMAROO,

ESQ  
Sworn to before me this  
12<sup>st</sup> day of July, 2021

\_\_\_\_\_  
NOTARY PUBLIC