- **“What Every Lawyer Practicing Family Law in 2025 Needs to Know”**

A “hot tips” style program, where each speaker is provided five minutes to provide tips and wisdom on an area of their choosing.

- **Speakers:**
- Panel 1 (8:30 – 9:20 a.m.)
    1. Kriste Rodriguez, CPA/ABV (Eisner)
    2. Amy Malamut (Malamut Mortgage Team)
    3. Cheryl Burman, Esq. (Manes & Weinberg)
    4. Tracy Julian, Esq.
    5. Jasmina Woodson, CPA/ABV/CFF (Withum)
    6. Ali Sutak, Esq.
    7. Michael Jawien, CRPC QPFC (Morgan Stanley, the Jawien Group)
    8. Rory Gannon, CPA, MST (Smolin)

- Panel 2 (9:25 – 10:15 a.m.)
    1. Dan Roche, CPA/ABV, ASA (CBIZ)
    2. Greg Cooke (Integris)
    3. Paul Sobol (Sobol & Associates)
    4. Taylor DeSantis, Esq.
    5. Mike Fonseca (Soberlink)
    6. Maranda Demaj, CPA (DLA)
    7. Richard Sanvanero, Esq.
    8. Gina Berkery, CPA (CG)
    9. Sam Berse, Esq.

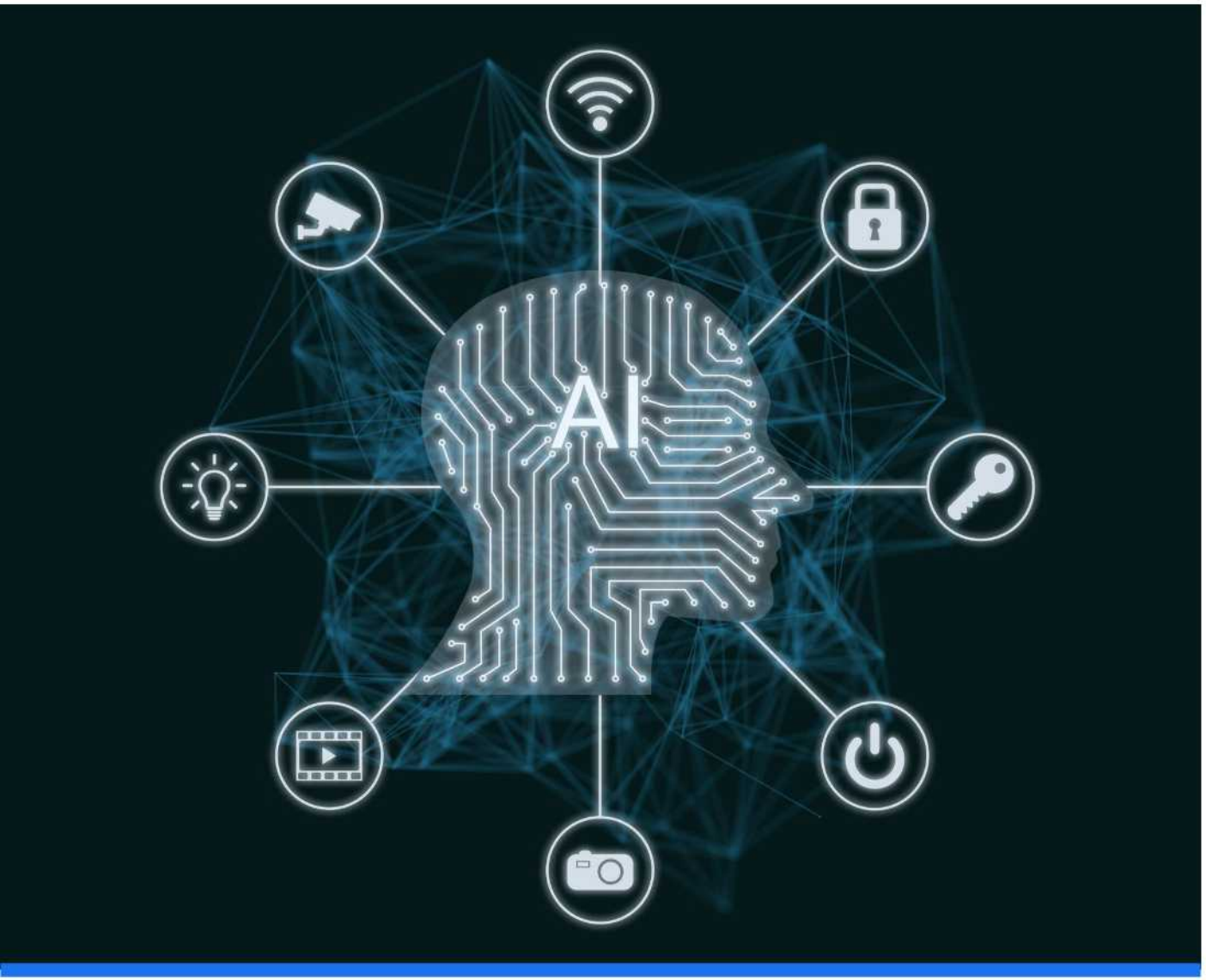
- Panel 3 (10:20 – 11:10 a.m.)
    1. Sandy Klevan, CPA (Stout)
    2. Carmen Diaz, Esq.
    3. Tasha Shadle, CDFA, CIMA, CBDA
    4. Chad Keeports, CPA, CVA
    5. Alex Krasnomowitz, CPA, CVA, MBA
    6. Lauren Miceli, Esq.
    7. Jessica Sprague, Esq.
    8. John O’Grady, CPA (Eisner)
    9. David Bruno, Esq.

AI in Family Law Practice

EXPLORING TECHNOLOGY'S ROLE IN MODERN LEGAL SERVICES.

ALEXANDER KRASNOMOWITZ, CPA, CVA, MBA

Smolin
ADVISORY • TAX • ACCOUNTING



Key Points Overview

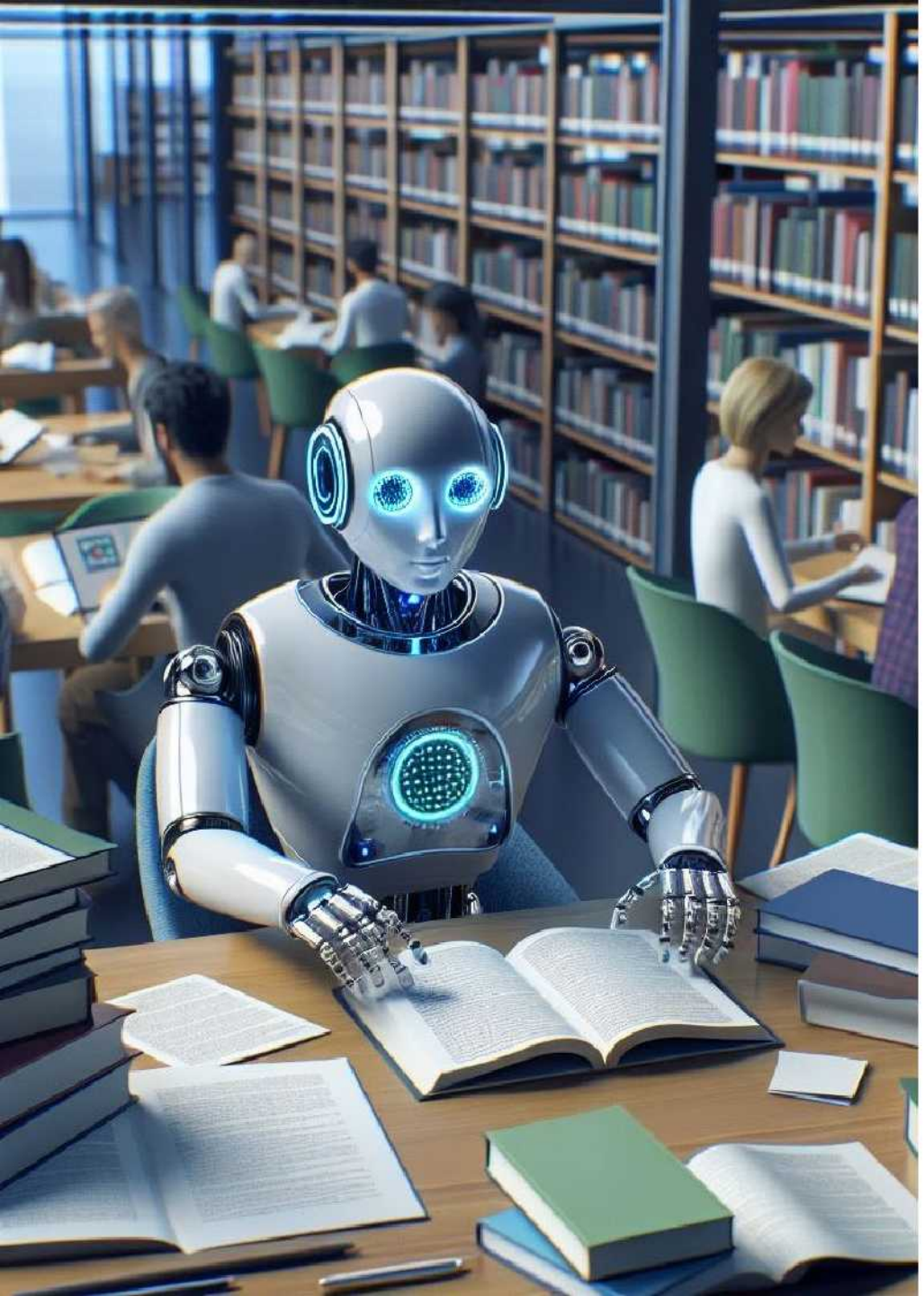
AI in Legal Research

Collaborating with Forensic Accountants

Client Interaction and Assistance

Ethical Considerations

Marketing



Automation of Legal Research

AI Enhances Legal Research

AI tools use natural language processing to streamline legal research significantly. They simplify complex legal inquiries and reduce manual effort.

Time Savings for Lawyers

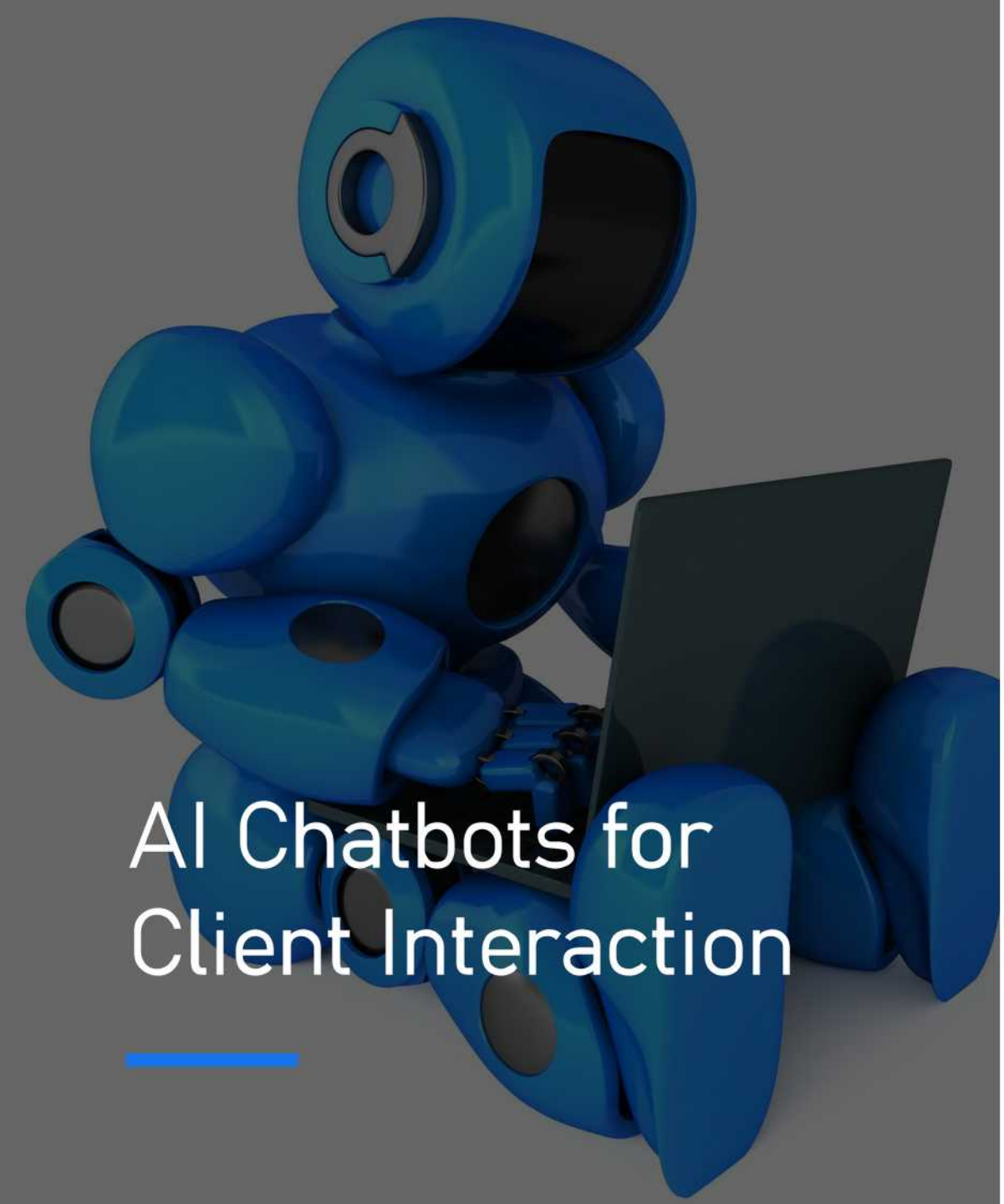
Automation allows lawyers to save significant time on document analysis. This efficiency leads to improved case management.

Focus on Client Interactions

With reduced research workload, family law practitioners can prioritize client interactions. This enhances overall client service and satisfaction.

Collaborating with Forensic Accountants

- **AI Integration**: Utilize AI tools to analyze financial data, detect anomalies, and provide insights that can assist forensic accountants in their investigations.
- **Business Valuation Standards**: Ensure that AI tools adhere to established business valuation standards to maintain accuracy and reliability in financial opinions.



AI Chatbots for Client Interaction

Enhanced Client Communication

AI chatbots streamline communication between clients and law firms effectively, offering quick responses.

Immediate Assistance

These virtual assistants provide instant support for common legal inquiries, improving client satisfaction.

Appointment Scheduling

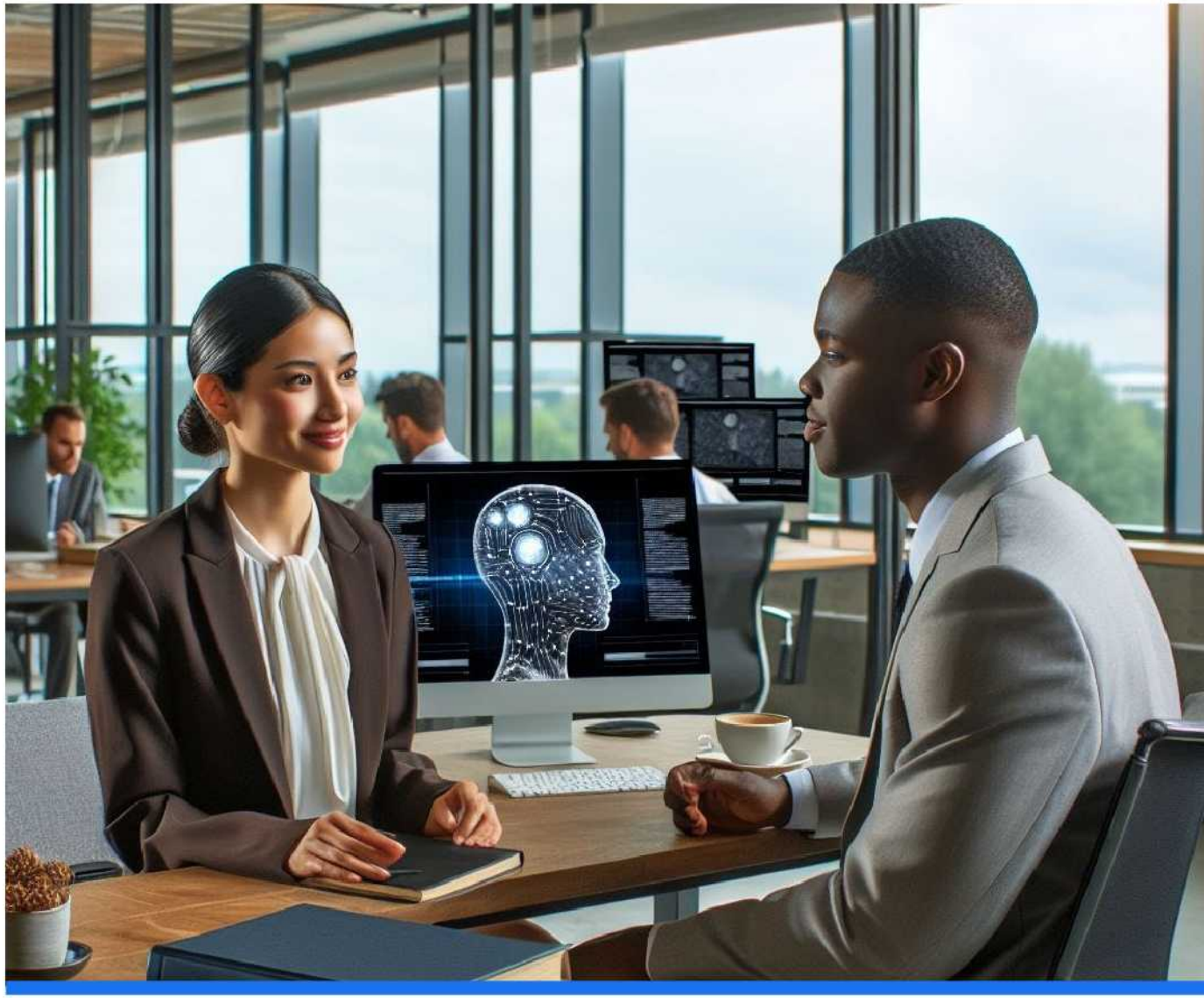
Chatbots can manage appointment bookings, freeing lawyers to focus on more complex cases.

Efficiency in Legal Practice

By handling routine inquiries, chatbots enhance law firm efficiency and streamline operations.

Ethical Implications of AI in Law

- AI introduces new ethical dilemmas in legal practice.
- Privacy concerns must be addressed with AI technologies.
- Transparency in AI decision-making is crucial for accountability.
- Bias in AI algorithms can lead to unfair legal outcomes.
- Ethical guidelines are essential for responsible AI usage.



Harnessing AI for Law Firm Marketing

- AI tools can analyze client data for targeted marketing.
- Personalized marketing campaigns increase client engagement.
- Using AI chatbots improves client interaction and service.
- Social media analytics help optimize online presence.
- AI-driven content creation enhances brand authority.

COMMENTARY

Major OPRA Amendments Take Effect: What You Need to Know

"As a result, the use of OPRA as a discovery tool during the pendency of legal proceedings will probably be substantially curtailed, if not eliminated," writes Walter M. Luers on the effects of the recent OPRA changes.

September 04, 2024 at 10:00 AM

Public Records

By Walter M. Luers | September 04, 2024 at 10:00 AM

Ready or not, the 2024 amendments to the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (OPRA), signed into law on June 5, 2024, by Gov. Phil Murphy, took effect on Sept. 3. These amendments, which are the first major changes to OPRA since the law became effective in 2002, have many aspects of which practitioners should be aware, including those that create traps, set important deadlines, and change how practitioners will be able to use OPRA going forward.

Limitations on the Use of OPRA by a Party to a Legal Proceeding

In a major change, the new OPRA bars parties to a "legal proceeding" from "request[ing] a government record if the record sought is the subject of a court order, including a pending discovery request[.]" The amendments do not define a "legal proceeding," and the change applies to all requests without regard to whether the public agency is a party to the legal proceeding. Furthermore, requestors must now certify "whether the government record is being sought in connection with a legal proceeding and identify the proceeding for the request to be fulfilled."

While the amendments do not define a "legal proceeding," the amendments define a "party" to a legal proceeding to include "a party subject to a court order, any attorney representing that party, and any person acting as an agent for or on behalf of that party." This broad language will make it difficult, at best, for requestors to create workarounds for this new limitation.

As a result, the use of OPRA as a discovery tool during the pendency of legal proceedings will probably be substantially curtailed, if not eliminated. However, it stands to reason that the use of OPRA prior to a legal proceeding should increase. In addition, subpoenas will likely replace OPRA as practitioners' preferred tool to secure documents and information from public agencies during legal proceedings.

Furthermore, because the terms "legal proceeding," "subject to a court order," and "pending discovery request" are not defined terms in the amendments, courts will probably be asked to parse out whether the amendments leave any room for the use of OPRA while a legal proceeding is pending.

New Retroactive Standing Requirement

Under prior case law, OPRA requestors who filed OPRA requests anonymously could not enforce those requests anonymously in court, absent a specific authorization based on statute, court rules, or other "compelling reason." *A.A. v.*

Gramiccioni, 442 N.J. Super. 276, 284 (App. Div. 2015). The amendments essentially codify this case. Most importantly, in any case currently pending before the GRC or Superior Court (including any related appeals), if the original filing party used an anonymous or fictitious name or identity, the plaintiff(s) must amend their filing to "accurately identif[y] their name and mailing address within 90 days of the effective date of" the amendments, which deadline would be Dec. 2, 2024. Any complaint that does not contain an accurate name and mailing address after the passage of this 90-day deadline may be dismissed with prejudice by the court upon the application of the records custodian.

This new requirement raises serious questions for practitioners who represent students, parents of students with disabilities, crime victims, and other individuals whose identity is protected under state, federal law or court rules. This amendment creates a trap for plaintiffs who are proceeding anonymously or fictitiously in OPRA cases and appeals and requires both plaintiff-side counsel and defense-side counsel to review all their pending OPRA cases to determine whether the complaints are impacted by the new requirement. Then practitioners must decide whether to amend their complaints and reveal the name and address of a person whose identity may otherwise be protected by another law, seek leave to file the amendment under seal, or pursue other relief.

New 'Commercial Purpose' Category

The amendments also create a new category of requestor, which is the "commercial purpose" requestor. "Commercial purpose" is defined by how the requestor intends to use the government record. Thus, the "commercial purpose" category covers more than just commercial entities; it includes individuals who intend to use the record "for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee." However, it exempts the news media, journalists, educational, scientific, scholarly, or governmental organizations, candidates and political committees, labor organizations, non-profits who do not sell the records for a fee, and, under certain circumstances, signatories to collective bargaining agreements from this definition.

All requestors must certify in their OPRA request whether the record will be used by themselves or another person for a commercial purpose. A requestor who "intentionally" fails to certify that a request is for a commercial purpose may be fined a civil penalty of $1,000 for the first offense, $2,500 for the second offense, and $5,000 for each subsequent offense. The Superior Court has jurisdiction to impose these penalties.

The consequences of a request being categorized as "for a commercial purpose" are somewhat limited. First, the deadline for most records custodians to respond to commercial requests will be 14 business days, rather than seven business days, and some fire districts will have an additional seven business days (for a total of 21 days to respond). Second, for a premium of "two times the cost of the production of the record," commercial requestors may demand that records custodians provide the records within seven business days.

One issue raised by the commercial purpose rule is whether an attorney in private practice who makes a request on behalf of a client has a "commercial purpose," if the client does not have a commercial purpose. This issue is not addressed in the amendments, and likely will have to be sorted by the courts.

New Form Requirements

Under the amendments, public agencies are now required to adopt official OPRA forms, and the GRC is required to establish a "uniform government record request form." In response to this mandate, the GRC has created a link on its website to a "portal" that enables public agencies to create OPRA request forms. The forms must include spaces for requestors to certify whether the request is for a commercial purpose and whether the request is related to a legal proceeding.

Consistent with *Renna v. County of Union*, 407 N.J. Super. 230 (App. Div. 2009), requestors are not required to use adopted forms, provided that their written request includes "all of the information required on the adopted form." But because valid requests must now include certifications regarding a requestor's commercial purpose and related legal

proceedings, the best practice will probably be to use an agency's form or online portal to avoid inadvertent omissions, as the failure to provide these certifications are grounds for denying the request.

New Private Right of Action Against Requestors

Last, but most certainly not least, the amendments created a cause of action in favor of public agencies against requestors who submit OPRA requests "with the intent to substantially interrupt the performance of government function."

Like an OPRA case, the lawsuit must be initiated via verified complaint and order to show cause and proceed as a summary proceeding. The action must also be accompanied by a "declaration" stating that the public agency has complied with OPRA and has made a "good faith effort to reach an information resolution of the issues relating to the records requests." If the agency proves by clear and convincing evidence that the requestor intended to "substantially interrupt the performance of government function," the court has broad authority to limit the scope and number of OPRA requests and order "such other relief as it deems appropriate[.]"

However, public agencies who are considering filing such lawsuits should also consider the possibility that the subjects of such lawsuits may rely on New Jersey's relatively new Anti-SLAPP statute, N.J.S.A. 2A:53A-49 to -61, to oppose such actions. Defendants who successfully use the Anti-SLAPP statute to dismiss lawsuits against them are entitled to prevailing party counsel fees against the public agency.

Walter M. Luers *is a partner of Cohn Lifland Pearlman Herrmann & Knopf. He practices in the areas of complex employment litigation, commercial litigation, and access to public records.*

[Second Reprint]

SENATE, No. 2930

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED MARCH 4, 2024

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)
Senator ANTHONY M. BUCCO
District 25 (Morris and Passaic)
Assemblyman JOE DANIELSEN
District 17 (Middlesex and Somerset)
Assemblywoman VICTORIA A. FLYNN
District 13 (Monmouth)

Co-Sponsored by:
Assemblyman Atkins

SYNOPSIS

Makes various changes to process for access to government records; appropriates $10 million.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on May 9, 2024, with amendments.

(Sponsorship Updated As Of: 5/13/2024)

AN ACT concerning access to government records, amending and supplementing various parts of the statutory law, and making an appropriation.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

[2][1. Section 1 of P.L.1963, c.73 (C.47:1A-1) is amended to read as follows:

1. The Legislature finds and declares it to be the public policy of this State that:

government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

all government records shall be subject to public access unless exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law, federal regulation, or federal order;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted, or information that might reasonably lead to disclosure of a person's personal information, when disclosure thereof would violate the citizen's reasonable expectation of privacy, or when the public agency has reason to believe that disclosure of such personal information may result in harassment, unwanted solicitation, identity theft, or opportunities for other criminal acts; and

nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

(cf: P.L.2001, c.404, s.1)]**[2]**

[2][2.] 1.**[2]** Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to read as follows:

1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SBA committee amendments adopted March 11, 2024.
[2]Senate SBA committee amendments adopted May 9, 2024.

"Biotechnology" means any technique that uses living organisms, or parts of living organisms, to make or modify products, to improve plants or animals, or to develop micro-organisms for specific uses; including the industrial use of recombinant DNA, cell fusion, and novel bioprocessing techniques.

"Child protective investigator in the Division of Child Protection and Permanency" means an employee of the Division of Child Protection and Permanency in the Department of Children and Families whose primary duty is to investigate reports of child abuse and neglect, or any other employee of the Department of Children and Families whose duties include investigation, response to, or review of allegations of child abuse and neglect.

"Commercial purpose" means the direct or indirect use of any part of a government record for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee. "Commercial purpose" shall not include [2]**[**using, distributing, gathering, procuring, transmitting, compiling, editing, disseminating, or publishing of information or data**]** the use of a government record for any purpose[2] by [2]:

(1)[2] the news media, or any parent company, subsidiary, or affiliate of any news media, as defined by section 2 of P.L.1977, c.253 (C.2A:84A-21a) [2]**[**, or by**]** ;

(2)[2] any news, journalistic, educational, scientific, scholarly, or governmental organization [2]**[**, or by**]** ;

(3)[2] any person authorized to act on behalf of a candidate committee, joint candidate committee, political committee, continuing political committee, political party committee, or legislative leadership committee, as defined by section 3 of P.L.1973, c.83 (C.19:44A-3), registered with the New Jersey Election Law Enforcement Commission [2];

(4) any labor organization;

(5) any contractor signatory to a collective bargaining agreement seeking information material to the enforcement of State or federal statutes or regulations regarding, but not limited to, wage and hour protections, workplace safety, or public procurement and public bidding, including, but not limited to, requests for certified payrolls or information about all bids submitted in response to a public procurement process subsequent to the deadline for the submission of all bids for that solicitation;

(6) any employee, agent, contractor, or affiliates of any entity identified in paragraphs (1) through (5) of this definition in this section; or

(7) any non-profit entity, including organizations or individuals qualified for exemption from federal taxation pursuant to section 501(c)(3) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(3) and section 501(c)(4) of the federal Internal Revenue Code, 26 U.S.C. s.501(c)(4), when the entity does not sell, resell, solicit, rent, or lease a

government record to an unaffiliated third party in a way in which the entity expects a fee[2] .

"Constituent" means any State resident or other person communicating with a member of the Legislature.

"Criminal investigatory record" means a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.

"Custodian of a government record" or "custodian" means in the case of a municipality, the municipal clerk and in the case of any other public agency, the officer officially designated by formal action of that agency's director or governing body, as the case may be.

[2][“Data broker” means a business that knowingly collects and sells to third parties the personal information of a consumer with whom the business does not have a direct relationship.][2]

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, [or] [2]or[2] deliberative [2][, or draft][2] material [2][, including notes generated and used to prepare final reports, documents, or records.][2]

[2]“Labor organization” means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment[2].

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including, but not limited to, information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;

any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible

report which is required by law to be submitted to the Legislature or its members;

any copy, reproduction or facsimile of any photograph, negative or print, including instant photographs and videotapes of the body, or any portion of the body, of a deceased person, taken by or for the medical examiner at the scene of death or in the course of a post mortem examination or autopsy made by or caused to be made by the medical examiner except [2]**[**:

when used in a criminal action or proceeding in this State which relates to the death of that person,

for the use as a court of this State permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,

for use in the field of forensic pathology or for use in medical or scientific education or research, or**]**

for use by a legal next of kin, a legal representative, or an attending physician of the deceased person, for use as a court of this State permits, or[2] for use by any law enforcement agency in this State or any other state or federal law enforcement agency;

criminal investigatory records;

the portion of any criminal record concerning a person's detection, apprehension, arrest, detention, trial or disposition for unlawful manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, dispensing, or possessing, or having under control with intent to distribute or dispense, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or for a violation of any of those provisions and a violation of N.J.S.2C:36-2 for using or possessing with intent to use drug paraphernalia with that marijuana or hashish;

victims' records, except that a victim of a crime shall have access to the victim's own records;

any written request by a crime victim for a record to which the victim is entitled to access as provided in this section, including, but not limited to, any law enforcement agency report, domestic violence offense report, and temporary or permanent restraining order;

personal firearms records, except for use by any person authorized by law to have access to these records or for use by any government agency, including any court or law enforcement agency, for purposes of the administration of justice;

personal identifying information received by the Division of Fish and Wildlife in the Department of Environmental Protection in connection with the issuance of any license authorizing hunting with a firearm**[**. For the purposes of this paragraph, personal identifying information shall include, but not be limited to, identity, name, address, social security number, telephone number, fax number, driver's license number, email address, or social media address of any applicant or licensee**]**;

trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include **[**data processing**]** software, applications, and code obtained by a public body under a licensing agreement which prohibits its disclosure;

any record within the attorney-client privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege;

administrative or technical information regarding computer hardware, tablets, telephones, **2[**and**]** electronic computing**2** devices, **2[**or**]2** software **2[**,**]2** applications, and networks **[**which, if disclosed, would jeopardize computer security**]** **2**or devices which operate on or as a part of a computer network or related technologies within the same, which shall include system logs, event logs, transaction logs, tracing logs, or any logs which are reasonably construed to be similar to the same and generated by the devices or servers covered within this paragraph, which, if disclosed, could jeopardize computer security**2** , or related technologies;

emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;

security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software;

security alarm system activity and access reports, including video footage, for any public building, facility, or grounds unless the request identifies a specific incident that occurred, **2**or**2** a specific date **2[**,**]2** and **2[**a**]2** limited time period at a particular public building, facility, or grounds **2**, and is deemed not to compromise the integrity of the security system by revealing capabilities and vulnerabilities of the system**2** ;

information which, if disclosed, would give an advantage to competitors or bidders, including detailed or itemized cost estimates prior to bid opening;

information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position;

[2]**[**information related to strategies or negotiating positions that would unfairly prejudice or impair contract negotiations;**]**[2]

information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office;

information which is to be kept confidential pursuant to court order;

any copy of form DD-214, NGB-22, or that form, issued by the United States Government, or any other certificate of honorable discharge, or copy thereof, from active service or the reserves of a branch of the Armed Forces of the United States, or from service in the organized militia of the State, that has been filed by an individual with a public agency, except that a veteran or the veteran's spouse or surviving spouse shall have access to the veteran's own records;

any copy of an oath of allegiance, oath of office or any affirmation taken upon assuming the duties of any public office, or that oath or affirmation, taken by a current or former officer or employee in any public office or position in this State or in any county or municipality of this State, including members of the Legislative Branch, Executive Branch, Judicial Branch, and all law enforcement entities, except that the full name, title, and oath date of that person contained therein shall not be deemed confidential;

that portion of any document which discloses the social security number, credit card number, **[**unlisted**]** debit card number, bank account information, month and day of birth, [2]any personal[2] email address [2]required by a public agency for government applications, services, or programs[2] , any telephone number or driver license number of any person, or, in accordance with section 2 of P.L.2021, c.371 (C.47:1B-2), that portion of any document which discloses the home address, whether a primary or secondary residence, of any active, formerly active, or retired judicial officer, law enforcement officer, child protective investigator in the Division of Child Protection and Permanency, or prosecutor, or, as defined in section 1 of P.L.2021, c.371 (C.47:1B-1), any immediate family member thereof; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); except with respect to the disclosure of information included in records and documents maintained by the Department of the Treasury in connection with the State's business

registry programs; and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor;

that portion of any document that discloses the personal identifying information of any person provided to a public agency for the sole purpose of receiving official notifications;

a list of persons identifying themselves as being in need of special assistance in the event of an emergency maintained by a municipality for public safety purposes pursuant to section 1 of P.L.2017, c.266 (C.40:48-2.67), and their personal identifying information; **[**and**]**

a list of persons identifying themselves as being in need of special assistance in the event of an emergency maintained by a county for public safety purposes pursuant to section 6 of P.L.2011, c.178 (C.App.A:9-43.13), and their personal identifying information;

that portion of any document that requires and would disclose personal identifying information of persons under the age of 18 years, **[2]**[including names,]**[2]** except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4) or the disclosure of driver information to any insurer or insurance support organization, or a self-insured entity, or its agents, employees, or contractors, for use in connection with claims investigation activities, antifraud activities, rating, or underwriting, and except with respect to the disclosure of voter information on voter and election records pursuant to section **[2]**[11]**[2]** 8**[2]** of P.L. , c. (C.) (pending before the Legislature as this bill);

personal identifying information disclosed on domestic animal permits, licenses, and registration;

structured reference data that helps to sort and identify attributes of the information it describes, referred to as metadata, or any extrapolation or compilation thereof **[2]**, which shall include the SMTP header properties of emails, except that portion that identifies authorship, identity of editor, and time of change**[2]**;

New Jersey State Firemen's Association financial relief applications;

owner and maintenance manuals;

data classified under the "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191;

[2][logs of telephone calls, emails, or texts;]**[2]** and

[2][electronic or paper calendars for individuals]

any indecent or graphic images of a person's intimate parts, as defined in section 10 of P.L. , c. (C.) (pending before the Legislature as this bill), that are captured in a photograph or video

recording without the prior written consent of the subject of the photograph or video footage, as defined in section 10 of P.L. , c. (C.) (pending before the Legislature as this bill)[2].

A government record shall not include, with regard to any public institution of higher education, the following information which is deemed to be privileged and confidential:

pedagogical, scholarly and/or academic research records and/or the specific details of any research project conducted under the auspices of a public higher education institution in New Jersey, including, but not limited to, research, development information, testing procedures, or information regarding test participants, related to the development or testing of any pharmaceutical or pharmaceutical delivery system, except that a custodian may not deny inspection of a government record or part thereof that gives the name, title, expenditures, source and amounts of funding and date when the final project summary of any research will be available;

test questions, scoring keys and other examination data pertaining to the administration of an examination for employment or academic examination;

records of pursuit of charitable contributions or records containing the identity of a donor of a gift if the donor requires non-disclosure of the donor's identity as a condition of making the gift provided that the donor has not received any benefits of or from the institution of higher education in connection with such gift other than a request for memorialization or dedication;

valuable or rare collections of books or documents obtained by gift, grant, bequest or devise conditioned upon limited public access;

information contained on individual admission applications; and

information concerning student records or grievance or disciplinary proceedings against a student to the extent disclosure would reveal the identity of the student.

[2]Nothing in this section shall be construed to limit the requirements to provide and make publicly available the information pursuant to section 5 of P.L.1963, c.150 (C.34:11-56.29) and section 5 of P.L.1999, c.238 (C.34:11-56.52).[2]

"Judicial officer" means any active, formerly active, or retired federal, state, county, or municipal judge, including a judge of the Tax Court and any other court of limited jurisdiction established, altered, or abolished by law, a judge of the Office of Administrative Law, a judge of the Division of Workers' Compensation, and any other judge established by law who serves in the executive branch.

"Law enforcement agency" means a public agency, or part thereof, determined by the Attorney General to have law enforcement responsibilities.

"Law enforcement officer" means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.

"Member of the Legislature" means any person elected or selected to serve in the New Jersey Senate or General Assembly.

"Personal firearms record" means any information contained in a background investigation conducted by the chief of police, the county prosecutor, or the Superintendent of State Police, of any applicant for a permit to purchase a handgun, firearms identification card license, or firearms registration; any application for a permit to purchase a handgun, firearms identification card license, or firearms registration; any document reflecting the issuance or denial of a permit to purchase a handgun, firearms identification card license, or firearms registration; and any permit to purchase a handgun, firearms identification card license, or any firearms license, certification, certificate, form of register, or registration statement. For the purposes of this paragraph, information contained in a background investigation shall include, but not be limited to, identity, name, address, social security number, **[**phone**]** telephone number, fax number, driver's license number, email address, or social media address of any applicant, licensee, registrant, or permit holder.

2["Personal identifying information" means information that may be used, alone or in conjunction with any other information, to identify a specific individual. For purposes of this act, personal identifying information shall include, but shall not be limited to, the following data elements: name, social security number, credit card number, debit card number, bank account information, month and day of birth, email address, any telephone number, the street address portion of any person's primary or secondary home address, or driver license number of any person.**]2**

"Public agency" or "agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

"Victim of a crime" means a person who has suffered personal or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime, or if such a person is deceased or incapacitated, a member of that person's immediate family.

"Victim's record" means an individually identifiable file or document held by a victims' rights agency which pertains directly to a victim of a crime except that a victim of a crime shall have access to the victim's own records.

"Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including, but not limited to, food, shelter, or clothing, medical, psychiatric,

psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board, established pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as the Victims of Crime Compensation Office pursuant to P.L.2007, c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.

[2]As used in this section, "personal identifying information" means information that may be used, alone or in conjunction with any other information, to identify a specific individual. Personal identifying information shall include, but shall not be limited to, the following data elements: name, social security number, credit card number, debit card number, bank account information, month and day of birth, any personal email address required by a public agency for government applications, services, or programs, personal telephone number, the street address portion of any person's primary or secondary home address, or driver license number of any person. "Personal identifying information" shall not include any street address, mailing address, email address, or telephone number of a public agency. "Personal identifying information" shall not include the email address of a governmental affairs agent.[2]

(cf: P.L.2023, c.113, s.1)

[2][3.] 2.[2] Section 6 of P.L.2001, c.404 (C.47:1A-5) is amended to read as follows:

6. a. The custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular business hours; or in the case of a municipality having a population of 5,000 or fewer according to the most recent federal decennial census, a board of education having a total district enrollment of 500 or fewer, or a public authority having less than $10 million in assets, during not less than six regular business hours over not less than three business days per week or the entity's regularly-scheduled business hours, whichever is less; unless a government record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, [unlisted] [2]personal[2] telephone number, or driver license number of any person, or, in accordance with section 2 of P.L.2021, c.371 (C.47:1B-2), the home address, whether a primary or secondary residence, of any active, formerly active, or retired judicial officer, prosecutor, law enforcement officer, or child protective investigator in the Division of

Child Protection and Permanency, or, as defined in section 1 of P.L.2021, c.371 (C.47:1B-1), any immediate family member thereof; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor. [2]⟦Prior to allowing access to any government record, the custodian shall redact from that record any information which discloses, or which might reasonably lead to disclosure of the telephone number, email address, or any medical, financial, or personal information of a member of the public when the disclosure thereof would violate the citizen's reasonable expectation of privacy or when the public agency has a reason to believe that disclosure of such personal information may result in harassment, unwanted solicitation, identity theft, or opportunities for other criminal acts.⟧[2] Except where an agency can demonstrate an emergent need, a regulation that limits access to government records shall not be retroactive in effect or applied to deny a request for access to a government record that is pending before the agency, the council or a court at the time of the adoption of the regulation.

b. (1) A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation.

Except as otherwise provided by law or regulation and except as provided in paragraph (2) of this subsection, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be $0.05 per letter size page or smaller, and $0.07 per legal size page or larger. ⟦If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section.⟧ Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs. No fee

shall be charged if the request is completed by directing the requestor to the requested government record that is available on the public agency's website or the website of another public agency.

(2) No fee shall be charged to a victim of a crime for a copy or copies of a record to which the crime victim is entitled to access, as provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

c. Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that **[**shall be reasonable and**]** shall be based upon the actual direct cost of providing the copy or copies **[**; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance**]**, and such special service charge shall be **[2**presumed to be**]2** reasonable. **2**The custodian shall provide the requestor with an explanation for and an itemized list of the fees or charges**2**.

The requestor shall have the opportunity to review and object to **[**the**]** any fee or charge prior to it being incurred. **2**There shall be a rebuttable presumption that the fees or charges presented by the custodian are reasonable. If the requestor objects to the fees or charges, the burden of proof shall be on the requestor to demonstrate that the fees or charges are unreasonable.**2**

d. A custodian shall permit access to a government record and provide a copy thereof in the medium or format requested if the public agency maintains the record in that medium or format. If the public agency does not maintain the record in the medium or format requested, the custodian **[**shall**] 2[**, at the custodian's discretion, may**]** shall**2 2[**either**]2** convert the record to the medium or format requested **2[**or provide a copy in some other meaningful medium or format.**]2** **[**If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.**]** **2**, if the medium or format is available to the public agency and does not require a substantial amount of manipulation or programming of information technology, or the services of a third party vendor. If the public agency converts the record to the medium or format requested, the agency may charge, in addition to the actual cost of

duplication, a special service fee that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.[2] If the public agency does not maintain the record in the electronic medium or format requested, [2]and the medium or format is not available to the public agency without a substantial amount of manipulation or programming of information technology,[2] the custodian shall be under no obligation to convert the record to the electronic medium or format requested but shall, at a minimum, provide a copy in the [2]electronic[2] format maintained by the public agency.

e. Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information. Immediate access to government records shall not be required to be granted for documents over [2][12] 24[2] months old.

Government records shall be made available to the public on a publicly available website to the extent feasible. A public agency may enter into shared services agreements for providing certain government records electronically.

If the government record [2]in a complete and unabridged form[2] is readily available on a public agency's website, the custodian may require the requestor to obtain the record from the website, which shall contain a search bar feature on its home page. The custodian shall provide the requestor with directions to assist in finding the record on the website, including providing the website URL address and the location on the website of the search bar, menu button, tab, link, landing page or equivalent, which contains the requested record. [1][The request shall be deemed fulfilled upon notification by the custodian to the requestor of the availability and location on the website of the requested information.] If the requestor does not respond to the custodian within seven [2]business[2] days of the custodian providing information about a record on the public agency's website, the request shall be deemed fulfilled [2]unless the version of the government record on the public agency's website fails to contain non-protected information contained in the original record, in which case the custodian shall produce the original version of the record subject to any redactions required by law[2]. If, after the custodian has provided instructions on how to find a record on a public agency's website, the requestor is unable to find the record upon making a good faith effort to locate the record on the website, the requestor shall notify the custodian within seven [2]business[2] days of the custodian providing the information. Upon receiving such a request for assistance from a requestor, the custodian shall make a reasonable attempt to assist the requestor in finding the record on the website within seven [2]business[2]

days of the requestor notifying the custodian.[1] [2]If the requestor is still unable to locate the record and requests a physical copy, the custodian shall provide the requestor with a physical copy of the record, for a fee not exceeding two times the cost of the production of the document. The custodian shall provide the requestor with the physical copy of the record within seven business days of the request for a physical copy.[2]

f. The custodian of a public agency shall adopt [2]**[**a**]** the[2] form [2]established by the Government Records Council pursuant to subsection b. of section 8 of P.L.2001, c.404 (C.47:1A-7),[2] for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, email address and **[**phone**]** telephone number of the requestor and a brief description of the government record sought. A request shall be submitted by a requestor in the form adopted by the custodian and the custodian may deny a request that is [2]**[**not submitted in the form adopted by the custodian**]** incomplete, except that a requestor indicating the request is being submitted anonymously shall not be grounds for denial. A completed form adopted by the custodian, a letter, or an email from a requestor including all of the information required on the adopted form shall suffice in place of a completed form as a valid government record request. If the letter or email from a requestor includes substantially more information than required on the adopted form and requires more than reasonable effort to clarify the information, the custodian may deny the request. If a letter or an email from a requestor does not include all of the information required on the adopted form, the custodian may deny the record request[2] . A request may be submitted anonymously provided, however, that anonymous requestors shall not be permitted to institute proceedings pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6). [2]A request that is submitted anonymously shall not be considered incomplete.[2]

The form also shall include space for a requestor to certify whether the government record will be used by that requestor or another person for a commercial purpose, and the requestor shall be required to provide this information for the request to be fulfilled.

[2]**[**All requests by a data broker or a requestor who is making a request on behalf of and for the use of a data broker shall be denied. The form also shall include space for a requestor to certify that the requestor is not a data broker or is not making the request on behalf of or for the use of a data broker, and the requestor shall be required to provide this information for the request to be fulfilled.

Data obtained through a records request shall not be sold.**]**[2]

The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following: (1) specific directions and procedures for requesting a record; (2) a statement as to whether prepayment of fees or a deposit is required; (3) the time period within which the public agency is required by

P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, to make the record available; (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal; (5) space for the custodian to list reasons if a request is denied in whole or in part; (6) space for the requestor to sign and date the form; (7) space for the custodian to sign and date the form if the request is fulfilled or denied. The custodian may require a deposit against costs for reproducing documents sought through ⟦an anonymous⟧ a request whenever the custodian anticipates that the information thus requested will cost in excess of $5 to reproduce.

Custodians [2]who have adopted electronic government record request forms[2] shall provide directions on how to submit requests for government records, including any required forms, on the public agency's website.

Custodians shall be permitted to provide an electronic response to any electronic records request if government records are available electronically.

g. A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. A public agency may make available to the public on its website an online form, portal, or software for transmitting requests electronically. [2]The form established by the Government Records Council, pursuant to subsection b. of section 8 of P.L.2001, c.404 (C.47:1A-7), may be submitted electronically or by fax. Each submission of a government record request form or an email record request shall be made to the custodian of not more than one public agency. Submission of repeated requests to multiple custodians in the same public agency for the same record, while an identical or substantially similar request is pending in the agency, shall permit the custodian to deny the request.[2]

A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record. ⟦If the government record requested is temporarily unavailable because it is in use or in storage, the custodian shall so advise the requestor and shall make arrangements to promptly make available a copy of the record.⟧ If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after

[2]informing the requestor of the potential disruption to agency operations and[2] attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.

A party to a legal proceeding may not request a government record if the record sought is the subject of a court order [2][in the legal proceeding or if compliance would otherwise be unreasonable, oppressive, or duplicative of already pending discovery request made in that legal proceeding] including a pending discovery request[2] , and a custodian shall not be required to complete such a request. The requestor shall be required to certify whether the government record is being sought in connection with a legal proceeding and identify the proceeding for the request to be fulfilled. For purposes of this provision, a party to a legal proceeding shall include a party [2][in interest] subject to a court order[2] , any attorney representing that party, and any person acting as an agent for or on behalf of that party. [2]Nothing in this paragraph shall bar a request for a government record filed by a labor organization or by a contractor signatory to a collective bargaining agreement seeking information material to the enforcement of State or federal statutes or regulations regarding but not limited to wage and hour protections, workplace safety, or public procurement and public bidding, including, but not limited to, requests for certified payrolls or information about all bids submitted in response to a public procurement process subsequent to the deadline for the submission of all bids for that solicitation, when the request by the labor organization or contractor signatory is not sought in connection with or in furtherance of discovery requests in a court proceeding.[2]

A custodian shall not be required to complete a request including for, but not limited to, mail, email, text messages, correspondence, or social media postings and messages, if the request does not identify [2]a[2] specific [2][individuals or] job title or[2] accounts to be searched [2], a specific subject matter,[2] and is not confined to a [2][discrete and limited] reasonable[2] time period [2][and a specific subject matter][2] , or if the custodian determines that the request would require research and the collection of information from the contents of government records and the creation of new government records setting forth that research and information. [2]It shall be sufficient for a requestor to identify specific individuals by the individual's job title and position.[2]

h. Any officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record. The request shall not be considered submitted until it is received by the custodian of records.

i. (1) Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, or 14 business days if

the request is for a commercial purpose or if the records have to be reviewed by the public agency for the purpose of the agency's compliance with P.L.2021, c.371 (C.47:1B-1 et seq.), but the custodian shall notify the requestor of the additional response time within seven business days, provided that the record is currently available and not in storage or archived. The response time periods of seven or 14 business days, as established in this subsection, shall be an additional seven business days longer if the public agency is a fire district which employs one or fewer full-time employees who serve as custodians. [2]If a commercial requestor would like to receive the record within seven business days, as established in this subsection, the custodian shall provide the requestor with a copy of the record and may charge a special service fee not exceeding two times the cost of the production of the record.[2]

In the event a records custodian is unable to fulfill a records request due to unforeseen circumstances or circumstances that otherwise reasonably necessitate additional time to fulfill the records request, the custodian shall be entitled to a reasonable extension of any response deadline and shall notify the requestor of the time extension within seven business days after receiving the request.

In the event a custodian fails to respond within seven business days or 14 business days, as appropriate, after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to accurately identify themselves or to provide [a name,] an accurate address, email address, or telephone number [, or other means of contacting the requestor]. If the requestor has elected not to accurately identify themselves or to provide [a name,] an accurate address, email address, or telephone number, [or other means of contacting the requestor,] the custodian shall not be required to respond until the requestor [reappears before] contacts the custodian seeking a response to the original request.

If the government record is in storage or archived, the requestor shall be so advised within seven or 14 business days, as appropriate, after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available, which shall be no more than 21 business days from the date the requestor is so advised. If the record is not made available by that time, access shall be deemed denied.

A public agency shall not be considered to be in possession of a public record that is created [2][or] ,[2] maintained [2], or received[2] by another public agency and made available to the public agency either by remote access to a computer network or by distribution as a courtesy copy [2], unless the agency that created, maintained, or received the record resides within the judicial branch of the State Government[2] . A records custodian of a public agency that receives a request for [2][such][2] a record [2]created, maintained, or received by another public agency[2] , shall not be obligated to provide the record to the requestor [2][and] . In the event the custodian does not provide the

record, the custodian[2] shall direct the requestor within seven business days to the public agency that, to the best of their knowledge, created [2][or],[2] maintains [2], or received[2] the requested record, at which time the request shall be considered completed.

The custodian shall not be required to complete an identical request for access to a government record from the same requestor if the information has not changed. [2]Nothing in this section shall prevent a requestor from filing periodic requests regarding regularly updated public records, including, but not limited to, certified payrolls, permits, and licensing applications.[2]

A requestor shall have 14 business days to retrieve the government records following notice from the custodian that the request has been completed and the records are available.

(2) During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or 14 business days, as appropriate, or as soon as possible thereafter.

j. A custodian shall [post prominently in public view in the part or parts of the office or offices of the custodian that are open to or frequented by the public a statement that sets forth in clear, concise and specific terms the] include information on the public agency's website and public records request form regarding a requestor's right to appeal a denial of, or failure to provide, access to a government record [by any person for inspection, examination, or copying or for purchase of copies thereof] and the procedure by which an appeal may be filed, which shall include the website address and toll-free information line phone number of the Government Records Council.

k. The files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.

(cf: P.L.2023, c.113, s.2)

[2][4.] 3.[2] Section 7 of P.L.2001, c.404 (C.47:1A-6) is amended to read as follows:

7. A person who is denied access to a government record by the custodian of the record, at the option of the requestor who is accurately identified by name, may, within 45 days of the date of denial:

institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records; or

in lieu of filing an action in Superior Court, file a complaint with the Government Records Council established pursuant to section 8 of P.L.2001, c.404 (C.47:1A-7).

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or **[**agency head**]** Government Records Council shall order that access be allowed. A requestor who prevails in any proceeding **[**shall**]** may be entitled to a reasonable attorney's fee. **2[**In determining whether to award attorney's fees, the court or the Government Records Council may consider whether the public agency is found to have knowingly and willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), or to have unreasonably denied access.**]** While the court or Government Records Council may award a reasonable attorney's fee to a prevailing party in any proceeding, if the public agency has been determined to have unreasonably denied access, acted in bad faith, or knowingly and willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), then the court or Government Records Council shall award a reasonable attorney's fee.**2**

If the records sought are produced by the public agency within seven business days of service of an action in Superior Court or a complaint before the Government Records Council, **1**upon notification to the Superior Court or the Government Records Council,**1** the matter shall be dismissed without prejudice and the requestor may be entitled to a reasonable attorney's fee if the custodian knew or should have known that the denial of access violated P.L.1963, c.73 (C.47:1A-1 et seq.).

(cf: P.L.2001, c.404, s.7)

2[5.**]** 4.**2** Section 8 of P.L.2001, c.404 (C.47:1A-7) is amended to read as follows:

8. a. (1) There is established in the Department of Community Affairs a Government Records Council. The council shall consist of the Commissioner of Community Affairs or the commissioner's designee, **[**the Commissioner of Education or the commissioner's designee, and three public members appointed by the Governor, with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The three public members shall serve during the term of the Governor making the appointment and until the appointment of a successor**]** who shall serve as Chair, and eight public members appointed as follows: four appointed by the Governor with the advice and consent of the Senate **1**, no more than two of whom shall be members of the same political party**1** ; two directly appointed by the Governor from persons recommended by the President of the Senate **1**, no more than one of whom shall be a member of the same political party**1** ; and two directly appointed by

the Governor from persons recommended by the Speaker of the General Assembly [1], no more than one of whom shall be a member of the same political party[1] . Each public member shall serve for a term of five years and until a successor is appointed and qualified.

(2) Notwithstanding [1][any provision of subsection a. (1) of this section] the provisions of paragraph (1) of this subsection[1] , or any other law, rule, or regulation to the contrary, within 90 days following the enactment date of P.L. , c. (pending before the Legislature as this bill), the Governor shall directly appoint eight public members to the council, each of whom shall serve for a term of three years and until a successor is appointed and qualified, as follows: two from persons recommended by the President of the Senate, [1]no more than one of whom shall be a member of the same political party;[1] two from persons recommended by the Speaker of the General Assembly, [1]no more than one of whom shall be a member of the same political party;[1] and four appointed at the sole discretion of the Governor [1], no more than two of whom shall be members of the same political party[1] . The terms of office of the members of the council serving on the date of enactment of P.L. , c [2].[2] (pending before the Legislature as this bill), shall expire upon the Governor's direct appointment of the new members pursuant to this subsection.

(3) A public member shall not hold any other State or local elected [or appointed] office [or employment] while serving as a member of the council. A public member shall [not receive a salary for service on the council but shall be reimbursed for reasonable and necessary expenses associated with serving on the council and may receive such per diem payment as may be provided in the annual appropriations act] receive a salary equivalent to that provided by law for a public member of the Local Finance Board of the Division of Local Government Services in the Department of Community Affairs. A member may be removed by the Governor for cause. Vacancies among the public members shall be filled [in the same manner in which the original appointment was made. The members of the council shall choose one of the public members to serve as the council's chair.] by appointment by the Governor, according to the provisions of subsection a. of this section, and for the remainder of the unexpired term. The council may employ an executive director and such professional and clerical staff as it deems necessary and may call upon the Department of Community Affairs for such assistance as it deems necessary and may be available to it.

b. The Government Records Council shall:

establish an informal mediation program to facilitate the resolution of disputes regarding access to government records;

receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian;

issue advisory opinions, on its own initiative, as to whether a particular type of record is a government record which is accessible to the public;

prepare guidelines and an informational pamphlet for use by records custodians in complying with the law governing access to public records;

prepare an informational pamphlet explaining the public's right of access to government records and the methods for resolving disputes regarding access, which records custodians shall make available to persons requesting access to a government record;

prepare lists for use by records custodians of the types of records in the possession of public agencies which are government records;

make training opportunities available for records custodians and other public officers and employees which explain the law governing access to public records;

[2]promulgate rules and regulations to establish a uniform government record request form for all government record requests permitted for use by any public agency, that includes the required form components as set forth in subsection f. of section 6 of P.L.2001, c.404 (C.47:1A-5). The form shall include certification that a party to a legal proceeding may not request a government record if the record sought is the subject of a court order or a pending discovery request. The council shall make the form available electronically and in print and shall make the form available to incarcerated individuals;[2] and

operate an informational website and a toll-free helpline staffed by knowledgeable employees of the council during regular business hours which shall enable any person, including records custodians, to call for information regarding the law governing access to public records and allow any person to request mediation or to file a complaint with the council when access has been denied[;] .

In implementing the provisions of [subsections d. and e. of] this section, the council shall: act, to the maximum extent possible, at the convenience of the parties; utilize video conferencing, teleconferencing, faxing of documents, e-mail and similar forms of modern communication; conduct virtual meetings and hearings, when practical and at the discretion of the council; and when in-person meetings are necessary, send representatives to meet with the parties at a location convenient to the parties.

The council shall periodically review the information and format of its website and make such adjustments as shall be deemed necessary to ensure that the information is clearly presented, accessible, and useful for the general public. The council shall conduct such an initial review within six months following the effective date of P.L. , c. (pending before the Legislature as this bill).

c. At the request of the council, a public agency shall produce documents and ensure the attendance of witnesses with respect to the council's investigation of any complaint or the holding of any hearing.

d. Upon receipt of a written complaint signed by any person alleging that a custodian of a government record has improperly denied that person access to a government record, the council shall offer the parties the opportunity to resolve the dispute through mediation. Mediation shall enable a person who has been denied access to a government record and the public agency that employs the records custodian who denied or failed to provide access thereto to attempt to mediate the dispute through a process whereby a neutral mediator, who shall be trained in mediation selected by the council, acts to encourage and facilitate the resolution of the dispute. Mediation shall be an informal, nonadversarial process having the objective of helping the parties reach a mutually acceptable, voluntary agreement. The mediator shall assist the parties in identifying issues, foster joint problem solving, and explore settlement alternatives.

e. If any party declines mediation or if mediation fails to resolve the matter to the satisfaction of all parties, the council shall initiate an investigation concerning the facts and circumstances set forth in the complaint. The council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or without any reasonable factual basis. The council may assign staff attorneys to conduct the investigation, present findings, and make recommendations to the council. If the council shall conclude that the complaint is outside its jurisdiction, frivolous, or without factual basis, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the public agency that employs the records custodian against whom the complaint was filed. Otherwise, the council shall notify the public agency that employs the records custodian against whom the complaint was filed of the nature of the complaint and the facts and circumstances set forth therein.

The public agency that employs the records custodian shall have the opportunity to present the board with any statement or information concerning the complaint which the ⟦custodian⟧ agency wishes. If the council is able to make a determination as to a record's accessibility based upon the complaint and the ⟦custodian's⟧ agency's response thereto, it shall reduce that conclusion to writing and transmit a copy thereof to the complainant and to the public agency that employs the records custodian against whom the complaint was filed. If the council is unable to make a determination as to a record's accessibility based upon the complaint and the ⟦custodian's⟧ agency's response thereto, the council shall conduct a hearing on the matter in conformity with the rules and regulations provided for hearings by a State agency in contested cases under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), insofar as they may be applicable and practicable.

The council shall, by a majority vote of its members, render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented. If the council determines, by a majority vote of its

members, that a custodian [has] is found to have knowingly and willfully violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and [is found] to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in section 12 of P.L.2001, c.404 (C.47:1A-11) on the public agency that employs the custodian.

A decision of the council may be appealed to the Appellate Division of the Superior Court. Such appeals shall be filed within [2][30] 45[2] days from the date the council renders a decision. A decision of the council shall not have value as a precedent for any case initiated in Superior Court pursuant to section 7 of P.L.2001, c.404 (C.47:1A-6). All proceedings of the council pursuant to this subsection shall be conducted as expeditiously as possible.

Beginning 18 months following the effective date of P.L. , c. (pending before the Legislature as this bill), the council shall adjudicate all complaints that come before it within 90 days of the complaint's filing, with the ability to extend for [2][30] 45[2] days for good cause, exclusive of any time period during which the parties are engaged in a mediation process pursuant to this section. The council shall make such organizational adjustments and modify its procedures as it deems necessary to ensure that complaints are adjudicated in such a timeframe.

f. The council shall not charge any party a fee in regard to actions filed with the council. The council shall be subject to the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6), except that the council may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed. [A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.] [2]A requestor who prevails in any proceeding may be entitled to a reasonable attorney's fee as provided for in section 6 of P.L.2001, c.404 (C.47:1A-6).[2]

g. The council shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches.

[2]h. The Superior Court shall provide the Government Records Council a list of all actions which have been brought before the courts filed pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open public records act, which have been settled by the parties thereto. Such a list shall provide the docket number and names of the parties to the action. The council shall compile a database comprised of the data provided by the Superior Court.

The Administrative Office of the Courts, on behalf of the Superior Court of New Jersey, shall provide the Government Records Council a report at the end of each court year of all cases filed pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.). The report shall be grouped by defendant and county filed in and shall include a comprehensive list of all cases filed with a summary judgment regarding P.L.1963, c.73 (C.47:1A-1 et seq.), Statewide, itemized by the following factors:

(1) Case caption;
(2) County of venue;
(3) Docket number;
(4) Counsel of records;
(5) Case disposition; and
(6) Attorney's fees requested and awarded.[2]
(cf: P.L.2001, c.404, s.8)

[2][6.] 5.[2] Section 12 of P.L.2001, c.404 (C.47:1A-11) is amended to read as follows:

12. a. [A] If a public official, officer, employee, or custodian [who] is found to have knowingly and willfully [violates] violated P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, and [is found] to have unreasonably denied access under the totality of the circumstances, the public agency that employs the custodian, officer, employee, or official shall be subject to a civil penalty of $1,000 for an initial violation, $2,500 for a second violation that occurs within 10 years of an initial violation, and $5,000 for a third violation that occurs within 10 years of an initial violation. [This penalty] The penalties authorized pursuant to this subsection may be imposed by the courts or by the Government Records Council.

b. A requestor [2][who is found to have sold the data obtained by a records request,][2] who is found to have intentionally failed to certify that a records request is for a commercial purpose [2][, who is a data broker, or who is making the request on behalf of and for the use of a data broker, and is found to have intentionally certified that the requestor is not a data broker or is not making the request on behalf of and for the use of a data broker,][2] shall be subject to a civil penalty of $1,000 for the first offense, $2,500 for the second offense, and $5,000 for each subsequent offense. The penalties may be imposed by the courts.

c. These penalties shall be collected and enforced in proceedings in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court governing actions for the collection of civil penalties. The Superior Court shall have jurisdiction of proceedings for the collection and enforcement of the penalty imposed by this section.

d. Appropriate disciplinary proceedings may be initiated against a public official, officer, employee or custodian against whom a penalty has been imposed.
(cf: P.L.2001, c.404, s.12)

[2][7.] 6.[2] Section 2 of P.L.2021, c.371 (C.47:1B-2) is amended to read as follows:

2. a. An authorized person seeking the redaction or nondisclosure of the home address of any covered person from certain records and Internet postings consistent with section 2 of

P.L.2015, c.226 (C.47:1-17), section 1 of P.L.1995, c.23 (C.47:1A-1.1), or section 6 of P.L.2001, c.404 (C.47:1A-5) shall submit a request in accordance with section 1 of P.L.2021, c.371 (C.47:1B-1) to the Office of Information Privacy through the secure portal established by the office. The address shall only be subject to redaction or nondisclosure if a request is submitted to and approved by the Director of the Office of Information Privacy.

b. (1) A public agency shall redact or cease to disclose, in accordance with section 6 of P.L.2001, c.404 (C.47:1A-5) and section 1 of P.L.1995, c.23 (C.47:1A-1.1), respectively, the home address of a covered person approved by the Office of Information Privacy not later than 30 days following the approval. A public agency shall also discontinue the redaction or nondisclosure of the home address of any covered person for whom a revocation request has been approved not later than 30 days following the approval.

(2) A custodian of a public agency who makes a reasonable effort to comply with this subsection shall be presumed to have acted without willful, purposeful, or reckless disregard of the law.

c. An immediate family member who has sought and received approval under subsection a. of this section and who no longer resides with the active, formerly active, or retired judicial officer, law enforcement officer, child protective investigator in the Division of Child Protection and Permanency, or prosecutor shall submit through the portal a revocation request not later than 30 days from the date on which the immediate family member no longer resided with the judicial officer, law enforcement officer, child protective investigator in the Division of Child Protection and Permanency, or prosecutor.

d. A person submitting a request pursuant to subsection a. of this section shall affirm in writing that the person understands that certain rights, duties, and obligations are affected as a result of the request, including:

(1) the receipt of certain notices from non-governmental entities as would otherwise be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);

(2) the signing of petitions related to the nomination or election of a candidate to public office or related to any public question;

(3) the eligibility or requirements related to seeking or accepting the nomination for election or election to public office, or the appointment to any public position;

(4) the sale or purchase of a home or other property, recordation of a judgment, lien or other encumbrance on real or other property, and any relief granted based thereon;

(5) the ability to be notified of any class action suit or settlement; and

(6) any other legal, promotional, or official notice which would otherwise be provided to the person but for the redaction or nondisclosure of such person's home address pursuant to subsection

a. of this section.
(cf: P.L.2023, c.113, s.4)

[2]⟦8.⟧ 7.[2] (New section) a. Notwithstanding any other law or rule or regulation to the contrary, whenever there is filed a verified complaint to the Superior Court of the county in which the request for access to government records was made under P.L.1963, c.73 (C.47:1A-1 et seq.) alleging that a requestor has sought records [2]⟦thereunder for the purpose to harass a public agency, or to⟧ with the intent to[2] substantially interrupt [2]the performance of[2] government function, the court may issue a protective order limiting the number and scope of requests the requestor may make or order such other relief as it deems appropriate, including referral of the matter to mediation [2]or a waiver of the required response time[2]. The court may issue the protective order if it finds [2]by clear and convincing evidence[2] that the requestor has sought records under P.L.1963, c.73 (C.47:1A-1 et seq.) [2]⟦for the purpose of harassing the public agency, or to⟧ with the intent to[2] substantially interrupt [2]the performance of[2] government function [2]⟦, as the term harass is defined in N.J.S.2C:33-4⟧[2]. The complaint shall be accompanied by a declaration of facts by the public agency withholding the records demonstrating that it has complied with P.L.1963, c.73 (C.47:1A-1 et seq.) and has made a good faith effort to reach an informal resolution of the issues relating to the records requests.

The requestor shall have notice and an opportunity to answer the allegations set forth in the petition submitted by the public agency.

The public agency shall have the burden of proof by clear and convincing evidence.

The court's consideration of a public agency's complaint for relief shall proceed in a summary or expedited manner.

b. The order specified in subsection a. of this section may limit, or, in appropriate circumstances, eliminate the public agency's duty to respond to government records requests from the requestor in the future.

[2]c. Requests for government records filed by a labor organization or by a contractor signatory to a collective bargaining agreement seeking information material to the enforcement of State or federal statutes or regulations regarding but not limited to wage and hour protections, workplace safety, or public procurement and public bidding, including but not limited to requests for certified payrolls or information about all bids submitted in response to a public procurement process subsequent to the deadline for the submission of all bids for that solicitation, when the request by the labor organization or contractor signatory is not sought in connection to or in furtherance of discovery requests in a court proceeding, shall not be considered to be intended to interrupt government functions, and shall not form the basis for the filing of a complaint under this section.[2]

[2]**[**9. (New section) a. A data broker business entity conducting business in this State shall register with the Division of Revenue and Enterprise Services in the Department of the Treasury. The division shall impose an annual fee of $250 for each registration. The fee shall be deposited into the fund created pursuant to subsection c. of this section. For the purpose of this section, "data broker" shall have the same meaning as in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

b. The Department of the Treasury may issue rules and regulations necessary to effectuate the purpose of this section. The rules and regulations shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed one year and may, thereafter, be amended, adopted, or readopted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. There shall be created in the Department of the Treasury a dedicated, non-lapsing fund for providing grants to political subdivisions of the State for the purpose of providing access to government records electronically, including through the use of shared services agreements. The fund shall be administered by the State Treasurer. Monies in the fund shall be appropriated annually solely for this purpose.**]**[2]

[2]**[**10. (New section) The Attorney General shall establish a Police Record Access Improvement Task Force to investigate the existing statutes governing public access to police records and develop recommendations for necessary changes to the law.

The members of the Police Record Access Improvement Task Force shall be comprised of 12 members. The membership of the task force shall be as follows:

The Attorney General, or the Attorney's General designee, who shall serve ex officio, as Chair;

Seven public members, appointed by the Governor, one who is a member of law enforcement, one who is a county or municipal prosecutor, one who is a criminal defense attorney or public defender, one who is a member of a social justice advocacy organization, one who is a member of the New Jersey Press Association, one who is a member of the New Jersey League of Municipalities, and one who is a member of the New Jersey Association of Counties;

Two public members, appointed by the Governor upon the recommendation of the President of the Senate; and

Two public members, appointed by the Governor upon the recommendation of the Speaker of the General Assembly.

The task force shall submit to the Governor and to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), recommendations for changes to the law.

The Department of Law and Public Safety shall provide stenographic, clerical, and other administrative assistance and

professional staff as the task force requires to carry out its work. The task force shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission, or agency as it may require and as may be available for its purposes.

The public members of the task force shall serve without compensation, but may be reimbursed for necessary and actual expenses incurred in the performance of their duties to the extent that funds are made available for that purpose.**]**[2]

[2]**[**11.**]** 8.[2] (New section) a. The provisions of this section shall apply only to the New Jersey Division of Elections, the New Jersey Election Law Enforcement Commission, County Boards of Elections, County Superintendents of Elections, County Clerks, Municipal Clerks, Fire District Board Clerks, School District Business Administrators, and School District Board Secretaries, hereafter referred to as an "election agency" or "election agencies." Except as otherwise provided for in this section, all provisions of this act, P.L. , c. (pending before the Legislature as this bill), shall apply to all election agencies. Nothing herein shall be construed to mean that an election agency is required to provide a record in response to a request for records, unless it has made or received and maintains said requested record pursuant to law or regulation.

b. Notwithstanding any other law, rule, or regulation to the contrary, except as otherwise provided in sections 2 and 3 of P.L.2021, c.371 (C.47:1B-1 et seq.), subsection b. of section 1 of P.L.1994, c.148 (C.19:31-3.2), or in any rules or regulations promulgated by the Secretary of State pursuant to subsection f. of this section, the following shall be records for which the provided information shall not be redacted by an election agency except for voter signatures, Social Security numbers, driver license numbers, and non-driver identification numbers:

(1) Voter registration forms and forms changing the provided information thereof;

(2) Party affiliation forms and forms changing the provided information thereof;

(3) Applications for a vote-by-mail ballot, except as otherwise provided in sections 3 and 13 of P.L.2020, c.70 (C.19:63-1 et seq.);

(4) Forms or reports submitted to the Election Law Enforcement Commission;

(5) Nominating petitions for any candidate for any elected office, which shall be provided in a manner that includes voter signatures on such petitions;

(6) Petitions to recall an elected official, which shall be provided in a manner that includes voter signatures on such petitions;

(7) Petitions or submissions for any public question or referenda to be considered by voters, which shall be provided in a manner that includes voter signatures on such petitions;

(8) Any submissions, responses, objections, or challenges pertaining to a record referred to in this subsection; and

(9) Any addendums, amendments, corrections, withdrawals, or accompanying forms or submissions pertaining to a record referred to in this subsection.

c. Notwithstanding any other law, rule, or regulation to the contrary, the following shall be records and information that an election agency shall make available to requestors for immediate access and transmission via email as soon as possible, but not later than two business days after receipt of the request, provided the request is not for a commercial purpose, for which a fee shall not be charged nor collected:

(1) Nominating petitions for any candidate for any elected office filed with the election agency within the preceding 90 days of the date the request is received;

(2) Petitions to recall an elected official filed with the election agency within the preceding 90 days of the date the request is received;

(3) Petitions or submissions for any public question or referenda to be considered by voters filed with the election agency within the preceding 90 days of the date the request is received;

(4) Any submissions, responses, objections, or challenges filed with the election agency within the preceding 90 days pertaining to a record referred to in this subsection;

(5) Any addendums, amendments, corrections, withdrawals, or accompanying forms or submissions filed with the election agency within the preceding 90 days pertaining to a record referred to in this subsection; and

(6) The inspection and transmission deadline requirements of this subsection shall be deemed satisfied if an election agency posts on its website the records and information referred to in this subsection.

d. Notwithstanding any other law, rule, or regulation to the contrary, the following in paragraphs (1) through (4) of this subsection shall be records and information that an election agency shall make available to requestors for immediate access and transmission via email as soon as possible, provided the request pertains only to an election to be held within 16 days after the date of the request and is not for a commercial purpose. The transmission shall be not later than two business days after receipt of the request when said request is made between one and 15 days before the date of the election pertaining to the request. For any request submitted the day before an election by noon, the request shall be completed by noon the day of the election. A fee shall not be charged nor collected. This subsection shall apply to:

(1) Lists, in a format capable of being sorted by the requestor, of registered voters, including their name, address, party affiliation, and municipal voting ward and district, who have requested, been mailed, or returned a vote-by-mail ballot, including the dates the ballot was requested by the voter, mailed to the voter, and received by the appropriate election agency;

(2) Lists, in a format capable of being sorted by the requestor, of registered voters, including their name, address, party affiliation, and municipal voting ward and district, who have cast a vote during the early voting period, including the date and polling location the vote was cast;

(3) The inspection and transmission deadline requirements of this subsection shall be deemed satisfied if an election agency posts on its website the records and information referred to in this subsection; and

(4) Whenever the requirements of this subsection would cause a voter's privacy to be violated, the information shall be provided in a manner that maintains the privacy of the voter.

e. The following records or information shall not be subject to disclosure pursuant to a request for public records:

(1) Ballots marked by a voter, vote tabulations, or election results for any election prior to the time of the closing of the polls on the date of the election, except as otherwise provided for by law, rule, or regulation; and

(2) Manuals instructions, specifications, technical information, or programming code of computers, software, applications, networks, tablets, voting machines, printers, scanners, and any other equipment, systems, policies or plans used for the conduct of elections, the disclosure of which, could have the potential to jeopardize the security, integrity or accuracy of the conduct of elections, tabulation of votes, or determination of election results, except as otherwise provided for by law, rule, or regulation, or in response to a subpoena or order of a court or tribunal of competent jurisdiction.

f. The Secretary of State may adopt regulations necessary to effectuate the purposes of this act, which regulations shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

[2][12.] 9.[2] (New section) a. [2][The provisions of section 1 of P.L.1963, c.73 (C.47:1A-1), section 1 of P.L.1995, c.23 (C.47:1A-1.1), sections 6, 7, and 8 of P.L.2001, c.404 (C.47:1A-5 through 47:1A-7), and section 2 of P.L.2021, c.371 (C.47:1B-2), as amended by sections 1 through 5 and section 7 of P.L. , c. (pending before the Legislature as this bill), shall apply retroactively to all complaints and appeals pending before the

Government Records Council, the Superior Court or the Supreme Court of New Jersey filed prior to the effective date of P.L. , c. (pending before the Legislature as this bill), provided, however, that nothing in this section shall be construed as to retroactively reduce the statute of limitations governing any complaint or appeal pending before the Government Records Council, the Superior Court or the Supreme Court of New Jersey.

b.**]**[2] All complaints and appeals pending before the Government Records Council or the Superior Court filed prior to the effective date of P.L. , c. (pending before the Legislature as this bill), either anonymously or using a fictitious name or identity, may be dismissed with prejudice upon a motion by the public agency, unless the complainant files an amendment to their complaint that accurately identifies their name and mailing address within 90 days of the effective date of P.L. , c. (pending before the Legislature as this bill).

[2]**[**c.**]** b.[2] The parties to any complaint or appeal pending before the Government Records Council, the Superior Court or the Supreme Court of New Jersey filed prior to the effective date of P.L. , c. (pending before the Legislature as this bill), shall be permitted to file an amendment to their respective complaints and answers within 90 days of the effective date of P.L. , c. (pending before the Legislature as this bill).

[2]10. (New section) a. A person who has obtained a photograph or video recording pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), and who is not a subject of the photograph or video footage, shall not disclose any indecent or graphic images of the subject's intimate parts, captured by the photograph or recording, without the prior written consent of the subject of the photograph or video footage or written consent of the legal next of kin if the subject is deceased.

b. A person who knowingly violates the provisions of subsection a. of this section shall be guilty of a disorderly persons offense.

c. As used in this section:

"Disclose" means to sell, manufacture, give, provide, lend, mail, deliver, transfer, publish, post, distribute, circulate, disseminate, present, exhibit, advertise, offer, share, or make available through the Internet or by any other means, whether or not for pecuniary gain.

"Indecent or graphic" means images depicting exposed intimate parts in a manner that would be clearly visible to a reasonable person.

"Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock, or breast of a person.

"Subject of the photograph or video footage" means a person who appears in the photograph or video recording.[2]

[2]**[**13.**]** 11.[2] a. There is hereby appropriated $4,000,000 from the State General Fund to the Department of Community Affairs to provide grants to political subdivisions of the State for the purpose of making government records that are accessible under P.L.1963, c.73 (C.47:1A-1 et seq.) available electronically, including through the use of shared services agreements.

b. There is hereby appropriated $4,000,000 from the State General Fund to the Department of Community Affairs for the Government Records Council.

[2]c. There is hereby appropriated $2,000,000 from the State General Fund to the Department of Community Affairs for the Government Records Council to effectuate the purposes of section 8 of P.L.2001, c.404 (C.47:1A-7) as amended by section 5 of P.L. , c. (pending before the Legislature as this bill).[2]

[2]**[**14.**]** 12.[2] This act shall take effect [2]**[**30**]** 90[2] days following the date of enactment [2]**[**, except as otherwise provided for in this act, and except that section 9 and section 11 shall take effect eight months following the date of enactment. The Attorney General, Department of Community Affairs, the Government Records Council, the Department of the Treasury, and the Department of State may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.**]**[2]

GOVERNOR'S STATEMENT UPON SIGNING
SENATE BILL NO. 2930
(SECOND REPRINT)

Today I am signing Senate Bill No. 2930 (Second Reprint), which makes various changes to the Open Public Records Act and appropriates $10 million.

Before I discuss the merits of the bill, I want to acknowledge that I know that this decision will disappoint many members of the advocacy community, including a number of social justice, labor, and environmental organizations, among others. I have heard the many objections to the bill directly, and I know that they are made in good faith and with good intentions. I also commend everyone who has engaged in this debate for making their voice heard, which is the foundation of our democratic system of government.

Perhaps the most troubling concern that I have heard is that signing this bill will both enable corruption and erode trust in our democracy. I understand we are living in a moment where our democracy feels more fragile than ever, with a former President who has been indicted for inciting an insurrection during his final days in office inexplicably within striking distance of the White House once again. And I know that closer to home, New Jerseyans across the political spectrum feel deeply betrayed and outraged by the serious allegations that our senior United States Senator accepted bribes from a foreign government.

If I believed that this bill would enable corruption in any way, I would unhesitatingly veto it. In my first week in office, I ordered a comprehensive audit of the Economic Development Authority's tax incentive programs, as I had reason to believe that under the prior administration, they were designed to favor special interests and the well-connected. I successfully fought to reform those programs and introduce important safeguards, even when there was little appetite to amend them. In 2021, when legislation was sent to my desk that would have eliminated mandatory prison sentences for public corruption offenses, I vetoed it on multiple occasions. And more recently, when Senator Menendez was indicted, I called for his immediate resignation that same day. Throughout my tenure in office, I have sought not only to lead an administration free from corruption, but also to speak out against it in all of its forms.

As for the health of our democracy here in New Jersey, I know that it is far more robust than when my Administration took office. Since I took office, in partnership with the Legislature, we have established automatic voter registration and online voter registration. We enacted in-person early

voting and made it far easier to vote by mail. We restored voting rights for over 80,000 New Jerseyans on probation or parole. We enacted legislation that will allow 17-year-olds to vote in primaries if they turn 18 by the general election. And we are by no means done. I continue to call for legislation allowing same-day voter registration and enabling 16- and 17-year-olds to vote in school board elections, and I am hopeful that these bills will move through the Legislature soon.

With this history in mind, when it comes to the legislation on my desk, I take the concerns regarding corruption and trust in our democracy extremely seriously. However, my responsibility as Governor is to evaluate the bill on the merits, regardless of how it may be perceived. And in making this evaluation, I am mindful that this bill was the product of a great deal of discussion and compromise.

The Open Public Records Act ("OPRA") was enacted in 2002. In the last 22 years, the statute has not been the subject of any type of comprehensive update until now. Today's world is very different than 2002, a time when the Internet was far less ubiquitous and there was vastly less access to individuals' personal information. While case law on OPRA has evolved, it is also appropriate for our democratic branches of government to take a look at the statute, informed by how various provisions have played out in practice.

The bill encourages public records to be placed on agency websites to the extent feasible, so they will be readily accessible even without an OPRA request, and appropriate funds to support those efforts. Furthermore, if the requestor is referred to the public agency's website, the bill requires that the agency assist requestors in locating those records. The bill also provides additional flexibility for submitting requests by allowing their submission via form, letter, or email. With regard to personal information, the bill takes a number of positive steps. It defines personal identifying information and specifically adds new protections for month and day of birth, personal email addresses, the street address portion of a person's primary or secondary home address, information about minors, and information protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The bill also modernizes the Government Records Council ("GRC") to enhance public access in a number of ways. It requires the GRC to update its website periodically to better assist the public, and to create a database of OPRA cases in Superior Court so that the public has easy access to how those matters were handled and resolved. The bill also requires the GRC to use videoconferencing and conduct virtual meetings and hearings, so that all members of the public have access to their proceedings. The bill preserves the ability for requestors to file in the GRC without paying a filing fee, and requires the

GRC to promptly adjudicate matters to ensure that it remains a viable forum for challenging a denial of access.

In addition to these provisions that update the law to better reflect today's world, the bill also codifies a number of judicial decisions. For example, the bill requires a date range, a subject matter, and the identification of an employee, account, or job title of the individual whose records are to be searched. This is the standard laid out by the Appellate Division in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). The bill codifies the Supreme Court's decision in Gilleran v. Twp. of Bloomfield, 227 N.J. 159 (2016) governing access to security camera recordings and expands that access to be available under OPRA, not just the common law right of access. And in addition to creating new statutory protections for individuals' privacy, as described above, the bill also codifies judicial decisions protecting the personal information that citizens provide to the government, such as contact information provided to receive updates from the government, Rise Against Hate v. Cherry Hill Twp., A-1440-21 (App. Div. Mar. 29, 2023).

The provision of the bill that has undoubtedly received the most attention is the change to fee shifting. Under current law, when the requestor is a prevailing party, the award of attorney's fees is mandatory. It is clear that many advocacy groups firmly believe that mandatory fee shifting is necessary to incentivize compliance with OPRA. At the same time, many local officials argue that this provision unnecessarily incentivizes litigation when municipal and county clerks are trying their best to abide by the statute and denials of access are inadvertent or unintentional. These local officials note that this litigation, and the attorney's fees that result, impose significant costs on taxpayers.

I am aware that many discussions were held in an effort to find a compromise on this issue. Ultimately, the Legislature included language that continues mandatory fee shifting, uncapped, in instances where there is 1) bad faith by the public entity; 2) a knowing and willful violation of OPRA; or 3) an unreasonable denial of access. In all other circumstances, attorney's fees may be awarded – the same standard that is currently in place under the Law Against Discrimination, the Civil Rights Act, and the federal Freedom of Information Act. Just as state and federal courts have been able to responsibly decide the issue of attorney's fees under these other statutes, I am confident that both our courts and the GRC will utilize their new discretion regarding attorney's fees wisely. My Administration will monitor the implementation of this provision closely to ensure there are no adverse impacts.

Another provision that has garnered a significant amount of controversy concerns the ability of public entities to sue requestors. In order to prevent abuse, the bill establishes an extraordinarily high standard for such lawsuits, as the public

entity must prove harassment or substantial interruption of government functions by clear and convincing evidence. Some advocacy groups claim that the mere threat of a lawsuit will deter citizens from making requests under OPRA. However, I signed an important law last September that protects individuals from meritless lawsuits intended to intimidate them for exercising their free speech rights. I am confident that this "anti-SLAPP" law will allow individuals to obtain expedited dismissals of any improper lawsuits brought under this new provision of OPRA.

After a thorough examination of the provisions of the bill, I am persuaded that the changes, viewed comprehensively, are relatively modest. The categories of documents currently subject to OPRA does not change at all. Under the bill, the manner by which requests are made and the specificity required for such requests is consistent with current practice. Important protections, such as the ability to file requests anonymously and have access to records related to collective bargaining, are preserved or strengthened.

With respect to the GRC, as mentioned earlier, the bill requires it to make better use of technology and remain accessible to the public, and also provides an additional appropriation of $6 million to help the GRC carry out its work. Given the GRC's important role, especially in applying the attorney's fees provision, I will ensure that my four appointments to the GRC are well-respected figures with unimpeachable credentials on issues of public access and the public interest.

As mentioned earlier, this legislation was proposed after extensive deliberation and compromise, and passed with bipartisan support in both chambers. In addition to support from the Senate President and the Speaker, the Senate Minority Leader was a prime sponsor of the bill and the Assembly Minority Leader voted for it as well. Over a hundred mayors from both parties have asked for it to be enacted into law. I understand that some may view this support cynically, but I do not believe it is fair to dismiss an overwhelming bipartisan consensus from local elected officials. Serving in local elected office is a deeply thankless and glamour-free job, and I have consistently found mayors from both parties to be dedicated and hard-working public servants. Mayors subject themselves to constant scrutiny by their neighbors and their very own communities, especially in the age of social media, and I simply reject the idea that those calling for the bill's passage are part of a nefarious plot to evade transparency and accountability.

The enactment of OPRA in 2002 was a landmark achievement that should be celebrated. But like any document meant to apply to a changing society, it must be periodically updated, particularly as technology is rapidly evolving. The Legislature's task of balancing all of the interests involved

in this challenging issue was not an easy one and should not be subject to derision. While I do not believe the concerns raised about some provisions of the bill are irrational, I am persuaded that the safeguards in the bill and the protections provided by the GRC and the courts are sufficient to mitigate them.

As a result, I am making the decision to sign this bill into law.

Date: June 5, 2024

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor

HMA Mortgage
3153 Fire Rd, Suite 1B
Egg Harbor Twp, NJ 08234
NMLS# 139164

Pre-Approval

February 3, 2025

Dear Jane Doe,

HMA Mortgage is pleased to inform you that you have been pre-approved for a mortgage loan. This decision is valid for 60 days from the date of this letter and can be renewed upon request.

The details of this pre-approval are as follows:

Loan Amount: $340,000
Loan Type: Conventional
Loan Term: 30 Year Fixed Rate

The loan qualification is subject to the following terms:

Contingent Upon: N/A
Interest Rate and Closing Cost: Subject to change due to market conditions until the time of Application and Rate Lock
Appraisal and Property Condition: The proposed property appraisal must be acceptable to the lender. The loan amount is based upon the lesser of the sales price or appraised value.

*The information you have provided regarding this qualification must remain unchanged and verifiable according to underwriting guidelines.

*This document is not a final lender commitment. Final loan approval and commitment will require a fully executed sales contract, a satisfactory appraisal report, sufficient verified funds to close and any other required documentation request under agency guidelines.

Sincerely,

Amy Malamut
Senior Loan Officer
NMLS ID# 139164
Phone: 609-646-5555
Email: amalamut@hmamortgage.com

ALIMONY AND CHILD SUPPORT

MORTGAGE INCOME ANALYZER

Ensuring that alimony and child support will count as income during the mortgage approval process.

CONVENTIONAL LOANS

- Must be receiving the support for at least 6 months as of the date of closing *pursuant to a court order or legally binding document*
- Payments must be full and consistent for the entire 6-month period

FHA LOANS

- If pursuant to a court order or other legal document, must document receipt for at least 3 months as of the date of closing
- If payment has been voluntary, must document receipt for at least 12 months as of the date of closing
- If payment has been consistent for the most recent 3-month period if court-ordered or 6-month period if voluntary, can use the most recent support amount
  - If payment has not been consistent, then lender averages the income received over the previous 2 years to calculate support amount (if receipt has been for less than 2 years, then lender uses the average over the time of receipt)

FHA + CONVENTIONAL LOANS

- Document that support will continue for at least 3 years
  - Copy of divorce decree, settlement agreement, voluntary payment agreement or any other type of legal agreement/decree describing payment terms
- Child support for a child 15 or over at time of closing will not be considered, as lender assumes child support terminates once child is 18 (unless legal document states a specific age otherwise)

Please reach out...

with any mortgage questions you may have.

Amy Malamut, Esq.

Sr. Loan Officer | Divorce Specialist
973-479-5347
AMalamut@HMAmortgage.com

THE MALAMUT MORTGAGE TEAM
HMA MORTGAGE

HMAMortgage.com
Company NMLS# 139164
NMLS# 2463141

Amy Malamut Bio

Amy graduated from Seton Hall University School of Law in 2009. She clerked for the presiding Judge of the Family Part in Union County, NJ for the 2009-2010 term and then exclusively practiced family law at mid-size law firms until 2019. Amy first worked at Norris McLaughlin & Marcus, PA in Bridgewater, NJ and then Obermayer Rebmann Maxwell & Hippel LLP in Mt. Laurel, NJ. Since October 2019, Amy has worked alongside her husband, Jim, in the mortgage business. Amy has worked as a loan processor, loan coordinator and most recently as a licensed mortgage loan originator. Over the last few years, Amy has come to realize how imperative it is for all matrimonial clients to consult with a mortgage professional at the outset of their divorce or separation to discuss their realistic housing options, credit worthiness, marital home value, etc. Amy recalls how much time and energy is often wasted at the end of or shortly after a divorce scrambling to figure out what to do with the marital residence when little is known about the parties' actual abilities to complete a buy-out, refinance, or purchase a new property. As a loan officer with a background in family law, Amy is uniquely qualified to discuss purchase and refinance options with separating or divorcing buyers, as well as with their realtors and attorneys.

ARNDT, SUTAK & MICELI, LLC

515 Plainfield Ave., Suite 202
Edison, NJ 08817
Phone 732-867-8894
Fax 732-564-6860
WWW.ASMFAMILYLAW.COM

JESSICA L. ARNDT*
ALISON J. SUTAK•
LAUREN A. MICELI•

* Licensed in NJ & PA
• Licensed in NJ & NY

Five Tips for QDROs

1. Can a QDRO be entered/filed before the divorce?

    a. Yes, a QDRO awards a benefit to an Alternate Payee. An Alternate Payee is defined as a *spouse*, *former spouse*. . .). Therefore, a QDRO can and should be filed once the complaint for divorce is filed. see *26 U.S. Code§ 414(p)(1)(B)(i)*

2. Can a QDRO be filed after the death of a Participant?

    a. Yes, the death of a Participant does not prohibit the entry of a posthumous QDRO. see *29 C.F.R. 2530.206*

3. Can a former spouse that, by Court Order is awarded a survivor benefits from the Federal Employees' Retirement System (FERS) lose that survivor benefit?

    a. Yes, the former spouse annuity will terminate on the first day of the month after the former spouse remarries before age 55. *see. 5 CFR 831.632(d)*

4. If parties are married less than ten years, is the U.S. Military required to make a direct payment to a former spouse via a QDRO *Equivalent* if so Ordered by a Court for equitable distribution?

    a. No. Under The Uniformed Services Former Spouses' Protection Act (USFSPA), a member (i.e. Participant) and former spouse must have been married to each other for 10 years or more during which the member performed at least 10 years of military service creditable towards retirement eligibility (the 10/10 rule). If the 10/10 rule is not met then no direct payments to a former spouse (i.e. Alternate Payee) for equitable distribution.

5. And the final tip, to settle much confusion... Can a QDRO be prepared if a Participant is already retired/collecting pension benefits?

    a. Absolutely, in virtually all cases a QDRO can be entered even if a Participant is already retired.

Special thanks to Rodney D. Troyan, Esq. of Troyan & Associates, P.A. for his assistance with this topic.

Alison J. Sutak, Esq.

Alison J. Sutak, Esq. is a founding partner at Arndt, Sutak & Miceli, LLC in Edison. She received her law degree from Seton Hall University School of Law in 2011 and has practiced family law exclusively for her entire career. She is the 2024 recipient of the Martin S. Goldin Family Law Award, presented by the Middlesex County Bar Association, as well as the 2019 recipient of the Middlesex County Bar Association's Young Lawyer of the Year Award. She is a former law clerk to the Honorable Teresa A. Kondrup Coyle, J.S.C. of the New Jersey Superior Court, Family Part in Monmouth County. Ali, along with her partner, Lauren A. Miceli, founded the Aldona E. Appleton Family Law Inn of Court in Middlesex County in 2017. She currently serves as its Treasurer. In 2022, she served on the NJSBA Putting Lawyers First Taskforce and was instrumental in the removal of question 12B of the New Jersey Character & Fitness application for Bar candidates. She has served as an Early Settlement Panelist since 2016 and is certified in Collaborative law. She is admitted to practice in New Jersey and New York. She coaches softball in her free time and also serves as PTA secretary for her daughter's elementary school. She lives in Old Bridge with her husband and two daughters.

MANES & WEINBERG, LLC

1136 Route 22, Suite 100
Mountainside, NJ 07092
(973) 376-7733
cheryl@manesweinberg.com

MSAs and Prenuptial Agreements… the aftermath

I. Marital Settlement Agreements:

A. MSAs often require a party to maintain life insurance, the proceeds of which are payable "in trust" for the benefit of the children.

1. What are the terms of this trust? Who is the Trustee? When does the trust terminate and pay out?

2. If life insurance proceeds are left for the children with the surviving parent as "custodian," what are the terms of the arrangement? When does the custodial arrangement end? (Many custodial arrangements are payable to the children outright when they reach 18, which is, generally, before emancipation.)

B. When an amount is required to be paid as child support for more than one child, what is the percentage breakdown between the children? This is particularly relevant when there is a special needs child whose portion needs to be paid to a supplemental needs trust and who might never be emancipated.

C. When there is a potential special needs child involved, have you made it clear when such child will be emancipated, if ever, for purposes of child support?

II. Prenuptial Agreements:

A. Do not fail to include provisions regarding incapacity in the prenuptial agreement.

1. What happens if a Guardian or individual acting under a Power of Attorney commences or furthers a divorce action for an incapacitated party?

a. Provisions should be included to prevent/disincentivize someone from taking advantage of an individual with diminished capacity (by commencing a divorce action) to increase their inheritance (i.e., a Guardian/Power of Attorney who would inherit more if the incapacitated individual was divorced prior to death as opposed to still married).

2. What happens if a person with a Power of Attorney (maybe a child from a prior marriage) diverts the assets of an incapacitated party away from the spouse?

B. A "Lien on a Person's Estate" is potentially a meaningless way to enforce the provisions of a Prenuptial Agreement (or MSA).

1. Understand the difference between probate and non-probate assets.

2. If an estate has no probate assets, there is nothing to put a lien on, and the spouse has no meaningful means for recovery.

C. Potential Fixes:

1. Contingent Waivers.

2. Additional Disclosures.

3. Provide Pre-death Standing to Challenge Noncompliance.

III. <u>The Smaller "Black Hole":</u>

A. New Statute.

1. As we all know, the "black hole" was recently closed as it relates to equitable distribution, spousal elective share, and intestacy.

B. Existing Law.

1. A smaller black hole still exists for individuals embroiled in a divorce action who die before updating their wills/beneficiary designations to exclude the (to be) ex-spouse.

2. Currently the law provides that only an actual divorce or annulment revokes (1) bequests under a will or as a named beneficiary to an account or contract, (2) appointment of a (to be) ex-spouse as a fiduciary under a will (executor or trustee), and/or (3) the status of a (to be) ex-spouse as a joint owner of an asset with rights of survivorship.

C. What to Do…

1. When a client comes into your office to commence a divorce action, one of the first things he or she should do is change their will to exclude their spouse.

2. What good is continuing the equitable distribution action after death if the (to be) ex-spouse is still the beneficiary under the will and inherits everything anyway?

Cheryl is a Partner in Manes & Weinberg, LLC in Mountainside, New Jersey. She concentrates on providing comprehensive estate planning, probate and estate administration, and guardianship services. Cheryl takes pride in working closely with her clients to create personalized estate plans that truly reflect their wishes and values. Cheryl's LL.M. in Taxation also equips her with invaluable insight into complex tax planning to help minimize estate and gift tax.

One of Cheryl's passions is assisting clients in developing and revising their estate plans in response to changing life circumstances. Whether it's due to a divorce, remarriage, or other significant change, she provides creative and thoughtful strategies for clients to address the needs of all their loved ones in potentially complicated situations. Additionally, Cheryl advises on estate planning and incapacity issues when clients are developing prenuptial agreements, with the aim of anticipating and addressing commonly overlooked eventualities.

How to Handle Private Investments During Divorce

Jasmina Woodson, CPA/ABV/CFF

What Are Private Investments?

Private investments, also known as alternative investments, refers to investing in assets that aren't traded on public exchanges.

Public Market *vs. Private Market*

FINANCIAL MARKETS WHERE INVESTMENTS ARE TRADED ON EXCHANGES AND EASILY INVESTED IN BY THE PUBLIC.

NEW YORK STOCK EXCHANGE (NYSE), NASDAQ, AND THE LONDON STOCK EXCHANGE (LSE).

BENEFITS – LIQUIDITY, EASILY ACCESSIBLE, HIGHLY REGULATED

Public Market vs. Private Market

01

Financial markets where investments are bought and traded privately.

02

Venture capital, growth equity, private equity, hedge funds, real estate, and private debt.

03

Benefits – Potential for high returns and diversify portfolio

Identify, Value, & Distribute

Discovery

- Type of Investment, Ownership Percentage, Original Investment Amount, Future Obligations, Expected Returns on Investment, etc.

Methods of Valuation

Distribute

- Divide In-Kind
- Buy-out
- Ride Along

JASMINA WOODSON, CPA/ABV/CFF
Senior Manager

Jasmina Woodson is a senior manager in the Forensic and Valuation Services group at WithumSmith+Brown (Withum) Saddle Brook, NJ. Jasmina is involved in the performance of business valuations of closely held companies, preparing cash flow analyses, preparing complex tracing analyses, and analyzing marital lifestyle. Jasmina's experience includes marital litigation, forensic investigations, bankruptcy litigation, partnership/shareholder disputes, and economic damage calculations. She also contributes her traditional accounting background attained earlier in her public accounting career, which began at PricewaterhouseCoopers, LLP in their audit department.

Jasmina is a licensed Certified Public Accountant (CPA) in the state of New Jersey. She is also Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF) by the American Institute of Certified Public Accountants (AICPA). She is a member of the AICPA, including their Forensic and Valuation Services Group, and the New Jersey Society of Certified Public Accountants (NJCPA). Jasmina is also a member of the National Association of Black Accountants, Inc. (NABA). Between 2017 and 2024, Jasmina held several positions on the NABA Northern New Jersey chapter's (NABA NNJ) Board, including Programs Committee Chair, 1st Vice President, 2nd Vice President, and Scholarship Committee Co-Chair. In addition, Jasmina served on the Board of the American Conference on Diversity from 2019 through 2020.

In 2020, Jasmina was recognized as a Withum Emerging Leader. She also served on Withum's Team Member Advisory Board for two consecutive years and has been an active member of Withum's team member resource groups (TMRG), BLAAC (Black, Latin, African American, African, and Caribbean) and WoW (Women of Withum). Beginning in July 2024, Jasmina will serve in a two year term as the Co-Lead for BLAAC.

In 2022, Jasmina was honored with the Black Leadership Award by Profiles in Diversity Journal.

Jasmina is a Summa Cum Laude graduate from Delaware State University with a Bachelor of Science in Accounting and a Rutgers University graduate with a master's in financial accounting.

JASMINA WOODSON, CPA/ABV/CFF
Senior Manager

Arbitration Testimony

Carol Ventre v. Anthony Ventre

(Bergen County, NJ) 2022

EISNERAMPER

Equity Based Compensation
Kriste J. Rodriguez, CPA/ABV

Typical forms of compensation are salaries and bonuses, however there are instances when employees are given non-cash compensation in the form of equity. Examples of equity-based compensation include, but are not limited to; stock options, restricted stock awards, restricted stock units ("RSU's"), stock appreciation rights and performance shares. There are several issues concerning equity-based compensation, including the value of the equity-based compensation, the tax implications of the awards, considerations for alimony on the equity-based compensation and whether the awards are marital, separate property or subject to equitable distribution in part.

Typically, equity-based compensation is granted on a specified date and is subject to a vesting schedule and/or performance benchmarks. For example, stock options give an employee the option to buy shares (once they are vested) in the company at a predetermined price, known as the strike price. Vested stock options become valuable if the market value of the stock is higher than the strike price. Unlike stock options, once RSU's have vested, they do not have to be purchased. As soon as they vest, they are no longer restricted and are treated exactly the same way as if one had bought them on the open market.

Determining whether the equity awards are separate or marital property will depend on when they were granted, when they vest and if the vesting is contingent upon future services/performance. The most common issue concerning equity-based compensation arises when the award was granted during the marriage but vests after the date of complaint. The question often becomes - Was the compensation awarded for past services or for future services or future performance? If the award was compensation for services already rendered, most likely the award would be considered marital and subject to equitable distribution. On the other hand, if the award was an incentive for future services or performance, it may be considered exempt and not subject to equitable distribution.

Sometimes it is not clear whether the award was for past or future service or performance. When the intent of the award is not clear or when vesting occurs simply based on time and the employee must just stay employed at the company to receive the units, it is common to use a formula known as a coverture fraction to determine what portion of the shares are subject to equitable distribution. A coverture fraction is the period of time between when the award was

granted and the date of complaint divided by the period of time between when the award was granted and the date the awards vest.

If it is determined that the equity awards are subject to equitable distribution, there are options for dividing this part of the marital estate as outlined below:

- If the shares are vested, the working spouse can give the non-working spouse other marital assets equal in value to their share of the stock options/RSU's, however tax implications on the shares must be considered and the spouse keeping the shares bears the risk or reward of how the stock price moves;
- If the shares are vested they could be sold to generate cash and be divided. Again, the tax implications for capital gains must be considered;
- An agreement can be reached where the parties wait until any unvested shares (if determined to be marital) vest and the shares could be sold. Taxes again will have to be taken into consideration;
- The working spouse can hold the options/RSU's in a constructive trust that outlines the process once the shares vest; and
- There may be an option where the employer allows for the options/RSU's to be transferred to the non-employee spouse, although this tends to be rare.

In addition to the typical requests as it relates to income and compensation, i.e. personal tax returns, W-'s, year-end paystubs, it is also important to obtain and understand the following documents:

- Award/compensation statements for each award granted;
- Detailed schedules showing the respective award, grant date, exercise price (if applicable), and vesting schedules;
- Any plan documents that outlines why the award was granted.

EISNERAMPER

KRISTE RODRIGUEZ

732.243.7422 | kriste.rodriguez@eisneramper.com
Managing Director | Eisner Advisory Group LLC

Kriste Rodriguez is a Managing Director in the Forensic, Litigation and Valuation Services Group. She has over 15 years of experience in business valuations, shareholder disputes, forensic investigations, and matrimonial disputes.

Kriste has experience valuing businesses in a variety of industries within the context of matrimonial litigation; shareholder buyouts and disputes; sales and acquisitions; the determination of exercise prices for stock options; and for estate and gift tax purposes. In addition, she has expertise in asset tracing, lifestyle analysis and income analysis.

In 2020, Kriste was recognized by the American Institute of Certified Public Accountants (AICPA) New Jersey Chapter as a Standing Ovation Program honoree. She has also been named one of the 40 Under 40 honorees by the National Association of Certified Valuation Analysts for 2020.

SPECIALTIES

- Business Valuation
- Matrimonial Disputes
- Estate & Gift Valuation
- Forensic Investigations

CREDENTIALS/EDUCATION

- Certified Public Accountant (CPA)
- Accredited in Business Valuation (ABV)
- William Paterson University: BS, Finance, cum laude
- Fairleigh Dickinson University: MS, Accounting, cum laude

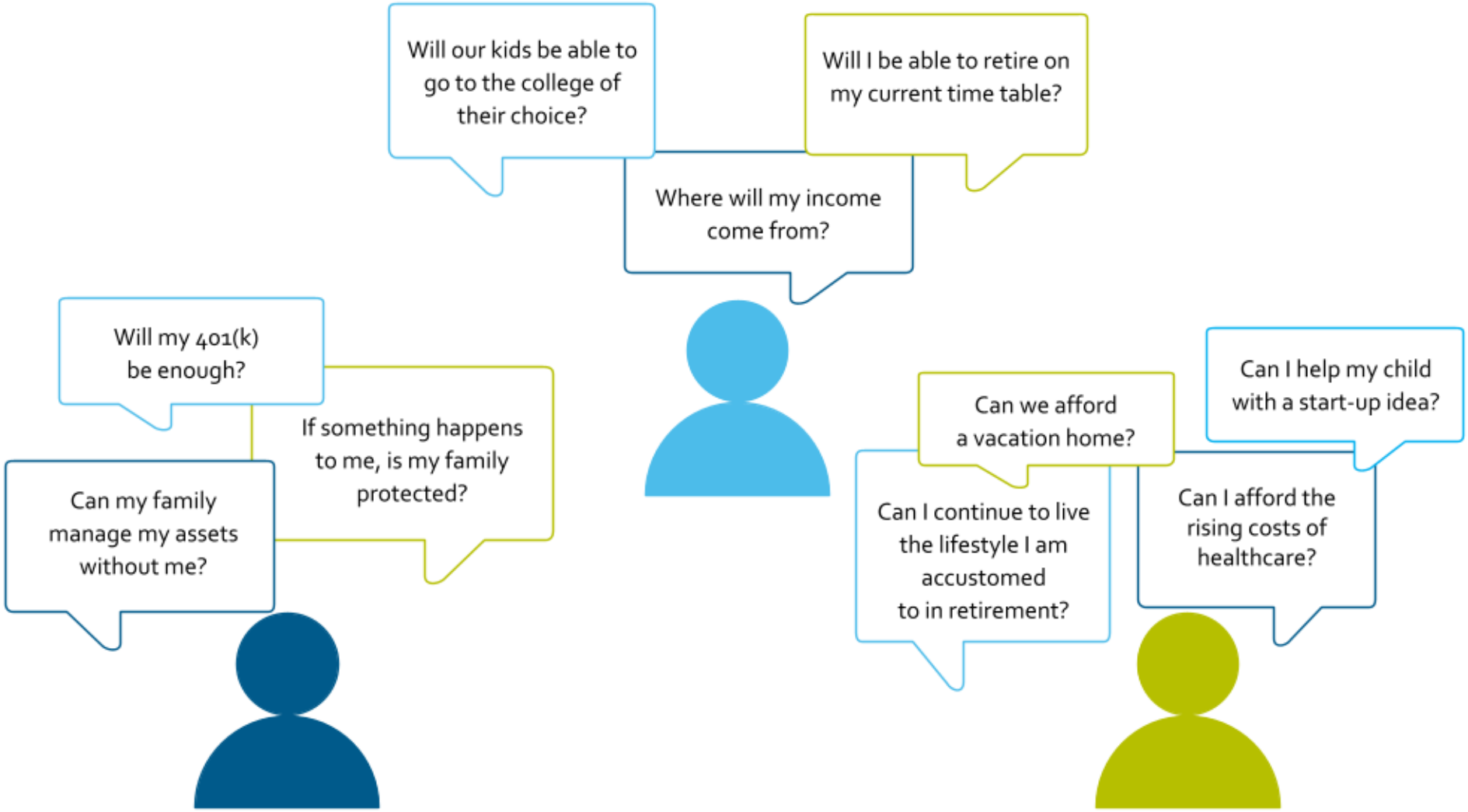
AFFILIATIONS

- American Institute of Certified Public Accountants
- New Jersey Society of Certified Public Accountants

Morgan Stanley

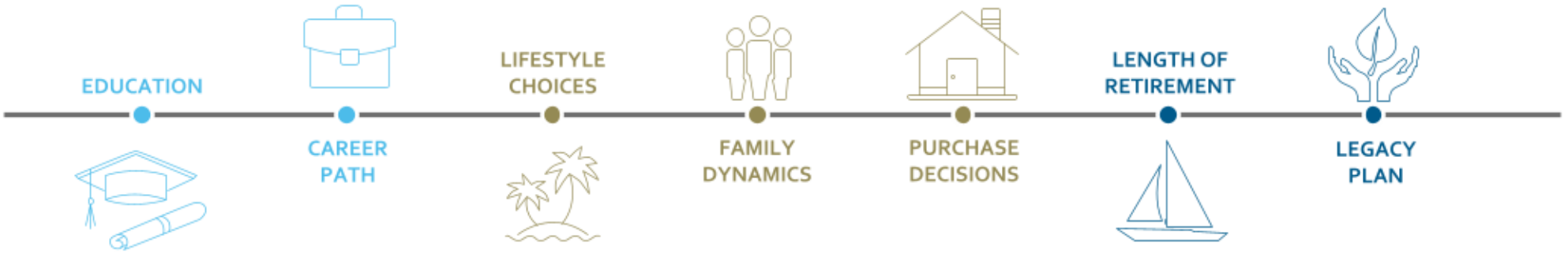
Goals Planning System | GPS

Life Is Complicated: You Have Unique Financial Needs



You Define Success, We Help You Achieve It

As your life stage changes, so do your goals—our platform is designed to help you develop a flexible strategy to address these changing demands.



EARLY / MID-CAREER

Goals

- Buy a home
- Have a child
- Build an emergency fund
- Protect family
- Manage budgets
- Manage equity

LATE CAREER

Goals

- Buy a larger home
- Send children to college
- Assist aging parents
- Plan for future healthcare
- Plan for retirement
- Minimize tax burden

RETIRED

Goals

- Maintain lifestyle and sufficient income
- Meet healthcare and other unforeseen expenses
- Buy a vacation home
- Plan your legacy
- Give to charity

Wherever you are on your journey, Morgan Stanley can help you achieve your goals through strategic advice and a combination of income, investment and debt products.

Goals Planning System | GPS

Our integrated platform ties goals to implementation, leveraging the intellectual capital and sophisticated institutional capabilities of Morgan Stanley

DISCOVER

Start with a conversation to gain a thorough understanding of your needs, lifestyle and family – and your goals for the future.

ADVISE

We work with you to develop portfolio strategies to help you achieve and protect the outcomes you envision.

IMPLEMENT

Look across multiple accounts and products to help you implement solutions that are an appropriate fit for your strategy.

TRACK PROGRESS

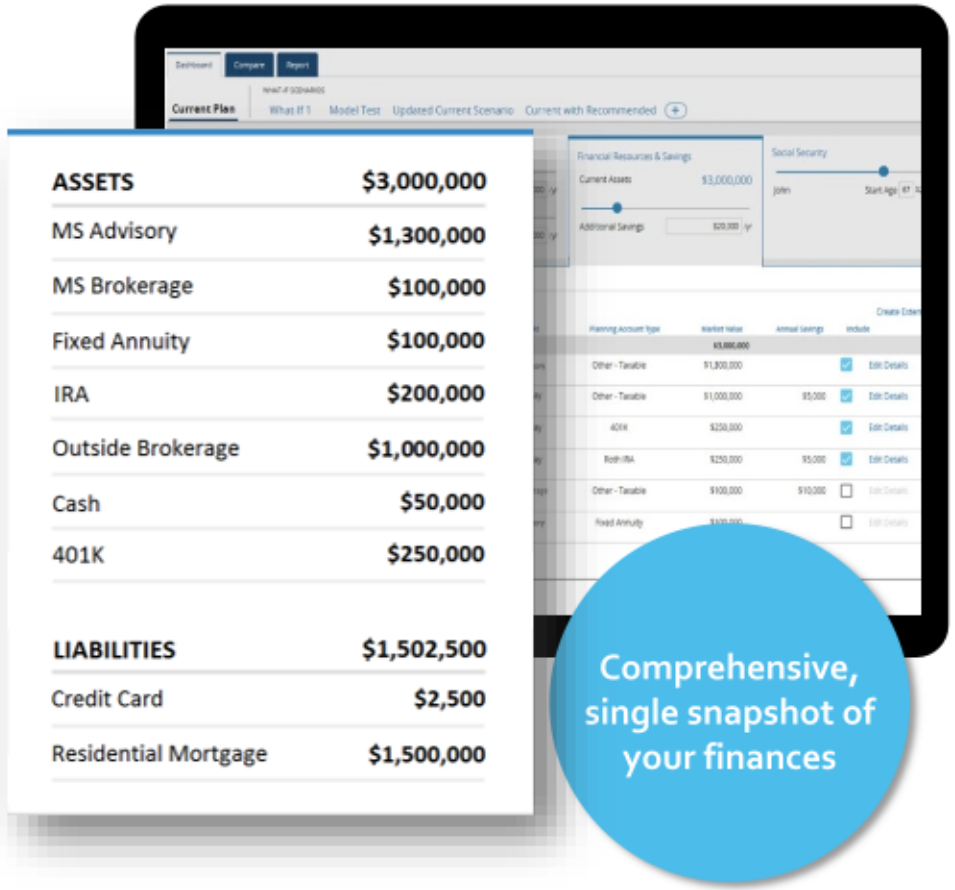
We help you track your progress as well as spending and savings to help ensure you remain on track toward your goals.

Building Your Financial Portrait

We will develop a comprehensive understanding of your financial situation

CREATE AN AGGREGATE VIEW TO HELP KEEP YOU ON TRACK

- Consolidate information on your assets, liabilities investments, and cash flow in one place
- We can leverage this information to make more informed decisions and identify opportunities for your investments and everyday finances at Morgan Stanley to help you achieve your financial goals



FOR ILLUSTRATIVE PURPOSES ONLY – not a recommendation to buy or sell

Past performance is no guarantee of future results. Estimates of future performance are based on assumptions that may not be realized. This material is not a solicitation of any offer to buy or sell any security or other financial instrument or to participate in any trading strategy. Please refer to important information, disclosures and qualifications at the end of this material.

Creating a Plan to Address Your Goals

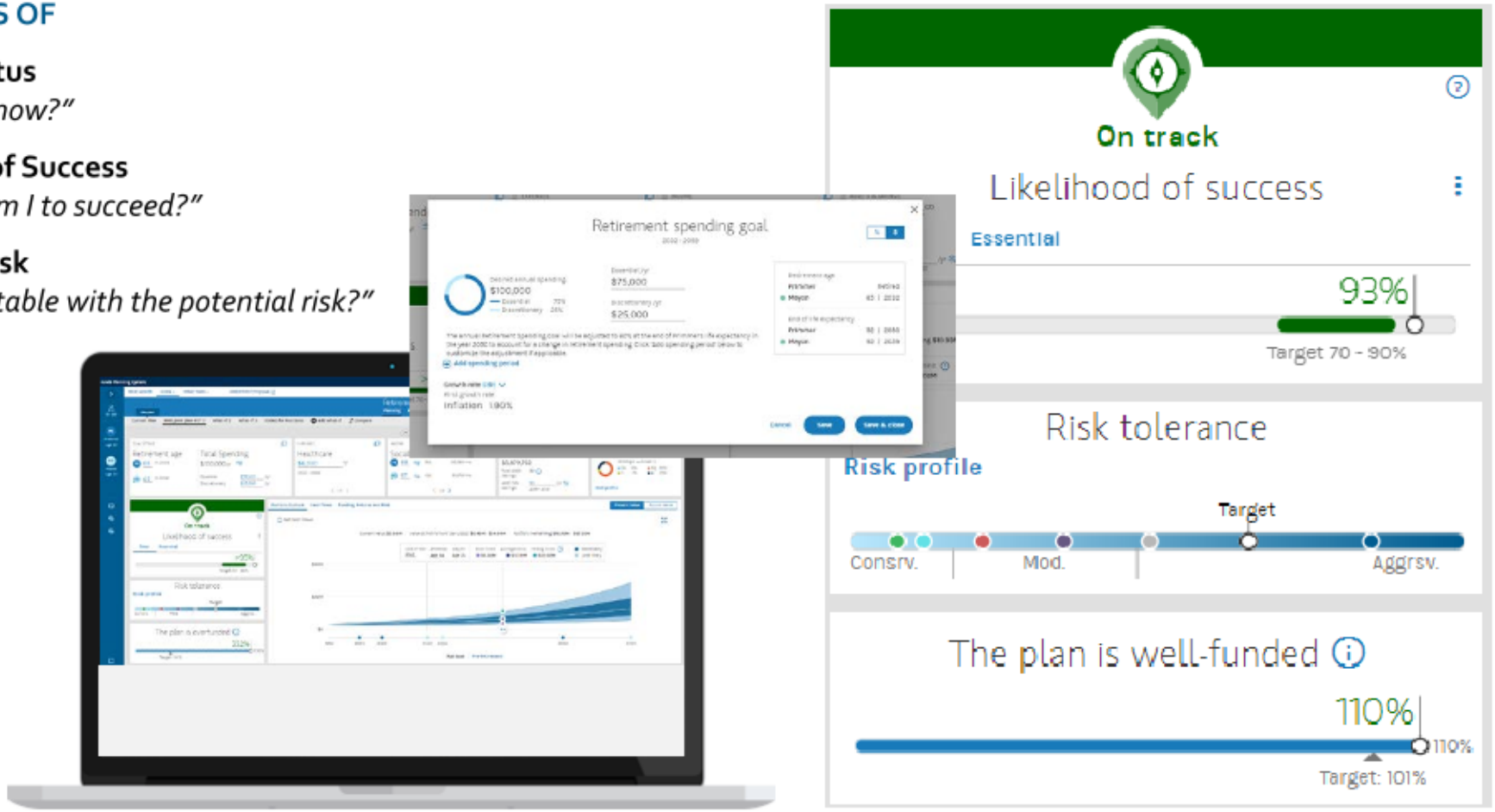
Your customized goal plan will encompass aspects of your unique financial portrait, and we can help you determine if your investments are on track to meet your goals

SNAPSHOTS OF

Funding Status
"Where am I now?"

Probability of Success
"How likely am I to succeed?"

Downside Risk
"Am I comfortable with the potential risk?"



Hypothetical illustration of Morgan Stanley's Goals Planning System platform.

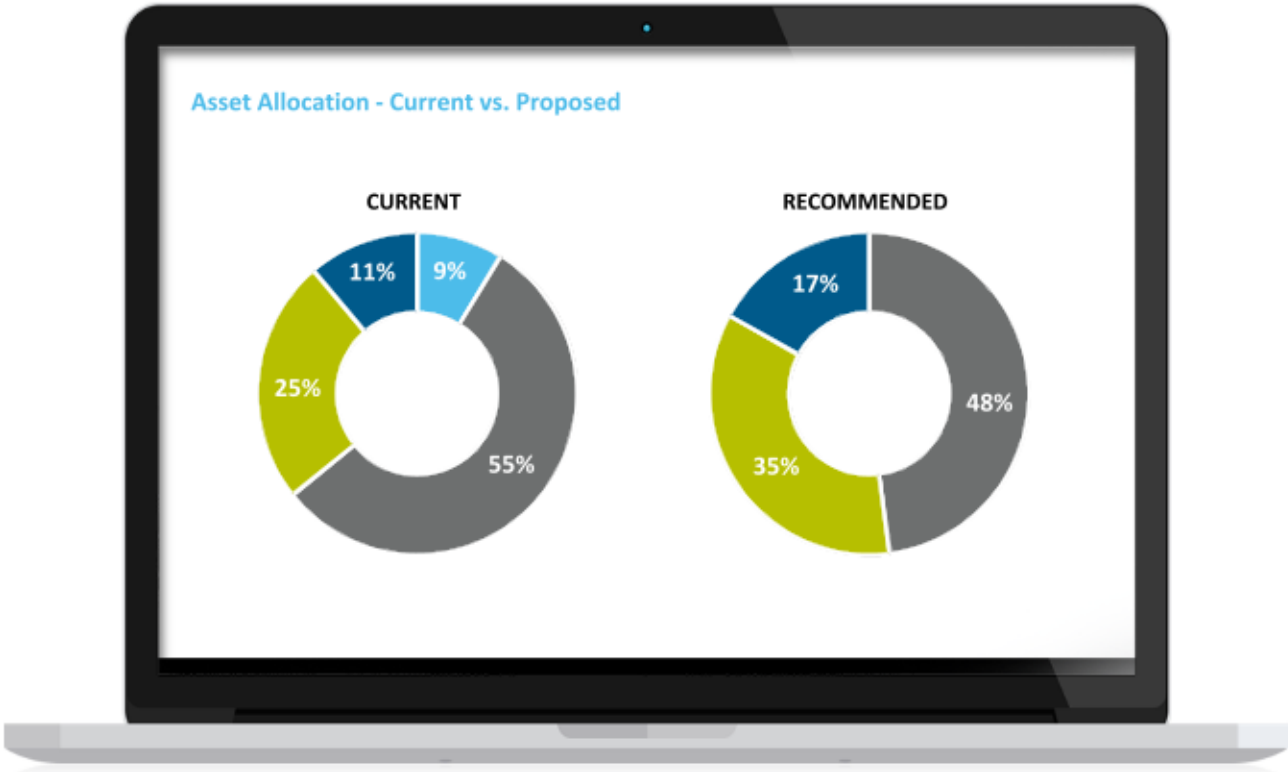
Past performance is no guarantee of future results. Estimates of future performance are based on assumptions that may not be realized. This material is not a solicitation of any offer to buy or sell any security or other financial instrument or to participate in any trading strategy. Please refer to important information, disclosures and qualifications at the end of this material.

Seeking to Optimize Asset Allocation

Our model scenarios seek recommendations for asset allocation – we can advise on various strategies and help you adjust when your goals or circumstances change

OUR GOALS-BASED SOLUTION CAN

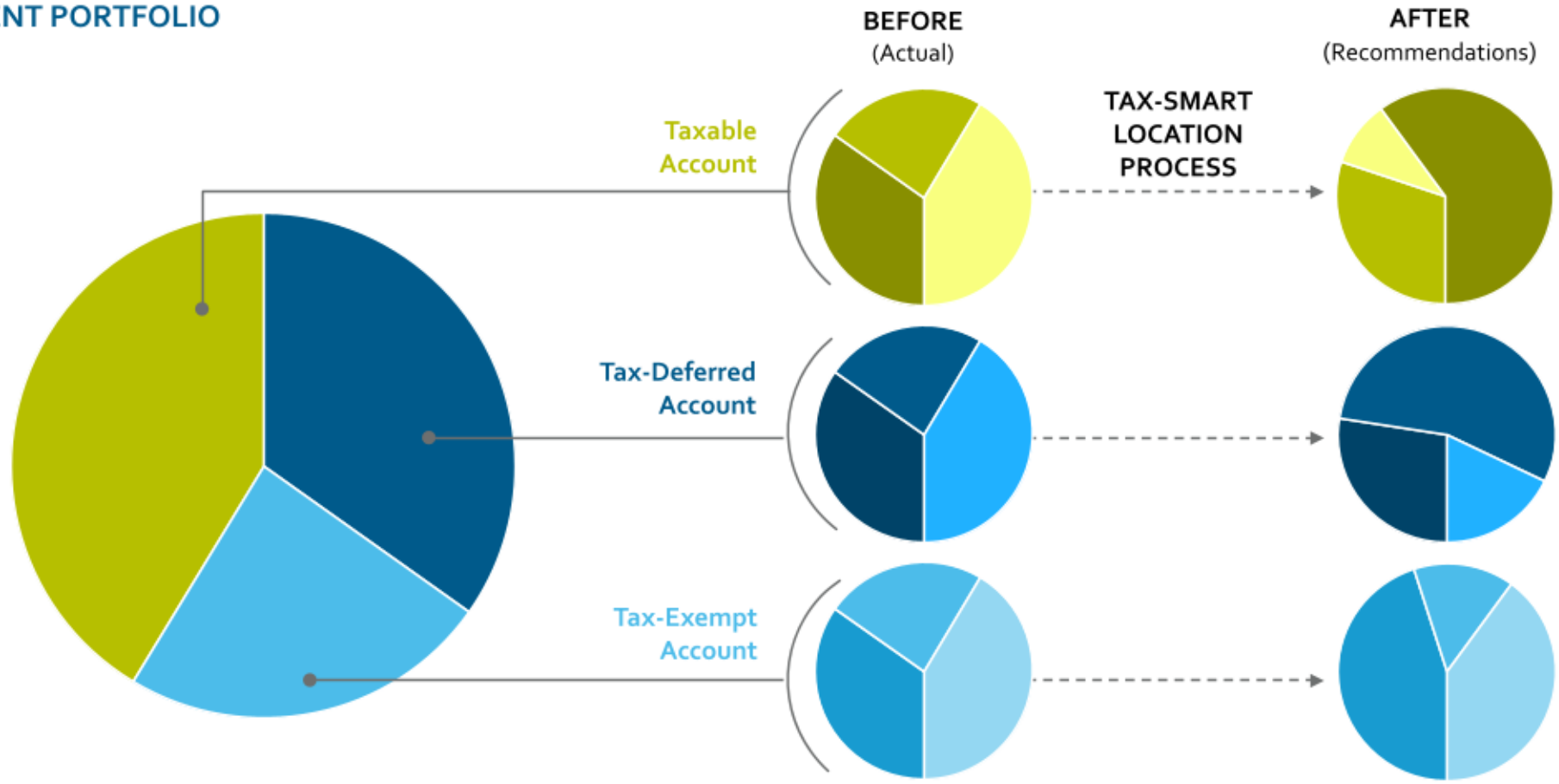
- Compare hypothetical scenarios based on different spending levels, asset allocation strategies or changes to other plan assumptions
- Help your Financial Advisor create a proposal based on what is appropriate for your goals
- Integrate Morgan Stanley's intellectual capital and our Global Investment Committee asset allocation guidance within your strategy



FOR ILLUSTRATIVE PURPOSES ONLY – not a recommendation to buy or sell

Tax-Efficient Investing

The available Tax-Smart Asset Location feature allows your Financial Advisor to use analytics that recommend securities be placed where they would be the most tax-efficient



Hypothetical illustration of Morgan Stanley's Goals Planning System platform.

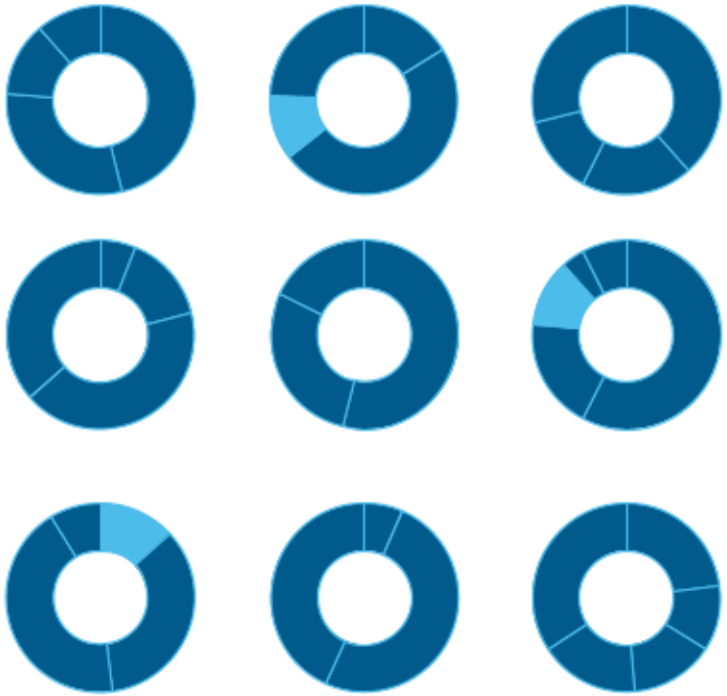
Past performance is no guarantee of future results. Estimates of future performance are based on assumptions that may not be realized. This material is not a solicitation of any offer to buy or sell any security or other financial instrument or to participate in any trading strategy. Please refer to important information, disclosures and qualifications at the end of this material.

Intelligent Withdrawals

We use state-of-the-art tools that recommend the most tax-efficient way to liquidate assets

Sophisticated technology to look across multiple accounts and products to identify the right combination of accounts and securities to help meet spending needs and seek to reduce your tax burden.

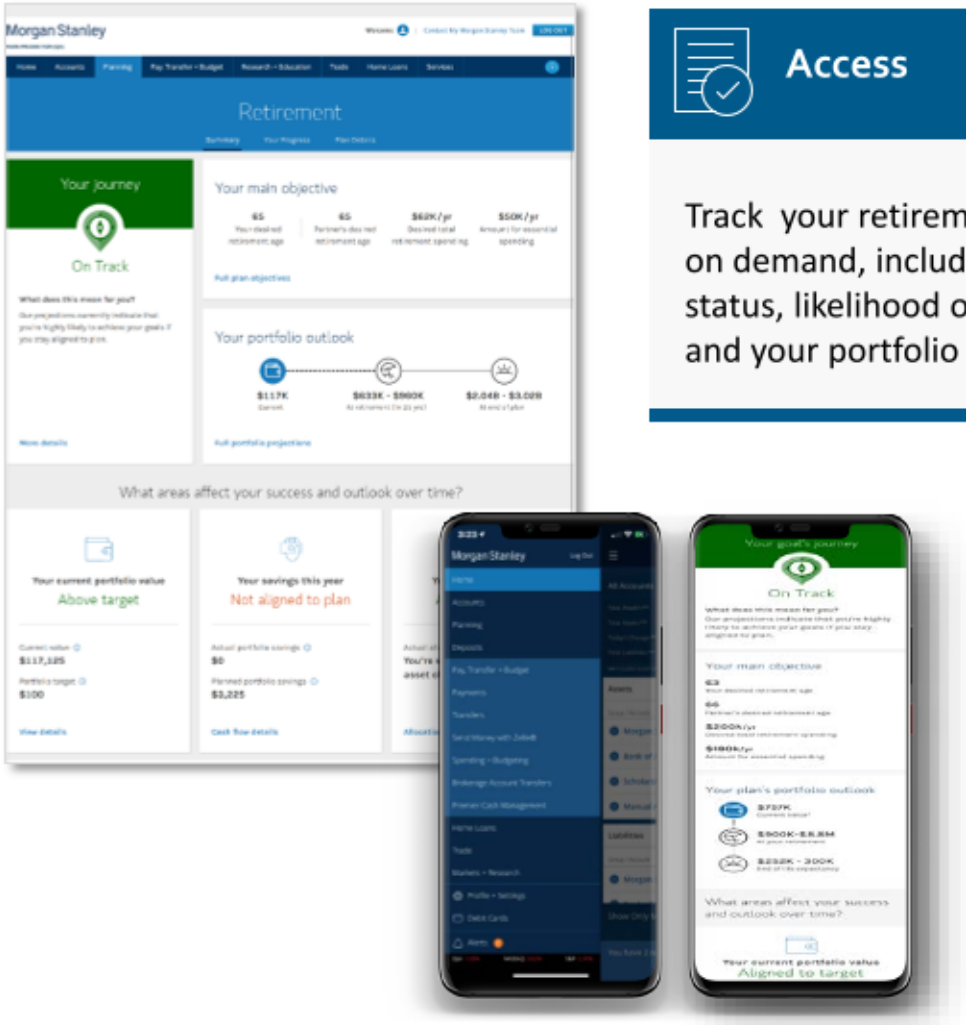
Analyze potential across accounts



Identify most advantageous combinations

Track Your Progress to Goals on Morgan Stanley Online

You are able to access and view your retirement goal plan's status and progress on Morgan Stanley Online (MSO) or Morgan Stanley Mobile (MSM).



Access

Track your retirement plan on demand, including your plan status, likelihood of success, and your portfolio projections

Engagement

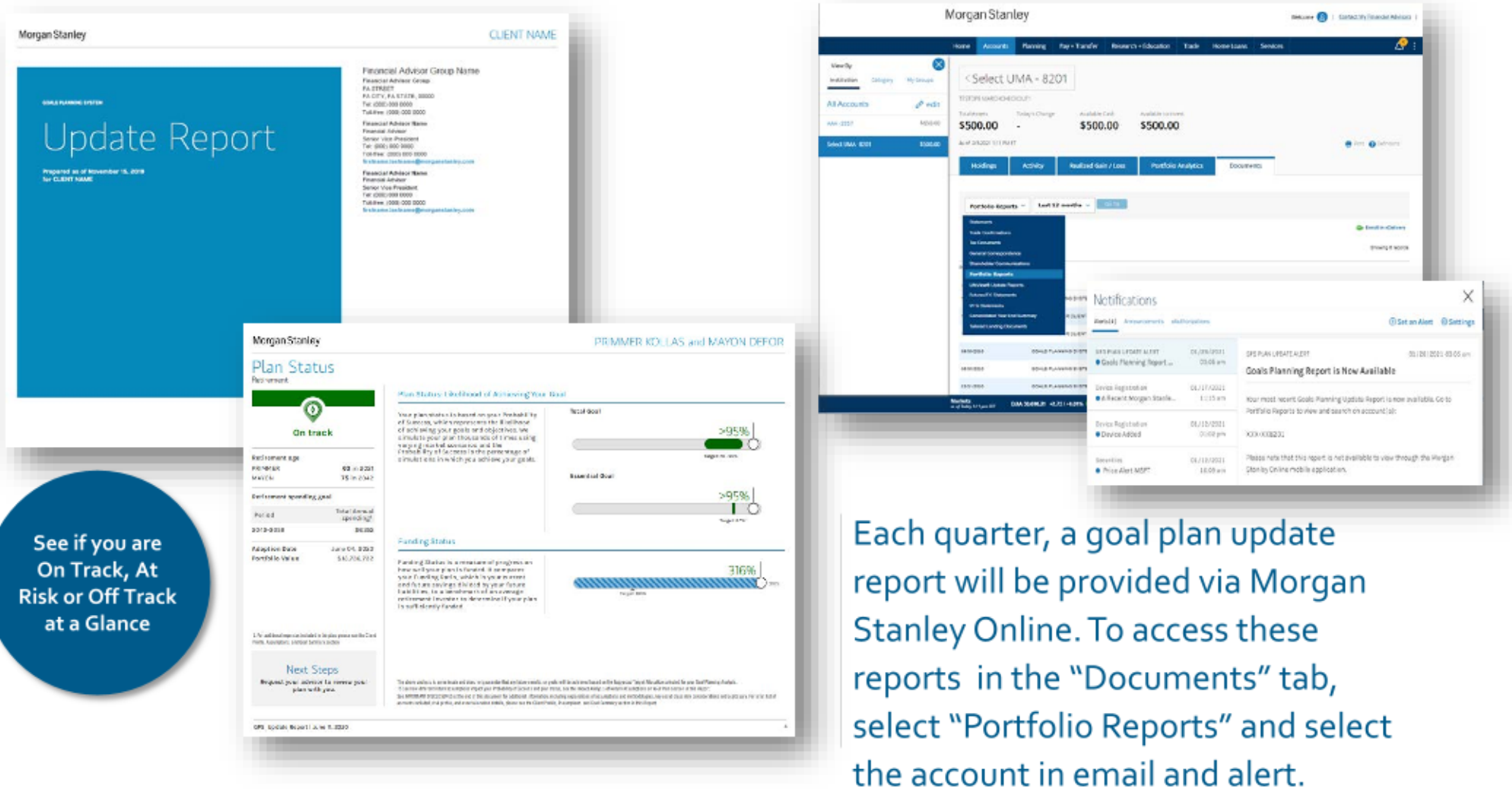
Understand your plan to achieve retirement and stay on top of your progress thru an intuitive digital experience

Connectivity

Integrate and coordinate your plan with other online features, such as Total Wealth View, and Spending and Budgeting

Reporting You Can Use

View Morgan Stanley Online and access quarterly reports to track progress toward your goals



Each quarter, a goal plan update report will be provided via Morgan Stanley Online. To access these reports in the "Documents" tab, select "Portfolio Reports" and select the account in email and alert.

Hypothetical Example for Illustrative Purposes Only.

Probability of Success Target Zone

See how your actual expenditures compare to your planned spending and whether your goal plan remains on target to succeed

Planned Net Cash Flow for this quarter

($25,000)

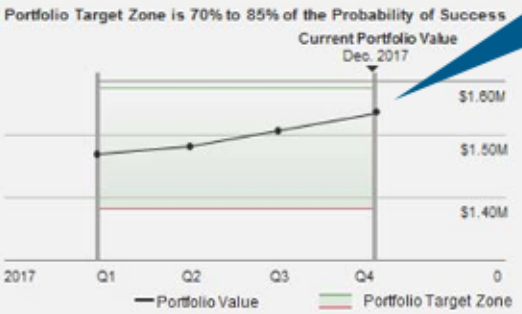
Actual Net Cash Flow for this quarter

($35,000)

You spent $10,000 more this quarter (Q4) than you had originally planned

Despite over spending in Q4, your Probability of Success is still within the Target Zone

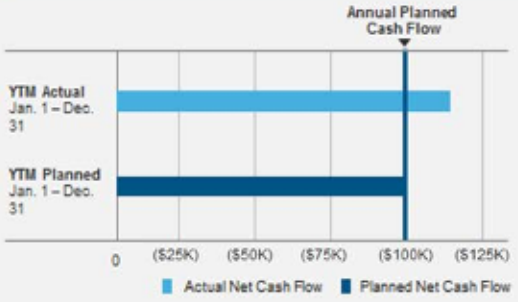
Asset Value Required Based on Your Plan



		Current Portfolio Value
Morgan Stanley Accounts	As of Dec. 31, 2017	$1,490,000
Externally Aggregated Accounts	Last Updated Dec. 31, 2017	$50,000
Manually Added Accounts	Last Updated Jan. 30,2017	$10,000
		$1,550,000

You spent $15,000 more this year than you had originally planned

Net Cash Flow



Period	Planned	Actual	Change
January - March	($25,000)	($25,000)	–
April - June	($25,000)	($30,000)	($5,000)
July - September	($25,000)	($25,000)	–
October - December	($25,000)	($35,000)	($10,000)
TOTALS	**($100,000)**	**($115,000)**	**($15,000)**

Portfolio Withdrawal Rate	
Actual Portfolio Withdrawal Rate Jan. 1 - Dec. 31, 2017	**7.18%**
Planned Portfolio Withdrawal Rate Jan. 1 - Dec. 31, 2017	**6.25%**
Portfolio Value As of Jan. 1, 2017	**$1,600,000**

Hypothetical Example for Illustrative Purposes Only.
Target Zone is 70% - 90% for clients over age 40 and 70% - 85% for clients age 40 and under

Impact of Current Net Cash Flow

The Goals Planning System quantifies and illustrates the impact so you can make informed decisions

Planned Net Cash Flow from January 1 - December 31, 2020

($100,000)

Actual Net Cash Flow from January 1 - December 31, 2020

($115,000)

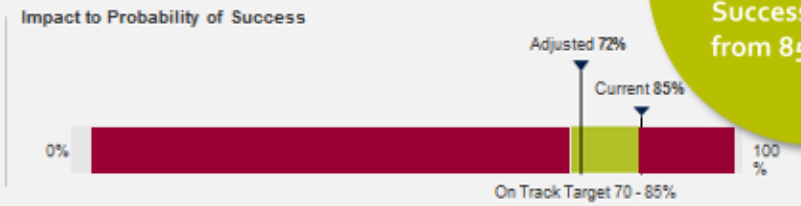
Actual Net Cash Flow is over plan by:

15%

You overspent by 15% in this calendar year

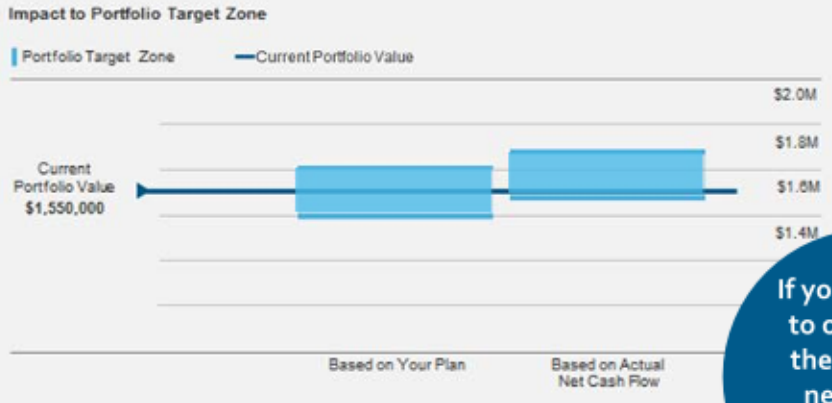
Impact to Your Plan Based on Your Current Net Cash Flow Behavior

The Probability of Success Impact illustration shows that the current Probability of Success will decrease from **85%** to **72%** if the current cash flow behavior is continued throughout the planning period.



If you continue to spend at this rate, your Probability of Success will drop from 85% to 72%

Portfolio Target Zone is the Portfolio value required to achieve **70% - 85%** Probability of Success. The illustration shows the impact to your plan if you continue this lifestyle for the remainder of your planning period.



If you continue to overspend then you will need more assets to cover your expenses

Hypothetical Example for Illustrative Purposes Only.
Target Zone is 70% - 90% for clients over age 40 and 70% - 85% for clients age 40 and under

Downside Risk Associated with Asset Allocation

The Goals Planning System demonstrates your portfolio's risk so you can assess your comfort level with potential losses associated with market disruptions and make adjustments to improve your overall situation

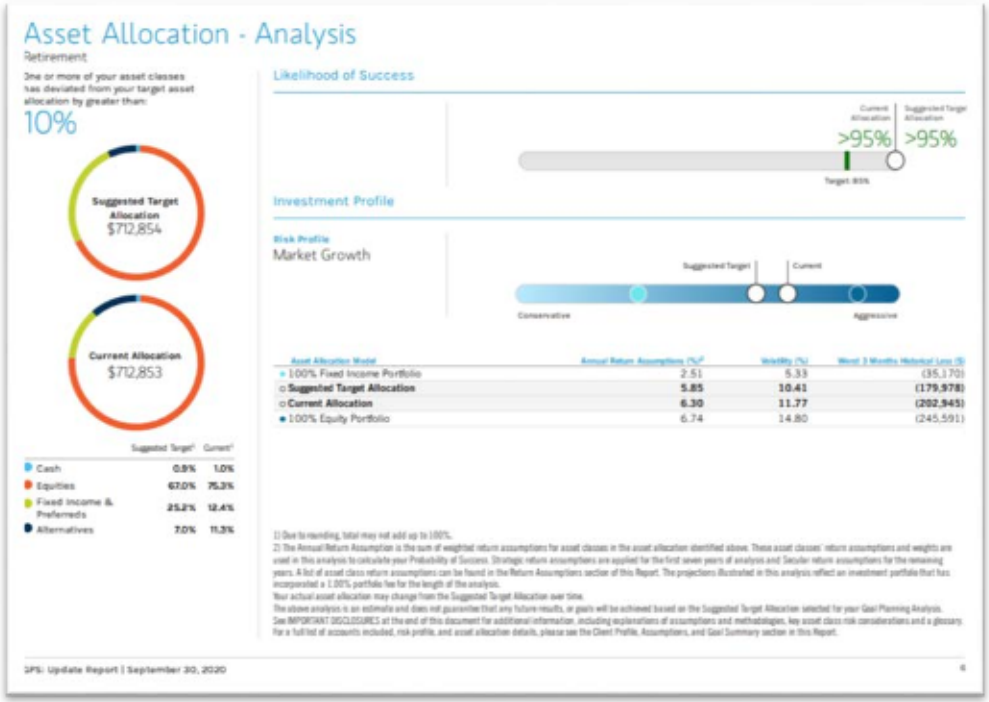
Target Allocation

($179,978)

Current Allocation

($202,945)

How much are you comfortable losing in a worst case market scenario?

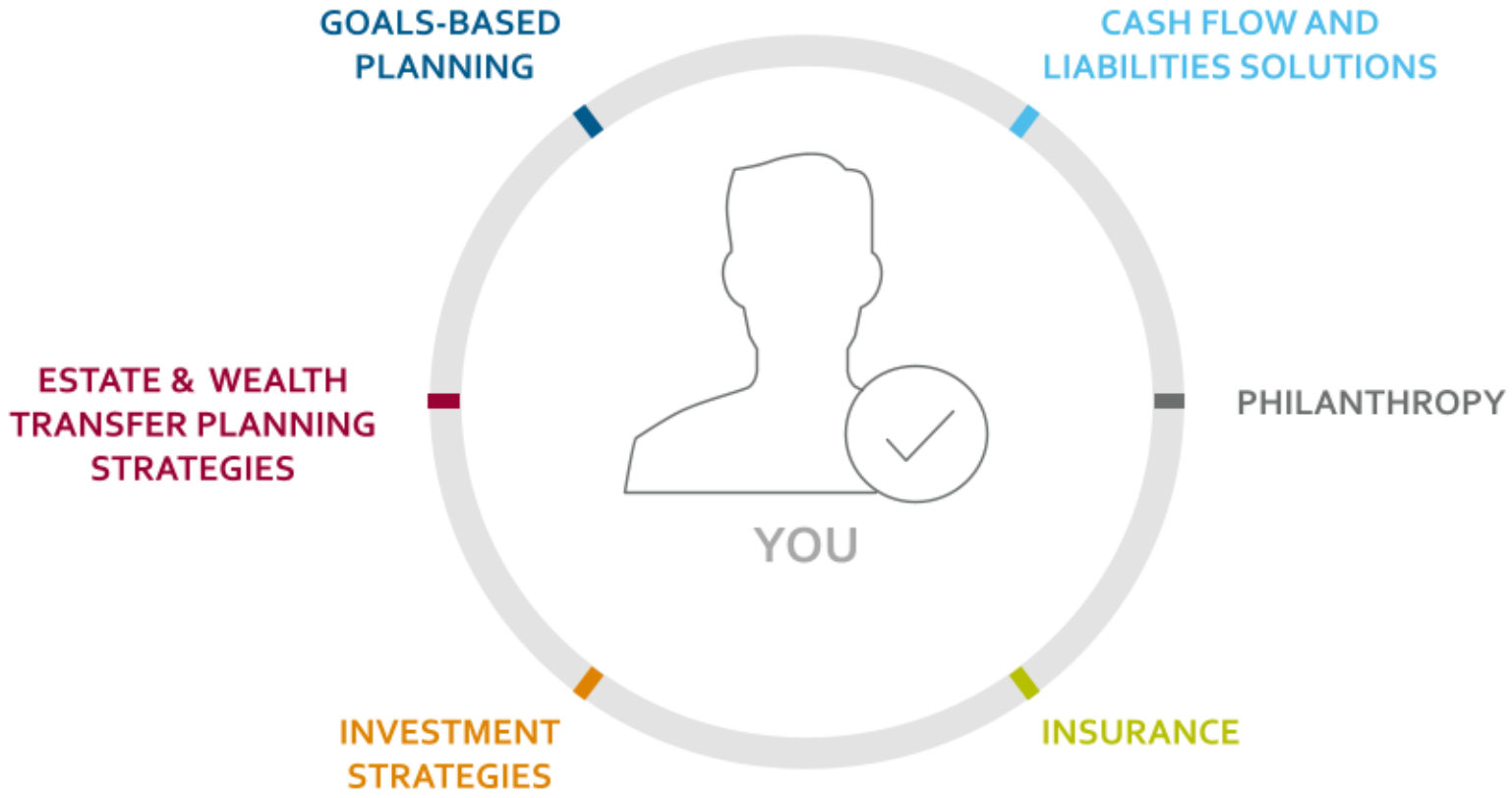


Your Current Allocation has significantly more downside risk than the Target

Hypothetical Example for Illustrative Purposes Only.
Target Zone is 70% - 90% for clients over age 40 and 70% - 85% for clients age 40 and under

Manage Your Financial Life & Beyond

Reaching your goals often involves going beyond investment advice—we provide a wide array of offerings and services centered on you and customized to help meet your needs, and provide access to specialists to help pursue specific goals



Tax laws are complex and subject to change. Morgan Stanley Smith Barney LLC, its affiliates and Morgan Stanley Financial Advisors do not provide tax or legal advice. Individuals are urged to consult their personal tax or legal advisors to understand the tax and legal consequences of any actions, including any implementation of any strategies or investments described herein. Morgan Stanley Smith Barney LLC offers insurance products in conjunction with its licensed insurance agency affiliates..

Past performance is no guarantee of future results. Estimates of future performance are based on assumptions that may not be realized. This material is not a solicitation of any offer to buy or sell any security or other financial instrument or to participate in any trading strategy. Please refer to important information, disclosures and qualifications at the end of this material.

We Are Dedicated to Helping You Meet Your Goals

In an increasingly complex and ever-changing world, we leverage deep expertise to create a goal plan that can help you adapt to your changing needs and helps keep you on track to reach your financial goals

RELATIONSHIPS YOU CAN TRUST

WORLD-CLASS IDEAS AND RESEARCH

INNOVATIVE PLATFORMS

PERIODIC REVIEW

Disclosure

Morgan Stanley Goals Planning System (GPS) is a focus on goals-based planning. Within this framework, we have a goals-based platform that includes a brokerage investment analysis tool (GPS Platform). While securities held in your investment advisory accounts may be included in the analysis, the reports generated from the GPS Platform are not financial plans nor constitute a financial planning service. A financial plan generally seeks to address a wide spectrum of your long-term financial needs, and can include recommendations about insurance, savings, tax and estate planning, and investments, taking into consideration your goals and situation, including anticipated retirement or other employee benefits. Morgan Stanley Smith Barney LLC ("Morgan Stanley") will only prepare a financial plan at your specific request using Morgan Stanley approved financial planning software. If you would like to have a financial plan prepared for you, please consult with a Morgan Stanley Financial Advisor.

To understand the differences between brokerage and advisory relationships, you should consult your Financial Advisor, or review our Understanding Your Brokerage and Investment Advisory Relationships brochure available at https://www.morganstanley.com/wealth-relationshipwithms/pdfs/understandingyourrelationship.pdf. Morgan Stanley's GPS Platform provides a snapshot of your current financial position and can help you to focus on your financial resources and goals, and to create a strategy designed to get you closer toward meeting your goals. Every individual's financial circumstances, needs and risk tolerances are different. The hypothetical projections in the reports are based on the methodology, estimates, and assumptions, as described in the reports, as well as personal data provided by you. Because the hypothetical results are calculated over many years, small changes can create large differences in potential future results. The reports should be considered working documents that can assist you with your objectives. Morgan Stanley makes no guarantees as to future results or that an individual's investment objectives will be achieved. The responsibility for implementing, monitoring and adjusting your investment plan rests with you. After your Financial Advisor delivers your report to you, if you so desire, your Financial Advisor can help you implement any part that you choose; however, you are not obligated to work with your Financial Advisor or Morgan Stanley.

Financial forecasts, rates of return, risk, inflation, and other assumptions may be used as the basis for illustrations generated by the Morgan Stanley GPS Platform. They should not be considered a guarantee of future performance or a guarantee of achieving overall financial objectives. All results use simplifying estimates and assumptions. No tool has the ability to accurately predict the future, eliminate risk or guarantee investment results. As investment returns, inflation, taxes, and other economic conditions vary from the assumptions used by the Morgan Stanley GPS Platform, your actual results will vary (perhaps significantly) from those presented.

You should note that investing in financial instruments carries with it the possibility of losses and that a focus on above-market returns exposes the portfolio to above-average risk. Performance aspirations are not guaranteed and are subject to market conditions. High volatility investments may be subject to sudden and large falls in value, and there could be a large loss on realization which could be equal to the amount invested.

IMPORTANT: The projections or other information provided by the Morgan Stanley GPS Platform regarding the likelihood of various investment outcomes (including any assumed rates of return and income) are hypothetical in nature, do not reflect actual investment results, and are not guarantees of future results. Morgan Stanley does not represent or guarantee that the projected returns or income will or can be attained.

Morgan Stanley and its Financial Advisors do not provide any tax/legal advice. Consult your own tax/legal advisor before making any tax or legal-related investment decisions.

Investment, insurance and annuity products offered through Morgan Stanley Smith Barney LLC are:

NOT FDIC INSURED | MAY LOSE VALUE | NOT BANK GUARANTEED | NOT A BANK DEPOSIT | NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY

Morgan Stanley Wealth Management is the trade name of Morgan Stanley Smith Barney LLC, a registered broker-dealer in the United States.

The sole purpose of this material is to inform, and it in no way is intended to be an offer or solicitation to purchase or sell any security, other investment or service, or to attract any funds or deposits. Investments mentioned may not be appropriate for all clients. Any product discussed herein may be purchased only after a client has carefully reviewed the offering memorandum and executed the subscription documents. Morgan Stanley Wealth Management has not considered the actual or desired investment objectives, goals, strategies, guidelines, or factual circumstances of any investor in any fund(s). Before making any investment, each investor should carefully consider the risks associated with the investment, as discussed in the applicable offering memorandum, and make a determination based upon their own particular circumstances, that the investment is consistent with their investment objectives and risk tolerance. Morgan Stanley Smith Barney LLC offers investment program services through a variety of investment programs, which are opened pursuant to written client agreements. Each program offers investment managers, funds and features that are not available in other programs; conversely, some investment managers, funds or investment strategies may be available in more than one program.

Morgan Stanley's investment advisory programs may require a minimum asset level and, depending on your specific investment objectives and financial position, may not be appropriate for you. Please see the Morgan Stanley Smith Barney LLC program disclosure brochure (the "Morgan Stanley ADV") for more information in the investment advisory programs available. The Morgan Stanley ADV is available at www.morganstanley.com/ADV.

Sources of Data. Information in this material in this report has been obtained from sources that we believe to be reliable, but we do not guarantee its accuracy, completeness or timeliness. Third-party data providers make no warranties or representations relating to the accuracy, completeness or timeliness of the data they provide and are not liable for any damages relating to this data. All opinions included in this material constitute the Firm's judgment as of the date of this material and are subject to change without notice. This material was not prepared by the research departments of Morgan Stanley & Co. LLC or Morgan Stanley Smith Barney LLC. Some historical figures may be revised due to newly identified programs, firm restatements, etc.

Global Investment Manager Analysis (GIMA) Focus List, Approved List and Tactical Opportunities List; Watch Policy. GIMA uses two methods to evaluate investment products in applicable advisory programs: **Focus** (and investment products meeting this standard are described as being on the Focus List) and **Approved** (and investment products meeting this standard are described as being on the Approved List). In general, Focus entails a more thorough evaluation of an investment product than Approved. Sometimes an investment product may be evaluated using the Focus List process but then placed on the Approved List instead of the Focus List. Investment products may move from the Focus List to the Approved List, or vice versa. GIMA may also determine that an investment product no longer meets the criteria under either process and will no longer be recommended in investment advisory programs (in which case the investment product is given a "Not Approved" status). GIMA has a '**Watch**" policy and may describe a Focus List or Approved List investment product as being on "Watch" if GIMA identifies specific areas that (a) merit further evaluation by GIMA and (b) may, but are not certain to, result in the investment product becoming "Not Approved." The Watch period depends on the length of time needed for GIMA to conduct its evaluation and for the investment manager or fund to address any concerns. Certain investment products on either the Focus List or Approved List may also be recommended for the **Tactical Opportunities List** based in part on tactical opportunities existing at a given time. The investment products on the Tactical Opportunities List change over time. For more information on the Focus List, Approved List, Tactical Opportunities List and Watch processes, please see the applicable Form ADV Disclosure Document for Morgan Stanley Wealth Management. Your Financial Advisor or Private Wealth Advisor can also provide upon request a copy of a publication entitled "Manager Selection Process."

The **Global Investment Committee** is a group of seasoned investment professionals who meet regularly to discuss the global economy and markets. The committee determines the investment outlook that guides our advice to clients. They continually monitor developing economic and market conditions, review tactical outlooks and recommend model portfolio weightings, as well as produce a suite of strategy, analysis, commentary, portfolio positioning suggestions and other reports and broadcasts.

The GIC Asset Allocation Models are not available to be directly implemented as part of an investment advisory service and should not be regarded as a recommendation of any Morgan Stanley investment advisory service. The GIC Asset Allocation Models do not represent actual trading or any type of account or any type of investment strategies and none of the fees or other expenses (e.g. commissions, mark-ups, mark-downs, advisory fees, fund expenses) associated with actual trading or accounts are reflected in the GIC Asset Allocation Models which, when compounded over a period of years, would decrease returns.

Adverse Active AlphaSM 2.0 is a patented screening and scoring process designed to help identify high-quality equity and fixed income managers with characteristics that may lead to future outperformance relative to index and peers. While highly ranked managers performed well as a group in our Adverse Active Alpha model back tests, not all of the managers will outperform. Please note that this data may be derived from back-testing, which has the benefit of hindsight. In addition, highly ranked managers can have differing risk profiles that might not be appropriate for all investors.

Our view is that Adverse Active Alpha is a good starting point and should be used in conjunction with other information. Morgan Stanley Wealth Management's qualitative and quantitative investment

manager due diligence process are equally important factors for investors when considering managers for use through an investment advisory program. Factors including, but not limited to, manager turnover and changes to investment process can partially or fully negate a positive Adverse Active Alpha ranking. Additionally, highly ranked managers can have differing risk profiles that might not be appropriate for all investors.

The proprietary **Value Score** methodology considers an active investment strategies' value proposition relative to its costs. From a historical quantitative study of several quantitative markers, Value Score measures perceived forward-looking benefit and computes (1) "fair value" expense ratios for most traditional investment managers across 40 categories and (2) managers' perceived "excess value" by comparing the fair value expense ratios to actual expense ratios. Managers are then ranked within each category by their excess value to assign a Value Score. Our analysis suggests that greater levels of excess value have historically corresponded to attractive subsequent performance.

For more information on the ranking models, please see Adverse Active AlphaSM 2.0: Scoring Active Managers According to Potential Alpha and Value Score: Scoring Fee Efficiency by Comparing Managers' "Fair Value" and Actual Expense Ratios. The whitepapers are available from your Financial Advisor or Private Wealth Advisor. ADVERSE ACTIVE ALPHA is a registered service mark of Morgan Stanley and/or its affiliates. U.S. Pat. No. 8,756,098 applies to the Adverse Active Alpha system and/or methodology.

Additionally, highly ranked managers can have differing risk profiles that might not be appropriate for all investors. For more information on AAA, please see the Adverse Active Alpha Ranking Model and Selecting Managers with Adverse Active Alpha whitepapers. The whitepaper are available from your Financial Advisor or Private Wealth Advisor. ADVERSE ACTIVE ALPHA is a registered service mark of Morgan Stanley and/or its affiliates. U.S. Pat. No. 8,756,098 applies to the Adverse Active Alpha system and/or methodology.

The Global Investment Manager Analysis (GIMA) Services Only Apply to Certain Investment Advisory Programs GIMA evaluates certain investment products for the purposes of some – but not all – of Morgan Stanley Smith Barney LLC's investment advisory programs (as described in more detail in the applicable Form ADV Disclosure Document for Morgan Stanley Wealth Management). If you do not invest through one of these investment advisory programs, Morgan Stanley Wealth Management is not obligated to provide you notice of any GIMA Status changes even though it may give notice to clients in other programs.

Strategy May Be Available as a Separately Managed Account or Mutual Fund Strategies are sometimes available in Morgan Stanley Wealth Management investment advisory programs both in the form of a separately managed account ("SMA") and a mutual fund. These may have different expenses and investment minimums. Your Financial Advisor or Private Wealth Advisor can provide more information on whether any particular strategy is available in more than one form in a particular investment advisory program. Generally, investment advisory accounts are subject to an annual asset-based fee (the "Fee") which is payable monthly in advance (some account types may be billed differently). In general, the Fee covers Morgan Stanley investment advisory services, custody of securities with Morgan Stanley, trade execution with or through Morgan Stanley or its affiliates, as well as compensation to any Morgan Stanley Financial Advisor.

In addition, each account that is invested in a program that is eligible to purchase certain investment products, such as mutual funds, will also pay a Platform Fee (which is subject to a Platform Fee offset) as described in the applicable ADV brochure. Accounts invested in the Select UMA program may also pay a separate Sub-Manager fee, if applicable.

If your account is invested in mutual funds or exchange traded funds (collectively "funds"), you will pay the fees and expenses of any funds in which your account is invested. Fees and expenses are charged directly to the pool of assets the fund invests in and are reflected in each fund's share price. These fees and expenses are an additional cost to you and would not be included in the Fee amount in your account statements. The advisory program you choose is described in the applicable Morgan Stanley Smith Barney LLC ADV Brochure, available at www.morganstanley.com/ADV.

Morgan Stanley or Executing Sub-Managers, as applicable, in some of Morgan Stanley's Separately Managed Account ("SMA") programs may effect transactions through broker-dealers other than Morgan Stanley or our affiliates. In such instances, you may be assessed additional costs by the other firm in addition to the Morgan Stanley and Sub-Manager fees. Those costs will be included in the net price of the security, not separately reported on trade confirmations or account statements. Certain Sub-Managers have historically directed most, if not all, of their trades to outside firms. Information provided by Sub-Managers concerning trade execution away from Morgan Stanley is summarized at: www.morganstanley.com/wealth/investmentsolutions/pdfs/adv/sotresponse.pdf. For more information on trading and costs, please refer to the ADV Brochure for your program(s), available at www.morganstanley.com/ADV, or contact your Financial Advisor / Private Wealth Advisor.

Conflicts of Interest: GIMA's goal is to provide professional, objective evaluations in support of the Morgan Stanley Wealth Management investment advisory programs. We have policies and procedures to help us meet this goal. However, our business is subject to various conflicts of interest. For example, ideas and suggestions for which investment products should be evaluated by GIMA come from a variety of sources, including our Morgan Stanley Wealth Management Financial Advisors and their direct or indirect managers, and other business persons within Morgan Stanley Wealth Management or its affiliates. Such persons may have an ongoing business relationship with certain investment managers or mutual fund companies whereby they, Morgan Stanley Wealth

Management or its affiliates receive compensation from, or otherwise related to, those investment managers or mutual funds. For example, a Financial Advisor may suggest that GIMA evaluates an investment manager or fund in which a portion of his or her clients' assets are already invested. While such a recommendation is permissible, GIMA is responsible for the opinions expressed by GIMA. Separately, certain strategies managed or sub-advised by us or our affiliates, including but not limited to MSIM and Eaton Vance Management ("EVM") and its investment affiliates, may be included in your account. See the conflicts of interest section in the applicable Form ADV Disclosure Document for Morgan Stanley Wealth Management for a discussion of other types of conflicts that may be relevant to GIMA's evaluation of managers and funds. In addition, Morgan Stanley Wealth Management, MS&Co., managers and their affiliates provide a variety of services (including research, brokerage, asset management, trading, lending and investment banking services) for each other and for various clients, including issuers of securities that may be recommended for purchase or sale by clients or are otherwise held in client accounts, and managers in various advisory programs. Morgan Stanley Wealth Management, managers, MS&Co., and their affiliates receive compensation and fees in connection with these services. Morgan Stanley Wealth Management believes that the nature and range of clients to which such services are rendered is such that it would be inadvisable to exclude categorically all of these companies from an account.

Morgan Stanley Wealth Management, managers, MS & Co., and their affiliates receive compensation and fees in connection with these services. Morgan Stanley Wealth Management believes that the nature and range of clients to which such services are rendered is such that it would be inadvisable to exclude categorically all of these companies from an account.

Morgan Stanley charges each fund family we offer a mutual fund support fee, also called a "revenue-sharing payment," on client account holdings in fund families according to a tiered rate that increases along with the management fee of the fund so that lower management fee funds pay lower rates than those with higher management fees.

Consider Your Own Investment Needs: The model portfolios and strategies discussed in the material are formulated based on general client characteristics including risk tolerance. This material is not intended to be an analysis of whether particular investments or strategies are appropriate for you or a recommendation, or an offer to participate in any investment. Therefore, clients should not use this material as the sole basis for investment decisions. They should consider all relevant information, including their existing portfolio, investment objectives, risk tolerance, liquidity needs and investment time horizon. Such a determination may lead to asset allocation results that are materially different from the asset allocation shown in this profile. Talk to your Financial Advisor about what would be an appropriate asset allocation for you, whether Morgan Stanley Pathway Funds is an appropriate program for you.

No obligation to notify – Morgan Stanley Wealth Management has no obligation to notify you when the model portfolios, strategies, or any other information, in this material changes.

For index, indicator and survey definitions referenced in this report please visit the following: https://www.morganstanley.com/wealth-investmentsolutions/wmir-definitions

The Morgan Stanley Pathway Funds, Firm Discretionary UMA Model Portfolios, and other asset allocation or any other model portfolios discussed in this material are available only to investors participating in Morgan Stanley Consulting Group advisory programs. For additional information on the Morgan Stanley Consulting Group advisory programs, see the applicable ADV brochure, available at www.morganstanley.com/ADV or from your Morgan Stanley Financial Advisor or Private Wealth Advisor. To learn more about the Morgan Stanley Pathway Funds, visit the Funds' website at https://www.morganstanley.com/wealth-investmentsolutions/cgcm. Consulting Group is a business of Morgan Stanley.

Morgan Stanley Pathway Program Asset Allocation Models There are model portfolios corresponding to five risk-tolerance levels available in the Pathway program. Model 1 is the least aggressive portfolio and consists mostly of bonds. As the model numbers increase, the models have higher allocations to equities and become more aggressive. Pathway is a mutual fund asset allocation program. In constructing the Pathway Program Model Portfolios, Morgan Stanley Wealth Management uses, among other things, model asset allocations produced by Morgan Wealth Management's Global Investment Committee (the "GIC"). The Pathway Program Model Portfolios are specific to the Pathway program (based on program features and parameters, and any other requirements of Morgan Stanley Wealth Management's Consulting Group). The Pathway Program Model Portfolios may therefore differ in some respects from model portfolios available in other Morgan Stanley Wealth Management programs or from asset allocation models published by the Global Investment Committee.

The type of mutual funds and ETFs discussed in this presentation utilizes nontraditional or complex investment strategies and/or derivatives. Examples of these types of funds include those that utilize one or more of the below noted investment strategies or categories or which seek exposure to the following markets: (1) commodities (e.g., agricultural, energy and metals), currency, precious metals; (2) managed futures; (3) leveraged, inverse or inverse leveraged; (4) bear market, hedging, long-short equity, market neutral; (5) real estate; (6) volatility (seeking exposure to the CBOE VIX Index). Investors should keep in mind that while mutual funds and ETFs may, at times, utilize nontraditional investment options and strategies, they should not be equated with unregistered privately offered alternative investments. Because of regulatory limitations, mutual funds and ETFs that seek alternative-like investment exposure must utilize a more limited investment universe. As a result, investment returns and portfolio characteristics of alternative mutual funds and ETFs may vary from traditional hedge funds pursuing similar investment objectives. Moreover, traditional hedge funds have limited liquidity with long "lock-up" periods allowing them to pursue investment strategies without having to factor in the need to meet client redemptions and ETFs trade on an exchange. On the

other hand, mutual funds typically must meet daily client redemptions. This differing liquidity profile can have a material impact on the investment returns generated by a mutual fund or ETF pursuing an alternative investing strategy compared with a traditional hedge fund pursuing the same strategy.

Nontraditional investment options and strategies are often employed by a portfolio manager to further a fund's investment objective and to help offset market risks. However, these features may be complex, making it more difficult to understand the fund's essential characteristics and risks, and how it will perform in different market environments and over various periods of time. They may also expose the fund to increased volatility and unanticipated risks particularly when used in complex combinations and/or accompanied by the use of borrowing or "leverage."

Please consider the investment objectives, risks, fees, and charges and expenses of mutual funds, ETFs, closed end funds, unit investment trusts, and variable insurance products carefully before investing. The prospectus contains this and other information about each fund. To obtain a prospectus, contact your Financial Advisor or Private Wealth Advisor or visit the Morgan Stanley website at www.morganstanley.com. Please read it carefully before investing.

Money Market Funds: You could lose money in money market funds. Although money market funds classified as government funds (i.e., money market funds that invest 99.5% of total assets in cash and/or securities backed by the U.S government) and retail funds (i.e., money market funds open to natural person investors only) seek to preserve value at $1.00 per share, they cannot guarantee they will do so. The price of other money market funds will fluctuate and when you sell shares they may be worth more or less than originally paid. Money market funds may impose a fee upon sale or temporarily suspend sales if liquidity falls below required minimums. During suspensions, shares would not be available for purchases, withdrawals, check writing or ATM debits. A money market fund investment is not insured or guaranteed by the Federal Deposit Insurance Corporation or other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Investors should carefully consider the investment objectives, risks, charges and expenses of a money market fund before investing. The prospectus contains this and other information about the money market fund. To obtain a prospectus, contact your Financial Advisor or visit the money market fund company's website. Please read the prospectus carefully before investing.

Exchange Funds are private placement vehicles that enable holders of concentrated single-stock positions to exchange those stocks for a diversified portfolio. Investors may benefit from greater diversification by exchanging a concentrated stock position for fund shares without triggering a taxable event. These funds are available only to qualified investors and may only be offered by Financial Advisors who are qualified to sell alternative investments. Before investing, investors should consider the following:
- Dividends are pooled
- Investors may forfeit their stock voting rights
- Investment may be illiquid for several years
- Investments may be leveraged or contain derivatives
- Significant early redemption fees may apply
- Changes to the U.S. tax code, which could be retroactive (potentially disallowing the favorable tax treatment of exchange funds)
- Investment risk and potential loss of principal

KEY ASSET CLASS CONSIDERATIONS AND OTHER RISKS

Investing in the markets entails the risk of market volatility. The value of all types of investments, including stocks, mutual funds, exchange-traded funds ("ETFs"), closed-end funds, and unit investment trusts, may increase or decrease over varying time periods. To the extent the investments depicted herein represent **international securities**, you should be aware that there may be additional risks associated with international investing, including foreign economic, political, monetary and/or legal factors, changing currency exchange rates, foreign taxes, and differences in financial and accounting standards. These risks may be magnified in **emerging markets and frontier markets**. Some funds also invest in foreign securities, which may involve currency risk. There is no assurance that the fund will achieve its investment objective. **Small- and mid-capitalization companies** may lack the financial resources, product diversification and competitive strengths of larger companies. In addition, the securities of small- and mid-capitalization companies may not trade as readily as, and be subject to higher volatility than, those of larger, more established companies. The value of **fixed income securities** will fluctuate and, upon a sale, may be worth more or less than their original cost or maturity value. Bonds are subject to interest rate risk, call risk, reinvestment risk, liquidity risk, and credit risk of the issuer. **High yield bonds** are subject to additional risks such as increased risk of default and greater volatility because of the lower credit quality of the issues. In the case of **municipal bonds**, income is generally exempt from federal income taxes. Some income may be subject to state and local taxes and to the federal alternative minimum tax. Capital gains, if any, are subject to tax. **Treasury Inflation Protection Securities' (TIPS)** coupon payments and underlying principal are automatically increased to compensate for inflation by tracking the consumer price index (CPI). While the real rate of return is guaranteed, TIPS tend to offer a low return. Because the return of TIPS is linked to inflation, TIPS may significantly underperform versus conventional U.S.

Treasuries in times of low inflation. There is no guarantee that investors will receive par if TIPS are sold prior to maturity. The returns on a portfolio consisting primarily of **environmental, social, and governance-aware investments ("ESG")** may be lower or higher than a portfolio that is more diversified or where decisions are based solely on investment considerations. Because ESG criteria exclude some investments, investors may not be able to take advantage of the same opportunities or market trends as investors that do not use such criteria. The companies identified and investment examples are for illustrative purposes only and should not be deemed a recommendation to purchase, hold or sell any securities or investment products. They are intended to demonstrate the approaches taken by managers who focus on ESG criteria in their investment strategy. There can be no guarantee that a client's account will be managed as described herein. **Options** and margin trading involve substantial risk and are not appropriate for all investors. Besides the general investment risk of holding securities that may decline in value and the possible loss of principal invested, **closed-end funds** may have additional risks related to declining market prices relative to net asset values (NAVs), active manager underperformance and potential leverage. Closed-end funds, unlike open-end funds, are not continuously offered. There is a one-time public offering and once issued, shares of closed-end funds are sold in the open market through a stock exchange. Shares of closed-end funds frequently trade at a discount from their NAV which may increase investors' risk of loss. The risk of loss due to this discount may be greater for investors expecting to sell their shares in a relatively short period after completion of the public offering. This characteristic is a risk separate and distinct from the risk that a closed-end fund's net asset value may decrease as a result of investment activities. NAV is total assets less total liabilities divided by the number of shares outstanding. At the time an investor purchases or sells shares of a closed-end fund, shares may have a market price that is above or below NAV. Portfolios that invest a large percentage of assets in only one industry **sector** (or in only a few sectors) are more vulnerable to price fluctuation than those that diversify among a broad range of sectors.

Structured Investments are complex and not appropriate for all investors. An investment in Structures Investments involve risks. These risks can include but are not limited to: (1) Fluctuations in the price, level or yield of underlying instruments, interest rates, currency values and credit quality, (2) Substantial or total loss of principal, (3) Limits on participation in appreciation of underlying instrument, (4) Limited liquidity, (5) Issuer credit risk and (6) Conflicts of Interest. There is no assurance that a strategy of using structured product for wealth preservation, yield enhancement, and/or interest rate risk hedging will meet its objectives.

Alternative investments may be either traditional alternative investment vehicles, such as hedge funds, fund of hedge funds, private equity, private real estate and managed futures or, non-traditional products such as mutual funds and exchange-traded funds that also seek alternative-like exposure but have significant differences from traditional alternative investments. Alternative investments often are speculative and include a high degree of risk. Investors could lose all or a substantial amount of their investment. Alternative investments are appropriate only for eligible, long-term investors who are willing to forgo liquidity and put capital at risk for an indefinite period of time. They may be highly illiquid and can engage in leverage and other speculative practices that may increase the volatility and risk of loss. Alternative Investments typically have higher fees than traditional investments. Investors should carefully review and consider potential risks before investing. Certain of these risks may include but are not limited to: Loss of all or a substantial portion of the investment due to leveraging, short-selling, or other speculative practices; Lack of liquidity in that there may be no secondary market for a fund; Volatility of returns; Restrictions on transferring interests in a fund; Potential lack of diversification and resulting higher risk due to concentration of trading authority when a single advisor is utilized; Absence of information regarding valuations and pricing; Complex tax structures and delays in tax reporting; Less regulation and higher fees than mutual funds; and Risks associated with the operations, personnel, and processes of the manager. Further, opinions regarding Alternative Investments expressed herein may differ from the opinions expressed by Morgan Stanley Wealth Management and/or other businesses/affiliates of Morgan Stanley Wealth Management.

Certain information contained herein may constitute forward-looking statements. Due to various risks and uncertainties, actual events, results or the performance of a fund may differ materially from those reflected or contemplated in such forward-looking statements. Clients should carefully consider the investment objectives, risks, charges, and expenses of a fund before investing.

Alternative investments involve complex tax structures, tax inefficient investing, and delays in distributing important tax information. Individual funds have specific risks related to their investment programs that will vary from fund to fund. Clients should consult their own tax and legal advisors as Morgan Stanley Wealth Management does not provide tax or legal advice.

Interests in alternative investment products are offered pursuant to the terms of the applicable offering memorandum, are distributed by Morgan Stanley Smith Barney LLC and certain of its affiliates, and (1) are not FDIC-insured, (2) are not deposits or other obligations of Morgan Stanley or any of its affiliates, (3) are not guaranteed by Morgan Stanley and its affiliates, and (4) involve investment risks, including possible loss of principal. Morgan Stanley Smith Barney LLC is a registered broker-dealer, not a bank.

A majority of Alternative Investment managers reviewed and selected by GIMA pay or cause to be paid an ongoing fee for distribution from their management fees to Morgan Stanley Wealth Management in connection with Morgan Stanley Wealth Management clients that purchase an interest in an Alternative Investment and in some instances pay these fees on the investments held by advisory clients. Morgan Stanley Wealth Management rebates such fees that are received and attributable to an Investment held by an advisory client and retains the fees paid in connection with investments held by brokerage clients. Morgan Stanley Wealth Management has a conflict of interest in offering alternative investments because Morgan Stanley Wealth Management or our affiliates, in most instances, earn more money in your account from your investments in alternative investments than from other investment options.

It should be noted that the majority of hedge fund indexes are comprised of hedge fund manager returns. This is in contrast to traditional indexes, which are comprised of individual securities in the various market segments they represent and offer complete transparency as to membership and construction methodology. As such, some believe that hedge fund index returns have certain biases that are not present in traditional indexes. Some of these biases inflate index performance, while others may skew performance negatively. However, many studies indicate that overall hedge fund index performance has been biased to the upside. Some studies suggest performance has been inflated by up to 260 basis points or more annually depending on the types of biases included and the time period studied. Although there are numerous potential biases that could affect hedge fund returns, we identify some of the more common ones throughout this paper.

Self-selection bias results when certain manager returns are not included in the index returns and may result in performance being skewed up or down. Because hedge funds are private placements, hedge fund managers are able to decide which fund returns they want to report and are able to opt out of reporting to the various databases. Certain hedge fund managers may choose only to report returns for funds with strong returns and opt out of reporting returns for weak performers. Other hedge funds that close may decide to stop reporting in order to retain secrecy, which may cause a downward bias in returns.

Survivorship bias results when certain constituents are removed from an index. This often results from the closure of funds due to poor performance, "blow ups," or other such events. As such, this bias typically results in performance being skewed higher. As noted, hedge fund index performance biases can result in positive or negative skew. However, it would appear that the skew is more often positive. While it is difficult to quantify the effects precisely, investors should be aware that idiosyncratic factors may be giving hedge fund index returns an artificial "lift" or upwards bias.

Hedge Funds of Funds and many funds of funds are private investment vehicles restricted to certain qualified private and institutional investors. They are often speculative and include a high degree of risk. Investors can lose all or a substantial amount of their investment. They may be highly illiquid, can engage in leverage and other speculative practices that may increase volatility and the risk of loss, and may be subject to large investment minimums and initial lockups. They involve complex tax structures, tax-inefficient investing and delays in distributing important tax information. Categorically, hedge funds and funds of funds have higher fees and expenses than traditional investments, and such fees and expenses can lower the returns achieved by investors. Funds of funds have an additional layer of fees over and above hedge fund fees that will offset returns. An investment in an **exchange-traded fund** involves risks similar to those of investing in a broadly based portfolio of equity securities traded on an exchange in the relevant securities market, such as market fluctuations caused by such factors as economic and political developments, changes in interest rates and perceived trends in stock and bond prices. An investment in a **target date portfolio** is subject to the risks attendant to the underlying funds in which it invests, in these portfolios the funds are the Consulting Group Capital Market funds. A target date portfolio is geared to investors who will retire and/or require income at an approximate year. The portfolio is managed to meet the investor's goals by the pre-established year or "target date." A target date portfolio will transition its invested assets from a more aggressive portfolio to a more conservative portfolio as the target date draws closer. An investment in the target date portfolio is not guaranteed at any time, including, before or after the target date is reached. **Managed futures** investments are speculative, involve a high degree of risk, use significant leverage, are generally illiquid, have substantial charges, subject investors to conflicts of interest, and are appropriate only for the risk capital portion of an investor's portfolio. Managed futures investments do not replace equities or bonds but rather may act as a complement in a well diversified portfolio. Managed Futures are complex and not appropriate for all investors.

Virtual Currency Products (Cryptocurrencies)

Buying, selling, and transacting in Bitcoin, Ethereum or other digital assets ("Digital Assets"), and related funds and products, is highly speculative and may result in a loss of the entire investment. Risks and considerations include but are not limited to:

- Digital Assets have only been in existence for a short period of time and historical trading prices for Digital Assets have been highly volatile. **The price of Digital Assets could decline rapidly, and investors could lose their entire investment.**

- Certain Digital Asset funds and products, allow investors to invest on a more frequent basis than investors may withdraw from the fund or product, and interests in such funds or products are generally not freely transferrable. This means that, particularly given the volatility of Digital Assets, an investor will have to bear any losses with respect to its investment for an extended period of time and will not be able to react to changes in the price of the Digital Asset once invested (for example, by seeking to withdraw) as quickly as when making the decision to invest. Such Digital Asset funds and products, are intended only for persons who are able to bear the economic risk of investment and who do not need liquidity with respect to their investments.

- Given the volatility in the price of Digital Assets, the net asset value of a fund or product that invests in such assets at the time an investor's subscription for interests in the fund or product is accepted may be significantly below or above the net asset value of the product or fund at the time the investor submitted subscription materials.

- Certain Digital Assets are not intended to function as currencies but are intended to have other use cases. These other Digital Assets may be subject to some or all of the risks and considerations set forth herein, as well as additional risks applicable to such Digital Assets. Buyers, sellers and users of such Digital Assets should thoroughly familiarize themselves with such risks and considerations before transacting in such Digital Assets.

- The value of Digital Assets may be negatively impacted by future legal and regulatory developments, including but not limited to increased regulation of such Digital Assets. Any such developments may make such Digital Assets less valuable, impose additional burdens and expenses on a fund or product investing in such assets or impact the ability of such a fund or product to continue to operate, which may materially decrease the value of an investment therein.

- Due to the new and evolving nature of digital currencies and the absence of comprehensive guidance, many significant aspects of the tax treatment of Digital Assets are uncertain. Prospective investors should consult their own tax advisors concerning the tax consequences to them of the purchase, ownership and disposition of Digital Assets, directly or indirectly through a fund or product, under U.S. federal income tax law, as well as the tax law of any relevant state, local or other jurisdiction.

- Over the past several years, certain Digital Asset exchanges have experienced failures or interruptions in service due to fraud, security breaches, operational problems or business failure. Such events in the future could impact any fund's or product's ability to transact in Digital Assets if the fund or product relies on an impacted exchange and may also materially decrease the price of Digital Assets, thereby impacting the value of your investment, regardless of whether the fund or product relies on such an impacted exchange.

- Although any Digital Asset product and its service providers have in place significant safeguards against loss, theft, destruction and inaccessibility, there is nonetheless a risk that some or all of a product's Digital Asset could be permanently lost, stolen, destroyed or inaccessible by virtue of, among other things, the loss or theft of the "private keys" necessary to access a product's Digital Asset.

- Investors in funds or products investing or transacting in Digital Assets may not benefit to the same extent (or at all) from "airdrops" with respect to, or "forks" in, a Digital Asset's blockchain, compared to investors who hold Digital Assets directly instead of through a fund or product. Additionally, a "fork" in the Digital Asset blockchain could materially decrease the price of such Digital Asset.

- Digital Assets are not legal tender, and are not backed by any government, corporation or other identified body, other than with respect to certain digital currencies that certain governments are or may be developing now or in the future. No law requires companies or individuals to accept digital currency as a form of payment (except, potentially, with respect to digital currencies developed by certain governments where such acceptance may be mandated). Instead, other than as described in the preceding sentences, Digital Asset products' use is limited to businesses and individuals that are willing to accept them. If no one were to accept digital currencies, virtual currency products would very likely become worthless.

- Platforms that buy and sell Digital Assets can be hacked, and some have failed. In addition, like the platforms themselves, digital wallets can be hacked, and are subject to theft and fraud. As a result, like other investors have, you can lose some or all of your holdings of Digital Assets.

- Unlike US banks and credit unions that provide certain guarantees of safety to depositors, there are no such safeguards provided to Digital Assets held in digital wallets by their providers or by regulators.

- Due to the anonymity Digital Assets offer, they have known use in illegal activity, including drug dealing, money laundering, human tracking, sanction evasion and other forms of illegal commerce. Abuses could impact legitimate consumers and speculators; for instance, law enforcement agencies could shut down or restrict the use of platforms and exchanges, limiting or shutting of entirely the ability to use or trade Digital Asset products.

- Digital Assets may not have an established track record of credibility and trust. Further, any performance data relating to Digital Asset products may not be verifiable as pricing models are not uniform.

- Investors should be aware of the potentially increased risks of transacting in Digital Assets relating to the risks and considerations, including fraud, theft, and lack of legitimacy, and other aspects and qualities of Digital Assets, before transacting in such assets.

- The exchange rate of virtual currency products versus the USD historically has been very volatile and the exchange rate could drastically decline. For example, the exchange rate of certain Digital

Assets versus the USD has in the past dropped more than 50% in a single day. Other Digital Assets may be affected by such volatility as well.

- Digital Asset exchanges have limited operating and performance histories and are not regulated with the same controls or customer protections available to more traditional exchanges transacting equity, debt, and other assets and securities. There is no assurance that a person/exchange who currently accepts a Digital Asset as payment will continue to do so in the future.

- The regulatory framework of Digital Assets is evolving, and in some cases is uncertain, and Digital Assets themselves may not be governed and protected by applicable securities regulators and securities laws, including, but not limited to, Securities Investor Protection Corporation coverage, or other regulatory regimes.

- Morgan Stanley Smith Barney LLC or its affiliates (collectively, "Morgan Stanley") may currently, or in the future, offer or invest in Digital Asset products, services or platforms. The proprietary interests of Morgan Stanley may conflict with your interests.

- The foregoing list of considerations and risks are not and do not purport to be a complete enumeration or explanation of the risks involved in an investment in any product or fund investing or trading in Digital Assets.

Asset allocation and diversification do not assure a profit or protect against loss in declining financial markets. Past performance is no guarantee of future results. Actual results may vary.

Rebalancing does not protect against a loss in declining financial markets. There may be a potential tax implication with a rebalancing strategy. Investors should consult with their tax advisor before implementing such a strategy.

Indices are unmanaged and investors cannot directly invest in them. They are not subject to expenses or fees and are often comprised of securities and other investment instruments the liquidity of which is not restricted. A particular investment product may consist of securities significantly different than those in any index referred to herein. Composite index results are shown for illustrative purposes only, generally do not represent the performance of a specific investment, may not, for a variety of reasons, be an appropriate comparison or benchmark for a particular investment and may not necessarily reflect the actual investment strategy or objective of a particular investment. Consequently, comparing an investment to a particular index may be of limited use.

To obtain **Tax-Management Services**, a client must complete the Tax-Management Form, and deliver the signed form to Morgan Stanley. For more information on Tax-Management Services,

including its features and limitations, please ask your Financial Advisor for the Tax Management Form. Review the form carefully with your tax advisor. Tax-Management Services: (a) apply only to equity investments in separate account sleeves of client accounts; (b) are not available for all accounts or clients; and (c) may adversely impact account performance. Tax-management services do not constitute tax advice or a complete tax-sensitive investment management program. There is no guarantee that tax-management services will produce the desired tax results.

When Morgan Stanley Smith Barney LLC, its affiliates and Morgan Stanley Financial Advisors and Private Wealth Advisors (collectively, "Morgan Stanley") provide "investment advice" regarding a retirement or welfare benefit plan account, an individual retirement account or a Coverdell education savings account ("Retirement Account"), Morgan Stanley is a "fiduciary" as those terms are defined under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and/or the Internal Revenue Code of 1986 (the "Code"), as applicable. When Morgan Stanley provides investment education, takes orders on an unsolicited basis or otherwise does not provide "investment advice", Morgan Stanley will not be considered a "fiduciary" under ERISA and/or the Code. For more information regarding Morgan Stanley's role with respect to a Retirement Account, please visit www.morganstanley.com/disclosures/dol. Tax laws are complex and subject to change. Morgan Stanley does not provide tax or legal advice. Individuals are encouraged to consult their tax and legal advisors (a) before establishing a Retirement Account, and (b) regarding any potential tax, ERISA and related consequences of any investments or other transactions made with respect to a Retirement Account. Individuals should consult their tax advisor for matters involving taxation and tax planning and their attorney for matters involving trust and estate planning, charitable giving, philanthropic planning and other legal matters.

Lifestyle Advisory Services: Products and services are provided by third party service providers, not Morgan Stanley Smith Barney LLC ("Morgan Stanley"). Morgan Stanley may not receive a referral fee or have any input concerning such products or services. There may be additional service providers for comparative purposes. Please perform a thorough due diligence and make your own independent decision.

This material is not a financial plan and does not create an investment advisory relationship between you and your Morgan Stanley Financial Advisor. We are not your fiduciary either under the

Employee Retirement Income Security Act of 1974 (ERISA) or the Internal Revenue Code of 1986, and any information in this report is not intended to be considered investment advice or a recommendation for either ERISA or Internal Revenue Code purposes and that (unless otherwise provided in a written agreement and/or as described at www.morganstanley.com/disclosures/dol) you remain solely responsible for your assets and all investment decisions with respect to your assets. Nevertheless, if Morgan Stanley or your Financial Advisor provides "investment advice," as that term is defined under Section 3(21) of ERISA, to you with respect to certain retirement, welfare benefit, or education savings account assets for a fee or other compensation, Morgan Stanley and/or your Financial Advisor will be providing such advice in its capacity as a fiduciary under ERISA and/or the Code. Morgan Stanley will only prepare a financial plan at your specific request using Morgan Stanley approved financial planning software.

A LifeView Financial Goal Analysis ("Financial Goal Analysis") or LifeView Financial Plan ("Financial Plan") is based on the methodology, estimates, and assumptions, as described in your report, as well as personal data provided by you. It should be considered a working document that can assist you with your objectives. Morgan Stanley makes no guarantees as to future results or that an individual's investment objectives will be achieved. The responsibility for implementing, monitoring and adjusting your Financial Goal Analysis or Financial Plan rests with you. After your Financial Advisor delivers your report to you, if you so desire, your Financial Advisor can help you implement any part that you choose; however, you are not obligated to work with your Financial Advisor or Morgan Stanley.

Important information about your relationship with your Financial Advisor and Morgan Stanley Smith Barney LLC when using LifeView Goal Analysis or LifeView Advisor. When your Financial Advisor prepares and delivers a Financial Goal Analysis (i.e., when using LifeView Goal Analysis), they will be acting in a brokerage capacity. When your Financial Advisor prepares a Financial Plan (i.e., when using LifeView Advisor), they will be acting in an investment advisory capacity with respect to the delivery of your Financial Plan. This Investment Advisory relationship will begin with the delivery of the Financial Plan and ends thirty days later, during which time your Financial Advisor can review the Financial Plan with you. To understand the differences between brokerage and advisory relationships, you should consult your Financial Advisor, or review our "Understanding Your Brokerage and Investment Advisory Relationships," brochure available at https://www.morganstanley.com/wealth-relationshipwithms/pdfs/understandingyourrelationship.pdf

We may act in the capacity of a broker or that of an advisor. As your broker, we are not your fiduciary and our interests may not always be identical to yours. Please consult with your Financial Advisor or Private Wealth Advisor to discuss our obligations to disclose to you any conflicts we may from time to time have and our duty to act in your best interest. We may be paid both by you and by others who compensate us based on what you buy. Our compensation, including that of your Financial Advisor or Private Wealth Advisor, may vary by product and over time.

Investment and services offered through Morgan Stanley Smith Barney LLC, Member SIPC.

Annuities and insurance products are offered in conjunction with Morgan Stanley Smith Barney LLC's licensed insurance agency affiliates. Not all products and services discussed herein are available through Morgan Stanley Smith Barney LLC's licensed insurance agency affiliates.

Since **life and long-term care insurance** are medically underwritten, you should not cancel your current policy until your new policy is in force. A change to your current policy may incur charges, fees and costs. A new policy will require a medical exam. Surrender charges may be imposed and the period of time for which the surrender charges apply may increase with a new policy. You should consult with your own tax advisors regarding your potential tax liability on surrenders.

The Morgan Stanley Global Impact Funding Trust, Inc. ("MS GIFT, Inc.") is an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986, as amended that sponsors a donor advised fund program. MS Global Impact Funding Trust ("MS GIFT") is a donor-advised fund. Morgan Stanley Smith Barney LLC provides investment management and administrative services to MS GIFT. Back office administration provided by RenPSG, an unaffiliated charitable gift administrator.

529 Plans - Investors should carefully read the Program Disclosure statement, which contains more information on investment options, risk factors, fees and expenses, and possible tax consequences before purchasing a 529 plan. You can obtain a copy of the Program Disclosure Statement from the 529 plan sponsor or your Financial Advisor. Assets can accumulate and be withdrawn federally tax-free only if they are used to pay for qualified expenses. Earnings on nonqualified distributions will be subject to income tax and a 10% federal income tax penalty. Contribution limits vary by state. Refer to the individual plan for specific contribution guidelines. Before investing, investors should consider whether tax or other benefits are only available for investments in the investor's home state 529 college savings plan. If an account owner or the beneficiary resides in or pays income taxes to a state that offers its own 529 college savings or pre-paid tuition plan (an "In-State Plan"), that state may offer state or local tax benefits. These tax benefits may include deductible contributions, deferral of taxes on earnings and/or tax-free withdrawals. In addition, some states waive or discount fees or offer other benefits for state residents or taxpayers who participate in the In -State Plan. An account owner may be denied any or all state or local tax benefits or expense reductions by investing in another state's plan (an "Out-of-State Plan"). In addition, an account owner's state or locality may seek to recover the value of tax benefits (by assessing income or penalty taxes) should an account owner rollover or transfer assets from an In-State Plan to an Out-of-State Plan. While state and local tax consequences and plan expenses are not the only factors to

consider when investing in a 529 Plan, they are important to an account owner's investment return and should be taken into account when selecting a 529 plan.

Morgan Stanley Smith Barney LLC ("Morgan Stanley") is the manager of the **Morgan Stanley National Advisory 529 Plan** and is responsible for its administration, distribution and investment management. Morgan Stanley does not provide tax and/or legal advice to investors in the 529 Plan. Investors should consult their personal tax advisor for tax-related matters and their attorney for legal matters. For more information please see the Morgan Stanley National Advisory 529 Plan Description and the applicable Morgan Stanley ADV brochure at www. morganstanley.com/adv.

The Morgan Stanley National Advisory 529 Plan is a proprietary offering available exclusively to Morgan Stanley advisory account clients. The Plan is not transferable to other intermediaries.

The Morgan Stanley National Advisory 529 Plan. The North Carolina State Education Assistance Authority (the "Authority") is an instrumentality of the State of North Carolina sponsoring the Morgan Stanley National Advisory 529 Plan, and the 529 Plan is a component of the Parental Savings Trust Fund established by the General Assembly of North Carolina. Neither the Authority, the State of North Carolina nor any other affiliated public entity or any other public entity is guaranteeing the principal or earnings in any account. Contributions or accounts may lose value and nothing stated herein, the 529 Plan Description and Participation Agreement or any other account documentation shall be construed to create any obligation of the Authority, the North Carolina State Treasurer, the State of North Carolina, or any agency or instrumentality of the State of North Carolina to guarantee for the benefit of any parent, other interested party, or designated beneficiary the rate of return or other return for any contribution to the Parental Savings Trust Fund and the 529 Plan.

The Morgan Stanley National Advisory 529 Plan Description contains more information on investment options, risk factors, fees and expenses, and potential tax consequences, which should be carefully considered before investing. Investors can obtain a 529 Plan Description from their Financial Advisor and should read it carefully before investing.

Investments in the 529 Plan are not FDIC-insured, nor are they deposits or guaranteed by a bank or any other entity, so an individual may lose money through such investments.

Investors should consider many factors before deciding which 529 plan is appropriate. Some of these factors include: the plan's investment options and the historical investment performance of these options, the plan's flexibility and features, the reputation and expertise of the plan's investment manager, plan contribution limits and the federal and state tax benefits associated with an investment in the plan. Some states, for example, offer favorable tax treatment and other benefits to their residents only if they invest in the state's own qualified tuition program. Investors should determine their home state's tax treatment of 529 plans when considering whether to choose an in-state or out-of-state plan. Investors should consult with their tax or legal advisor before investing in any 529 plan or contact their state tax division for more information.

Morgan Stanley Smith Barney LLC does not accept appointments, nor will it act as a trustee, but it will provide access to trust services through an appropriate third -party corporate trustee.

The trust services referenced herein are provided by the third parties listed who are not affiliated with Morgan Stanley. Neither Morgan Stanley nor its affiliates are the provider of such trust services and will not have any input or responsibility concerning a client's eligibility for, or the terms and conditions associated with these trust services. Neither Morgan Stanley nor its affiliates shall be responsible for content of any advice or services provided by the unaffiliated third parties listed herein. Morgan Stanley or its affiliates may participate in transactions on a basis separate from the referral of clients to these third parties and may receive compensation in connection with referrals made to them.

Trusts are not necessarily appropriate for all clients. There are risks and considerations which may outweigh any potential benefits. Establishing a trust will incur fees and expenses which may be substantial. Trusts often incur ongoing administrative fees and expenses such as the services of a corporate trustee or tax professional.

The Portfolio Analysis report ("Report") is generated by Morgan Stanley Smith Barney LLC's ("Morgan Stanley") Portfolio Risk Platform. The assumptions used in the Report incorporate portfolio risk and scenario analysis employed by BlackRock Solutions ("BRS"), a financial technology and risk analytics provider that is independent of Morgan Stanley. BRS' role is limited to providing risk analytics to Morgan Stanley, and BRS is not acting as a broker-dealer or investment adviser nor does it provide investment advice with respect to the Report. Morgan Stanley has validated and adopted the analytical conclusions of these risk models.

Any recommendations regarding external accounts/holdings are asset allocation only and do not include security recommendations. Transitioning from a brokerage to an advisory relationship may not be appropriate for some clients.

IMPORTANT: The projections or other information provided in the Report regarding the likelihood of various investment outcomes (including any assumed rates of return and income) are hypothetical

in nature, do not reflect actual investment results, and are not guarantees of future results. Hypothetical investment results have inherent limitations.
- There are frequently large differences between hypothetical and actual results.
- Hypothetical results do not represent actual results and are generally designed with the benefit of hindsight.
- They cannot account for all factors associated with risk, including the impact of financial risk in actual trading or the ability to withstand losses or to adhere to a particular trading strategy in the face of trading losses.
- There are numerous other factors related to the markets in general or to the implementation of any specific strategy that cannot be fully accounted for in the preparation of hypothetical risk results and all of which can adversely affect actual performance.

Morgan Stanley cannot give any assurances that any estimates, assumptions or other aspects of the risk analyses will prove correct. They are subject to actual known and unknown risks, uncertainties and other factors that could cause actual results to differ materially from those shown in a Report. The information is as of the date of the Report or as otherwise noted within the Report. Morgan Stanley expressly disclaims any obligation or undertaking to update or revise any statement or other information contained in a Report to reflect any change in past results, future expectations or circumstances upon which that statement or other information is based.

The Morgan Stanley Digital Vault ("Digital Vault") is accessible to clients with dedicated Financial Advisors. Documents shared via the Digital Vault should be limited to those relevant to your Morgan Stanley account relationship. Uploading a document to the Digital Vault does not obligate us to review or take any action on it, and we will not be liable for any failure to act upon the contents of such document. Please contact your Financial Advisor or Branch Management to discuss the appropriate process for providing the document to us for review. If you maintain a Trust or entity account with us, only our certification form will govern our obligations for such account. Please refer to the Morgan Stanley Digital Vault terms and conditions for more information.

Information related to your external accounts is provided for informational purposes only. It is provided by third parties, including the financial institutions where your external accounts are held. Morgan Stanley does not verify that the information is accurate and makes no representation or warranty as to its accuracy, timeliness, or completeness. Additional information about the features and services offered through Total Wealth View are available on the Total Wealth View site on Morgan Stanley Online and also in the Total Wealth View Terms and Conditions of Use.

Eaton Vance and Parametric Portfolio Associates are businesses of Morgan Stanley Investment Management and are affiliated with Morgan Stanley Wealth Management.

Lending products and securities-based loans are provided by Morgan Stanley Smith Barney LLC, Morgan Stanley Private Bank, National Association or Morgan Stanley Bank, N.A, as applicable.

Borrowing against securities may not be appropriate for everyone. You should be aware that there are risks associated with a securities-based loan, including possible maintenance calls on short notice, and that market conditions can magnify any potential for loss. For details, please see the important disclosures below.

Important Risk Information for Securities Based Lending: You need to understand that: (1) Sufficient collateral must be maintained to support your loan(s) and to take future advances; (2) You may have to deposit additional cash or eligible securities on short notice; (3) Some or all of your securities may be sold without prior notice in order to maintain account equity at required maintenance levels. You will not be entitled to choose the securities that will be sold. These actions may interrupt your long-term investment strategy and may result in adverse tax consequences or in additional fees being assessed; (4) Morgan Stanley Bank, N.A., Morgan Stanley Private Bank, National Association or Morgan Stanley Smith Barney LLC (collectively referred to as "Morgan Stanley") reserves the right not to fund any advance request due to insufficient collateral or for any other reason except for any portion of a securities based loan that is identified as a committed facility ; (5) Morgan Stanley reserves the right to increase your collateral maintenance requirements at any time without notice; and (6) Morgan Stanley reserves the right to call securities based loans at any time and for any reason.

With the exception of a margin loan, the proceeds from securities based loan products may not be used to purchase, trade, or carry margin stock (or securities, with respect to Express CreditLine); repay margin debt that was used to purchase, trade or carry margin stock (or securities, with respect to Express CreditLine); and cannot be deposited into a Morgan Stanley Smith Barney LLC or other brokerage account.

To be eligible for a securities based loan, a client must have a brokerage account at Morgan Stanley Smith Barney LLC that contains eligible securities, which shall serve as collateral for the securities based loan.

The lending products described are separate and distinct, and are not connected in any way. The ability to qualify for one product is not connected to an individual's eligibility for another.

Liquidity Access Line ("LAL") is a securities based loan/line of credit product, the lender of which is either Morgan Stanley Private Bank, National Association or Morgan Stanley Bank, N.A., as applicable, each an affiliate of Morgan Stanley Smith Barney LLC. All LAL loans/lines of credit are subject to the underwriting standards and independent approval of Morgan Stanley Private Bank, National Association or Morgan Stanley Bank, N.A., as applicable. LAL loans/lines of credit may not be available in all locations. Rates, terms and conditions are subject to change without notice. To be eligible for an LAL loan/line of credit, a client must have a brokerage account at Morgan Stanley Smith Barney LLC that contains eligible securities, which shall serve as collateral for the LAL. In conjunction with establishing an LAL loan/line of credit, an LAL facilitation account will also be opened in the client's name at Morgan Stanley Smith Barney LLC at no charge. Other restrictions may apply. The information contained herein should not be construed as a commitment to lend. Morgan Stanley Private Bank, National Association and Morgan Stanley Bank, N.A. are Members FDIC that are primarily regulated by the Office of the Comptroller of the Currency. **The proceeds from a non-purpose LAL loan/line of credit (including draws and other advances) may not be used to purchase, trade, or carry margin stock; repay margin debt that was used to purchase, trade, or carry margin stock; and cannot be deposited into a Morgan Stanley Smith Barney LLC or other brokerage account.**

Clients may be responsible for the fees of a third party law firm engaged to review complex transactions (e.g., review of trust agreements). Clients may also be charged a fee for the issuance of a letter of credit, for prepayment of principal on fixed rate advances, and upon a client's request for certain cash management services (e.g., duplicate statement or check re-order).

Clients may be responsible for the fees of a third party law firm engaged by Morgan Stanley Private Bank, National Association or Morgan Stanley Bank, N.A., as applicable, to review complex LAL transactions (e.g., review of trust agreements). Clients will also be charged a fee for the issuance of a letter of credit, for prepayment of principal on fixed rate advances, and upon a client's request for certain cash management services (e.g., duplicate statement or check re-order).

Borrower shall pay Morgan Stanley Private Bank, National Association or Morgan Stanley Bank, N.A. ("Bank"), as applicable, a prepayment fee if any portion of the principal on a Fixed Rate Advance is prepaid prior to the applicable Scheduled Payment Date(s), regardless of the reason that the Fixed Rate Advance is prepaid, and including, without limitation, as a result of a demand by the Bank or liquidation of collateral by the Bank. The Bank, in its sole discretion, can make a Variable Rate Advance and apply the proceeds to such prepayment fee. Interest will accrue on the unpaid portion of the debited amount at a variable interest rate until the amount is paid in full.

Residential mortgage loans/home equity lines of credit are offered by Morgan Stanley Private Bank, National Association, an affiliate of Morgan Stanley Smith Barney LLC. With the exception of the pledged-asset feature, an investment relationship with Morgan Stanley Smith Barney LLC does not have to be established or maintained to obtain the residential mortgage products offered by Morgan Stanley Private Bank, National Association. All residential mortgage loans/home equity lines of credit are subject to the underwriting standards and independent approval of Morgan Stanley Private Bank, National Association. Rates, terms, and programs are subject to change without notice. Residential mortgage loans/home equity lines of credit may not be available in all states; not available in Guam, Puerto Rico and the U.S. Virgin Islands. Other restrictions may apply. The information contained herein should not be construed as a commitment to lend. Morgan Stanley Private Bank, National Association is an Equal Housing Lender and Member FDIC that is primarily regulated by the Office of the Comptroller of the Currency. Nationwide Mortgage Licensing System Unique Identifier #663185. **The proceeds from a residential mortgage loan (including draws and advances from a home equity line of credit) are not permitted to be used to purchase, trade, or carry eligible margin stock; repay margin debt that was used to purchase, trade, or carry margin stock; or to make payments on any amounts owed under the note, loan agreement, or loan security agreement; and cannot be deposited into a Morgan Stanley Smith Barney LLC or other brokerage account.**

Through the pledged-asset feature offered by Morgan Stanley Private Bank, National Association, the applicant(s) or third party pledgor (collectively "Client") may be able to pledge eligible securities in lieu of a full or partial cash down payment or in connection with a refinance mortgage loan. To be eligible for the pledged-asset feature a Client must have a brokerage account at Morgan Stanley Smith Barney LLC. If the value of the pledged securities in the account drops below the agreed-upon level stated in the loan documents, a Client may be required to deposit additional securities or other collateral (such as cash) to stay in compliance with the terms of the mortgage loan. If a Client does not deposit additional securities or other collateral, the Client's pledged securities may be sold to satisfy the Client's obligation, and the Client will not be entitled to choose which assets will be sold. Borrowing against securities may not be appropriate for everyone. In deciding whether the pledged-asset feature is appropriate, a Client should consider, among other things, the degree to which he or she is comfortable subjecting his or her investment in a home to the fluctuations of the securities market. The pledged-asset feature is not available in all states. Other restrictions may apply.

Interest-only loans enable borrowers to make monthly payments of only the accrued monthly interest on the loan during the introductory interest-only period. Once that period ends, borrowers must make monthly payments of principal and interest for the remaining loan term, and payments will be substantially higher than the interest-only payments. During the interest-only period, the total interest that the borrower will be obligated to pay will vary based on the amount of principal paid down , if any. If a borrower makes just an interest-only payment, and no payment of principal, the

total interest payable by the borrower during the interest-only period will be greater than the total interest that a borrower would be obligated to pay on a traditional loan of the same interest rate having principal-and-interest payments. In making comparisons between an interest-only loan and a traditional loan, borrowers should carefully review the terms and conditions of the various loan products available and weigh the relative merits of each type of loan product appropriately.

The interest rate and payments on an adjustable rate mortgage ("ARM") loan may increase over the life of a loan as interest is fixed for a specified period and then will adjust periodically thereafter. The annual percentage rate may increase after consummation of the loan.

3/6M, 5/6M, 7/6M, 10/6M adjustable rate mortgage ("ARM") loans are based on the Secured Overnight Financing Rate ("SOFR") 30-Day Average.

Relationship-based pricing offered by Morgan Stanley Private Bank, National Association is based on the value of clients', or their immediate family members' (i.e., grandparents, parents, and children) eligible assets (collectively "Household Assets") held within accounts at Morgan Stanley Smith Barney LLC. To be eligible for relationship-based pricing, Household Assets must be maintained within appropriate eligible accounts prior to the closing date of the residential mortgage loan. Relationship-based pricing is not available on conforming loans.

The Morgan Stanley Debit Card is issued by Morgan Stanley Private Bank, National Association pursuant to a license from Mastercard International Incorporated. Mastercard and Maestro are registered trademarks of Mastercard International Incorporated. The third-party trademarks and service marks contained herein are the property of their respective owners. Investments and services offered through Morgan Stanley Smith Barney LLC, Member SIPC.

Certain terms, conditions, restrictions and exclusions apply. Please refer to the Morgan Stanley Debit Card Terms and Conditions at http://www.morganstanley.com/debitcardterms for additional information.

The Morgan Stanley American Express Card portfolio consists of three cards: The Platinum Card from American Express Exclusively for Morgan Stanley, the Morgan Stanley Blue Cash Preferred American Express Card, and the Morgan Stanley Credit Card.

The Platinum Card from American Express exclusively for Morgan Stanley and the Morgan Stanley Blue Cash Preferred American Express Card are available for acquisition, and eligible clients are invited to apply. Existing Morgan Stanley Credit Card members may continue to enjoy the benefits of their card, but this product is no longer available for acquisition.

The Platinum Card® from American Express exclusively for Morgan Stanley is only available for clients who have an Eligible Account with Morgan Stanley Smith Barney LLC.

The Morgan Stanley Blue Cash Preferred® Card is only available for clients who have an Eligible Account with Morgan Stanley Smith Barney LLC or its eligible affiliates, including but not limited to E*TRADE Securities LLC.

An "Eligible Account" is a brokerage account (i) held in your name, (ii) held by a trust where you are both the grantor and trustee of such trust, or (iii) held as a beneficial owner of a personal holding company, a non-operating limited liability company, a non-operating limited partnership, or a similar legal entity. Eligibility is subject to change. American Express may cancel your Card Account and participation in this program, if you do not maintain an Eligible Account.

The Platinum Card® from American Express exclusively for Morgan Stanley and the Morgan Stanley Blue Cash Preferred® Card are issued by American Express National Bank, not Morgan Stanley Smith Barney LLC. Services and rewards for the Cards are provided by Morgan Stanley Smith Barney LLC, American Express or other third parties. Restrictions and other limitations apply. See the terms and conditions for the Cards for details. Clients are urged to review fully before applying.

Morgan Stanley, its affiliates, and Morgan Stanley Financial Advisors and employees are not in the business of providing tax or legal advice. Clients should speak with their tax advisor regarding the potential tax implications of the Rewards Program upon their specific circumstances.

The Platinum Card® from American Express Exclusively for Morgan Stanley and the Morgan Stanley Blue Cash Preferred® American Express Card are issued by American Express National Bank. ©2022 American Express National Bank.

American Express may share information about your Card Account with Morgan Stanley in support of Morgan Stanley programs and services. For information as to how Morgan Stanley will use your Card Account data please visit http://www.morganstanley.com/wealth/investmentsolutions/pdfs/adv/mssb_privacynotice.pdf.

The CashPlus Account is a brokerage account offered through Morgan Stanley Smith Barney LLC. Conditions and restrictions apply. Please refer to the CashPlus Account Disclosure Statement at https://www.morganstanley.com/wealthdisclosures/cashplusaccountdisclosurestatement.pdf.

The qualifying criteria to avoid the monthly account fee for all CashPlus Accounts in an Account Link Group (ALG) is: an additional eligible Morgan Stanley investment account (that may include additional fees), one Morgan Stanley Online enrollment; for Premier CashPlus account $2,500 monthly deposit or $25,000 Average BDP Daily Balance; for Platinum CashPlus account $5,000 monthly deposit and $25,000 Average BDP Daily Balance. For more information, please refer to the CashPlus Account Disclosure Statement at https://www.morganstanley.com/wealth-disclosures/cashplusaccountdisclosurestatement.pdf.

CashPlus Accounts receive SIPC coverage for securities and free credit balances and cash swept into the Bank Deposit Program receives FDIC insurance, both up to applicable limits.

Securities Investor Protection Corporation ("SIPC") — Morgan Stanley Smith Barney LLC is a member of SIPC, which protects securities of its customers up to $500,000 (including $250,000 for claims for cash). Losses due to market fluctuation are not protected by SIPC. To obtain information about SIPC, including an explanatory SIPC brochure, contact SIPC at 1-202-371-8300 or visit www.sipc.org.

Federal Deposit Insurance Corporation ("FDIC") — Cash balances swept into deposit accounts at participating banks in the Bank Deposit Program are protected by FDIC Insurance up to applicable FDIC limits. FDIC insurance is a federal government program administered by the Federal Deposit Insurance Corporation. This insurance covers bank deposits held in checking accounts, savings accounts, certificates of deposits and money market deposits (not money market funds). This insurance comes into play in the event of a bank failure and covers client cash up to a total of $250,000 per bank, for each "insurable capacity" (e.g., each individual, joint, etc.). It does not cover investment products that are not deposits, such as mutual funds, annuities, life insurance policies, stocks or bonds. Refer to https://www.fdic.gov for additional details.

The Active Assets Account is a brokerage account offered through Morgan Stanley Smith Barney LLC.

Under the Bank Deposit Program, generally cash balances held in an account(s) at Morgan Stanley Smith Barney LLC are automatically deposited into an interest-bearing FDIC-insured deposit account(s) at Morgan Stanley Bank, N.A. and/or Morgan Stanley Private Bank, National Association, each a national bank, member FDIC, and an affiliate of Morgan Stanley Smith Barney LLC. Detailed information on federal deposit insurance coverage is available on the FDIC's website (https://www.fdic.gov/deposit/deposits/).

Under the Savings and Preferred Savings programs ("Savings"), Morgan Stanley Smith Barney LLC makes available interest-bearing FDIC insured deposit accounts(s) at either Morgan Stanley Private Bank, National Association or Morgan Stanley Bank, N.A., each a national bank, Member FDIC, and an affiliate of Morgan Stanley Smith Barney LLC, as selected by the client. Deposits placed in Savings are eligible for FDIC insurance up to $250,000 (including principal and interest) per depositor, per each bank selected by the client for all deposits held in the same insurable capacity (the Maximum Applicable Deposit Insurance Amount). All deposits per bank held in the same insurable capacity will be aggregated for purposes of the Maximum Applicable Deposit Insurance Amount, including deposits maintained through the Bank Deposit Program. The client is responsible for monitoring the total amount held with each bank. The bank also reserves the right to offer promotional rates from time to time. Detailed information on federal deposit insurance coverage is available on the FDIC's website (https://www.fdic.gov/deposit/deposits/). **The Savings programs are not intended for clients who need to have frequent access to funds and those funds will not be automatically accessed to reduce a debit or margin loan in your brokerage account. Withdrawals from an account in Savings are limited to 10 transactions per calendar month, and any withdrawal or transfer over the limit in any one calendar month will be subject to an excess withdrawal fee.**

Reserved clients and CashPlus accounts are eligible for unlimited global ATM fee rebates. All other clients are eligible for up to $200 in annual global ATM fee rebates.

While Morgan Stanley will always make transferred and deposited funds available immediately for investment purposes, we may not make all transferred or deposited funds immediately available for withdrawal. Funds deposited by check or funds transfer may be delayed depending on certain circumstances, such as dollar value, account status, etc., and could be held for up to six business days. Please contact your Financial Advisor or Private Wealth Advisor for additional information and/or review the Fund Availability Policy by signing into your Morgan Stanley Online account.

To review the Bank Deposit Program Disclosure Statement refer to https://www.morganstanley.com/wealth-investmentstrategies/pdf/BDP_disclosure.pdf

Mobile check deposits are subject to certain terms and conditions. Checks must be drawn on a U.S. Bank.

Send Money with Zelle® is available on the Morgan Stanley Mobile App for iPhone and Android. Enrollment is required and dollar and frequency limits may apply. Domestic fund transfers must be made from an eligible account at Morgan Stanley Smith Barney LLC (Morgan Stanley) to a US-based account at another financial institution. Morgan Stanley maintains arrangements with JP Morgan Chase Bank, N.A. and UMB Bank, N.A. as NACHA-participating depository financial institutions for the processing of transfers on Zelle®. Data connection required, and message and data rates may apply, including those from your communications service provider. Must have an eligible account in the U.S. to use Zelle®. Transactions typically occur in minutes when the recipient's email address or U.S. mobile number is already enrolled with Zelle®. See the Send Money with Zelle® terms for details.

Zelle® and the Zelle® related marks are wholly owned by Early Warning Services, LLC and are used herein under license. Morgan Stanley is not affiliated with Zelle®.

Electronic payments arrive to the payee within 1-2 business days, check payments arrive to the payee within 5 business days. Same-day and overnight payments are available for an additional fee within the available payment timeframes.

The Morgan Stanley Mobile App is currently available for iPhone® and iPad® from the App Store® and Android™ on Google Play™. Standard messaging and data rates from your provider may apply. Subject to device connectivity.

Apple®, the Apple logo, iPhone®, iPad®, and iPad Air® are trademarks of Apple Inc., registered in the US and other countries. Apple Pay™ and iPad mini™ are trademarks of Apple Inc. App Store is a service mark of Apple Inc. Android and Google Play are trademarks of Google Inc.

Cash management and lending products and services are provided by Morgan Stanley Smith Barney LLC, Morgan Stanley Private Bank, National Association or Morgan Stanley Bank, N.A, as applicable.

The information provided herein is not intended to address any particular matter and may not apply depending on the context, as all clients' circumstances are unique.

Morgan Stanley Smith Barney LLC is a registered Broker/Dealer, Member SIPC, and not a bank. Where appropriate, Morgan Stanley Smith Barney LLC has entered into arrangements with banks and other third parties to assist in offering certain banking related products and services.

Investment, insurance and annuity products offered through Morgan Stanley Smith Barney LLC are: NOT FDIC INSURED | MAY LOSE VALUE | NOT BANK GUARANTEED | NOT A BANK DEPOSIT | NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY

CRC 4662476 (9/2022)

LAW FIRM, LLC
Attorney (ID #)
Email address
Address
Phone:
Attorneys for

Party Name, Plaintiff, v. **Party Name,** Defendant	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: FAMILY PART COUNTY DOCKET NO. FM- Civil Action **AFFIDAVIT OF ATTORNEY SERVICES IN SUPPORT OF PLAINTIFF/DEFENDANY COUNSEL FEE APPLICATION**

I, **Attorney**, of full age, hereby certify as follows:

1. I am an attorney at law of the State of New Jersey and a partner of the law firm of . I have been the partner in this firm charged with primary responsibility for this matter and designated trial counsel at this firm since . As such, I am personally familiar with the facts and proceedings herein.

(1) Education and Experience Narrative. A true and correct copy of my professional resume is annexed hereto at **Exhibit A,** which more thoroughly addresses my specific qualifications to perform the services reflected in this firm's invoices.

A. R. 5:3-5 Retainer Agreement

2. ***Client*** executed an initial Retainer Agreement with this firm on , 2025, consistent with the requirements of R. 5:3-5. A true and correct copy of the Retainer Agreement is annexed hereto as **Exhibit B**.

3. During the course of the representation, this firm invoiced ***Client*** under File No. 00011 for a total of hours since inception of the matter on , totaling fees in the amount of $. A true and correct copy of ***Client's*** billing activity with this firm is annexed hereto as **Exhibit C.**

B. R. 4:42-9(b) Generally.

4. The within Affidavit of Services is submitted pursuant to R. 4:42-9(b). ***Client*** requests a counsel fee award in the total amount of the fees and disbursements she has paid to counsel in this matter thus far. The total amount of fees and disbursements ***Client*** incurred with this firm from through is $.

5. Paraprofessionals. From time to time paralegals have performed tasks such as creating tables of discovery, preparing exhibits and similar delegated tasks at the rate of $xxx.00 per hour. No portion of any fee claimed for the attorney's services duplicates in any way the fees claimed by the attorney for paraprofessional services rendered to the client.

6. The Statement of Fees Received required by R. 4:42-9(c) is set forth at Section C herein. A Statement of Outstanding Fees and Disbursements is set forth at Section D. The RPC 1.5(a) reasonableness factors are addressed herein at Section E. The R. 5:3-5(a) factors are addressed herein at Section F; and R. 5:3-5(c) factors are addressed at Section G.

C. Statement of Fees Received (R. 4:42-9(c)).

7. ***Client*** has paid fees to this firm in the amount of $XXX and disbursements in the amount of $XXX), totaling $XXX in fees and costs from the inception of the engagement through her last payment on .

D. Outstanding Fees and Disbursements

Client has paid her balance in full to this firm through conclusion of the trial on .

E. RPC 1.5(a)

Client fees are "reasonable" under the RPC 1.5(a) factors:

1. The time and labor required by this firm to provide competent counsel to ***Client*** is set forth in detail in the Activity and Billing Report at **Exhibit C**. The complex nature of this matter required substantive skills, knowledge, effort and experience to properly bring the matter to conclusion, including, among other things, the following: interaction with expert witnesses; conducting discovery, including issuing subpoenas for financial information and taking the deposition of the adverse party; addressing domestic violence issues; successfully mediating and settling complex equitable distribution and alimony issues; and in preparing and trying the custody/removal and parenting time claims with six witness over the course of seven days.

2. It was both likely and apparent to ***Client*** that my acceptance of the particular employment of her representation in a complex divorce involving equitable distribution; alimony; child custody; removal of children out of state; parenting time; and child support, precluded me from committing the equivalent time and effort to other matters and clients. Since , I have committed over XXX billable hours to this matter, exclusive of substantial time and effort that I did not bill to the client. This singular matter required an exceptional level of time and commitment, and the client was aware of and appreciated that commitment.

3. My billable hourly rate is $XXX. My billable hourly rate is highly competitive to lawyers similarly situated in this geographic region with similar family law litigation experience whereby rates range from approximately $475.00 to $675.00 per hour.

4. In addition to the custody and parenting time issues, the parties addressed equitable distribution of marital assets with a value in excess of $XXXX; and we resolved Plaintiff's alimony claim based upon a marital lifestyle of approximately $XXXX per month.

5. The were no time constraints unique to this matter imposed by the court or by the client.

6. My professional resume is annexed hereto as Exhibit A. It sets forth my education; professional experience; membership in professional organizations; and my legal speaking and publishing efforts.

7. This firm billed this matter on an hourly basis; the fee was not fixed or contingent.

F. R. 5:3-5(a).

The Retainer Agreement, annexed hereto as **Exhibit B**, complies with the requirements set forth under R 5:3-5(a), including the following factors:

(1) a description of legal services anticipated to be rendered;

(2) a description of the legal services not encompassed by the agreement, such as real estate transactions, municipal court appearances, tort claims, appeals, and domestic violence proceedings;

(3) the method by which the fee will be computed;

(4) the amount of the initial retainer and how it will be applied;

(5) when bills are to be rendered, which shall be no less frequently than once every ninety days, provided that services have been rendered during that period; when payment is to be made; whether interest is to be charged, provided, however, that the running of interest shall not commence prior to thirty days following the rendering of the bill; and whether and in what manner the initial retainer is required to be replenished;

(6) the name of the attorney having primary responsibility for the client's representation and that attorney's hourly rate; the hourly rates of all other attorneys who may provide legal services; whether rate increases are agreed to, and, if so, the frequency and notice thereof required to be given to the client;

(7) a statement of the expenses and disbursements for which the client is responsible and how they will be billed;

(8) the effect of counsel fees awarded on application to the court pursuant to paragraph (c) of this rule;

(9) the right of the attorney to withdraw from the representation, pursuant to paragraph (e) of this rule, if the client does not comply with the agreement; and

(10) the availability of Complementary Dispute Resolution (CDR) programs including but not limited to mediation and arbitration.

8. R. 5:3-5(c).

Client's fees are allowable in this family action pursuant to the requirements of R. 4:42-9 and the factors set forth in R. 5:3-5(c). The fees are "reasonable" under RPC 1.5(a). An analysis of the R. 5:3-5(c) factors here unquestionably requires a fee shift and full fee award of $XXX and $XXX in other professional fees, in favor of ***Client*** .

1. Financial Circumstances of the Parties

The financial circumstances of the Parties are primarily set forth in their respective Case Information Statements, which are collectively annexed hereto as **Exhibit D.** ***Adverse party*** earned $XXX in 2024. In contrast, ***Client*** earned $XXX. ***Address assets and any disparity in financial status***.

2. Ability of the Parties to Pay their Own Fees or Contribute to the Other Party's Fees.

Address assets and any disparity in ability to pay.

3. Reasonableness and Good Faith of the Positions Advanced by the Parties Both During and Prior to Trial.

Client consistently engaged in good faith pre-trial and during trial, including providing discovery when requested, meeting deadlines, attending court appearances as scheduled and generally acting in good faith to negotiate and settle the case. Her general cooperative demeanor and preparedness was aptly demonstrated at trial. In contrast, ***Adverse Party*** consistently acted in bad faith to withhold necessary information; dissipate marital assets; and cause the necessity for motion practice.

Describe good faith/bad faith of each party.

4. The Extent of the Fees incurred by Both Parties.

Client is unaware of the extent of fees incurred by ***Adverse Party***. The amount of counsel fees incurred by ***Client*** is set forth above.

5. Any Fees Previously Awarded.

The Court previously awarded ***Client*** counsel fees as follows:

The Court has not awarded counsel fees to ***Adverse Party*** as none were warranted.

6. Amount of Fees Previously Paid to Counsel by Each Party.

As noted in Section C above, ***Client*** has paid fees to this firm in the amount of $XXX and disbursements in the amount of $XXX, totaling $XXX in fees and costs from the inception of the engagement through her last payment on .

7. The Results Obtained.

Client prevailed at trial in securing a domestic violence restraining order and, later, prevailed at trial on her claims to obtain sole legal custody of the children.

8. Degree to Which Fees were Incurred to Enforce Existing Orders or Compel Discovery.

Describe circumstances if fees were incurred to enforce prior orders or compel discovery.

9. Any other Factor Bearing on the Fairness of an Award.

For all of the foregoing reasons, ***Client*** requests the Court to enter a counsel fee award in her favor.

I hereby certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are found to be willfully false, I may be subject to punishment.

LAW FIRM
Attorneys for,
Client

By:_____
Attorney, Esq.

DATED:

New Jersey Statutes Annotated
New Jersey Rules of Court
Part IV. Rules Governing Civil Practice in the Superior Court, Tax Court and Surrogate's Courts (Refs & Annos)
Chapter VI. Judgment
Rule 4:42. Judgment; Orders; Damages; Costs

R. 4:42-9

4:42-9. Attorney's Fees

Currentness

(a) Actions in Which Fee Is Allowable. No fee for legal services shall be allowed in the taxed costs or otherwise, except

(1) In a family action, a fee allowance both pendente lite and on final determination may be made pursuant to R. 5:3-5(c).

(2) *Out of a fund in court.* The court in its discretion may make an allowance out of such a fund, but no allowance shall be made as to issues triable of right by a jury. A fiduciary may make payments on account of fees for legal services rendered out of a fund entrusted to the fiduciary for administration, subject to approval and allowance or to disallowance by the court upon settlement of the account.

(3) *In a probate action,* if probate is refused, the court may make an allowance to be paid out of the estate of the decedent. If probate is granted, and it shall appear that the contestant had reasonable cause for contesting the validity of the will or codicil, the court may make an allowance to the proponent and the contestant, to be paid out of the estate. In a guardianship action, the court may allow a fee in accordance with R. 4:86-4(e) to the attorney for the party seeking guardianship, counsel appointed to represent the alleged incapacitated person, and the guardian ad litem.

(4) *In an action for the foreclosure of a mortgage,* the allowance shall be calculated as follows: on all sums adjudged to be paid the plaintiff amounting to $5,000 or less, at the rate of 3 ½ %, provided, however, that in any action a minimum fee of $75 shall be allowed; upon the excess over $5,000 and up to $10,000 at the rate of 1 ½ %; and upon the excess over $10,000 at the rate of 1%, provided that the allowance shall not exceed $7,500. If, however, application of the formula prescribed by this rule results in a sum in excess of $7,500, the court may award an additional fee not greater than the amount of such excess on application supported by affidavit of services. In no case shall the fee allowance exceed the limitations of this rule.

(5) In an action to foreclose a tax certificate or certificates, the court may award attorney's fees not exceeding $500 per tax sale certificate in any *in rem* or *in personam* proceeding except for special cause shown by affidavit. If the plaintiff is other than a municipality no attorney's fees shall be allowed unless prior to the filing of the complaint the plaintiff shall have given not more than 120 nor fewer than 30 days' written notice to all parties entitled to redeem whose interests appear of record at the time of the tax sale, by registered or certified mail with postage prepaid thereon addressed to their last known addresses, of intention to file such complaint. The notice shall also contain the amount due on the tax lien as of the day of the notice. A copy of the notice shall be filed in the office of the municipal tax collector.

(6) *In an action upon a liability or indemnity policy of insurance,* in favor of a successful claimant.

(7) *As expressly provided by these rules with respect to any action*, whether or not there is a fund in court.

(8) *In all cases where attorney's fees are permitted by statute.*

(b) Affidavit of Service. Except in tax and mortgage foreclosure actions, all applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated by RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought. If the court is requested to consider the rendition of paraprofessional services in making a fee allowance, the affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorneys' services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client. For purposes of this rule, "paraprofessional services" shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks which are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform.

(c) Statement of Fees Received. All applications for the allowance of fees shall state how much had been paid to the attorney (including, in a matrimonial action, the amount, if any, received by the attorney from pendente lite allowances) and what provision, if any, has been made for the payment of fees to the attorney in the future.

(d) Prohibiting Separate Orders for Allowances of Fees. An allowance of fees made on the determination of a matter shall be included in the judgment or order stating the determination.

Credits

Note: Source -- R.R. 4:55-7(a) (b) (c) (d) (e) (f), 4:55-8, 4:98-4(c). Paragraphs (a) and (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a)(1) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a)(1) and (b) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended January 19, 1989 to be effective February 1, 1989; paragraph (a)(4) amended June 29, 1990 to be effective September 4, 1990; paragraph (a)(5) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1)(2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(5) amended June 28, 1996 to be effective September 1, 1996; paragraph (a)(1) amended January 21, 1999 to be effective April 5, 1999; paragraph (a)(5) amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(3) amended July 27, 2006 to be effective September 1, 2006; caption amended and subparagraphs (a)(5) and (a)(8) amended July 23, 2010 to be effective September 1, 2010.

Notes of Decisions (6)

R. 4:42-9, NJ R SUPER TAX SURR CTS CIV R. 4:42-9

New Jersey rules are current with amendments received through February 1, 2025. Some rules may be more current; see credits for details.

End of Document

New Jersey Statutes Annotated
New Jersey Rules of Court
Part V. Rules Governing Practice in the Chancery Division, Family Part
Chapter I. Actions Cognizable; Scope and Applicability of Rules; General Provisions; Process; Venue; Pleadings; Process; Appearances
Rule 5:3. General Provisions for Family Actions

R. 5:3-5

5:3-5. Attorney Fees and Retainer Agreements in Civil Family Actions; Withdrawal

Currentness

(a) Retainer Agreements. Except where no fee is to be charged, every agreement for legal services to be rendered in a civil family action shall be in writing signed by the attorney and the client, and an executed copy of the agreement shall be delivered to the client. The agreement shall have annexed thereto the Statement of Client Rights and Responsibilities in Civil Family Actions in the form appearing in Appendix XVIII of these rules and shall include the following:

(1) a description of legal services anticipated to be rendered;

(2) a description of the legal services not encompassed by the agreement, such as real estate transactions, municipal court appearances, tort claims, appeals, and domestic violence proceedings;

(3) the method by which the fee will be computed;

(4) the amount of the initial retainer and how it will be applied;

(5) when bills are to be rendered, which shall be no less frequently than once every ninety days, provided that services have been rendered during that period; when payment is to be made; whether interest is to be charged, provided, however, that the running of interest shall not commence prior to thirty days following the rendering of the bill; and whether and in what manner the initial retainer is required to be replenished;

(6) the name of the attorney having primary responsibility for the client's representation and that attorney's hourly rate; the hourly rates of all other attorneys who may provide legal services; whether rate increases are agreed to, and, if so, the frequency and notice thereof required to be given to the client;

(7) a statement of the expenses and disbursements for which the client is responsible and how they will be billed;

(8) the effect of counsel fees awarded on application to the court pursuant to paragraph (c) of this rule;

(9) the right of the attorney to withdraw from the representation, pursuant to paragraph (e) of this rule, if the client does not comply with the agreement; and

(10) the availability of Complementary Dispute Resolution (CDR) programs including but not limited to mediation and arbitration.

(b) Limitations on Retainer Agreements. During the period of the representation, an attorney shall not take or hold a security interest, mortgage, or other lien on the client's property interests to assure payment of the fee. This Rule shall not, however, prohibit an attorney from taking a security interest in the property of a former client after the conclusion of the matter for which the attorney was retained, provided the requirements of R.P.C. 1.8(a) shall have been satisfied. Nor shall the retainer agreement include a provision for a non-refundable retainer. Contingent fees pursuant to R. 1:21-7 shall only be permitted as to claims based on the tortious conduct of another, and if compensation is contingent, in whole or in part, there shall be a separate contingent fee arrangement complying with R. 1:21-7. No services rendered in connection with the contingent fee representation shall be billed under the retainer agreement required by paragraph (a) of this rule, nor shall any such services be eligible for an award of fees pursuant to paragraph (c) of this rule.

(c) Award of Attorney Fees. Subject to the provisions of R. 4:42-9(b), (c), and (d), the court in its discretion may make an allowance, both pendente lite and on final determination, to be paid by any party to the action, including, if deemed to be just, any party successful in the action, on any claim for divorce, dissolution of civil union, termination of domestic partnership, nullity, support, alimony, custody, parenting time, equitable distribution, separate maintenance, enforcement of agreements between spouses, domestic partners, or civil union partners and claims relating to family type matters. All applications or motions seeking an award of attorney fees shall include an affidavit of services at the time of initial filing, as required by paragraph (d) of this rule. A pendente lite allowance may include a fee based on an evaluation of prospective services likely to be performed and the respective financial circumstances of the parties. The court may also, on good cause shown, direct the parties to sell, mortgage, or otherwise encumber or pledge assets to the extent the court deems necessary to permit both parties to fund the litigation. In determining the amount of the fee award, the court should consider, in addition to the information required to be submitted pursuant to R. 4:42-9, the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

(d) Affidavit of Services Provided. All applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated in RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought. If the court is requested to consider paraprofessional services in making a fee allowance, the affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorneys' services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client. For purposes of this rule, “paraprofessional services” shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks that are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform.

(e) Withdrawal from Representation.

(1) An attorney may withdraw from representation ninety (90) days or more prior to the scheduled trial date on the client's consent in accordance with R. 1:11-2(a)(1). If the client does not consent, the attorney may withdraw only on leave of court as provided in subparagraph (2) of this rule.

(2) Within ninety (90) days of a scheduled trial date, an attorney may withdraw from a matter only by leave of court, on motion with notice to all parties. The motion shall be supported by the attorney's affidavit or certification setting forth the reasons for the application and shall have annexed the written retainer agreement. In deciding the motion, the court shall consider, among other relevant factors, the terms of the written retainer agreement and whether either the attorney or the client has breached the terms of that agreement; the age of the action; the imminence of the scheduled trial; the complexity of the issues; the ability of the client to timely retain substituted counsel; the amount of fees already paid by the client to the attorney; the likelihood that the attorney will receive payment of any balance due under the retainer agreement if the matter is tried; the burden on the attorney if the withdrawal application is not granted; and the prejudice to the client or to any other party.

(3) Upon the filing of a motion or cross-motion to be relieved as counsel, the court, absent good cause, shall sever all other relief sought by the motion or cross-motion from the motion to be relieved as counsel. The court shall first decide the motion to be relieved and, in the order either granting or denying the motion to be relieved, shall include a scheduling order for the filing of responsive pleadings and the return date for all other relief sought in the motion or cross-motion.

Credits

Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; new paragraph (a)(10) adopted, and paragraphs (d)(1) and (d)(2) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 16, 2009 to be effective September 1, 2009; paragraph (c) amended and subparagraphs (d)(1) and (d)(2) amended July 21, 2011 to be effective September 1, 2011; subparagraphs (d)(1) and (d)(2) amended July 9, 2013 to be effective September 1, 2013; paragraph (c) amended, new paragraph (d) adopted, former paragraph (d) redesignated as paragraph (e), and new subparagraph (e)(3) adopted July 28, 2017 to be effective September 1, 2017; subparagraph (a)(9) amended July 29, 2019 to be effective September 1, 2019.

R. 5:3-5, NJ R CH DIV FAM PT R. 5:3-5

New Jersey rules are current with amendments received through February 1, 2025. Some rules may be more current; see credits for details.

End of Document

KeyCite Red Flag - Severe Negative Treatment
Enacted Legislation Amended by 2025 NEW JERSEY COURT ORDER 0002 (C.O. 0002),

New Jersey Statutes Annotated
New Jersey Rules of Court
Part I. Rules of General Application
Appendix to Part I
Rules of Professional Conduct (Refs & Annos)

New Jersey Rules of Professional Conduct RPC 1.5

RPC 1.5 Fees

Currentness

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and

(2) the client is notified of the fee division; and

(3) the client consents to the participation of all the lawyers involved; and

(4) the total fee is reasonable.

Credits

Note: Adopted July 12, 1984 to be effective September 10, 1984; new subparagraph (e)(2) added and former subparagraphs (e)(2) and (e)(3) redesignated as subparagraphs (e)(3) and (e)(4) November 17, 2003 to be effective January 1, 2004.

NJ Rules Prof.Cond. RPC 1.5, NJ R RPC 1.5

New Jersey rules are current with amendments received through February 1, 2025. Some rules may be more current; see credits for details.

End of Document

JS JulianSmuro Law, LLC

Tracy Julian, Esq.
Partner
The Galleria
2 Bridge Avenue, Suite 633A
Red Bank, New Jersey 07701
Phone (732) 924-6011
Fax (732) 924-6009
www.juliansmurolaw.com

Tracy Julian, Esq., is a founding partner of Julian Smuro Law, LLC, Red Bank, New Jersey. She has practiced in the fields of family law; commercial litigation; and trust and estate litigation for nearly twenty-five years. She brings substantive experience and compassion to all varieties of family law matters. Tracy applies her extensive experience as a commercial litigator to divorce cases involving business owners and high-net-worth individuals. In addition to her commercial litigation experience, she also has significant experience in handling the delicate and emotional aspects of child custody and parenting time disputes. When parties have been unable to reach an amicable resolution to their child custody issues, Tracy has successfully litigated custody and parenting time cases to conclusion at trial. She understands the sensitive nature of these matters and is an intense advocate for her clients and their families in every instance. Tracy is a member of the NJSBA Family Law Executive Committee; the NJAJ Family Law Executive Committee; and the Monmouth County Bar Family Law Committee.

Focused on the road ahead
Tax, Audit & Advisory

GINA BERKERY, CPA

Manager
Litigation & Valuation Services Group

Cowan, Gunteski & Co., P.A.
730 Hope Road
Tinton Falls, NJ 07724
Phone: 732-676-4100 ext. 4102 Fax: 732-676-4101
E-mail: gberkery@cgteam.com

PROFESSIONAL QUALIFICATIONS

Over seven years of professional public accounting experience; expertise in matrimonial litigation matters, forensic accounting; business valuations, cash flow and lifestyle analyses, asset tracing, valuation critiques.

Service Areas

Litigation support services, including business valuation, matrimonial accounting, cash flow and lifestyle analyses, asset tracing, equitable distribution and other reports.

Industry Experience

Forensic Accounting and litigation support for small closely held businesses. Financial statement audit and tax services to non-profit organizations and closely-held businesses, their owners and individuals.

EDUCATIONAL BACKGROUND

Rutgers University, New Brunswick, NJ - 2018
Bachelor of Science degree in Accounting.

PROFESSIONAL EXPERIENCE

Manager – 2024 to Present
Supervisor – 2023 to 2024
Senior Accountant – 2022 to 2023
Cowan, Gunteski & Co., P.A., Certified Public Accountants & Consultants, Tinton Falls, NJ

Supervisor – 2020 to 2022
Senior Accountant – 2018 to 2020
Staff Accountant – 2016 to 2018
Matthews & Nulty, Inc., East Brunswick, NJ

LICENSES & DESIGNATIONS

- Certified Public Accountant (License No. 20CC04368700) in the State of New Jersey.

SEMINARS & PRESENTATIONS

- Reasonable Compensation – Part of a Hot Tips Seminar, New Jersey State Bar Association, Family Law Retreat, March 2024
- Prenuptial Agreements and Premarital Assets, Essex County Bar Association, November 2024

PROFESSIONAL AFFILIATIONS

- American Institute of Certified Public Accountants

COURT EXPERIENCE

Provided Expert Testimony in the Following Cases:

- Salsa v. Salsa, Family Court, Divorce, Judge Aithal, FM-12-268-19D, Middlesex County, 06/11/2024

Cryptocurrency II, Update

By Samuel J. Berse, Esq.

Cryptocurrency is evolving at an increasingly faster pace, and the purpose of this article is to provide an update from my previous Hot Tips seminar presentation. Family law practitioners need to be aware that their cases may involve a variety of complex cryptocurrency-related assets, and it is important to understand some of the basic premises distinguishing cryptocurrency from its derivations. Arguably this topic is most relevant for situations in which the party on the other side engages in complex crypto-related transactions, and you need to make sure that you are not failing to appropriately find and value distributable assets. Take a logical approach to the situation, and do not be led astray by the other side if something seems fishy. The way I view these situations, you first need to identify where the money to purchase the digital asset or where the digital asset itself came from, then ascertain through what means the asset was acquired, and lastly determine the value of the asset at the time of acquisition and the asset's current value. Sometimes valuation can involve a multi-step process because crypto-related digital assets are most frequently purchased with cryptocurrency (whose value likely fluctuates drastically), so several currency conversions may be required. This gets even more complicated when ascertaining cost basis and tax consequences.

I would hope at this point that anyone reading this article has already heard of "Bitcoin", "Ethereum", and "Coinbase". For those unaware, at the time of this writing, Bitcoin is the most popular cryptocurrency in the world and presently has a market cap over $1.6 trillion, up from a mere trillion as of a few months ago, but down from over $2 trillion more recently than that. Ethereum is the second most with a market cap over $225 billion, down from a peak of nearly $500 billion, and Coinbase is perhaps the most popular cryptocurrency exchange in the United States.[1]

NFT (non-fungible tokens) are unique, blockchain-based digital assets, and the most popular exchange to buy and sell NFTs is OpenSea.[2] A common approach that people take when

---

[1] https://coinmarketcap.com/

[2] https://opensea.io/

purchasing NFTs is depositing cash into their Coinbase account from a bank account, buying cryptocurrency in their Coinbase account, linking their Coinbase account with OpenSea, and then buying NFTs on OpenSea utilizing the cryptocurrency (commonly Ethereum) in their Coinbase account. This is by no means the only way to acquire cryptocurrency or NFTs, but it is illustrative of the steps that may be taken to buy NFTs and the paper trail that may be left behind.

NFTs have been around for about a decade, but a newcomer to the crypto space in 2023 is the "Ordinal", which is essentially an NFT on the Bitcoin blockchain. Another relative newcomer to the crypto space is the concept of "Rare Satoshis". Satoshis (abbreviated as "Sats") are the smallest unit of Bitcoin, whereby 100 million Satoshis = 1 Bitcoin. The value of this 0.000000001 Bitcoin is presently about $0.0005, so it takes about 100 Satoshis to equal 5 cents. However, "Rare Sats" are conceptually similar to rare serial-numbered physical currency, and these "Rare Sats" can be bought and sold through various exchanges, akin to cryptocurrency and NFTs.[3] As perhaps the most extreme example, on April 25, 2024, a single particularly Rare Sat sold for $2.1 million.[4] This illustrative example is not meant to induce paranoia and panic, but any case where the party on the other side says they have "some cryptocurrency" or "bought some worthless NFTs" deserves a second look and a non-zero amount of discovery.

If I had to say the most important thing to be mindful of in this area, it would be the party on the other side's attempt to hide money through cryptocurrency and crypto-related assets. Subpoenas should be sent to applicable financial institutions, and all crypto-related transactions where allegedly a lot of money was lost should be scrutinized with diligence. The query needs to be: did the person really lose a lot of money, or are they hiding money with a fraudulent transfer either of assets to a friend or family member or by acquiring an asset with significant value which they have sought to hide?

---

[3] https://magiceden.us/ordinals/marketplace/rare-sats

[4] https://www.prnewswire.com/news-releases/1st-epic-satoshi-auction-sold-for-2-1-million-on-coinex-302128386.html#:~:text=As%20the%20first%20example%20shown,33.3%20BTC%20(%242.1%20million).

Lastly, with what has perhaps been the rise-and-fall of "memecoins", "altcoins", "NFTs", and other crypto-related endeavors too numerous to mention, there have been relevant developments enabling people to store money in Bitcoin, which has continued its dominance in the space. What I believe will continue to be increasingly popular are Bitcoin ATMs.[5] The way these work is very simple: deposit cash, get Bitcoin. The fees are astronomical, far eclipsing what you would pay, for example, to buy gold at Costco or even to buy Bitcoin through an online exchange like Coinbase. So with Bitcoin ATMs serving what I would describe as no legitimate "investing" or "speculating" purpose in the cryptocurrency, I leave for you, the reader, to speculate upon the reasons for the popularity of these devices and why they will make the world of family law more interesting and challenging.

[5] See, e.g., https://bitcoindepot.com/

Sam joined Berse Law in September 2017. He had graduated cum laude from the Seton Hall University School of Law in 2015, and thereafter completed two clerkships: in 2015-16 for the Honorable Lisa M. Vignuolo, P.J.Ch. (then-J.S.C.) in the Superior Court of New Jersey, Middlesex County, Family Part, and in 2016-17 for retired Presiding Appellate Division Judge Marie P. Simonelli, P.J.A.D. (then-J.A.D.).

Sam is admitted to the New Jersey State Bar, New York State Bar, and New Jersey Federal District Court. He is a member of the New Jersey State Bar Association and for 4 years served as the Union County Representative and Co-Chair of the Seminars Committee for the Young Lawyers Division Executive Committee. As of May 2024, Sam is now Secretary for the Young Lawyers Division of the New Jersey State Bar Association. Sam also served as the New Jersey Bar Foundation Union County Mock Trial Coordinator and is member of numerous county bar associations, the Hon. Peter J. Barnes, III Inn of Court, the Barry Croland Family Law Inn of Court, and the Association of Family and Conciliation Courts. He is an active ESP Panelist in Middlesex County and Union County.

While attending law school Sam served as a Notes Editor on the Seton Hall Legislative Journal and completed judicial internships for Justice Anne M. Patterson of the New Jersey Supreme Court, and Magistrate Judge Steven C. Mannion and District Judge Madeline Cox Arleo of the District Court of New Jersey. Additionally, Mr. Berse worked in the in-house legal department of Amicus Therapeutics for two years and participated in the SDNY Representation in Mediation Practicum where he obtained one of the highest settlements in the program's history for a client in a Title VII employment discrimination case.

Although he now focuses his practice on family law matters, Sam is a Patent Attorney licensed before the United States Patent and Trademark Office, holds a Master of Biomedical Sciences degree from the Rutgers Graduate School of Biomedical Sciences (legacy-RWJ GSBS), and is a certified EMT-B.

Sam views his approach to the law as somewhat of a visionary. Over the past several years, Sam co-authored a three-part article series for the New Jersey Family Lawyer magazine which focused on bankruptcy and debt collections in the context of divorce. Sam's most recent article on the subject of tips for appeals was published in the magazine's September 2024 edition.

On April 2, 2020, Sam prevailed in the published Appellate Division opinion Amzler v. Amzler, 463 N.J. Super. 187 (App. Div. 2020), where he successfully overturned an erroneous family part judge's ruling and clarified a provision of the alimony statute; on June 9, 2020, he again prevailed in the published family part opinion C.N. v. S.R., 463 N.J. Super. 213 (Ch. Div. 2020), where the court held that, in the absence of a writing, partition of a residence remains an equitable remedy among unmarried, cohabitating intimates engaged in a joint venture. On October 12, 2021, Sam prevailed in the Appellate Division opinion K.A. v. C.E., No. A-4471-19, where the panel affirmed the family part's order, following a trial, which granted Probation wage garnishment for a child's college tuition. More recently, Sam prevailed in Smiley v. Sheedy, A-2693-20 (App. Div. May 11, 2022), which was the first case after Temple v. Temple, 468 N.J. Super. 364 (App. Div. 2021), where the family part's order was reversed and remanded for discovery and an evidentiary hearing. Within the past year, Sam prevailed in J.S. v. B.S., A-3507-

22 (App. Div. June 10, 2024) and D.A.V. v. M.N., A-88-23 (App. Div. July 1, 2024), where two restraining orders Berse Law obtained were affirmed on appeal. Sam also just settled on remand the victory he obtained in Anestis Karasaridis v. Voula Constantarakos, A-1642-22 (App. Div. August 29, 2024), which dealt with complex QDRO issues.

Integris.

Law Firm Cybersecurity: Does Your Firm Measure Up?

In today's evolving threat landscape, law firms are prime targets for cyberattacks due to the vast amounts of sensitive client data they handle. A single breach can lead to financial loss, reputational damage, and even ethical violations. But how secure is your firm's cybersecurity posture? Does it meet industry best practices, regulatory requirements, and client expectations? Assessing your firm's cybersecurity resilience is no longer optional—it's essential for protecting your business and maintaining client trust.

#1—Do you have antivirus and Endpoint Protection Software installed on all your company devices?

According to the ABA, law firms are doing decently well on spam/virus detection. Their survey revealed that 80% of firms have a spam filter, 76% have a firewall, and 71% have some kind of anti-spyware tool monitoring their systems.

However, I'd like to take this opportunity to point out Endpoint Detection and Response (EDR)—the gold standard for modern-day security filters. EDR uses machine learning to determine what normal patterns of work look like on your company-issued laptops, phones, and tablets. Because it understands the rhythms of that machine, it can quickly notice patterns of unusual activity like malware and ransomware. When it detects it, the anomaly is flagged, isolated, and remediated before it can do any more damage to your system.

This tool has the power to weed out the lion's share of threats entering your systems. It's one of the most important cybersecurity investments you can make, no matter your firm's size and scope.

#2—Does your firm provide cybersecurity awareness training for all staff and lawyers in your firm?

While we weren't successful in finding reliable statistics around cyber security training at law firms, Statista recently released numbers saying approximately 32% of all companies have used online cybersecurity training programs for their staff. In our experience, that number is a lot lower for law firms, who generally assume their firm is too small or poorly resourced for such a large-scale effort.

Monthly cyber security training for your lawyers and staffers can be purchased at a very reasonable per-seat cost. Best of all, most of these programs come with built-in user testing and tracking. The documentation from these tests will show you how well everyone understands the lessons and serve as great third-party proof of your cyber security best practices.

#3—Is everyone on your staff required to use a password vault or password manager?

The importance and privacy of the documents you handle at law firms goes without saying. This is especially true when you handle client documents with data protected by regulations like HIPAA, GDPR, or others.

That's why it's particularly depressing to see only 33% of firms require their lawyers and staffers to use a password vault to manage their passwords. Tools such as Last Pass or 1Password are cheap and easy to implement—potentially saving your team the agony of late-night panics from password logouts, man-in-the-middle attacks, and more. Suffice it to say, if anyone on your staff has a written password book or sticky notes with their passwords stuck to their desk, it's time to get vigilant about password vault use.

#4—Does your firm enforce multi-factor authentication (MFA) or Single Sign-on (SSO) for logins?

Multi-factor Authentication or Single sign-on programs are among the best resources in your cybersecurity toolkit. This simple program requires employees to sign on with their username and password and verify their identity through a secondary device—usually their phone. MFA eliminates issues that come from having credentials stolen or spoofed, reducing the chances of bad actors hacking into your system almost completely.

Only 53 percent of law firms surveyed reported having this tool. It should be 100 percent. It is truly critical to the health of your system. We usually recommend pairing this with a Zero Trust system, which continuously authenticates users as they work.

#5—In the event of a natural disaster, outage, or ransomware hack, do you have a written business continuity plan with written IT procedures?

Cybersecurity professionals say written policies are the core of your security effort. Why? Written cybersecurity plans, policies, and procedures ensure that everyone on your team agrees on how to prevent and respond to cybersecurity incidents. These documents save your firm time and money and provide proof of your good cybersecurity practices.

The policies also have an important training function, educating everyone on your systems and how to work safely and effectively. The ABA reports the following policy usage rates: 55% for email use policy, 51% for internet use policy, 50% for computer acceptable use, 50% for remote access, and 44% for social media acceptable use. With AI tools now widely being adopted, we also recommend an AI Acceptable Use Policy.

There was a big downturn in the number of firms having an incident response plan, with only 34% of respondents reporting in the affirmative, down from 42% last year.

#6—Do you have an offsite backup for both the data held on your onsite servers and the data stored in your cloud programs like Windows M365?
The growth of the cloud has given rise to a whole new slate of affordable options for backing up your data offsite, even for smaller firms. Yet, it appears most law firms haven't gotten this memo.
The Bar Association reports that only 43 percent of firms use online backups such as Mozy, Carbonite, etc. About 32% use an external hard drive, 15% use Network Attached Storage, and 25% have random offsite storage at their homes, bank, or other offices. They also noted some firms are still clinging to legacy backup solutions such as—seriously—tape, optical disk, and CD.
At a law firm, time is money, and data safety is everything. We recommend offsite cloud storage and, often, a redundant cloud backup to that. Losing your data should never be a concern.

#7—During an outage, do you know how long it would take to retrieve your data and keep running?
It's not enough just to have a Cloud backup. You need the kind of backup that can be retrieved on your time frame in the event of an emergency. You also need to be sure that the space between your backups isn't so long that critical data is lost in the process. How you set your RTO and RPO will determine the price of your backup effort. Your IT department or IT MSP can help you fine-tune your backup and get the right solution in place for you.

#8—Do you have an offboarding process for locking and wiping devices and ensuring offboarded employees cannot access applications and firm data?
This process will go far more easily if you have other processes in place, such as password-protected files, well-organized document vaults, and strict policies that ensure your firm's work is stored in all the right workspaces. Add written onboarding and offboarding procedures to the mix, and you'll save your firm a lot of headaches.

#9— Does your firm have the ability to push software updates to all devices on your system and ensure security compliance?
With more law firms moving their operations to the cloud than ever before, automatic updates are now common, especially for foundational platforms like Microsoft 365. But what about the other software your firm is using? Is it being automatically updated as well? Are those auto-updates playing well together? Answer those questions if you want a safe tech foundation for your firm. Then, make sure you have the right IT governance to manage these issues.

#10— Have you purchased cyber insurance to protect your firm from hacks and data breaches?
Here at Integris, we recommend that every firm purchase cyber risk insurance, regardless of size. For law firms, there's simply too much on the line.
Yet, I'm continually surprised by the stats that show how few firms have this

protection. According to the latest ABA report, only 40% of overall respondents reported their firms had cyber risk insurance. Larger law firms, not surprisingly, were somewhat more likely to make the investment, with 59% of firms between 50 and 99 lawyers and 57% of firms with 100 to 499 employees saying they've purchased these policies.

Perhaps the most mystifying statistics concerned the largest and smallest firms, who somehow managed to have the lowest insured rates. Only 37% of surveyed firms with over 500 lawyers had cyber risk insurance, down from 42% in 2022. Only 31% of solo attorneys had coverage, down from 38% in 2022.

This is a critical oversight. Consider this question from the same report: "Has your firm ever experienced a security breach (such as a lost or stolen computer, a serious hack, break-in, or website exploit)?" A full 29 percent of all firms surveyed said they had—in the last calendar year. Another 19% said they could not know if a breach happened. Would you want to take a gamble with that kind of math?

Cyber risk insurance can cover the expensive IT remediations needed when a breach/outage occurs, as well as lost business, damages, and more. Best of all, it can be custom-tailored to your firm's size, risk, and budget.

Greg Cooke
VP, Legal Practice
Office: (609) 642-0143
Cell: (215) 880-5767
greg.cooke@integrisit.com

Greg Cooke

Vice President, Legal Practice | Integris

With over 15 years of experience in the legal industry, Greg is the Vice President for the Legal Practice at Integris and is responsible for leading and overseeing strategic initiatives, business development, and client engagement. He guides the growth of the legal sales team in client acquisition and serves as a trusted advisor to law firms by sharing industry insights and best practices through speaking engagements and publications.

Before joining Integris, Greg spent a decade in the insurance industry, where he established a reputation in delivering client-focused solutions and building trusted relationships that addressed the unique risks and challenges faced by law firms.

Greg is a thought leader in the intersection of legal and cybersecurity industries, frequently speaking at events, publishing insights on emerging trends, and advising bar associations across the country. Greg is well-known for translating complex challenges into actionable strategies, empowering law firms to thrive in a competitive and risk-prone environment.

Speaker: 5 Minutes

Mike Fonseca – National Sales Manager

Course Name: Successful Real Time Alcohol Monitoring In Family Law

Course Description:

This course is designed to give Family Law Professionals specific knowledge on how to manage cases that involves one or both parents being accused of abusing alcohol while parenting child(ren). The presentation will review products that provide proper chain of custody along with different proposed technologies putting children at risk. Best practices will be reviewed around testing and both compliant and non-compliant behavior. Ultimately the attendees will leave with an enriched knowledge base of how to implement court approved technology that meets specific goals. Parenting and child safety remain the common goal while maintaining the best interest of the Child and not weaponizing the disease of Alcohol Use Disorder.

Mike Fonseca, National Sales Manager:
SOBERLINK Healthcare.

Mike Fonseca has been the National Sales Manager for Soberlink Healthcare since 2011. He manages National Matrimonial Organizations like AAML, AFCC, and ABA Family Law Section. At the 2023 NYSBA Family Law Section Meeting in Lake Placid, Mike presented on a panel surrounding substance abuse.

He dedicates his efforts educating matrimonial professionals on Soberlink's alcohol monitoring technology for Child Custody Cases.

Mike and his wife Amber are proud parents to son's Roman and Lincoln residing in North Texas.

Mike holds his degree from Santa Ana College with emphasis in science and technology.

SOBERLINK, Inc.'s Mission Statement:

SOBERLINK's mission is to become the global leader in the development of leading-edge wireless diagnostic technology that monitors addiction related diseases to aid in the reduction of relapse rates.

About SOBERLINK, Inc.

SOBERLINK is a technology-based company that develops innovative products to help automate the alcohol monitoring process. SOBERLINK strives to provide exactly what is stated in the company's name: a link between a person and sobriety. To achieve this goal, SOBERLINK's DOT certified breathalyzer uses a built-in camera and wireless technology to send a person's blood alcohol content (BAC), GPS location, verification photo, and time of report to cloud storage on a secure Monitoring Web Portal.

SOBOL & ASSOCIATES, INC.

REAL ESTATE APPRAISAL MANAGEMENT SERVICES

908.879.1222 | mail@sobolassociates.com

MARKET VALUE

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in the definition is the consummation of a sale as a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated
- Both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest
- A reasonable time is allowed for exposure in the open market
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale

WHAT DO WE LOOK FOR IN A COMP?

- Neighborhood / Location
- Style
- Size
- Condition
- Bedroom / Bathroom Count
- Amenities

WHY CAN'T I JUST LOOK ON ZILLOW?

- Zillow is a marketing tool, not a reliable source of valuation

- When the founder of Zillow, Spencer Rascoff, sold his home it was for 40% under the "Zestimate"

- In early 2021 Zillow went into the home flipping business using their "Zestimate" algorithm. Within eight months they lost $304,000,000 and were forced to layoff 2,000 employees (25% of their staff)


Kelly Kamowski
for
LighterSide
"Yes, I know what all the comps say, but my house is SPECIAL."


RESOLVE

SOBOL & ASSOCIATES, INC

REAL ESTATE APPRAISAL MANAGEMENT SERVICES

95 West Main Street
Suite 5-111
Chester, NJ 07930

Office: 908-879-1222
Cell: 973-865-7991
mail@sobolassociates.com

Paul A. Sobol is a highly experienced Residential Real Estate Appraiser celebrating his 30th year in business. As President of Sobol & Associates, Inc., Paul specializes in property valuation, market analysis and high conflict cases, bringing a wealth of knowledge and precision to every assignment.

Throughout his distinguished career, Paul has provided expert testimony in federal, state and local courts, offering invaluable insights into real estate valuation and market conditions. His expertise in real estate property appraisals has made him a sought-after authority in legal proceedings involving real estate disputes.

Paul's work is characterized by his meticulous approach to appraisals and his ability to convey complex valuation issues in clear, understandable terms for legal proceedings. He has been recognized for his dedication to excellence in the field.

Outside of his professional endeavors, Paul is an appraiser for Habitat for Humanity, a board member for the Chester Senior Resource Center and was a frequent contributor to the Daily Business report with Joe Connelly on WCBS 880 radio. His commitment to these causes underscores his broader dedication to the community. In his off time you can find him at CitiField rooting for his beloved Mets or enjoying a good glass of red wine.

With a career spanning over three decades, Paul A. Sobol continues to set the standard for excellence in residential real estate appraisal and expert witness testimony, contributing to the field with unparalleled expertise and insight.

PAUL A. SOBOL

95 West Main Street, Suite 5-111, Chester, NJ 07930
Phone: (908) 879-1222 **E-mail:** mail@sobolassociates.com

Summary of Qualifications

New Jersey/ New York/ Pennsylvania certified Real Estate Appraiser and New Jersey Licensed Real Estate Agent. Progressive and diverse experience in Real Estate Appraising and Sales. Provides detailed and impartial analysis of real estate for the purpose of estimating value. Maintains Real Estate portfolios for federal government agencies and enhanced skill levels as they pertain to this industry, i.e. preparation of diverse residential appraisals for banks/lending institutions, including F.H.A. Provides highly competent research, analysis, and compilation of data for commercial appraisal reports. Proficient in the interpretation of complex and technical matter for the purpose of relaying it to clients. Provides independent, unbiased estimate of value of real property. Utilizes strong and effective communication skills. Proficient in the operation of all-related professional equipment; computer literate in the use of Internet and Microsoft Office. Possesses strong interpersonal and social ethics. Thorough, organized, detail-oriented, and ambitious; works well independently and in team environments.

- Expert Witness in Federal Bankruptcy Court.
- Expert Witness in Hudson County Superior Court.
- Expert Witness in Essex & Hudson County Family Court.
- Expert Witness who has provided testimony in the following tax boards: Bergen County, Essex County, Hudson County, Hunterdon County, Morris County, Sussex County.
- Member of the American Society of Appraisers and The Appraisal Institute.
- Presenter at The Justice Virginia Long Family Law American Inn of Court.

Professional Development

Sobol & Associates, Inc., Chester, NJ
President 03/95 – Present
Maintains all aspects of diverse Real Estate portfolios including residential, commercial and federal government agencies. Prepares residential appraisals for banks/lending institutions, including F.H.A. reports. Researches and compiles data for commercial appraisal reports.

Carano Appraisal Company, Verona, NJ
Independent Fee Appraiser 07/92 – 03/95
Prepared broad scope of residential appraisal reports for State agencies, banks and mortgage companies.

Romac Associates, Paramus, NJ
Marketing Manager 05/89 – 04/92
Directed marketing program for executive consulting placement firm. Defined target market and implemented sales effort directed at Fortune 500 companies. Expanded sales by more than 200% over three-year period.

Education

2023 *Pennsylvania State Mandated Law for Appraisers*

2022 *The FHA Handbook 4000.1*
Appraising 2-4 Unit MF Properties
How to Write a Bullet Proof Expert Witness Report
How to Excel at Your Expert Witness Disposition
New Jersey Law
Complex Residential Valuation
New Jersey Law
ANSI 2765-2021

2021 *Essential Elements of Disclosures and Disclaimers*
7-Hour National USPAP Update
The Cost Approach: Unnecessary or Vital to a Healthy Practice
The FHA Handbook 4000.1

2019 *Evaluations, Desktops, and Other Limited Scope Appraisals*
Complex Properties: The Odd Side of Appraisals
Supporting Your Adjustments: Methods for Residential Appraisers
7 Hour USPAP Update
NJ 2-Hour Law Course

2018 *Appraising Stigmatized Property*
Supervisory Appraiser/Trainee Appraiser Course

2017 *7 Hour USPAP Update*
NJNAIFA New FHA Handbook 4000.1

2016 *NJ Real Estate Appraisal Law*
Business Practices and Ethics
Reviewing Residential Appraisals and Using
Fannie Mae Form 2000
Data Verification Methods

2015 *Thinking Outside the Form*
FHA Appraising for Valuation Professionals: FHA Single Family Housing Appraisal

2014 *Appraising for Local Banks*
Valuation Issues Post Super Storm Sandy and Other Stigma Issues
Regression Analysis
7 Hour USPAP Update

2013 *FHA and the Appraisal Process*
The Lending World in Crisis-What Clients Need Their Appraisers to Know Today

2012 *7 Hour USPAP Update*

2011 *Uniform Appraisal Dataset from Fannie Mae and Freddie Mac*
Worldwide Employee Relocation Council (Relocation Appraising)
Revaluation and Tax Appeals
NJNAIFA Conference (The Relocation Appraisal)

2010 *Supervising Appraisal Trainees*

2009 *Business Practices and Ethics*
Advanced Reviewing Techniques

NJ Appraisal Board Update
New Residential Market Form
Home Valuation Code of Conduct & New Market Conditions Form 1004MC

2008 *Quadrennial Code of Ethics Orientation*
7 Hour USPAP Update

2007 *5.3 Scope of Work*
Institutional Fraud
Relocation Training Program

2006 *7 Hour USPAP Update*

2005 *Attacking and Defending an Appraisal*
Appraising Manufactured Housing
Appraising Unique and Difficult Properties
NJ NAIFA Conference (2005 Appraisal Board Update, Appraiser Qualification Board, Real Estate Economist)
The Reviewer Keys
The Professional's Guide to the Uniform Residential Appraisal Report

2004 *7 Hour USPAP Update*
NJ – NAIFA Conference

2003 *How to Appraise, Buy & Sell a Business, Part 1: Business Issues*
How to Appraise, Buy & Sell a Business, Part 2: Business Evaluations
9.7N Fannie Mae Property and Appraisal Guidelines
7 Hour USPAP Update

2002 *Legal Issues Affecting Appraisal Industry*
Mount Laurel and the Appraiser
Subdivisions
Preparation for Tax Appeals at the County Level
2001 Developments in Real Estate Law

2001 *Calculating Gross Living Using ANSI Standards*
FHA Review
Real Estate Disclosure
Home Inspections and Common Defects
FHA 203K Review
Appraisal Liability
USPAP 2001 Update

1999 *Valuation of Detrimental Conditions in Real Estate*
FHA Appraisals and Changes
Fair Lending for Appraisers

***1*997** *HUD 203K Appraisals*
Residential Cost Approach
Internet for Appraisers
Appraising Foreclosures
Most Common Pitfalls When Making an FHA Appraisal
Cost Approach Analysis
How to do an FHA 203K Appraisal

1994 *Standards of Professional Appraisal Practice*
Small Residential Income Property Appraisal

Appraisal of Condominium of PUD Unit Appraisal Courses
Valuations, Principals & Procedures

1993 *Introduction to Real Estate Appraisal Principals*

County College of Morris, Randolph, NJ 1991-1995

Business Administration Major

- Phi Theta Kappa (International Honor Society of Two-Year Colleges)
- Member Alpha Beta Gamma (National Business Honor Society)

Can a Judge order the sale of property pending a divorce under Randazzo v. Randazzo?

By Richard Sanvenero Jr., Esq.

In New Jersey, a court has the authority to order the sale of property during a divorce under certain circumstances. This authority is derived from the state's equitable distribution laws, which allow courts to divide marital assets fairly, though not necessarily equally. The court can order the sale of property to facilitate the equitable distribution of assets between spouses, especially when one spouse cannot afford to buy out the other's share, or when keeping the property is not feasible or in the best interest of either party.

In **Randazzo v. Randazzo**, 441 N.J. Super. 479 (App. Div. 2015), the New Jersey Appellate Division addressed the issue of whether a court could order the sale of a marital home in a divorce. The court found that the trial court did not err in ordering the sale of the home, even though the property was considered the primary residence of the parties. In this case, the wife had not been able to afford to buy out her husband's interest in the home, and the court found that selling the property was a reasonable and equitable solution. The Appellate Division emphasized that equitable distribution is not always about keeping the family home but rather about achieving a fair division of assets in light of the circumstances.

Thus, **Randazzo v. Randazzo** illustrates that in New Jersey, a court can order the sale of property, including the marital home, if it is necessary to ensure an equitable division of assets in a divorce. The decision is made on a case-by-case basis, considering factors such as the financial capabilities of the parties and the feasibility of dividing the property in a manner that is fair to both spouses. Let’s break it down even further from here…

In divorce cases, the financial aspects play a crucial role in determining whether a court in New Jersey will order the sale of marital property. When a court is asked to divide marital assets, including real estate, it is guided by the principle of **equitable distribution**, which requires the division of assets to be fair, but not necessarily equal. Several financial factors influence whether a court will order the sale of property, such as the value of the property, the financial situation of both spouses, and the ability of one spouse to buy out the other.

1. Ability to Buy Out the Other Spouse's Interest

One of the primary financial considerations is whether one spouse has the ability to buy out the other spouse's interest in the property. If one spouse wants to keep the property but cannot afford to pay the other spouse's share, a sale may be ordered as a practical solution. For instance, if the parties own a home together, and one spouse cannot afford to pay the other’s share of the property’s value (after accounting for the equity in the home and other debts), the court may decide that selling the home is the best way to divide the asset equitably.

In **Randazzo v. Randazzo**, the wife was unable to afford to buy out the husband's share of the home, which made selling the property the only viable option for dividing the marital asset.

2. Financial Impact on Each Spouse's Post-Divorce Situation

A court will also consider how the sale of property impacts the financial well-being of each spouse after the divorce. The court looks at the income, earning potential, and overall financial stability of both spouses. For example, if the sale of the property would result in a significant financial windfall for one spouse, the court may take that into account when considering how the distribution should take place. If selling the property would provide one spouse with enough funds to support their post-divorce lifestyle, and the other spouse is left without enough resources to maintain a similar standard of living, this could influence the court's decision.

The court will try to ensure that both parties are in a reasonably stable financial position after the divorce. For instance, if one spouse is financially dependent on the other or relies on the marital property to maintain a livelihood (e.g., by living in the home or operating a family business out of the property), selling the property may be an impractical option. In such cases, the court may find alternative ways to distribute the assets, such as providing the dependent spouse with alimony or other compensation to offset the sale.

3. Property's Market Value and Debts

The current market value of the property and any outstanding debts (like mortgages or liens) on the property are also critical financial aspects. If the property has significant value, selling it could provide the couple with substantial proceeds to distribute. However, if the property is underwater (i.e., the debts exceed its value), a sale might not provide enough funds to divide fairly. In such cases, the court may find it more appropriate to consider other assets in the marital estate when making the division.

4. The Financial and Emotional Costs of Maintaining the Property

Owning and maintaining a property comes with ongoing costs, such as mortgage payments, taxes, utilities, and maintenance. These costs can be a burden on one or both spouses, especially if the property is no longer financially viable or if neither spouse wants to remain in the home. In **Randazzo v. Randazzo**, the court considered the financial implications of maintaining the marital home. If neither party could afford to maintain the property or if keeping the home would create an ongoing financial strain, the court might view the sale of the property as the most equitable solution.

5. Long-Term Financial Considerations

A court will also think about the long-term financial stability of both spouses. For example, if keeping the property would tie up a significant portion of one spouse's assets, it might not be the best long-term financial decision. On the other hand, if selling the property provides one spouse with enough funds to establish their own financial independence and maintain a stable lifestyle, the sale might be more appropriate.

When there are multiple properties involved in a divorce in New Jersey, the court will consider several factors to determine how to divide them fairly and equitably. The same principles of **equitable distribution** apply, but the complexity of multiple properties can make the process more intricate. Here's a breakdown of what can happen when there is more than one property involved in a divorce:

A. Valuation of All Properties

The court will require that each property be properly valued, which may involve appraisals or the use of expert testimony. These valuations will establish the current market value of each property. The court will also take into account any debts tied to the properties (like mortgages, liens, or other encumbrances) to determine the net value of each property.

For example, if one property has significant equity (after accounting for the mortgage) and another property has little or no equity, the court may treat these properties differently in terms of division.

B. Equitable Distribution of Multiple Properties

The court will decide how to divide the total value of the properties in a way that is fair but not necessarily equal. The court may choose to divide the properties by awarding one spouse a particular property and the other spouse a different property, taking into account each property's value and any other financial considerations.

- If one property is much more valuable than the others, the court may award the more valuable property to one spouse, while compensating the other spouse with other assets, such as a larger share of liquid assets, or by adjusting the distribution of other properties.
- Alternatively, the court may order the sale of one or more properties to ensure an equitable distribution of assets. If one spouse has a higher financial need or the properties have significant equity, the court may decide that selling some properties and dividing the proceeds is the most effective way to achieve fairness.

C. Ability to Maintain or Buy Out the Property

When there are multiple properties, the financial abilities of the parties play an even more crucial role. The court will look at whether either spouse has the ability to keep or "buy out" the other's interest in one or more properties. For example:

- **If one spouse wants to keep a particular property** but does not have the financial means to buy out the other spouse's share, the court may order the sale of that property or another property to compensate the other spouse.
- **If both spouses are interested in keeping different properties**, the court may balance the distribution by considering the equity of the properties and the financial feasibility for both spouses. The court may also decide to allocate certain properties to one spouse, with the other spouse receiving a larger share of other assets to maintain an equitable outcome.

D. Special Considerations with Multiple Properties

- **Primary Residence vs. Investment Properties**: The court may treat a primary residence differently from other investment or vacation properties. A primary residence may have a stronger emotional attachment for the parties, particularly if children are involved. However, the court will still use financial considerations to determine which spouse has the better claim to keep it, such as the ability to afford the mortgage, taxes, and upkeep.
- **Vacation Homes or Rental Properties**: If there are vacation homes or rental properties, the court may take into account the income or profit generated by these properties when determining their value. In some cases, a court may view income-producing properties differently from non-income-producing ones and take that income into account when dividing assets. The court may also consider the financial maintenance of these properties when deciding whether to keep or sell them.

E. Dividing Multiple Properties by Sale or Liquidation

If neither spouse wants to keep a particular property, or if neither spouse can afford to buy out the other's interest in one or more properties, the court may order the sale of the properties. This is especially likely if:

- The properties have significant equity that can be liquidated to provide an equitable division.
- One spouse is financially incapable of maintaining the property, or maintaining multiple properties, after the divorce.

In some cases, if there are more than one property and both spouses want to keep certain properties, the court may order the sale of one or more properties to provide liquidity to divide the marital estate fairly. Proceeds from the sale of these properties would be divided between the spouses, either equally or equitably, depending on the circumstances.

F. Impact of Debts on Property Division

If the properties involved have significant debt or mortgages, the court will consider the outstanding liabilities tied to each property. Debts may impact how properties are divided or whether certain properties are worth keeping.

For example, if one property has a large mortgage, the court may decide that it is not in the best interest of either party to keep that property, as it could result in financial strain. In such a case, the court may opt to sell the property and divide the proceeds after the debt is paid off. If there are multiple properties with varying levels of debt, the court will weigh this factor heavily when determining how to divide them equitably.

G. Spousal Support Considerations

In some cases, the distribution of multiple properties can affect the need for spousal support (alimony). If one spouse is awarded more valuable or income-producing properties, the court may reduce the need for ongoing alimony payments. On the other hand, if the division leaves one spouse without significant assets or financial support, the court may consider ordering spousal support to ensure fairness in the overall division of assets.

When there are multiple properties involved in a divorce, the court in New Jersey has to consider not only the value and type of properties but also the financial capabilities of both parties to maintain them or buy out the other's share. The court will work to divide the properties in a way that is equitable based on the circumstances, whether that involves awarding specific properties to one spouse, selling properties and dividing the proceeds, or adjusting the distribution of assets to reflect the value of each property. The overarching goal is to ensure a fair and financially sound division of assets that accounts for both spouses' needs and capabilities.

When the property involved in a divorce is the **primary residence**, the situation becomes more nuanced because of both the financial and emotional considerations that come into play. The primary residence often holds significant value, both financially (in terms of equity) and emotionally (as the family home). Here's how courts in New Jersey typically address the division of a **primary residence** during a divorce:

1. Emotional Attachment to the Primary Residence

The **primary residence** is often the place where the family has lived, and it can be strongly associated with emotional and familial ties. Courts recognize this emotional aspect, especially when children are involved. For example, if the children have been living in the home, the court may take into account the stability and continuity of keeping them in the same environment after the divorce.

However, while emotional considerations are important, New Jersey law is focused on **equitable distribution**—ensuring that property is divided fairly, even if not necessarily equally. Emotional attachment does not override financial realities and the need for a fair distribution of assets.

2. Equitable Distribution of the Primary Residence

Under New Jersey law, property acquired during the marriage, including the primary residence, is considered **marital property** and subject to **equitable distribution**. This means the court will divide the home's equity in a manner that is fair to both parties.

In determining how to divide the primary residence, the court will look at:

- **The equity in the home**: The value of the property minus any debts (such as the mortgage) will be divided between the parties.

- **The financial capability of each spouse**: If one spouse has the ability to buy out the other's interest in the property, the court may allow that spouse to keep the home, but the other spouse must be compensated for their share of the home's equity.
- **Other marital assets**: If the property has significant equity, the court might award the home to one spouse and balance the distribution by awarding other assets (such as liquid assets or retirement accounts) to the other spouse.

For instance, if the home is worth $500,000 and the mortgage balance is $200,000, the court will consider how to fairly divide the $300,000 in equity between the spouses.

3. Who Gets to Keep the Home?

There are several possible outcomes when it comes to the primary residence:

- **One spouse keeps the home**: One spouse may be awarded the primary residence, especially if it is in the best interest of the children or if that spouse has the financial ability to maintain the home. In such cases, the spouse who is awarded the home must typically buy out the other spouse's share of the home's equity.
    - If the spouse keeping the home cannot afford to buy out the other spouse, the court may order the sale of the home.
- **The home is sold**: If neither spouse wants to keep the primary residence or if neither spouse can afford to buy out the other's share, the court may order the sale of the home. The proceeds from the sale would then be divided between the spouses in a manner that is equitable based on their share of ownership, the division of debts, and other financial factors.

4. Special Considerations Involving Children

If the couple has children, the court may take the children's best interests into account when deciding who will keep the primary residence. In some cases, the court might allow the custodial parent to remain in the home for the sake of the children's stability and continuity. The court may allow this spouse to continue living in the home with the children until the children reach a certain age or another arrangement can be made. However, the other spouse's share of the home's equity would still need to be addressed—either through a buyout or sale.

For example, if the husband is awarded custody of the children and the wife agrees to allow him to keep the home, the court might still require that the wife be compensated for her half of the equity in the home. This could be done through other assets or the husband agreeing to make payments to the wife.

5. Financial Considerations: Can One Spouse Buy Out the Other?

If one spouse wants to keep the primary residence, the court will typically assess whether that spouse can afford to buy out the other spouse's share of the equity in the home. This often depends on the income and financial resources of the spouse who wishes to keep the home.

- If the spouse wishing to keep the home cannot afford a buyout, the court may order the sale of the home and divide the proceeds.
- In some cases, the spouse keeping the home may also be required to refinance the mortgage in their name alone, to remove the other spouse from the debt obligation.

6. Mortgage and Debt Considerations

The court will also consider the **mortgage** and any outstanding debt tied to the property when determining how to divide the home. If one spouse is awarded the home, that spouse must typically assume responsibility for the mortgage and any other debts related to the property. If the court orders the sale of the home, the proceeds from the sale will be used to pay off the mortgage and other debts, with the remaining equity divided between the spouses.

7. Impact of the Primary Residence on Alimony

In some cases, the division of the primary residence can also influence the determination of **alimony** or **spousal support**. If one spouse is awarded the home, the court may consider that when determining whether alimony is necessary and the amount of alimony. For example, the spouse receiving the home may be less in need of alimony if the home provides them with financial stability.

8. Tax Implications

The sale or transfer of a primary residence during a divorce can have **tax implications**, especially concerning capital gains taxes. In some cases, there may be tax benefits associated with the sale of the primary residence, so it's important to consult with a tax professional to understand how tax laws may apply to the sale of the home.

In conclusion in New Jersey, the division of the **primary residence** during a divorce depends on both **financial and emotional factors**. The court will consider the equity in the property, the financial capabilities of each spouse, the interests of the children, and any other relevant circumstances when determining how the home should be divided. While one spouse may be awarded the home, the court may order the sale of the property if a buyout is not feasible or if it would not be equitable to keep the home. In any case, the court's goal is to ensure that the division of the primary residence and other marital assets is fair and consistent with the principles of equitable distribution.

In **Randazzo v. Randazzo**, the financial inability of the wife to buy out her husband's share of the marital home was a central factor in the court's decision to order the sale of the property. Financial considerations, including the ability to buy out the property, the ongoing costs of maintaining the home, and the long-term financial impact on both spouses, are all key factors that a court in New Jersey will consider when deciding whether to sell property during a divorce.

Ultimately, the court's goal is to ensure a fair and equitable distribution of assets based on the financial realities and needs of the parties involved.

BIO:

Richard Sanvenero Jr. is a founding partner at Sanvenero & Cittadino LLC located in Red Bank, New Jersey. He focuses his practice to family law matters including complex matrimonial litigation, mediation, business valuations, alimony, equitable distribution, child support, child custody, adoptions, and domestic violence. He is trained as a Collaborative Divorce attorney, mediator, parenting coordinator and has been appointed by the Court to serve as a Guardian Ad Litem.

He is admitted to practice in New Jersey, New York, District of Columbia and the Supreme Court of the United States. He is a member of the New Jersey State Bar Association and currently serves as Trustee for the Monmouth Bar Association.

Mr. Sanvenero received his Bachelor degree from Rutgers University and received his law degree from Barry University School of Law. He has served as a Law Clerk to the Honorable Christopher D. Rafano, J.S.C. of the Superior Court of New Jersey, Family Part, Middlesex Vicinage.

User Name: Richard Sanvenero
Date and Time: Tuesday, March 11, 2025 11:38:00 PM EDT
Job Number: 247498602

Document (1)

1. *Randazzo v. Randazzo*
   Client/Matter: -None-
   Search Terms: randazzo v. randazzo
   Search Type: Natural Language
   Narrowed by:

Content Type	Narrowed by
	-None-

Randazzo v. Randazzo

Supreme Court of New Jersey
February 28, 2005, Argued ; June 28, 2005, Decided
A-15 September Term 2004

Reporter

184 N.J. 101 *; 875 A.2d 916 **; 2005 N.J. LEXIS 811 ***

LAURA RANDAZZO, PLAINTIFF-RESPONDENT, v. JOSEPH J. RANDAZZO, JR., DEFENDANT-APPELLANT.

Prior History: [*1]** On certification to the Superior Court, Appellate Division.

Randazzo v. Randazzo, 180 N.J. 456, 852 A.2d 192, 2004 N.J. LEXIS 858 (2004)

Core Terms

parties, trial court, proceeds, divorce, marital assets, alimony, equitable distribution, marital, farm, pendente lite, matrimonial, ordering, commercial property, circumstances, horse, obligations, authorize, taxes, properties, expenses, spouse, divorce judgment, final judgment, marital home, utilization

Case Summary

Procedural Posture

Defendant husband sought review of the judgment from the Superior Court, Appellate Division (New Jersey), which affirmed the trial court's judgment ordering the sale of the parties' marital property prior to its final judgment of divorce in plaintiff wife's action for divorce from the husband.

Overview

The parties were married in 1954 and acquired properties, including a vacation home in Florida and a 52-acre horse farm in New Jersey. The wife filed for divorce in 1997. She sought pendente lite support, alleging monthly expenses but no income. She arranged for the sale of the parties' vacation home, but the husband resisted the sale. The trial court then ordered the sale of the Florida property. Thereafter, the trial court issued a judgment of divorce. The appellate division affirmed. On certification, the court found that consistent

with N.J. Stat. Ann. § 2A:34-23 and N.J. Ct. R. 5:3-5, a trial court could exercise its discretion to order the sale of marital assets and the utilization of the proceeds in a manner as the case rendered fit, reasonable, and just. Because the parties needed income from the sale of the Florida property for financial maintenance, the court found that the trial court properly ordered its sale. The court disapproved of the decision in Grange v. Grange, 160 N.J. Super. 153 (1978), to the extent that it stood for the proposition that absent consent, the trial court lacked authority to order the sale of a marital asset prior to the judgment of divorce.

Outcome

The court affirmed the judgment of the appellate division.

LexisNexis® Headnotes

Family Law > Marital Termination & Spousal Support > Spousal Support > General Overview

HN1[] Marital Termination & Spousal Support, Spousal Support

See N.J. Stat. Ann. § 2A:34-23.

Family Law > ... > Property Distribution > Equitable Distribution > General Overview

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

Family Law > ... > Property Distribution > Characterization > Marital Property

HN2[] Property Distribution, Equitable Distribution

The equitable distribution portion of N.J. Stat. Ann. § 2A:34-23 authorizes the court where a judgment of divorce is entered to make such award or awards to the parties to effectuate an equitable distribution of the marital property, both real and personal. N.J. Stat. Ann. § 2A:34-23(h).

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

Governments > Legislation > Interpretation

Family Law > Marital Termination & Spousal Support > Spousal Support > General Overview

HN3[] Dissolution & Divorce, Property Distribution

A rigid and literal reading of N.J. Stat. Ann. § 2A:34-23 would not serve its intent.

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

Family Law > Marital Termination & Spousal Support > Spousal Support > General Overview

HN4[] Judges, Discretionary Powers

The overriding purpose of N.J. Stat. Ann. § 2A:34-23 is to give a matrimonial judge broad discretion and authority to fashion sagacious remedies on a case-by-case basis, which will achieve justice and fulfill the needs of the litigants.

Civil Procedure > Judgments > Relief From Judgments > Independent Actions

Estate, Gift & Trust Law > Trusts > Constructive Trusts

Family Law > ... > Property Distribution > Equitable Distribution > General Overview

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

Family Law > Marital Termination & Spousal Support > Spousal Support > General Overview

HN5[] Relief From Judgments, Independent Actions

In highly unusual circumstances, some aspects of statutory equitable distribution and related forms of relief may precede a divorce judgment or survive a spouse's death before divorce.

Family Law > Marital Termination & Spousal Support > Spousal Support > General Overview

HN6[] Marital Termination & Spousal

Support, Spousal Support

Pending judgment in matrimonial action, a court may order such pendente lite relief as the circumstances of the parties and the nature of the case shall render fit, reasonable and just, and, upon failure of compliance, may attach property as necessary or enforce such orders by other ways according to the practice of the court.

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

Family Law > Marital Termination & Spousal Support > Spousal Support > General Overview

HN7[] Dissolution & Divorce, Property Distribution

See N.J. Ct. R. 5:3-5(c).

Civil Procedure > Preliminary Considerations > Equity > General Overview

Family Law > ... > Dissolution & Divorce > Jurisdiction > General Overview

HN8[] Preliminary Considerations, Equity

The New Jersey Superior Court, Family Part, is a court of equity.

Family Law > Marital Duties & Rights > General Overview

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

Family Law > ... > Property Distribution > Equitable Distribution > General Overview

Family Law > Marital Termination & Spousal Support > Spousal Support > General Overview

HN9[] Family Law, Marital Duties & Rights

The Supreme Court of New Jersey reads the statutory requirement that directs equitable distribution at the time of the divorce judgment to be limited by the portion of N.J. Stat. Ann. § 2A:34-23 that authorizes the court in its

discretion to make such order as to the alimony or maintenance of the parties, and also as to the care, custody, education and maintenance of the children. Consistent with *N.J. Stat. Ann. § 2A:34-23* and *N.J. Ct. R. 5:3-5*, the trial court may exercise its discretion to order the sale of marital assets and the utilization of the proceeds in a manner as the case shall render fit, reasonable, and just.

Family Law > ... > Property Distribution > Equitable Distribution > General Overview

Real Property Law > Common Interest Communities > Condominiums > Purchase & Sale

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Family Law > ... > Dissolution & Divorce > Property Distribution > General Overview

Family Law > ... > Property Distribution > Characterization > Marital Property

Real Property Law > Common Interest Communities > Condominiums > General Overview

HN10[] **Property Distribution, Equitable Distribution**

The Supreme Court of New Jersey disapproves of the decision in *Grange v. Grange, 160 N.J. Super. 153 (1978)*, to the extent it stands for the proposition that absent consent, the trial court lacks authority to order the sale of a marital asset prior to the judgment of divorce.

Syllabus

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

***Laura Randazzo v. Joseph J. Randazzo, Jr.* (A-15-04)**

Argued February 28, 2005 -- Decided June 28, 2005

WALLACE, J., writing for a unanimous Court.

The Court considers whether the sale of marital real property can be ordered prior to a final judgment of divorce.

Plaintiff Laura Randazzo and defendant Joseph J. Randazzo, Jr., were married in 1954. In 1961, the parties acquired commercial property and an adjoining two-family residence. They operated an auto repair facility and a licensed used car dealership at that location. Joseph Randazzo sold and repaired cars and Laura Randazzo did the bookkeeping for the businesses, which grew to gross between $ 350,000 and $ 400,000 annually. A substantial part of that income resulted from a towing contract with the City of Clifton. The parties also **[***2]** leased out commercial building space. Over the years, they purchased additional properties, including a vacation home in Florida (the Florida property), and a fifty-two acre horse farm in New Jersey for raising and training race horses.

In 1997, Laura Randazzo filed for divorce. In her Case Information Statement, she listed no monthly income and $ 13,482.86 in monthly expenses. She also listed $ 2,802,190 in net assets and $ 440,916.32 in liabilities. After filing for divorce, Laura obtained Joseph's consent to sell the Florida property. However, Joseph then resisted the sale and Laura filed a motion seeking the sale of the property, *pendente lite* support, and appraisals of the properties owned by the parties. In his response, Joseph admitted that he had agreed to sign the listing agreement for the Florida property and acknowledged the need to liquidate assets. He claimed, however, that there was no money to pay for an appraisal because he had lost the towing contract with the City of Clifton, resulting in the reduction of their income and the exhaustion of their savings. Nor would there be money for *pendente lite* support, Joseph explained, until their assets were liquidated. **[***3]** The trial court found the motion to sell the Florida property "moot," presumably because Joseph had agreed to the sale. Although the court ordered Joseph, in part, to pay temporary support, he failed to do so and Laura moved for additional support and other relief. The judge required the parties to list various properties for sale and authorized Laura to sign Joseph's name to the listing agreements if necessary.

In October 1998, Laura filed an order to show

cause seeking authorization to sign the agreement of sale and to execute closing documents for the Florida property, to pay delinquent taxes on all of their real estate holdings with the proceeds, and to evenly divide the balance. Joseph responded that he had signed the agreement, but would not release it until there was an understanding regarding the disbursement of the proceeds. The court granted Laura's requests regarding the closing of the sale of the property, but required any remaining proceeds to be placed in a trust account after the payment of outstanding real estate tax liens on the New Jersey real estate. Subsequently, the judge ordered additional disbursements from the sale of the Florida property to pay certain **[***4]** obligations.

Trial on equitable distribution and alimony occurred in 1999 and 2000. In relevant part, the court found that neither party was capable of being self-supportive at the upper-middle-class standard of living enjoyed during the marriage, both parties contributed to the acquisition of the assets, and both parties would suffer equivalent tax consequences. The court ordered the assets equally divided, but assessed Joseph a greater portion of the liabilities because he had not met his *pendente lite* obligations. The court also adjusted portions of the equitable distribution to account for obligations, such as liens and taxes, that should have been paid by Joseph but were not. Additionally, because Joseph had caused the loss of $ 20,000 in equity by his wrongful delay in selling the Florida property, the court ordered him to pay Laura $ 10,000, representing her share of that loss of equity. The court then applied the statutory factors and awarded Laura alimony. A final judgment of divorce was entered September 11, 2000.

Joseph Randazzo appealed. On January 2, 2001, the trial court entered an amended judgment of divorce, and Joseph filed a separate appeal from that **[***5]** judgment. The appeals were consolidated. Following a partial remand, the trial court held a plenary hearing regarding alimony, and issued several orders, from which Joseph also appealed.

The Appellate Division affirmed the trial court. The panel noted that the main question on appeal was whether the judge erred in ordering the *pendente lite* sale of the Florida property. The panel distinguished *Grange v. Grange, 160 N.J. Super. 153, 158-59, 388*

A.2d 1335 (App.Div.1978), which held that absent consent, marital assets could not be sold and distributed prior to the divorce of the parties. In respect of challenges to the trial court's award of alimony, the panel found no need to address the judge's decision, noting Joseph's waiver of the issue by failing to raise it in his first two appeals. Nonetheless, the panel considered the merits of the claim and rejected it. The panel noted also that Joseph can move for relief from payment of alimony based on changed circumstances at any time.

This Court granted Joseph Randazzo's petition for certification, limited to the questions whether the trial court erred in ordering the *pendente lite* sale of real property or in its disposition **[***6]** of the alimony issue.

***HELD*:** A trial court has the discretion to order the sale of marital assets prior to a judgment of divorce when the circumstances of the case so justify. Although ordinarily distribution of the proceeds from the sale of a marital asset should await the final judgment of divorce, a court has the discretion to order an earlier distribution to serve the best interests of the parties.

1. Because Joseph Randazzo did not properly appeal the alimony issue, certification was improvidently granted on that issue and the Court dismisses it. (P. 11).

2. In respect of the sale of the Florida property, N.J.S.A. 2A:34-23 states, in part, that pending any matrimonial action, the court may make such order as to the alimony or maintenance of the parties and children as circumstances render fit, reasonable and just. N.J.S.A. 2A:34-23(h) authorizes the court, where a judgment of divorce is entered, to make an award to the parties that will effectuate the equitable distribution of the marital property. (Pp. 11-13).

3. In *Grange*, the Appellate Division interpreted **[***7]** N.J.S.A. 2A:34-23 to severely limit the court's authority prior to the judgment of divorce. There, a trial court authorized the sale of a condominium because the plaintiff claimed that he could not afford to maintain three residences, pay support and pay the defendant's counsel fees. On appeal, the panel reviewed N.J.S.A. 2A:34-23(h) and concluded that the trial court lacked authority to order a pre-judgment distribution of marital property absent consent of the parties. Several courts subsequently distinguished *Grange* on the facts. Additionally, Rule 5:3-5(c) was

amended to provide, in part, that the court may direct parties to sell or encumber marital assets to fund the divorce litigation. (Pp. 13--18).

4. The Court disapproves of *Grange* to the extent it stands for the proposition that, absent consent, the trial court lacks authority to order the sale of a marital asset prior to the judgment of divorce. The Family Part is a court of equity. The Court reads the statutory requirement that directs equitable distribution at the time of divorce judgment to be limited by the portion of **[***8]** *N.J.S.A. 2A:34-23* that authorizes the court in its discretion to make orders as to the alimony or maintenance of the parties, and also as to the care, custody, education and maintenance of the children. The Court concludes that, consistent with *N.J.S.A. 2A:34-23* and *Rule 5:3-5*, the trial court may exercise its discretion to order the sale of marital assets and the utilization of the proceeds in a manner as "the case shall render fit, reasonable, and just." The Court acknowledges that in many cases the proceeds from the sale of marital assets should be placed in escrow pending final distribution, but in other cases, the proceeds may properly be used to pay marital obligations. The Court leaves to the discretion of the trial court the varying circumstances that may justify the sale of marital assets and the utilization of the proceeds prior to the divorce judgment. (Pp. 18--19).

5. Here, the Court notes that the parties had several valuable pieces of real estate but little money to meet the financial obligations on those properties, including state tax liens. The sale of the Florida property was necessary for the financial maintenance of the parties. The trial court recognized that the mounting marital obligations could be abated by the sale of the Florida property and the utilization of the proceeds to pay some of the obligations. Further, the court required that the balance of the proceeds should be held in a trust account and distributed at the time of the final hearing. The Court concludes that the trial court acted well within its discretionary powers by ordering the sale of the Florida property and that the disbursement of a portion of the proceeds to meet the pressing obligations of the parties was fit, reasonable, and just. (Pp. 19--20).

The judgment of the Appellate Division is **AFFIRMED**.

CHIEF JUSTICE PORITZ and JUSTICES

LONG, LaVECCHIA, ZAZZALI, ALBIN and RIVERA-SOTO join in JUSTICE WALLACE's opinion. [*9]**

Counsel: *Robert B. Cherry,* argued the cause for appellant.

Erin E. O'Connell Sussman, argued the cause for respondent (*O'Connell & Sussman,* attorneys).

Judges: Justice WALLACE delivered the opinion of the court. Chief Justice PORITZ and Justices LONG, LaVECCHIA, ZAZZALI, ALBIN, WALLACE and RIVERA-SOTO.

Opinion by: WALLACE

Opinion

[*102] [917]** Justice WALLACE delivered the opinion of the court.

This matrimonial action presents the issue of whether a trial court may order the sale of marital real property prior to a final judgment of divorce. We hold that a trial court has the equitable power to order such a sale and, if the circumstances warrant, to order the proceeds be distributed to serve the best interests of the parties.

I.

We recite the facts pertinent to the disposition of this appeal. Plaintiff Laura Randazzo and defendant Joseph J. Randazzo, Jr. were married on November 14, 1954. The parties have two emancipated children. Plaintiff and defendant both graduated high school. Although defendant did not have any subsequent education, plaintiff studied accounting at Bloomfield College for two years.

In 1961, the parties **[***10]** acquired commercial property and an adjoining two-family residence in Clifton, New Jersey. They operated an auto repair facility and a licensed used car dealership at that location. Defendant repaired and sold high-end cars and plaintiff did the bookkeeping for the businesses as well as becoming **[*103]** a realtor in 1978. The businesses grew to gross between $ 350,000 and $ 400,000 annually. A substantial part of that income resulted from a towing contract with the City of Clifton that grossed approximately $ 100,000 annually. The parties also leased out commercial building space at the Clifton location. In 1975, they purchased a

home in Montclair, New Jersey, and later they purchased a vacation home in Sanibel, Florida (the Florida property).

Subsequently, the parties acquired a fifty-two-acre horse farm in Hardwick Township, New Jersey, that contained a track, barn, horse paddocks, and other features **[**918]** conducive to raising and training about seventy race horses. In 1992, defendant's mother gifted to the parties a home on Louise Street in Clifton, subject to a life estate in her favor. The following year the parties sold their Montclair home and purchased their final marital home next to the **[***11]** horse farm in Hardwick Township. The parties also bought a 3.2-acre lot adjacent to the marital home and a twenty-seven-acre lot consisting of mostly wetlands. Since 1993, plaintiff has managed and worked on the horse farm full time, but has earned little or no profit.

After approximately forty-three years of marriage, plaintiff filed for divorce on July 28, 1997. At the time of the filing, plaintiff was sixty-one years old and defendant was sixty-four years old. In her Case Information Statement, plaintiff listed no monthly income and $ 13,482.86 in monthly expenses. She also listed $ 2,802,190 in net assets and $ 440,916.32 in liabilities. The parties' real estate included

(1) the commercial property in Clifton, including the two-family residence;

(2) the horse farm and wetlands;

(3) the marital residence and adjacent 3.2-acre lot;

(4) the Florida property; and

(5) the Clifton house that defendant's mother gifted to both parties subject to a life estate.

After filing for divorce, plaintiff obtained defendant's consent to sell the Florida property. Afterwards, defendant resisted the sale and plaintiff filed a motion, among other things, for the sale of the **[*104]** Florida **[***12]** property, *pendente lite* support, and appraisals of the real estate owned by the parties. In his answering certification, defendant acknowledged that he and plaintiff had worked hard to obtain considerable economic wealth, but that the loss of the towing contract with the City of Clifton had reduced their income and had caused them to exhaust their savings. He claimed that an appraisal of the Clifton commercial property had not been undertaken because neither

party had the money to pay for it. Further, he asserted that plaintiff's operation of the horse farm was a drain on their finances and until they liquidated their assets, primarily the Florida property, there would be no money available for support. He acknowledged the need to liquidate assets to raise cash and admitted that he had agreed to sign the listing agreement for the sale of the Florida property.

The motion court ordered defendant to pay temporary support of $ 200 a week, to obtain appraisals of the residential and business real estate properties, and to pay the real estate taxes for the properties in Clifton. The court noted in the paragraph of the order authorizing the sale of the Florida property that plaintiff's **[***13]** request was "moot," presumably because defendant had agreed to the sale.

After defendant failed to pay the temporary alimony, plaintiff moved for additional support and other relief. On September 11, 1998, the court entered an order denying plaintiff's request for additional support, authorizing plaintiff to collect rent from the Clifton residential and commercial properties, and requiring the parties to list the horse farm and the Clifton commercial property for sale. In addition, plaintiff was authorized to sign defendant's name to the listing agreements if he refused to do so.

In October 1998, plaintiff filed an Order to Show Cause seeking authorization to sign the agreement of sale and to execute all closing documents for the Florida property, to pay the delinquent taxes on all of their real estate holdings with the proceeds, and to evenly divide the balance. Defendant certified in response that he **[**919]** had signed the agreement of sale for the Florida property, but **[*105]** that he would not release the agreement until they reached an understanding regarding the disbursement of the proceeds. Defendant, in part, sought to use the proceeds to pay the outstanding tax liens on the Clifton properties **[***14]** in excess of $ 100,000, and the unpaid taxes on the farm and the marital residence.

The trial court granted plaintiff's request to sign the agreement of sale and the closing documents necessary for the sale of the Florida property. The court also required plaintiff's counsel, after paying the outstanding real estate tax liens on the New Jersey real

estate, to place the net proceeds of the sale in a trust account. Subsequently, on December 14, 1998, the motion court authorized additional disbursements from the proceeds from the sale of the Florida property to pay certain obligations.

Trial on the outstanding issues of equitable distribution and alimony was conducted on various dates from June 14, 1999, to January 14, 2000. During that time, the trial court entered several additional orders compelling defendant to pay real estate taxes, interest, and penalties owed on the farm and the commercial property. At the conclusion of the trial, the parties requested an "early decision" limited to a determination of which offer the parties should accept for the sale of the Clifton commercial property and whether the horse farm should be listed for sale separately or with the marital home.

[*15]** On January 31, 2000, the trial court rendered a written decision directing which offer should be accepted for the Clifton commercial property and ordering that the farm should be sold separate from the marital home. Eventually, the parties agreed to sell the Clifton commercial property to a different buyer. As part of that transaction, each party received approximately $ 4,125 per month in mortgage payments for the mortgage they took back as part of the sale.

On June 15, 2000, the court issued a comprehensive opinion, resolving all of the remaining issues concerning alimony and equitable distribution. The court expressly considered the statutory criteria set forth in *N.J.S.A. 2A:34-23.1* in distributing the **[*106]** assets and liabilities of the parties. The court found, among other things, that both parties suffered some health problems, although no expert testimony had been presented on the effect of those problems on their ability to work; neither party was capable of being self-supportive at the upper-middle-class standard of living enjoyed during the marriage; both parties contributed to the acquisition of the assets; and both parties would suffer equivalent tax consequences. The court ordered the assets equally divided, but assessed defendant a greater portion of the liabilities because he had not met his *pendente lite* obligations.

With respect to the Florida property, the court found that the property

sold for $ 193,808.39. The proceeds were put into a trust account. Some $ 93,177.34 of such proceeds were used to pay joint debt that neither party is asking be reallocated or credited to one party. . . . However, during the litigation, some $ 95,483.53 was removed from the trust account to pay taxes on the Clifton properties; $ 1284.12 was removed to pay for liens owed to the New Jersey Department of Labor; $ 2215.40 was taken out to pay payroll taxes; $ 1000 was paid to attorney []; and $ 648 was used to pay for the repair of the Cadillac. The court finds that all of the aforementioned expenses, which total $ 100,631.05, were the [defendant's] responsibility to pay. As indicated above, **[**920]** the court finds that a "50-50" distribution of assets is appropriate at the outset, but is ordering the [defendant] to pay for all of the aforementioned debts. Had $ 100,631.05 of the proceeds not been used to pay for debts the [defendant] was supposed to have paid, the [plaintiff] would have had access to her 50% share of the proceeds, which is $ 50,315.22. Accordingly, the sum of $ 50,315.22 shall be paid to the [plaintiff] out of the [defendant's] share of equitable distribution when either the Clifton or Hardwick property sells, whichever occurs first. . . .

Additionally, because defendant had caused a loss of $ 20,000 in equity by his wrongful delay in selling the Florida property, the court ordered defendant to pay plaintiff $ 10,000 representing her share of that loss of equity.

The court then applied the factors set forth in **[***16]** *N.J.S.A. 2A:34-23(b)*, and awarded plaintiff alimony of $ 410 per week. The court ordered the parties to submit applications for counsel fees. A final judgment of divorce was entered on September 11, 2000. On October 5, 2000, the court awarded plaintiff counsel fees in the amount of $ 60,357.

[*107] Defendant moved for reconsideration. Prior to a hearing on that motion, defendant filed a notice of appeal from the divorce judgment. On November 8, 2000, the trial court denied defendant's motion for reconsideration without prejudice, finding that it lacked jurisdiction to decide the motion while his appeal was pending.

On January 2, 2001, the trial court entered an amended judgment of divorce, and defendant

filed a separate appeal from that judgment. Defendant's appeals were consolidated in March 2001, and a temporary remand was ordered to consider whether there were changed circumstances to justify a reduction in the alimony award.

In April 2001, plaintiff filed a motion for support arrears and permission to sell the farm and the wetlands. Defendant filed a cross motion seeking a hearing on the alimony issue. Defendant's motion was granted and the trial court conducted a plenary hearing regarding alimony beginning on January 8, 2002. Defendant argued that his health prevented him from working and that he should be permitted to retire and not pay alimony. The trial court gave defendant three months to produce expert testimony regarding his health, but defendant failed to do so. The plenary hearing concluded on May 6, 2002.

In a May 27, 2002, letter opinion, the trial court found that defendant failed to show changed circumstances, noting that his physical ailments had existed at the time of the divorce trial and that they had not deteriorated to the extent to prevent him from working. Further, the court found that although the seventy-year-old defendant had a legitimate reason for wanting to retire, the advantage of retirement to him did not substantially outweigh the disadvantage to plaintiff. The court memorialized its decision by order dated June 18, 2002. Defendant did not appeal the June 18, 2002, order; however, he moved to vacate that order. Defendant's motion was denied by order dated February 24, 2003, and again was denied by order dated June 17, 2003. The court also entered an order dated July 7, 2003, continuing the requirement that defendant pay alimony to plaintiff.

[*108] On July 24, 2003, defendant appealed the June 17 and July 7, 2003, orders. In an unpublished opinion, the Appellate Division affirmed the trial court and rejected defendant's claims of error. The panel noted that the main question on appeal was whether the judge erred in ordering **[**921]** the *pendente lite* sale of the Florida property. The panel distinguished *Grange v. Grange, 160 N.J. Super. 153, 158-59, 388 A.2d 1335 (App.Div.1978)*, which held that absent consent, marital assets could not be sold and distributed prior to the divorce of the parties. The panel found overwhelming evidence in the record that defendant consented to the sale of

the Florida property. Further, the panel found no need to address the alimony issue because defendant waived that issue by failing to raise it in his first two appeals. Moreover, defendant failed to appeal from the June 18, 2002, order, which denied his application to terminate alimony, and he failed to include a transcript of the plenary hearing conducted in May 2002. Nonetheless, the panel considered the merits of defendant's alimony claim and rejected it. The panel noted that defendant can move for relief from payment of alimony based on changed circumstances at any time.

We granted defendant's petition for certification, limited to the following questions: (1) whether the trial court erred in ordering the *pendente lite* sale of real property of the marriage and (2) whether the trial court erred in its disposition of the alimony issue. ***Randazzo v. Randazzo***, *180 N.J. 456, 852 A.2d 192 (2004)*. Because defendant did not properly appeal the alimony issue, we conclude that certification was improvidently granted on that issue and dismiss it.

II.

We turn now to defendant's argument that the trial court erred in ordering the *pendente lite* disposition of marital property. Defendant claims that **[***17]** N.J.S.A. 2A:34-23 authorizes the equitable distribution of marital assets only upon the divorce of the parties and not before. Further, he contends that the sale of the marital assets was not necessary for spousal support.

[*109] Plaintiff argues that the Appellate Division correctly upheld the *pendente lite* sale of the Florida property. She urges that the Florida property was the sole marital asset sold prior to the divorce judgment and there was overwhelming evidence that defendant consented to the sale. Further, she contends the trial court is vested with wide discretion to order appropriate action for the maintenance of a party and the court properly found that the liquidation of the Florida property was necessary for the parties' financial stability.

III.

The starting point for our analysis is N.J.S.A. 2A:34-23. That statute provides, in part, that

> HN1[] [p]ending any matrimonial action . . . the court may make such order as to the alimony or maintenance of the parties, and also as to the care, custody, education and maintenance of the children, . . . as the

> circumstances of the parties and the nature of the case shall render fit, reasonable, and just, and require reasonable security for the due observance of such orders, including, but not limited to, the creation of trusts or other security devices, to assure payment of reasonably foreseeable medical and educational expenses.
>
> **[***18]** [*N.J.S.A. 2A:34-23*.]

HN2[⬆] The equitable distribution portion of that statute authorizes the court "where a judgment of divorce . . . is entered [to] make such award or awards to the parties . . . to effectuate an equitable distribution of the [marital] property, both real and personal. . . ." *N.J.S.A. 2A:34-23(h)*.

An early Appellate Division decision interpreting the statute severely limited the court's authority prior to the judgment of divorce. In *Grange,* the plaintiff filed a complaint for divorce, and each party **[**922]** sought equitable distribution of all marital assets. *Supra, 160 N.J. Super. at 154, 388 A.2d 1335*. The plaintiff claimed that he could not afford to maintain three residences, pay support, and pay the defendant's counsel fees. *Ibid.* He sought, without success, to have the defendant cooperate in the sale of their former marital residence, a condominium in Stanhope, New Jersey. *Ibid.* The plaintiff obtained an appraisal of the property indicating a negative equity of approximately $ 5,300. *Ibid.* He **[*110]** then filed a motion to compel the defendant to execute the necessary documents to convey the property to a proposed buyer and to reserve the issue of the treatment of the loss for the final hearing. *Ibid.* The trial court authorized the sale without prejudice subject to the defendant's right to challenge the price for the property and to seek equitable distribution based upon the fair market value of the condominium. *Id. at 156, 388 A.2d 1335*. After the defendant sought to demonstrate that the price was too low, the trial court directed her to comply with its order. *Id. at 157, 388 A.2d 1335*. The defendant's motions for stay and leave to appeal to the Appellate Division were granted. *Ibid.* The Appellate Division framed the issue as "whether in a matrimonial matter the court may make a *pendente lite* order relating to the equitable distribution of the marital assets and, more specifically, order the sale of the marital dwelling absent the consent of the parties."

Ibid. The panel reviewed **[***19]** N.J.S.A. 2A:34-23(h), and found "no statutory authority for *pendente lite* action of this kind in connection with equitable distribution." *Id. at 158, 388 A.2d 1335*. The panel concluded that the trial court lacked authority to order a pre-judgment distribution of the marital property absent consent of the parties and reversed the judgment of the trial court. *Id. at 158-59, 388 A.2d 1335*.

Several years after the *Grange* decision, the Supreme Court Committee on Matrimonial Litigation (the Committee) addressed the issue of the *pendente lite* sale of marital assets. The Committee found that the "*Grange* rule is unduly restrictive, contrary to the broad discretionary powers of a court of equity and generally unfair." *Supreme Court Committee on Matrimonial Litigation, Phase Two, Final Report,* 81 *N.J.L.J. Supp.* at 1 (July 16, 1981). Among other things, the Committee recommended that trial courts have "the discretionary power to permit a party to utilize a portion of the proceeds when . . . basic living expenses cannot be paid in any other way []" and "for other good and emergent cause." *Ibid.*

[*111] Consistent with the Committee's recommendations, several trial courts have distinguished *Grange* on the facts and authorized the *pendente lite* sale of marital assets in order to provide support to a dependent spouse or child. *See, e.g.*, *Pelow v. Pelow, 300 N.J. Super. 634, 646-47, 693 A.2d 564 (Ch.Div.1996)*; *Glatthorn v. Wisniewski, 236 N.J. Super. 504, 509, 566 A.2d 242 (Ch.Div.1989)*; *Graf v. Graf, 208 N.J. Super. 240, 246, 505 A.2d 207 (Ch.Div.1985)*; *Witt v. Witt, 165 N.J. Super. 463, 465-66, 398 A.2d 597 (Ch.Div.1979)*. For example, in *Pelow,* the plaintiff sought to have the defendant pay the mortgage, taxes, and other expenses of the home, and the defendant sought to sell the marital home. *Supra, 300 N.J. Super. at 636, 693 A.2d 564*. Because of the dire financial circumstances of the parties, the trial court ordered the listing of the home for sale. *Id. at 646, 693 A.2d 564*. In reaching that decision, the trial court limited the reach of *Grange* to a "sale of convenience." *Id. at 643, 693 A.2d 564*. The court held that *Grange* should not control where the sale was necessary "to avoid irreparable harm to a spouse and/or the children." *Ibid.* In **[**923]** interpreting the purpose and breath of **[***20]** N.J.S.A. 2A:34-23, the court found that "the Legislature

intended to invest a court with broad discretion under [that statute] to make such orders as are 'fit, reasonable and just' to protect the parties and dependent children during and after the dissolution process." *Id. at 644, 693 A.2d 564*. The court found that ***HN3***[⬆] a rigid and literal reading of the statute would not serve its intent. *Ibid.* The court concluded that ***HN4***[⬆] the "overriding 'purpose of [*N.J.S.A. 2A:34-23*] is to give a matrimonial judge broad discretion and authority to fashion sagacious remedies on a case by case basis, which will achieve justice and fulfill the needs of the litigants.'" *Id. at 646, 693 A.2d 564* (quoting *Graf, supra, 208 N.J. Super. at 243, 505 A.2d 207*). *See also Witt, supra, 165 N.J. Super. at 465-66, 398 A.2d 597* (finding *pendente lite* sale of marital residence was proper where parties previously consented and where sale was necessary to maintain property's value).

Although we have not yet spoken to this issue, we obliquely referred to it in *Carr v. Carr, 120 N.J. 336, 342, 576 A.2d 872* ***[*112]*** *(1990)*. In *Carr,* we were asked to decide whether a spouse could receive an equitable distribution of the marital assets when the husband died while the divorce action was pending, or whether the spouse could elect to receive a share of her deceased husband's estate under the probate code. *Id. at 346, 576 A.2d 872*. We concluded that under the facts of that case, neither statutory scheme entitled the spouse to relief. *Id. at 345-46, 576 A.2d 872*. In discussing the equitable distribution statute, we noted that "[t]he Court has consistently interpreted **[***21]** [*N.J.S.A. 2A:34-23*] to authorize a distribution of martial assets only on the condition that the marriage of the parties has been terminated by divorce." *Id. at 342, 576 A.2d 872* (citations omitted). We noted, however, that some of our courts "have recognized that ***HN5***[⬆] in highly unusual circumstances some aspects of statutory equitable distribution and related forms of relief may precede a divorce judgment or survive a spouse's death before divorce." *Ibid.* (citations omitted). We found no unusual or exceptional circumstances to avoid the general rule in that case. *Id. at 343, 576 A.2d 872*. In fashioning the remedy of a constructive trust, we looked to the Legislature's recognition of the courts' equitable powers in the context of domestic relations. *Id. at 351, 576 A.2d 872*. We cited to *N.J.S.A. 2A:34-23* for the proposition that

> ***HN6***[⬆] pending judgment in matrimonial action, [a] court may order such *pendente*

> *lite* relief 'as the circumstances of the parties and the nature of the case shall render fit, reasonable and just,' and, upon failure of compliance, may attach property as necessary or enforce such orders 'by other ways according to the practice of the court[.]'
>
> [*Ibid.*]

We also note that subsequent to our decision in *Carr,* we concurred with the recommendation of the Special Committee on Matrimonial Litigation to amend the Court Rules to authorize the trial court to utilize marital assets to fund matrimonial litigation expenses. *See Administrative Determinations by the Supreme Court on the Recommendation of the Special Committee on Matrimonial Litigation,* January 21, 1999, 8 N.J.L.J. 233 (1999); 155 N.J.L.J. 513 (1999). Thereafter, we amended **[***22]** *Rule 5:3-5(c)* to provide, in part, that ***HN7***[⬆] "[t]he court may also, on good cause shown, **[*113]** direct the parties to sell, mortgage, or otherwise encumber or pledge marital assets to the extent the court deems necessary to permit both parties to fund the litigation." *See* Pressler, *Current N.J. Court Rules,* comment 4 on *R. 5:3-5* (2005). Thus, our Court Rules authorize the trial court to order the sale of marital **[**924]** assets prior to the final judgment to help defray the cost of the litigation.

HN8[⬆] The Family Part is a court of equity. ***HN9***[⬆] We read the statutory requirement that directs equitable distribution at the time of the divorce judgment to be limited by the portion of *N.J.S.A. 2A:34-23* that authorizes the court in its discretion to "make such order as to the alimony or maintenance of the parties, and also as to the care, custody, education and maintenance of the children." We conclude that, consistent with *N.J.S.A. 2A:34-23* and **[***23]** *Rule 5:3-5*, the trial court may exercise its discretion to order the sale of marital assets and the utilization of the proceeds in a manner as "the case shall render fit, reasonable, and just."

We acknowledge that in many cases the proceeds from the sale of marital assets should be placed in escrow pending final distribution. But in other cases, the proceeds may properly be used to pay marital obligations. We leave to the discretion of the trial court the varying circumstances that may

justify the sale of the marital assets and the utilization of the proceeds prior to the divorce judgment.

We take this opportunity to express our disagreement with the *Grange* decision. There, despite the apparent equities in favor of the sale of marital property prior to the divorce, the *Grange* panel reversed the trial court's judgment authorizing the sale of the marital condominium. ***HN10***[⬆] We disapprove of *Grange* to the extent it stands for the proposition that absent consent, the trial court lacks authority to order the sale of a marital asset prior to the judgment of divorce.

IV.

We now apply our expanded principles to the present case. Although other real property was ordered to be sold, the Florida **[*114]** property was the only real property actually sold prior to the judgment of divorce. [1] The record shows that the parties had several valuable pieces of real estate, but little money to meet the financial obligations on those properties. In fact, in response to plaintiff's request to order him to sell the property, defendant expressly stated that the proceeds from the sale of the Florida property should be used to payoff the real estate tax liens on the Clifton properties and the farm. Both parties believed there was insufficient income from the businesses to justify incurring the continued expense of maintaining the Florida property. We find that the sale of the Florida property was necessary for the financial maintenance of the parties.

This case is a paradigm for why our trial courts should have the discretion to order the distribution of proceeds when distribution is deemed fit, reasonable, and just. Because of the lack of sufficient funds to meet the financial obligations of the parties, the trial court recognized that the mounting marital obligations could be abated by the sale of the Florida property and the utilization of the proceeds to pay some of those obligations. Further, the court required that the balance of the proceeds should be held in plaintiff's attorney's trust account and distributed at the time of the final hearing. We conclude that the trial court acted well within its discretionary powers to order the sale of the Florida property, and that the disbursement of a

[1] Because we are convinced that the trial court did not abuse its discretion in ordering the sale of the Florida property, we need not address plaintiff's assertion that defendant consented to the sale.

portion of the proceeds to **[**925]** meet the pressing obligations of the parties was fit, reasonable, and just.

In sum, we hold that a trial court has the discretion to order the sale of marital assets prior to a final judgment of divorce when the circumstances of the case so justify. Although ordinarily distribution of the proceeds from the sale of a marital asset should await the final judgment of divorce, a court has discretion **[*115]** to order an earlier distribution to serve the best interests of the parties.

V.

The judgment of the Appellate Division is affirmed.

CHIEF JUSTICE PORITZ and JUSTICES LONG, LaVECCHIA, ZAZZALI, ALBIN, and RIVERA-SOTO join in JUSTICE WALLACE's opinion. **[***24]**

Bio of Taylor DeSantis, Esq.

Taylor W. DeSantis joined Rozin Golinder Law, LLC in 2024 as Counsel, concentrating her practice on all aspects of matrimonial and family law.

Ms. DeSantis has been recognized as a New Jersey Super Lawyer Rising Star since 2022 and named on the Best Lawyers Ones to Watch List in 2023 and 2024. Ms. DeSantis also received the Hunterdon County Bar Association's Rising Star Award in 2023 and is the current Hunterdon County Bar Association President. She also volunteers her time as a Matrimonial Early Settlement Panelist for Hunterdon, Mercer, and Burlington counties.

Prior to joining Rozin Golinder Law, LLC, Ms. DeSantis worked for a mid-sized New Jersey firm in the matrimonial department where she was also a member of the firm's Diversity, Equity, and Inclusion committee. She also served as a judicial law clerk to the Honorable Hany A. Mawla, J.A.D., for the Appellate Division of the Superior Court of New Jersey, where she gained valuable insight into appellate practice.

Congressional Research Service
Informing the legislative debate since 1914

Reference Table: Expiring Provisions in the "Tax Cuts and Jobs Act" (TCJA, P.L. 115-97)

Updated November 13, 2024

Congressional Research Service
https://crsreports.congress.gov
R47846

CRS REPORT
Prepared for Members and
Committees of Congress

Contents

Tables

Contacts

A variety of temporary changes enacted as part of P.L. 115-97, commonly referred to as the Tax Cuts and Jobs Act (TCJA), are scheduled to expire. Many of these provisions affect individuals and families and are scheduled to expire at the end of 2025. Others affecting businesses, including pass-through businesses, are scheduled to expire between 2025 and 2028.

As Congress considers whether and to what extent to extend these temporary TCJA provisions, **Table 1** provides for each provision:

- a brief overview and how it will change upon the scheduled expiration of the TCJA;
- the budgetary score, both at enactment and if extended permanently
  - a **negative number (-)** generally indicates reduced revenues and hence an **increase in the deficit**,
  - a **positive number (+)** generally indicates increased revenues and hence a **reduction in the deficit**;
- the relevant section of the TCJA;
- the amended section of the Internal Revenue Code (IRC); and
- the expiration date.

Budgetary Cost

At the time of the law's passage, the Joint Committee on Taxation (JCT) estimated that the TCJA would cost $1.5 trillion between FY2018 and FY2027.[1] The Congressional Budget Office (CBO) and JCT have estimated that extensions of all provisions that are scheduled to either expire or become less generous would cost $4.0 trillion between FY2025 and FY2034, although most of these effects would begin in FY2026. More detailed estimates of the provisions' budgetary effects can be found in CBO's supplemental data.[2]

Delayed Onset Provisions

In addition to these expiring provisions, several TCJA provisions featured *delayed onsets* that are expected to make certain tax benefits related to business—including those related to the R&D expenditures—less generous and hence raise revenue. Congress may consider modifying those as well. For more information on these provisions, see "Delayed Onset Tax Provisions in the TCJA" on page 16.

Other Resources

For an overview of all the provisions enacted by the TCJA, including permanent provisions which are not included below, see CRS Report R45092, *The 2017 Tax Revision (P.L. 115-97): Comparison to 2017 Tax Law*. Other temporary tax provisions that were not enacted by the TCJA—and which are commonly referred to as "tax extenders"—are also scheduled to expire at the end of 2025. Consequently, their expiration coincides with the expiration of most of the TCJA's changes to individual income tax provisions. More information on those non-TCJA expiring provisions can be found in CRS Report R47252, *Expired and Expiring Temporary Tax*

[1] Joint Committee on Taxation, *Estimated Budget Effects of The Conference Agreement for H.R.1, The Tax Cuts and Jobs Act*, December 18, 2017, JCX-67-17.

[2] Congressional Budget Office, *Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues*, Supplemental Data, May 2024, https://www.cbo.gov/publication/60114#data.

Provisions (Including "Tax Extenders"). The list of all expiring tax provisions by year can be found in the Joint Committee on Taxation publication JCX-1-24.[3]

Table 1. TCJA Expiring Provisions

Provision	TCJA	Scheduled Expiration of TCJA
Individuals and Families		
Marginal tax rates *JCT budgetary cost estimate of TCJA changes at enactment: -$1.2 trillion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$2.2 trillion (FY2025-FY2034).*	Marginal tax rates are applied to a taxpayer's taxable income to calculate their income tax liability before any credits are claimed. The range of income over which a particular rate applies and its associated rate is often called a tax bracket. These income ranges are annually adjusted for inflation. Under the TCJA, marginal rates are 10%, 12%, 22%, 24%, 32%, 35%, and 37%. (Note: Taxes on capital gains and dividends were not changed by the TCJA.) *Section 11001 of P.L. 115-97* *IRC Section 1(j)* Expires 12/31/2025	Marginal rates will revert to their permanent pre-TCJA levels of 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%. Aside from the first two brackets (10% and 15%) these rates apply over different ranges of taxable income than the TCJA rates. These income ranges are annually adjusted for inflation. *IRC Section 1*
Standard deduction *JCT budgetary cost estimate of TCJA changes at enactment: -$0.7 trillion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$1.3 trillion (FY2025-FY2034).*	To calculate taxable income, taxpayers subtract the standard deduction from their adjusted gross income (AGI) if the taxpayer does not itemize their deductions. The standard deduction is the sum of the basic standard deduction and, if applicable, the additional standard deduction for the blind or elderly. The basic standard deduction amount varies by the taxpayer's filing status and is adjusted annually for inflation. Under the TCJA, basic standard deduction amounts in 2018 were nearly doubled to $12,000 for single filers, $18,000 for head of household filers, and $24,000 for married joint filers. These amounts were annually adjusted for inflation after 2018. In 2024, these amounts are $14,600, $21,900, and $29,200, respectfully. *Section 11021 of P.L. 115-97* *IRC Section 63(c)(7)* Expires 12/31/2025	The basic standard deduction amounts will revert to their TCJA levels and then be adjusted for inflation. For 2018, prior to the TCJA, the basic standard deduction amounts for 2018 would have been $6,500 for single filers, $9,550 for head of household filers, and $13,000 for married taxpayers filing jointly. *IRC Section 63*

[3] Joint Committee on Taxation, *List Of Expiring Federal Tax Provisions 2024 - 2034,* January 11, 2024, JCX-1-24, https://www.jct.gov/publications/2023/jcx-1-24/.

Provision	TCJA	Scheduled Expiration of TCJA
Personal exemptions *JCT budgetary cost estimate of TCJA changes at enactment: +$1.2 trillion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: +$1.7 trillion (FY2025-FY2034).*	To calculate taxable income, taxpayers subtract the appropriate number of personal exemptions for themselves, their spouse (if married), and their dependents from their adjusted gross income (AGI). Under the TCJA, the personal exemption amount was temporarily reduced to $0, effectively suspending the provision. *Section 11041 of P.L. 115-97* *IRC Section 151(d)(5)* Expires 12/31/2025	Personal exemptions will revert to their pre-TCJA levels and then be adjusted for inflation. For 2018, prior to the TCJA, the personal exemption amount would have been $4,150. *IRC Section 151*
Child tax credit *JCT budgetary cost estimate of TCJA changes at enactment: -$543 billion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$735 billion (FY2025-FY2034).* Both of these estimates include the budgetary impact of the "Credit for other dependents."	The child tax credit allows a taxpayer to reduce their federal income tax liability by up to $2,000 per qualifying child. Lower-income taxpayers with little or no federal income tax liability may be eligible to receive some or all of the credit as the refundable portion of the credit—the additional child tax credit, or ACTC. For higher-income taxpayers, the credit amount phases down if income exceeds the phaseout threshold. **Maximum credit:** $2,000 per child **Maximum ACTC:** $1,400 per child (The ACTC is adjusted for inflation and equals $1,700 in 2024.) **Formula for the ACTC:** 15% of earned income above $2,500, up to the maximum credit **Phaseout threshold:** $200,000 unmarried taxpayers / $400,000 married taxpayers Aside from the max ACTC amount, none of the parameters are adjusted for inflation. Taxpayers claiming the child credit (including the ACTC) must provide the child's Social Security number (SSN). *Section 11022 of P.L. 115-97* *IRC Section 24(h)* Expires 12/31/2025	The child credit will revert to its pre-TCJA structure. **Maximum credit:** $1,000 per child **Maximum ACTC:** $1,000 per child **Formula for the ACTC:** 15% of earned income above $3,000, up to the maximum credit **Phaseout threshold:** $75,000 unmarried taxpayers / $110,000 married taxpayers None of the parameters are adjusted for inflation. Taxpayers claiming the child credit (including the ACTC) will need to provide the child's taxpayer ID number, which includes their Social Security number (SSN) or, if they are not eligible for an SSN, their individual taxpayer identification number (ITIN). *IRC Section 24*

Provision	TCJA	Scheduled Expiration of TCJA
Credit for other dependents *JCT budgetary cost estimate of TCJA changes at enactment: Included in the cost of the child credit changes (above).* *CBO budgetary cost estimate if TCJA changes extended permanently: Included in the cost of the child credit changes (above).*	The "credit for other dependents" or "other dependent credit" (ODC) allows taxpayers to reduce their income tax liability by $500 for each dependent that is ineligible for the child credit. This includes older (nonchild) dependents, children lacking an SSN, and children aged 17 years and older (as the child tax credit only applies to children under age 17). The $500 amount per other dependent is not adjusted for inflation. The ODC is nonrefundable, meaning it cannot exceed income tax liability. The total ODC amount is added to a taxpayer's child tax credit amount (if any), and then subject to the same phaseout as the child credit (i.e., phaseout thresholds of $400,000 married filing jointly, $200,000 other taxpayers, 5% phaseout rate). Taxpayers do not have to provide an SSN for ODC-eligible dependents. *IRC Section 24(h)(4)* *Section 11022 of P.L. 115-97* Expires 12/31/2025	The credit will expire.
Above-the-Line Deductions		
Moving expense deduction *JCT budgetary cost estimate of TCJA changes at enactment: +$8 billion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: +$10 billion (FY2025-FY2034).*	Only members of the Armed Forces can claim an above-the-line deduction for moving expenses incurred as a result of work at a new location (effectively repealing this deduction for other taxpayers). Other taxpayers are not eligible to claim this deduction. *IRC Section 217(k)* *Section 11049 of P.L. 115-97* Expires 12/31/2025	All eligible taxpayers will be able to claim an above-the-line deduction for moving expenses incurred as a result of work at a new location, subject to certain conditions dealing with the individual's employment status as well as the distance of the move. (These conditions will not apply to members of the Armed Forces.) *IRC Section 217*

Provision	TCJA	Scheduled Expiration of TCJA
Itemized Deductions *JCT budgetary cost estimate of TCJA changes to itemized deductions (e.g., wagering losses) at enactment: +$668 billion (FY2018-FY2027).* *CBO budgetary cost estimate of TCJA changes to itemized deductions (e.g., wagering losses) extended permanently: +$1,244 billion (FY2025-FY2034).*		
Charitable contributions deduction *JCT budgetary cost estimate of TCJA changes at enactment and CBO budgetary cost estimate if TCJA changes extended permanently: Included in combined cost estimates of all changes to itemized deductions (above).*	Taxpayers who itemize their deductions can deduct charitable donations of cash or property to certain organizations, including public charities; federal, state, local, and Indian governments; private foundations; and other less common types of qualifying organizations. There are limitations on the total dollar amount that can be deducted by a taxpayer in a given tax year. The limitations are defined as a percentage of the taxpayer's adjusted gross income (AGI) and differ based on the form of the donation (cash or property) and the recipient, with recipient limits smaller for private foundations. The TCJA temporarily increased the AGI limit for cash donations made to public charities from 50% to 60%. Other limitations based on the form of the donation and the recipient organization were unchanged by the TCJA. *Section 11023 of P.L. 115-97* *IRC Section 170(b)(1)(G)* Expires 12/31/2025	Cash contributions to public charities will generally be limited to 50% of the taxpayer's AGI. *IRC Section 170*
State and local tax (SALT) deduction *JCT budgetary cost estimate of TCJA changes at enactment and CBO budgetary cost estimate if TCJA changes extended permanently: Included in combined cost estimates of all changes to itemized deductions (above).*	Taxpayers who itemize their deductions can deduct up to $10,000 in state and local income, sales (in lieu of income), and property taxes, as well as foreign income taxes (but not foreign real property taxes). Property taxes associated with carrying on a trade or business are fully deductible (i.e., not subject to a cap). *Section 11042 of P.L. 115-97* *IRC Section 164(b)(6)* Expires 12/31/2025	The $10,000 cap on this deduction will not apply and hence taxpayers will be able to deduct all eligible state and local income, sales (in lieu of income), and property taxes, as well as foreign income taxes. Taxpayers will be also able to deduct foreign real property taxes. *IRC Section 164*

Provision	TCJA	Scheduled Expiration of TCJA
Mortgage interest deduction *JCT budgetary cost estimate of TCJA changes at enactment and CBO budgetary cost estimate if TCJA changes extended permanently: Included in combined cost estimates of all changes to itemized deductions (above).*	Taxpayers who itemize their deductions may deduct interest paid on the first $750,000 ($375,000 for married filing separately) of mortgage debt (combined for first and second homes). The limitation applies to new loans incurred after December 15, 2017. Taxpayers with mortgage debt incurred on or before December 15, 2017, who itemize their deductions may deduct interest on the first $1 million ($500,000 for married filing separately) of combined mortgage debt. No deduction is allowed for interest payments made for new or existing home equity debt if such debt is used for purposes unrelated to the property securing the loan. *Section 11043 of P.L. 115-97* *IRC Section 163(h)(3)(F)* Expires 12/31/2025	The $750,000 limitation will increase to $1 million of combined (first and second home) acquisition debt regardless of when the debt was incurred. The interest on the first $100,000 of home equity debt will also be deductible, regardless of whether or not the taxpayer incurred the debt to finance costs associated with the home. *IRC Section 163(h)*
Personal casualty and theft loss deduction *JCT budgetary cost estimate of TCJA changes at enactment and CBO budgetary cost estimate if TCJA changes extended permanently: Included in combined cost estimates of all changes to itemized deductions (above).*	Taxpayers who itemize their deductions can generally claim a deduction only for noncompensated personal casualty and theft losses associated with a disaster declared by the President under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Casualty losses are generally deductible if they exceed $100 per casualty, and to the extent aggregate net casualty losses exceed 10% of adjusted gross income (AGI). *Section 11044 of P.L. 115-97* *IRC Section 165(h)(5)* Expires 12/31/2025	Taxpayers will be able to claim an itemized deduction for noncompensated personal casualty and theft losses regardless of whether the losses result from a federally declared disaster. *IRC Section 165(h)*
Wagering losses deduction *JCT budgetary cost estimate of TCJA changes at enactment: +$0.1 billion (FY2018-FY2027* *CBO budgetary cost estimate if TCJA changes extended*	Taxpayers who itemize their deductions can deduct gambling losses, provided those losses do not exceed gambling winnings included in gross income. Gambling losses include deductible expenses incurred in carrying on the gambling activity, for both recreational and professional gamblers. *Section 11050 of P.L. 115-97* *IRC Section 165(d)* Expires 12/31/2025	Gambling losses will no longer include expenses incurred in carrying on the gambling activity. Professional gamblers will be able to deduct ordinary and necessary nonwagering business expenses. *IRC Section 165(d)*

Provision	TCJA	Scheduled Expiration of TCJA
permanently: +$47 million (FY2025-FY2034).		
Itemized deduction for miscellaneous expenses *JCT budgetary cost estimate of TCJA changes at enactment and CBO budgetary cost estimate if TCJA changes extended permanently: Included in combined cost estimates of all changes to itemized deductions (above).*	There is no itemized deduction for certain miscellaneous expenses such as unreimbursed employee expenses or tax preparation fees. *Section 11045 of P.L. 115-97* *IRC Section 67(g)* Expires 12/31/2025	Individual taxpayers who itemize their deductions will be able to deduct miscellaneous expenses to the extent that such expenses collectively exceed 2% of their AGI. Expenses subject to the 2% floor will include unreimbursed employee expenses, tax preparation fees, and certain other expenses. *IRC Sections 62, 67, and 212*
Overall limitation on itemized deductions *JCT budgetary cost estimate of TCJA changes at enactment and CBO budgetary cost estimate if TCJA changes extended permanently: Included in combined cost estimates of all changes to itemized deductions (above).*	The total amount of itemized deductions that can be claimed by a taxpayer is the sum of all allowable itemized deductions and there is no overall limitation on itemized deductions. *Section 11046 of P.L. 115-97* *IRC Section 68(f)* Expires 12/31/2025	For taxpayers with AGI above certain thresholds, the total amount of itemized deductions will be reduced by 3% of the amount by which their AGI exceeds the threshold. (For 2018, before the TCJA, the thresholds once adjusted for inflation would have been $320,000 for married taxpayers filing jointly and $267,700 for singles.) The total reduction will be capped at 80% of the deductions. Itemized deductions not subject to the limitation include deductions for medical and dental expenses, investment interest, charitable contributions, casualty and theft losses, and wagering losses. *IRC Section 68*

Provision	TCJA	Scheduled Expiration of TCJA
Exclusions[a]		
Bicycle commuter reimbursement *JCT budgetary cost estimate of TCJA changes at enactment: revenue increase of less than $50 million (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: +$160 million (FY2025-FY2034).*	Employer reimbursements for bicycle commuting expenses are considered wage income and therefore subject to income and employment (i.e., "payroll") taxes. *Section 11047 of P.L. 115-97* *IRC Section 132(f)* Expires 12/31/2025	Up to $20 per month of qualified employer reimbursements for bicycle commuting expenses will be excludible from wage income, and hence not subject to either income or employment (i.e., "payroll") taxes. *IRC Section 132(f)*
Moving reimbursement exclusion *JCT budgetary cost estimate of TCJA changes at enactment: +$5 billion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: +$7 billion (FY2025-FY2034).*	Employer reimbursements for moving expenses are only excludible from income and wages for members of the Armed Forces and pursuant to a military order for a permanent change of station. For all other employees, such benefits are considered wage income and hence subject to income and employment (i.e., "payroll") taxes. *Section 11048 of P.L. 115-97* *IRC Section 132(g)(2)* Expires 12/31/2025	Qualified moving expense reimbursements from an employer will be excludible from an employee's wage income, and hence not subject to either income or employment (i.e., "payroll") taxes. *IRC Section 132*
Combat zone tax benefits for members of the Armed Forces in the Sinai Peninsula *JCT budgetary cost estimate of TCJA changes at enactment: revenue loss of less than $50*	Members of the Armed Forces serving in a combat zone (and their families) are entitled to several tax benefits, including: (1) an exemption from income and employment ("payroll") taxes on certain military pay received during any month in which the member served in a combat zone (IRC Sections 112 and 3401(a)(1)); (2) an exemption from income taxes during the year that the member dies and the year prior while serving in a combat zone (IRC Section 692); (3) special estate tax rules where death occurs in a combat zone (IRC Section 2201);	The Sinai Peninsula will not be statutorily presumed to be a combat zone. Unless the Sinai Peninsula is designated as a combat zone under the usual process (IRC Section 112), members of the Armed Forces serving in this area will not be eligible for combat zone tax benefits. *IRC Sections 2, 112, 692, 2201, 3401, 4253, 6013, and 7508*

Provision	TCJA	Scheduled Expiration of TCJA
million (FY2018-FY2027). *CBO budgetary cost estimate if TCJA changes extended permanently: -$7 million (FY2025-FY2034).*	(4) special benefits to surviving spouses (IRC Sections 2(a)(3) and 6013(f)(1)); (5) an extension of tax deadlines, including for filing returns, making payments, claiming credits or refunds, and certain other deadlines (IRC Section 7508); (6) an exclusion of telephone excise taxes (IRC Section 4253(d)). Typically, combat zones are designated by the President in an Executive Order as an area where the Armed Forces are or have engaged in combat. Under the TCJA, the Sinai Peninsula is statutorily presumed to be a combat zone. *Section 11026 of P.L. 115-97* Expires 12/31/2025	
Alternative Minimum Tax		
Alternative minimum tax (AMT) exemption and phaseouts *JCT budgetary cost estimate of TCJA changes: -$0.6 trillion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$1.4 trillion (FY2025-FY2034).*	A tax is imposed at 26% on an individual's alternative minimum taxable income, with a higher rate of 28% applied to taxpayers with alternative minimum taxable incomes above $232,600 in 2024. Alternative minimum taxable income (AMTI) starts with taxable income, then *adds back* certain preference items (such as net operating losses, depreciation, and passive losses all calculated under special AMT rules, state and local taxes, miscellaneous business expenses, and personal exemptions), and then subtracts an AMT exemption amount. (Note: Personal exemptions were effectively eliminated under the TCJA. See "Personal exemptions.") For 2024 the AMT exemption amounts are $85,700 for singles/heads of households and $133,300 for married couples. The AMT exemption amount phases down when a taxpayer's income exceeds a phaseout level. These levels are $578,150 for singles/head of households and $1,156,300 for married couples. These amounts are adjusted for inflation. *Section 12003 of P.L. 115-97* *IRC Section 55* Expires 12/31/2025	The AMT exemption and exemption phaseout will revert to pre-TCJA levels and then both will be adjusted for inflation. For 2018, prior to the TCJA, the higher 28% rate applied to incomes above $191,500 for married couples. For 2018, prior to the TCJA, the exemption amounts were $55,400 for singles/heads of households and $86,200 for married couples and the exemption phaseouts were $123,100 for singles/heads of households and $164,100 for married couples in 2018. (Note: Personal exemptions will again be in effect upon the expiration of the TCJA. See "Personal exemptions.") *IRC Section 55*

Provision	TCJA	Scheduled Expiration of TCJA
ABLE Accounts		
Achieving A Better Life Experience (ABLE) account contribution limit *JCT budgetary cost estimate of TCJA changes at enactment: revenue loss of less than $50 million (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: less than $500,000 (FY2025-FY2034).*	ABLE accounts are tax-favored savings accounts intended to encourage qualifying disabled individuals (referred to as "designated beneficiaries") to save money for certain disability-related expenses (in a tax-preferred way) without losing eligibility for certain federal means-tested programs, such as Medicaid. Generally, in a given year an ABLE account cannot receive aggregate contributions in excess of the annual gift tax exemption, which is $18,000 in 2024. Under the TCJA, a designated beneficiary who is employed can contribute an additional amount to their ABLE account (above the annual gift-tax exclusion amount). The additional amount is equal to the lesser of (1) the applicable federal poverty level for a one-person household in the prior year, or (2) the beneficiary's compensation for the year. A beneficiary cannot contribute this additional amount for the year if any contribution is made on their behalf to certain defined contribution plans. *Section 11024(a) of P.L. 115-97* *IRC Section 529A(b)(2)(B)* Expires 12/31/2025	While the gift tax exclusion will still apply, designated beneficiaries will not be able to make the additional contribution of up to the lesser of the federal poverty level for a one-person household or the beneficiary's compensation. *IRC Section 529A*
ABLE accounts and the saver's credit *JCT budgetary cost estimate of TCJA changes at enactment: revenue loss of less than $50 million (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$2 million (above)*	Designated beneficiaries who make qualified contributions to their ABLE account can qualify for a nonrefundable saver's credit of up to $1,000. *Section 11024(b) of P.L. 115-97* *IRC Section 25B(d)(1)(D)* Expires 12/31/2025	Designated beneficiaries will not be able to claim the saver's credit for their contributions. Note: the SECURE 2.0 Act of 2022 (Section 103 of P.L. 117-328) included a provision aimed at promoting retirement savings among low-income households that effectively repeals the saver's credit under IRC Section 25B and replaces it with a saver's match under IRC Section 6433, effective 1/1/2027. IRC Section 25B
529 to ABLE account rollover	Rollovers from a 529 account to an ABLE account (*plus* any other contributions to the account for the year) that are less than	All rollovers from 529 accounts to ABLE accounts will be subject to taxation.

Provision	TCJA	Scheduled Expiration of TCJA
JCT budgetary cost estimate of TCJA changes at enactment: revenue loss of less than $50 million (FY2018-FY2027). *CBO budgetary cost estimate if TCJA changes extended permanently: -$4 million (FY2025-FY2034).*	or equal to the annual ABLE contribution limit are not subject to income taxation, provided that the accounts have the same designated beneficiary (or the designated beneficiaries of the two accounts are members of the same family). The portion of the rollover (plus any other contributions to the account) in excess of the annual contribution limit is taxable. *Section 11025 of P.L. 115-97* *IRC Section 529(c)(3)(C)(i)(III)* Expires 12/31/2025	*IRC Section 529*
Business Provisions		
Deduction for pass-through business income—"199A Deduction" *JCT budgetary cost estimate of TCJA changes: -$415 billion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$684 billion (FY2025-FY2034).*	Pass-through business income is taxed according to ordinary individual income tax rates. The TCJA created a deduction equal to 20% of qualified business income. The deduction is limited to the greater of 50% of W-2 wages, or 25% of W-2 wages plus 2.5% multiplied by depreciable property (equipment and structures). Specified service trade or businesses (SSTBs)[b] generally may not claim the deduction except in specific circumstances. The deduction limitation and SSTB limitation do not apply if taxable income is less than $191,950 (single) or $383,900 (married) in 2024. These limitations are phased in over a $50,000 (single) and $100,000 (married) range, and thus apply fully if a taxpayer's income is at or above $214,950 (single) and $483,900 (married). *Section 11011 of P.L. 115-97* IRC Section 199A Expires 12/31/2025	The 199A deduction will expire. Hence pass-through business income will generally be taxed according to ordinary individual income tax rates without a deduction for qualified business income.
Limitation on losses for noncorporate taxpayers *JCT budgetary cost estimate of TCJA changes: +$150 billion (FY2018-FY2027).*	For taxpayers other than C corporations, a deduction in the current year for excess business losses is temporarily disallowed, originally through 2026 by the TCJA and subsequently extended to 2028 by the Inflation Reduction Act (P.L. 117-169, IRA). In addition, such losses are treated as a NOL carryover to the following year. An excess business loss is the amount that a taxpayer's aggregate deductions attributable to trades and businesses	Businesses will generally be permitted to carry over a net operating loss (NOL) to certain past and future years. Under the passive loss rules, individuals and certain other taxpayers will be limited in their ability to claim deductions and credits from passive trade and business activities, although unused deductions and credits can generally be carried forward to the next year. Similarly, certain farm losses may not be deducted in

Provision	TCJA	Scheduled Expiration of TCJA
CBO budgetary cost estimate if TCJA changes extended permanently: +$22 billion (FY2025-FY2034).	exceed the sum of (1) aggregate gross income or gain attributable to such activities, and (2) $305,000 ($610,000 if married filing jointly) in 2024. For partnerships and S corporations, this provision is applied at the partner or shareholder level. *Section 11012 of P.L. 115-97* *Section 13903 of P.L. 117-169* *IRC Section 461(l)* Expires 12/31/2028	the current year, but can be carried forward to the next year. *IRC Section 461(l)*
Expensing *JCT budgetary cost estimate of TCJA changes: -$86 billion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$378 billion (FY2025-FY2034).*	A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization. The TCJA temporarily allowed full expensing (i.e., 100% bonus depreciation) through 2022, before phasing down ratably through the end of 2026. For long-production-period property, the phasedown period begins after 2024. *Section 13201 of P.L. 115-97* *IRC Section 168(k)* Expires 12/31/2026 (Excluding long production property)	Businesses will generally capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization without the use of bonus depreciation.
Citrus plants lost by casualty *JCT budgetary cost estimate of TCJA changes: revenue loss of less than $50 million (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$31 million (FY2025-FY2034).*	The uniform capitalization (UNICAP) rules address the method for determining costs that taxpayers are required to capitalize or treat as inventory. They generally apply to property produced in a trade or business or acquired for resale. One exception is for edible citrus plants lost or damaged by reason of a casualty or similar event. The exception may apply to (A) the taxpayer's cost of replanting such citrus plants, and either (B) costs paid or incurred by other persons if the taxpayer has more than a 50% equity interest in the citrus plants at all times during the year and the other person owns any of the remaining interest and materially participates in the planting or similar activities, or (C) temporarily through the TCJA to third parties if (1) the taxpayer has an equity interest of at least 50% in the replanted citrus plants at all times during the year and the other person owns any of	The exception for third parties (C) would no longer apply. (The other two exceptions—(A) and (B)—would still apply.) *IRC Section 263A*

Provision	TCJA	Scheduled Expiration of TCJA
	the remaining interest, or (2) the other person acquired the taxpayer's entire equity interest in the land on which the citrus plants were located and the replanting is on such land. *Section 13207 of P.L. 115-97* *IRC Section 263A(d)(2)(C)(ii)* Expires 12/22/2027	
Other Provisions		
Estate and gift tax *JCT budgetary cost estimate of TCJA changes: -$83.0 billion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$167 billion (FY2025-FY2034).*	Estate and gift taxes are levied at a rate of 40% on transfers after excluding a fixed amount from taxation. For decedents who die in 2024, the exclusion amount is $13,610,000 per decedent ($10 million per decedent statutorily adjusted annually for inflation). *Section 11061 of P.L. 115-97* *IRC Section 2010(c)(3)(C)* Expires 12/31/2025	The estate and gift tax exclusion amount will be reduced from $10 million per decadent to $5 million per decedent statutorily and then adjusted annually for inflation. *IRC Sections 2001 and 2010*
Employer credit for paid family and medical leave *JCT budgetary cost estimate of TCJA changes: -$4 billion (FY2018-FY2027).* Note that this does not reflect the cost of the subsequent extensions of this provision by P.L. 116-94 and P.L. 116-260. *CBO budgetary cost estimate if TCJA changes extended permanently: -$5 billion (FY2025-FY2034).*	Employers paying wages to employees on family and medical leave may be eligible for a tax credit. The credit amount is calculated as a percentage of wages paid to a qualifying employee while on family and medical leave. If the employers pay 50% of wages normally paid while an employee is on family and medical leave, the credit is 12.5% of wages paid, proportionally increasing to a maximum credit of 25% for paid leave worth 100% of wages normally paid. Employers may claim the credit for up to 12 weeks of paid leave per employee. Leave required by state or local law does not qualify for the credit. Leave provided in excess of legally required minimums may qualify for the credit. For example, if an employer provided a paid family and medical leave benefit with 100% wage replacement, while legally required to provide a 50% wage replacement benefit, the excess 50% may qualify for the credit. However, many state or local laws regarding paid family or medical leave require a wage replacement rate above 50%, so benefits paid to employees in those	No credit will be available for employer-provided paid family and medical leave.

Provision	TCJA	Scheduled Expiration of TCJA
	jurisdictions are likely not eligible for the credit. As state and local governments continue to adopt paid family and medical leave policies, the pool of employers who are potentially eligible for this credit may be shrinking. Eligible employers are those that allow qualifying full-time employees at least two weeks of paid family and medical leave (with leave time prorated for part-time employees) separate from vacation, personal, or sick leave. A qualifying employee is one who has been employed by the employer for at least one year, and who, during the preceding year, had compensation up to 60% of the compensation threshold for highly compensated employees.[c] *Under TJCA, this credit originally expired on December 31, 2019. The Taxpayer Certainty and Disaster Relief Act of 2019 (Division Q of P.L. 116-94) extended the credit through 2020, while the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of P.L. 116-260) extended it through 2025.* *Section 13403 of P.L. 115-97* *Section 142 of Division Q of P.L. 116-94* *Section 119 of Division EE of P.L. 116-260* *IRC Section 45S* Expires 12/31/2025	
Qualified opportunity zones *JCT budgetary cost estimate of TCJA changes: -$2 billion (FY2018-FY2027).* *CBO budgetary cost estimate if TCJA changes extended permanently: -$70 billion*	Opportunity zones provide several tax benefits to those who invest in these areas, including (1) a temporary deferral of capital gains taxation if gains are reinvested in a qualified opportunity fund; (2) an increase in the investment basis if specific holding periods are met; and (3) a permanent exclusion of the capital gains from income if investments in a qualified opportunity fund are held for at least 10 years (hence, these capital gains are not subject to taxation). No election for deferral of gain is allowed after December 31, 2026. *Section 13823 of P.L. 115-97* *IRC Sections 1400Z-1 and 1400Z-2* Expires 12/31/2026	Investments in opportunity zones will not be eligible for deferral, adjustments to basis, or exclusions on gains.

Sources: CRS analysis of P.L. 115-97 and other laws as noted in the table. IRS Revenue Procedures 17-58 and 23-34.

Notes: This table provides a basic description of the tax provisions in P.L. 115-97. Any deviations from the statutory text are not intended as legal interpretations of such text. The table includes primary citations to the Internal Revenue Code (IRC) for each provision, but other IRC provisions and sources of law may be relevant. Some temporary changes to the TCJA either expired as scheduled before 2025, were repealed, or were made permanent and hence are not included in this table.

a. Forgiven debts are generally considered income and subject to the income tax. Under the TCJA, this provision was modified so student loans discharged due to the death or permanent total disability of the student did not count as gross income through 12/31/2025. Section 9675 of the American Rescue Plan Act (ARPA; P.L. 117-2) modified the TCJA change further so that it applied to virtually any discharged student loan. At the end of 2025, when the ARPA change expires, forgiven student loan debt (including debt forgiven due to death or permanent and total disability) will generally be includible in gross income and hence subject to taxation.

b. An SSTB is a trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, investing and investment management, trading or dealing in certain assets, or any trade or business where the principal asset is the reputation or skill of one or more of its employees or owners.

c. For example, for 2023 the applicable amount of compensation was $150,000. Hence to be a qualifying employee in 2024, the employee could be paid up to $90,000 in 2023.

Delayed Onset Tax Provisions in the TCJA

In addition to the expiring provisions discussed above, the TCJA contained several provisions which have delayed implementation dates. For example, for tax years beginning prior to January 1, 2022, businesses could fully deduct research and experimentation expenses in the year the expenses were incurred. For tax years beginning after December 31, 2021, businesses are required under the TCJA to amortize research and experimentation (R&E) expenses over five years. At the time of consideration, JCT estimated that this provision would generate additional federal revenues of $120 billion (FY2022 through FY2027). Continuing to allow R&E expensing, instead of requiring that such expenditures be amortized, would reduce federal tax revenues by an estimated $153 billion (FY2023-FY2032) according to the Tax Policy Center (TPC).[4]

The TCJA also enacted several business tax provisions—base erosion minimum tax (BEAT), foreign-derived intangible income (FDII), and global intangible low-taxed income (GILTI)—with formulas that will be modified starting in tax years beginning after December 31, 2025, and, for the modified limitation on the deduction for business interest, starting in tax years beginning after December 31, 2021. The effects of these formula changes were not separately estimated at the time of consideration, though all of the modifications would generate additional tax revenue. Delaying the formula changes would reduce federal revenue by $21 billion (FY2025-FY2034) for BEAT and a combined $120 billion (FY2025-FY2034) for FDII and GILTI.[5]

Author Information

Donald J. Marples
Specialist in Public Finance

Brendan McDermott
Analyst in Public Finance

Acknowledgments

Margot L. Crandall-Hollick, former CRS Specialist in Public Finance, contributed to an earlier version of this report.

[4] For more information, see Tax Policy Center, "Model Estimates, T22-0163R - Modify Certain Business Provisions, Make CTC Fully Refundable, and Extend Expansion of EITC for Workers without Qualifying Children, Impact on Tax Revenue, 2023-42 Fiscal Years," https://www.taxpolicycenter.org/model-estimates/modify-business-provisions-and-child-tax-credit-and-earned-income-tax-credit-15.

[5] Congressional Budget Office, *Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues*, Supplemental Data, May 2024, https://www.cbo.gov/publication/60114#data.

Disclaimer

Impacts of the Expiration of Individual Provisions of the TCJA on Matrimonial Cases

Individual Tax Provision changes

- **Tax Rate Changes**
  - Slightly different marginal rates:
    - range from 10% to 39.6%,
    - currently 10% to 35%
    - slightly different income ranges for each marginal rate.

- **Standard Deduction/Exemption Changes**
  - Return to the TCJA standard deduction:
    - **$13,000 vs. $30,000 for married filers**
    - **$6,500 vs. $15,000 for Individuals**
  - Return of personal/dependent exemptions
    - would be $5,000(?), currently $0
    - Exemptions for Taxpayer, Spouse, Dependents
  - Single filers and joint filers with no children will be more likely to itemize

- **Child Tax Credit**
  - Reduced from $2,000 to $1,000
  - ACTC Reduced from $1,400 to $1,000
  - **Phaseout Income Reduced from $400k to $110K for married filers**

- **Various Deductions**
  - Work moving expense deduction returns for all taxpayers
  - Charitable deduction changes – Limitation goes from 60% of AGI to 50%
  - **SALT limitation expires (Currently $10k)**
  - Mortgage interest deduction limitation changes from $750k to $1M (only for taxpayers who itemize deductions)
  - Casualty loss deduction no longer required to be from federally declared disaster
  - Overall itemized deductions will again be capped based on income (deductions reduced by 3% of the excess over cap of $320k for MFJ, $267.7k for single filers)

- **Alternative Minimum Tax**
  - Reduction of exemption and phaseout incomes will throw many into “bump zone” where they will owe additional tax.
  - **Under current law, joint filers in the $1.2M-$1.7M range are most likely to owe AMT**
  - **After sunset, that income range drops to $200k-$600k**
  - **Single filers currently $600-$950k, after sunset $150k-$420K**

Impacts of the Expiration of Individual Provisions of the TCJA on Matrimonial Cases

Business Tax Provision changes

- **Qualified Business Income Deduction Eliminated**
  - Applies to S Corps, Partnerships, Schedule C
  - Currently 20% deduction
  - Limited for Specified Trades or Businesses based on Income
    - Phased out if income in excess of $191,950 single, $383,900 MFJ
- **Business Loss Deduction Limitation Sunsets**
- **Bonus Depreciation Phaseout Continues**
  - 40% in 2025, 20% in 2026

Estate and Gift Tax

- **Lifetime Exclusion Reduction**
  - Current exclusion is $13.99M per decedent for 2025
  - Reverts to $7M (estimated) in 2026

Provisions of the TCJA Not Expiring

- **Tax Treatment of Alimony/Support**
- **C Corporation Tax Rates**
  - Currently 21% federal tax rate

Impacts of the Expiration of Individual Provisions of the TCJA on Matrimonial Cases

Impacts on Your Cases

- **Many taxpayers will be shifted into different tax brackets and subject to higher effective tax rates in 2026 forward.**
  - **This applies to W2 earners as well as business owners.**
  - **Available income as a percent of gross wages/income may be lower.**

- **Business owners of S Corps and Partnerships will be paying tax on an additional 20% of earned income.**
  - **This will have an impact on Net Economic Benefit and potentially valuation of businesses**
  - **May see businesses converting to C Corporations if practical to lower taxes.**

- **Consider incorporating estate and gift planning in negotiations.**
  - **Accelerate planned gifting throughout 2025 to take advantage of current high exemptions.**

- **Consider inserting protective language in agreements that incorporates potential tax changes.**

- **Stay tuned for updates throughout the year as Congress works to extend the individual provisions or even expand the provisions of the TCJA.**

Chad Keeports is an advisory partner in CBIZ's Forensic Consulting Group. He has 25 years of experience in the forensic accounting field, with a concentration in business valuation, forensic accounting, insured loss calculations, and fraud investigations. Common engagements include business valuation and income determination in matrimonial cases, shareholder or partnership disputes, forensic investigations, contractual disputes, and lost profits determination.

Chad works with public and private clients in a range of industries, including manufacturing and distribution, technology, and insurance, construction, retail, and restaurant and hospitality among others. He is routinely engaged by local attorneys, adjusters, and business owners to analyze, investigate, and report on financial disputes involving individuals and corporations.

N.J. Ct. R. 5:8A

Rule 5:8A - Appointment Of Counsel For Child

In all cases where custody or parenting time/visitation is an issue, the court may, on the application of either party or the child or children in a custody or parenting time/visitation dispute, or on its own motion, appoint counsel on behalf of the child or children. Counsel shall be an attorney licensed to practice in the courts of the State of New Jersey and shall serve as the child's lawyer. The appointment of counsel should occur when the trial court concludes that a child's best interest is not being sufficiently protected by the attorneys for the parties. Counsel may, on an interim basis or at the conclusion of the litigation, apply for an award of fees and costs with an appropriate affidavit of services, and the trial court shall award fees and costs, assessing same against either or both of the parties.

N.J. Ct. R. 5:8A

Adopted November 6, 1989 to be effective 1/2/1990; amended July 5, 2000 to be effective 9/5/2000.

Official Comment for Rules 5:8A and 5:8B

The purpose of Rules 5:8A and 5:8B is to eliminate the confusion between the role of a court-appointed counsel for a child and that of a court-appointed guardian ad litem (GAL). The Supreme Court's Family Division Practice Committee in its 1987-1988 Annual Report distinguishes the roles.

A court-appointed counsel's services are to the child. Counsel acts as an independent legal advocate for the best interests of the child and takes an active part in the hearing, ranging from subpoenaing and cross-examining witnesses to appealing the decision, if warranted. If the purpose of the appointment is for legal advocacy, then counsel would be appointed.

A court-appointed guardian ad litem's services are to the court on behalf of the child. The GAL acts as an independent fact finder, investigator and evaluator as to what furthers the best interests of the child. The GAL submits a written report to the court and is available to testify. If the purpose of the appointment is for independent investigation and fact finding, then a GAL would be appointed. The GAL can be an attorney, a social worker, a mental health professional or other appropriate person. If the primary function of the GAL is to act in the capacity of an expert, then the court should ordinarily appoint a GAL from the appropriate area of expertise. Attorneys acting on behalf of children in abuse or neglect cases and in termination of parental rights cases should act as counsel for the child pursuant to Rule 5:8A rather than in the capacity of a GAL pursuant to Rule 5:8B. See, Matter of M.R., 135 N.J. 155, 174, 638 A.2d 1274, 1283 (1994)).

These rules are not intended to expand the circumstances when such appointments are to be made; neither are these appointments to be made routinely.

Note: Adopted November 6, 1989, to be effective January 2, 1990, amended July 13, 1994 to be effective September 1, 1994.

W.M. v. D.G.

467 N.J. Super. 216 (App. Div. 2021) · 251 A.3d 386
Decided Apr 14, 2021

DOCKET NO. A-3097-19

04-14-2021

W.M., Plaintiff-Appellant. v. D.G., Defendant-Respondent. A.M.B., Intervenor-Respondent.

Jodi Argentino argued the cause for appellant (Argentino Fiore Law & Advocacy, LLC, attorneys; Jodi Argentino, of counsel and on the brief; Celeste Fiore, on the brief). D.G., respondent, argued the cause pro se. Carmen Diaz-Duncan argued the cause for intervenor A.M.B. (Newsome O'Donnell, LLC, attorneys; Carmen Diaz-Duncan, Morristown, of counsel and on the brief; Brian E. Newsome and Edward J. O'Donnell, Morristown, on the brief). Scott M. Weingart argued the cause for amici curiae Partners for Women and Justice, Rachel Coalition, Rutgers Domestic Violence Clinic, Seton Hall University Law Center for Social Justice, and Volunteer Lawyers for Justice (McCarter & English, LLP, attorneys; Adam N. Saravay, Michelle Movahed, Scott M. Weingart and Benjamin D. Heller, Newark, on the brief).

ENRIGHT, J.A.D.

Jodi Argentino argued the cause for appellant (Argentino Fiore Law & Advocacy, LLC, attorneys; Jodi Argentino, of counsel and on the brief; Celeste Fiore, on the brief).

D.G., respondent, argued the cause pro se.

Carmen Diaz-Duncan argued the cause for intervenor A.M.B. (Newsome O'Donnell, LLC, attorneys; Carmen Diaz-Duncan, Morristown, of counsel and on the brief; Brian E. Newsome and Edward J. O'Donnell, Morristown, on the brief).

Scott M. Weingart argued the cause for amici curiae Partners for Women and Justice, Rachel Coalition, Rutgers Domestic Violence Clinic, Seton Hall University Law Center for Social Justice, and Volunteer Lawyers for Justice (McCarter & English, LLP, attorneys; Adam N. Saravay, Michelle Movahed, Scott M. Weingart and Benjamin D. Heller, Newark, on the brief).

Before Judges Ostrer, Accurso and Enright.

The opinion of the court was delivered by

221 ENRIGHT, J.A.D.*389 *221

In this non-dissolution matter, plaintiff W.M.[1] appeals from the January 29, 2020 and March 11, 2020 orders directing her to return physical custody of intervenor-respondent A.M.B. (Alex) to his biological mother, defendant D.G.[2] We reverse.

[1] We use initials for the parties and a fictitious name for the minor to protect their privacy. R. 1:38-3(d)(13).

[2] Alex's biological father is not a party to this appeal.

By way of brief background, Alex was born in April 2003. In 2017, he was in the eighth grade and a member of the National Honor Society. Plaintiff was his National Honor Society advisor. In anticipation of Alex's middle school graduation,
222 plaintiff offered *222 to assist defendant in completing an application for Alex to attend a

particular high school in Newark. Defendant accepted the offer. She testified that after her sister died in March 2017, she was "down and too depressed," so plaintiff started assisting her in caring for Alex, taking him to school and church. According to plaintiff, in or around July 2017, with defendant's consent, Alex began living with plaintiff and her family. The parties lived only a few blocks apart, so Alex spent time with his mother while he lived at plaintiff's home. It is uncontroverted Alex participated in various activities and continued to excel academically after he entered high school.

The informal arrangement between the parties was mutually satisfactory for a significant period of time, and defendant admitted to the trial court that plaintiff "did help a lot." However, defendant occasionally expressed concern that plaintiff was indulging Alex by purchasing expensive items for him, such as an iPhone. Defendant told plaintiff to "stop spoiling" Alex because she could not "compete with that."

Late in November 2019, defendant learned Alex was chosen to appear in a television commercial. Alex came to her home afterwards to show her an expensive jacket he was allowed to keep from his involvement in the commercial. Defendant became angry, believing plaintiff was "buying [her] child," and promptly informed plaintiff that Alex needed to be returned to defendant's custody. The situation deteriorated when Alex learned of his mother's actions. He confronted her, telling her to leave plaintiff "alone." Alex further informed his mother he did not want to return home.

Plaintiff filed an emergent application in late November 2019, seeking to retain physical custody of Alex. In response, defendant filed her own emergent application for Alex to return to her home. The trial court denied both applications, pending a hearing a few weeks hence, and permitted Alex to continue living with plaintiff until the hearing occurred.

Both parties appeared in court without counsel in mid- December. After each party testified, the
223 judge allowed Alex to remain in *223 plaintiff's care, but continued the hearing to the end of January. The judge directed Alex to be present for that hearing.

The parties and Alex appeared before the court on January 29, 2020. No one was represented by counsel at that proceeding. Defendant was the first witness to testify at the hearing. She initially informed the judge she "never had any agreement giving the custody of [her] child to anybody." However, she knew plaintiff was a teacher in Alex's school in 2017, and when plaintiff offered to help fill out an application for Alex to enroll in a local high school, she accepted plaintiff's help. Defendant also noted plaintiff offered to bring her
390 son to *390 school, raise money for her son to graduate from the eighth grade, and sent her money that was collected at a local church for defendant's benefit. Defendant described her appreciation for plaintiff's assistance at the time, acknowledging, "I'm kind of blessed. I got this lady helping me. I have this lady helping my child. And I'm trusting her." As plaintiff became more involved in Alex's life, defendant recalled arguing with plaintiff about involving him in too many activities and "giving [him] so many things." Defendant felt plaintiff needed to "calm down." Defendant added, "[s]o far, we fight five times over the same thing."

Plaintiff also testified during the January 29 hearing. She recalled that when Alex was in seventh grade, he had eighty-three absences, a "chronic absentee record." Because Alex was one of her National Honor Society students, plaintiff became aware he did not have money to pay his dues. She thought she could help him so she "became involved." According to plaintiff, defendant embraced her assistance and "never complain[ed], never said it's too much." Regarding Alex's living conditions at his mother's home, plaintiff stated Alex's brother is "bipolar and schizophrenic and he's dangerous." She added that

because of the danger his sibling presented to Alex, defendant feared the Division of Child Protection and Permanency (Division) would "take [Alex] away." Therefore, defendant asked plaintiff to write a letter to the Division in October
224 2017 in which defendant confirmed she was *224 aware Alex was living with plaintiff for his safety and was "in a better condition at [plaintiff's] home ... than he would be at" defendant's home. According to plaintiff, once the relationship between the two women soured, defendant demanded Alex return home, and "called [her] school twice, telling them that there was a teacher in the fourth grade who was molesting her students .... The third time she showed up to the building and ... security guards did not let her in." Plaintiff asked the judge to continue the status quo and allow Alex to remain in her home.

Alex was the last to testify. He was almost seventeen years old at the time. The judge asked Alex what he had "to say about this matter," and he confirmed he would never have been able to stay at plaintiff's home unless defendant was "okay with it to begin with." Alex added that, at times, defendant encouraged him to "leave the house because of [his] schizophrenic brother." Alex also unequivocally expressed his desire to remain in plaintiff's care. He testified living with his mother was "unhealthy" and "unfit." Additionally, he stated he "never had a relationship with [his mother] ever" and claimed that even when he was living at home, he was "alone ... more than half the time." He testified, too, that when he was at his mother's home, he did not feel "wanted – because [his] siblings [were] very abusive," and his mother was "very absent." He described his prior existence at defendant's home as "going through the motions over there" and compared it to living at plaintiff's house, where he felt "secure and ... [had] all the support [he] need[ed]." Alex also testified that despite his mother's allegations, he had no romantic relationship with plaintiff, that such a suggestion was "nasty," and he viewed plaintiff as his "Mom." While on the stand, Alex testified he had "so much to say and it's hard ... to get it all out."

Before ending the hearing, the judge reviewed a letter from the Division in which it advised the court that Alex was doing well in plaintiff's care and should remain with her. The Division observed Alex had a "current GPA of 4.036 with only one tardy," and was "in all honors classes."
225 Also, the Division reported defendant's *391 *225 home "appears to be inappropriate as she doesn't have appropriate space for the minor." Defendant informed the Division her nephew, who was recently released from jail after a domestic abuse incident, was living in her home. Additionally, defendant advised the Division she rents out rooms in her home, her boyfriend lived with her and she had an active restraining order against Alex's father. The judge noted that according to court records, it appeared the restraining order referenced by defendant was dismissed by another judge in October 2017.

At the conclusion of the January 29 hearing, and notwithstanding Alex's express desire to remain with plaintiff, the judge found "as far as the legal documentation is concerned ... [defendant] has custody." Additionally, the judge concluded a May 2017 letter purportedly written by defendant to plaintiff, which allowed plaintiff to act on Alex's behalf, did not alter defendant's status as Alex's custodial parent. When the judge announced Alex was to return to defendant's custody, plaintiff responded Alex "has nowhere to stay there." Defendant replied she recently had rented a five-bedroom apartment where her son would be more comfortable, and she would be moving there on the first of the month. The judge directed the Division to assess defendant's new home prior to the next hearing date on March 11, 2020. The record reflects the assessment was not conducted as defendant decided prior to the March 11 hearing not to move. Further the record shows

Alex remained at plaintiff's home between January 29 and March 11, 2020, notwithstanding the judge's ruling to the contrary.

On March 11, 2020, plaintiff appeared with counsel; defendant appeared self-represented. For the benefit of plaintiff's counsel, the judge summarized what had occurred in prior proceedings. The judge highlighted that a May 2017 letter plaintiff claimed she received from defendant authorized her to act on Alex's behalf "to make certain accommodations for the child's school, necessary documentations, and things like that. It does not address any residential custody." Further, the judge stated she understood plaintiff retained counsel "at the very end of this
226 litigation," but *226 "these are summary hearings" and "[w]e've been in court three times with regards to this matter. The court is not willing to reopen the matter ... under this application .... We're already 107 days in on this matter. So we're over-goal on ... these cross-applications." She directed Alex to be returned to defendant's custody immediately.

Newark police officers arrived at plaintiff's home on the night of March 12, 2020, because Alex refused to return to his mother's home. He told the police he did not want to leave plaintiff's home because he was scared and had been assaulted at his mother's home. The officers told him he had no choice but to comply with the court order, and they transported Alex to his mother's home that night.

On March 13, 2020, plaintiff's counsel filed an order to show cause, addressing new causes of action pertaining to the parties' custody dispute and seeking Alex's immediate return to plaintiff's home. Plaintiff also requested to be designated as Alex's psychological parent. Additionally, she asked the court to schedule a plenary hearing to address ongoing custody issues and moved to have an attorney appointed to represent Alex pursuant to Rule 5:8A. Plaintiff's counsel advised the judge that an attorney volunteered to represent Alex. The court denied plaintiff's request for emergent relief but agreed to hear her application on March 17, 2020.

Defendant did not appear for the March 17 hearing, although plaintiff's counsel represented
392 *392 she served defendant with notice of the emergent filing via email. The trial court attempted to contact defendant by phone but was unable to do so. During the proceeding, plaintiff's counsel informed the court Alex's attorney was "poised and ready" to participate in the hearing, with or without a formal appointment by the court. The judge declined to appoint an attorney for Alex. She stated it was not necessary for him to be represented by counsel "in this FD matter for today's hearing or any hearing going further." The judge added:

227 *227

> There's no need at this point for him to be represented by separate counsel .... [H]e's very intelligent. He's well spoken. I've had the opportunity to observe him. He is a part of this litigation. He is the child at issue, yes. But again, this is an FD case. I've spoken with him. I'm not going to appoint counsel for [Alex] at this point.

Plaintiff's counsel advised the court Alex was removed by the police on March 12, 2020 and returned to his

> birth mother's house where he slept on the sofa full of dust and it aggravated his asthma. He then indicated to pretty much anyone who would listen, that he would not be staying at his birth mother's house and has now not returned home because he feels unsafe, inappropriately cared for, and has asked that [the Division] be contacted at pretty much every turn .... [T]he minor child has pretty severe asthma. He utilizes a nebulizer .... [H]e should not be in environments that are smokey, environments that are dusty.

In response, the judge noted she previously considered plaintiff's position and denied plaintiff's request for emergent relief. The judge explained she understood Alex lived with plaintiff for the past three years but "custody had never changed. And that was the basis of the court's decision at the last hearing." Further, the judge stated she "placed on the record all of the previous proceedings where it was evident that [defendant] was the custodial parent" of Alex. Moreover, the judge found "nothing has changed even now with this new application." She concluded plaintiff "definitely provided outstanding accommodations for the child. She has guided him with his schoolwork. She has been a support to his mother .... But there is nothing here that the court could rely on in ... depriving [defendant] of her constitutional rights to parent her child."

Plaintiff's counsel urged the court to consider plaintiff's position as Alex's psychological parent. The judge responded:

> the court recognizes that exceptional circumstances could very well be argued of the ... psychological parentage .... But, again, the court also has to find clear and convincing evidence of what I've just placed on the record. Parental abandonment, unfitness or gross misconduct .... The court has to look also to [defendant's] rights as a parent and whether they should be terminated.

Although the judge denied plaintiff's emergent application for custody, she agreed to consider plaintiff's remaining requests for relief on April 16, 2020. Additionally, the judge denied plaintiff's
228 application for a stay pending appeal.*228 Plaintiff immediately sought emergent appellate relief, and on March 17, 2020, we stayed the trial court's orders of March 11, 13 and 17, 2020. We also directed physical custody of Alex to be returned to plaintiff pending further order. On April 6, 2020, we continued the stay pending appeal and granted Alex's attorney permission to act as the minor's law guardian.

On appeal, plaintiff argues the trial court failed to
393 hold a proper plenary hearing *393 to address Alex's best interests, misapplied the law relating to psychological parentage, prematurely concluded the proceedings due to the time spent in prior hearings, and mistakenly denied Alex the right to counsel. As intervenor, Alex's law guardian contends the judge erred in denying Alex counsel and failing to appoint her firm to act as Alex's law guardian. She also argues the trial court improperly conducted proceedings in Alex's absence.

Amici curiae decline to take a position on whether the trial court erred in returning Alex to his mother's physical custody. Instead, they present broader arguments involving constitutional due process protections for FD litigants and contend additional procedural protections are needed for litigants involved in FD child custody disputes. Amici specifically argue custody disputes should not be resolved in summary fashion and trial courts should ensure children's opinions are heard in FD child custody cases.

As a threshold matter, we recognize Alex is almost eighteen. However, we do not deem all issues raised in this appeal as moot. See Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58, 888 A.2d 507 (App. Div. 2006) ("An issue is moot when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy."). Instead, we are persuaded certain issues in this case may be capable of repetition and should be addressed. See Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330, 676 A.2d 1065 (1996) (stating that courts may consider an otherwise moot issue if it is likely to
229 reoccur but evade review).*229 Appellate review of a trial court's findings in a custody dispute is limited. Cesare v. Cesare, 154 N.J. 394, 411, 713 A.2d 390 (1998). "The general rule is that findings

by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12, 713 A.2d 390 (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484, 323 A.2d 495 (1974)). Furthermore, appellate courts afford substantial deference to the Family Part's findings of fact because of that court's special expertise in family matters. Id. at 413, 713 A.2d 390. "Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility because, having heard the case, and seen and observed the witnesses, the trial court has a better perspective than a reviewing court in evaluating the veracity of witnesses." P.B. v. T.H., 370 N.J. Super. 586, 601, 851 A.2d 780 (App. Div. 2004) (citing Pascale v. Pascale, 113 N.J. 20, 33, 549 A.2d 782 (1988)). However, appellate courts review issues of law de novo, even those that arise in the context of a custody dispute. R.K. v. F.K., 437 N.J. Super. 58, 61, 96 A.3d 291 (App. Div. 2014).

The United States Constitution, New Jersey's statutes and Constitution, and common sense "afford a fit parent a superior right to the custody of his or her child as against third parties." Watkins v. Nelson, 163 N.J. 235, 245, 748 A.2d 558 (2000) ; see also N.J. Div. of Youth & Fam. Servs. v. R.G., 217 N.J. 527, 553, 90 A.3d 1258 (2014). Thus, "a presumption of custody exists in favor of the parent." Watkins, 163 N.J. at 246, 748 A.2d 558. Both parents have an equal right to custody of their child. N.J.S.A. 9:2-4.

Unlike a child's legal parents, third parties, such as grandparents, who have a close relationship with a child, have no inherent rights to custody of that child. See Watkins, 163 N.J. at 245, 748 A.2d 558. Likewise, a court order granting custody to a grandparent or other third party does not bestow
394 parental rights upon that third party. *394 Tortorice v. Vanartsdalen, 422 N.J. Super. 242, 251-52, 27
230 A.3d 1247 (App. Div. 2011).*230 Yet, "[t]he right of parents to the care and custody of their children is not absolute." V.C. v. M.J.B., 163 N.J. 200, 218, 748 A.2d 539 (2000). While there is a presumption supporting a natural parent's "right to the care, custody, and control of his or her child," this "presumption in favor of the parent will be overcome by 'a showing of gross misconduct, unfitness, neglect, or "exceptional circumstances" affecting the welfare of the child[.]' " K.A.F. v. D.L.M., 437 N.J. Super. 123, 131-32, 96 A.3d 975 (App. Div. 2014) (quoting Watkins, 163 N.J. at 246, 748 A.2d 558). An exceptional circumstance that overrides the presumption favoring the natural parent occurs when a third party has become a child's "psychological parent," i.e., where "a third party has stepped in to assume the role of the legal parent who has been unable or unwilling to undertake the obligations of parenthood." V.C., 163 N.J. at 219, 748 A.2d 539 (citing Sorentino v. Fam. & Child.'s Soc. of Elizabeth, 72 N.J. 127, 132, 367 A.2d 1168 (1976)). The exceptional circumstances element is grounded in the court's power of parens patriae to protect minor children from serious physical or psychological harm. Watkins, 163 N.J. at 246-47, 748 A.2d 558.

To be recognized as a psychological parent, a third party must file a petition with the court. Lewis v. Harris, 188 N.J. 415, 450 n. 20, 908 A.2d 196 (2006). If on reviewing such petition, the court determines a third party is a child's psychological parent, "he or she stands in parity with the legal parent." V.C., 163 N.J. at 227, 748 A.2d 539 (citing Zack v. Fiebert, 235 N.J. Super. 424, 432, 563 A.2d 58 (App. Div. 1989)). On the other hand, a mere court-ordered award of custody to a third party does not elevate that third party to the status of a custodial parent, nor does it terminate an existing parent-child relationship. Tortorice, 422 N.J. Super. at 251, 27 A.3d 1247. Further, a custody award does not entitle the third party to enter the constitutionally protected zone of autonomous privacy that is fundamental to the legal parent-child relationship. Id. at 251-52, 27
231 A.3d 1247.*231 A third party establishing exceptional circumstances by proving psychological parentage "may rebut the

presumption in favor of a parent seeking custody even if he or she is deemed to be a fit parent." Watkins, 163 N.J. at 247-48, 748 A.2d 558. "In such circumstances, the legal parent has created a family with the third party and the child[,] ... essentially giving [the child] another parent[.]" V.C., 163 N.J. at 227, 748 A.2d 539. If a third party is deemed a child's psychological parent, thereby standing "in parity with the legal parent," "[c]ustody and visitation issues between them are to be determined on a best interests [of the child] standard[.]" Id. at 227-28, 748 A.2d 539 (citing Zack, 235 N.J. Super. at 432, 563 A.2d 58).

In V.C., our Supreme Court set forth the requirements a third party must demonstrate to establish psychological parentage. Id. at 223, 748 A.2d 539. The four-prong test to be satisfied is as follows:

> [1] the legal parent must consent to and foster the relationship between the third party and the child; [2] the third party must have lived with the child; [3] the third party must perform parental functions for the child to a significant degree; and [4] most important, a parent-child bond must be forged.
>
> [Ibid.]

In discussing the fourth element, the Court stated, "[w]hat is crucial here is not the amount of time
395 but the nature of the *395 relationship .... Generally, that will require expert testimony." Id. at 226-27, 748 A.2d 539.

Here, the judge did not undertake a complete examination of the psychological parentage issue, and thus never reached a best interests analysis for Alex's benefit, even though she acknowledged "exceptional circumstances could very well be argued." Additionally, it appears the judge was under the mistaken impression that before she could consider plaintiff's request to be deemed Alex's psychological parent, she first would need to find by "clear and convincing evidence" that Alex's parents struggled with issues of parental abandonment, unfitness or gross misconduct. The judge compounded this error by finding she also
232 had to look to *232 defendant's "rights as a parent and whether they should be terminated." However, as we have discussed, a third party establishing exceptional circumstances by proving psychological parentage "may rebut the presumption in favor of a parent seeking custody even if he or she is deemed to be a fit parent." Watkins, 163 N.J. at 247-48, 748 A.2d 558.

Because Alex is due to turn eighteen in a matter of weeks, we perceive no value in remanding this matter to allow the trial court to determine if plaintiff can establish her psychological parentage claim. For similar reasons, we decline to address each argument raised by plaintiff, Alex's law guardian and amici. However, for the benefit of litigants who find themselves navigating the FD docket, we observe that, as with other custody disputes, generally litigants involved in an FD custody dispute should be required to attend mediation before a plenary hearing is conducted. R. 1:40-5 and R. 5:8-1. The record does not indicate that happened here. Of course, litigants and their minor children also remain free to pursue therapeutic options.

Additionally, where custody or parenting time is an issue, a trial court may appoint counsel on behalf of the child. R. 5:8A. The court also has the discretion to appoint a guardian ad litem to represent the child's best interests. R. 5:8B. The application for either appointment can be made by a party or the child, or the court may direct the appointment on its own motion.

Here, Alex testified in open court that he had "so much to say and it's hard ... to get it all out." During the next hearing, plaintiff's counsel requested that independent counsel advance Alex's positions. The judge declined this request, finding she had a chance to hear from and observe Alex, and that Alex was intelligent and "well spoken." In light of Alex's age and his statements to the

court, along with the fact that Alex's counsel was "poised" to immediately represent him, we are persuaded the totality of circumstances militated
233 in favor of appointing counsel for the minor.*233 Regarding the summary nature of the proceedings, we recognize the judge afforded both parties an opportunity to be heard on more than one occasion. She also ensured Alex participated in the proceedings. However, it is unclear why the court did not permit cross-examination to test the veracity of the witnesses. Given the nature of the parties' dispute, cross-examination should have been permitted to discern what was in the best interests of the child.

Additionally, we observe that during the March 11, 2020 hearing, the judge declined to "reopen the matter" to more fully address concerns raised by plaintiff's counsel, noting that typically FD matters involve "summary hearings." Further, the judge informed plaintiff's counsel the parties were "in court three times with regards to this matter,"
396 and the case had *396 aged to "107 days .... So we're over-goal on ... these cross-applications."

Typically, FD custody disputes are to be handled in summary fashion. R. 5:4-4. "The summary nature of [an FD] action is intended 'to accomplish the salutary purpose of swiftly and effectively disposing of matters which lend themselves to summary treatment ....' " R.K. v. D.L., 434 N.J. Super. 113, 133, 82 A.3d 305 (App. Div. 2014) (quoting Washington Commons, LLC v. City of Jersey City, 416 N.J. Super. 555, 564, 7 A.3d 225 (App. Div. 2010), certif. denied, 205 N.J. 318, 15 A.3d 326 (2011)). For this reason, " [s]ummary actions in the Family Part are ordinarily tried without the benefits of discovery." Ibid. (citing R. 5:5-1).

However, the summary nature of an FD action is also intended to give " 'the defendant an opportunity to be heard at the time [the] plaintiff makes [an] application on the question of whether or not summary disposition is appropriate.' " Ibid. (quoting Washington Commons, 416 N.J. Super. at 564, 7 A.3d 225). A Family Part judge has the authority to order, and parties have a right to request, that a matter be placed on a complex track. R. 5:4-2(j). In fact, as we previously have held, "[t]he need and degree of judicial supervision is left entirely to the discretion of the
234 trial judge" in FD proceedings. *234 R.K., 434 N.J. Super. at 138, 82 A.3d 305. Thus, an FD custody dispute, like other FD actions, "should not be automatically treated by the Family Part as a summary action requiring expedited resolution, merely because it bears an FD docket number." Id. at 133, 82 A.3d 305. Notably, neither party formally asked the court to place the case on the complex track.

Nevertheless, considering that plaintiff raised a credible claim of psychological parenthood, the minor involved was almost seventeen, his attorney sought to intervene, and defendant was unrepresented, this matter should not have been treated summarily. Placing the matter on a complex track would have alleviated some of the time constraints ordinarily associated with the FD docket, and afforded the court the necessary time to grapple with these difficult issues. Also, if plaintiff and Alex had legal representation, the court might have considered appointing pro bono counsel for defendant.

Finally, we are mindful the parties initially were advised by Essex County personnel that they needed to file their cross-applications in Passaic County. This instruction was based, in part, on the fact Alex's parents previously litigated support and custody issues under an existing FD matter in Passaic County. Nonetheless, because the parties and Alex lived in Essex County, and their issues were not inextricably intertwined with issues raised in the Passaic County case, this case should have been heard in Essex County.

To the extent we have not addressed the remaining arguments of the parties or amici, we are satisfied the issues are either moot or involve policy

questions that are more appropriate for the Supreme Court Family Practice Committee's consideration.

Reversed.

Carmen Diaz, Esq.

Carmen M. Diaz, Esq. is a Member and Chair of the Family Law Department at the Firm of Goodgold West Diaz Bennett & Klein, LLC located in Roseland, New Jersey. Carmen devotes her practice exclusively to family law matters, including complex matrimonial litigation, Business valuations, child custody and domestic violence. She is also a family law mediator, parent coordinator and trained in Collaborative Divorce.

In addition to her legal practice, Carmen is also actively involved in various legal organizations and associations. Carmen is the incoming Present of the Essex County Bar Association and a trustee of the New Jersey Hispanic Bar Association. Carmen also serves on the Family Law Executive Committee of the New Jersey State Bar Association.

Judicial Recusal – Sample Brief Language

Rule 1:12-1 provides:

> The judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if the judge
>
> > (a) is by blood or marriage the second cousin of or is more closely related to any party to the action;
> >
> > (b) is by blood or marriage the first cousin of or is more closely related to any attorney in the action. This proscription shall extend to the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits;
> >
> > (c) has been attorney of record or counsel in the action;
> >
> > (d) has given an opinion upon a matter in question in the action;
> >
> > (e) is interested in the event of the action;
> >
> > (f) has discussed or negotiated his or her post-retirement employment with any party, attorney or law firm involved in the matter; or
> >
> > (g) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.
>
> Paragraphs (c), (d) and (e) shall not prevent a judge from sitting because of having given an opinion in another action in which the same matter in controversy came in question or given an opinion on any question in controversy in the pending action in the course of previous proceedings therein, or because the board of chosen freeholders of a county or the municipality in which the judge resides or is liable to be taxed are or may be parties to the record or otherwise interested.

Additionally, Canon 3(C)(1) of the *Code of Judicial Conduct* provides that "[a] judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." These rules, “are designed to address actual conflicts and bias as well as the appearance of impropriety.” State v. McCabe, 201 N.J. 34, 43

See also, N.J.S.A. 2A:15-49 ("This section shall not be construed to prevent a judge from sitting on such trial or argument because he has . . . given his opinion on any question in controversy in the pending action in the course of previous proceedings therein"). As stated in Matthews v. Deane, 196 N.J. Super. 441, 444 (Ch. Div. 1984), appeal dismissed, 206 N.J. Super. 608 (App. Div. 1986):

> a review of the applicable statute and court rule reveal a clear intention on the part of the Legislature and the Supreme Court to allow a judge to continue to participate in a case when any opinion which he has rendered with respect to a matter in controversy was expressed in the course of proceedings regarding that same controversy.

The *Matthews*, court further stated:

It is within the sound discretion of the judge, in the first instance, whether he should disqualify himself. *State v. Flowers*, 109 N.J. Super. 309, 311-312 (App.Div.1970). In determining whether to disqualify himself, the judge is guided by the following principle:

> Absent a showing of bias or prejudice, the participation of a judge in previous proceedings in the case before him is not a ground for disqualification. (citation omitted). And the fact that a judgment resulting from previous proceedings is reversed on appeal is likewise not a sufficient ground for disqualification. [*State v. Walker*, 33 N.J. 580, 591 (1960).]

Id., 196 N.J. Super. at 445. That court further explained:

> In *United States v. Valenti*, 120 F. Supp. 80, 83 (D.N.J.1954), the United States District Court for the District of New Jersey reiterated the rule that the federal disqualification statute must be strictly construed "in order to safeguard the judiciary from frivolous attacks upon its dignity and integrity, and to avoid interruption of its ordinary and proper functioning." Footnote omitted. The rule outlined in *Valenti* should apply with equal necessity to *N.J.S.A.* 2A:15-49 and *R.* 1:12-1. These provisions should not be used to waste judicial resources and unjustifiably question the objectivity of judges.

Id., 196 N.J. Super. at 446-447.

Pursuant to Rule 1:12-2, motions for recusal are required to be made to the judge whose recusal is sought.

Jessica Ragno Sprague is a Shareholder with Jardim Meisner Salmon Sprague & Susser, P.C. and co-chair of the Family and Matrimonial practice group.

Jessica is a Certified Matrimonial Attorney, as authorized by the New Jersey Supreme Court. Jessica has a substantial appellate practice. She was the prevailing attorney in the published Appellate Division decision of L.C. v. M.A.J., 451 N.J. 408 (App. Div. 2017) as well as prevailing in many unpublished decisions.

Jessica graduated from Fairleigh Dickinson University, College at Florham, with a B.A. in Psychology in 2003, and her Juris Doctorate from Seton Hall University Law School in 2006. While in law school, she was a research assistant for New Jersey State Senator Robert Martin, and she spent a semester representing indigent clients in their Family Law Clinic. Upon graduating from law school, she had the honor to clerk for the late Honorable John E. Selser in Passaic County in the Family Division.

Jessica was the 100th President of the Passaic County Bar Association from 2019 through 2020. She is the co-chair of the Family Law Section and the co-chair of the Early Settlement Panel Committee, as well as panelist, in Passaic County. Along with the other members of the committee and the Honorable Rudolph Filko, P.J.F.P., she spear-headed a low bono program to help assist with the lengthy backlog of matrimonial motions and said program continues to assist litigants today. Along with her co-chair, she established a program for unmarried couples in the Passaic Family Court to alleviate the long delays that litigants are experiencing due to the pandemic. In 2021, she received the Professional Lawyer of the Year award for Passaic County from the New Jersey Commission on Professionalism.

At the State level, Jessica is a Trustee of the New Jersey State Bar Association, including the Family Law Section. She is also a voting member of the Family Law Executive Committee. She previously served a number of years on the General Council. At both the State and local level, Jessica has been a speaker and moderator at a number of continuing legal education classes.

Jessica was previously appointed by the Supreme Court to serve a term on the District XI Fee Arbitration Committee and a term on the District XI Ethics Committee. She is currently serving a term on the Committee on Character.

HOT TIPS

Questions to Ask and Issues to Know when Representing a Client with a Special Needs Child

By: Lauren A. Miceli, Esq.

I. Does the Child Have an IEP?

For students with disabilities and other special needs, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. § 1400 *et seq.,* directs how school districts must interact with those students. Under the IDEA and state regulations, decisions regarding eligibility, program and placement are determined by an Individuals Education Placement ("IEP") Team.

II. An IEP Is Instructive But Not to be Utilized to Determine Best Interests.

A recent Appellate Division case (unpublished), addressed the use of IEP documents in custody and parenting time litigation. Specifically, in W.A. v. S.T., 2024 WL 4847270 (App. Div. 11/21/24), the Court noted:

> … an IEP serves a very different purpose from a best interests evaluation. An IEP is 'a written plan which sets forth present levels of academic achievement and functional performance, measurable annual goals, and short-term objectives or benchmarks, and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives." N.J.S.A. 30:4-165.8(b). In contrast, a custody evaluation "is an expert report where the court expects, and is assisted by, the independent professional judgment of a licensed mental health expert." Koch v. Koch, 424 N.J. Super. 542, 550 (Ch. Div. 2011).

III. Will Your Client or the Other Party Remain in the Marital Home?

Public schools have the obligation to provide education services to "persons over five and under 20 years of age…" N.J.S.A. 18A:38-1. And those persons to whom the

education must be provided are "Any person who is domiciled within the school district . . ." Id.

Pursuant to the Administrative Code, a student is domiciled in the school district when he or she is the child of a parent or guardian whose domicile is located within the school district. N.J.A.C. 6A:22-3.1(a)(1).

For those parents with shared parenting time arrangements, N.J.A.C. 6A:22-3.1(a)(1)(i) explains:

> When a student's parents or guardians are domiciled within different school districts . . . the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year. This subparagraph shall apply regardless of which parent has legal custody. (emphasis added).

A little advertised portion of the Code does provide relief to parents in 50/50 parenting time situations because it allows for the designation of a parent's residence to be utilized for school enrollment purposes under two scenarios: (1) where there is a court order or (2) where there is a written agreement between the parents designating the school district of attendance for the child. N.J.A.C. 6A:22-3.1(a)(1)(i).

For students with IEPs,

> When the domicile of a student with disabilities as defined in N.J.A.C. 6A:14, Special Education, cannot be determined pursuant to this section, nothing in this section shall preclude an equitable determination of shared responsibility for the cost of the student's out-of-district placement.
>
> N.J.A.C. 6A:22-3.1(a)(1)(ii)(2).

IV. Is the School District Trying to Change the Child's IEP?

Clients should be advised, at that time, if a proposed change is being made over the objection of the parents to the special needs child that they have the right to file for "Stay Put."

Stay Put acts as an automatic injunction against any attempt to change a student's placement from that which was prescribed in the last agreed upon IEP. Drinker by Drinker v. Colonial School Dist., 78 F.3d 859, 864 (3d Cir. 1996).

The clients will be best served by contacting and working with a special needs attorney as the potential conflict and litigation with the district can increase at this point in time.

If a school districts fails to abide by Stay Put, N.J.A.C. 6A:14-2.7(r)(1) permits parents to seek judicial enforcement of Stay Put via Emergent Relief, very much like an Order to Show Cause filed with the Family Division. However, it is important to note that the litigation must originate in the Office of Administrative Law, not in the Family Division.

V. Financial Provisions in Marital Settlement Agreements for Special Needs Children.

a. Deviation from the Guidelines:

"The purpose of child support is to benefit children, not to protect or support either parent." J.S. v. L.S., 389 N.J. Super. 200, 205 (App. Div. 2006). "In accordance with Rule 5:6A, [the] guidelines must be used as a rebuttable presumption to establish . . . all child support orders. The guidelines must be applied in all actions . . . ." Current N.J. Court Rules, Appendix IX-A to R. 5:6A, ¶ 2. "A rebuttable presumption means that an award based on the guidelines is assumed to be the correct amount of child support unless a party proves to the court that circumstances exist that make a guidelines-based award inappropriate in a specific case." Id.

Current N.J. Court Rules, Appendix IX-A to R. 5:6A ¶ 9(d) confirms that the "special needs of gifted or disabled children" is a reason to deviate from the guidelines.

When representing a parent with a child who has extraordinary needs, you must consider some of the following additional expenses which the family incurred while intact and must now account for upon separation, or that which will be incurred in a non-dissolution context:

1. Specialized therapies such as physical therapy, occupational therapy, speech therapy, considering the transportation obligations and the costs of the therapies both covered and uncovered by insurance;
2. Specialized equipment and supplies like a wheelchair, an automobile with a wheelchair lift, lavatory lifts or hoists, including the cost of replacement for the equipment, the required maintenance whether yearly or monthly, and the necessary upgrades due to the age and growth of the child;
3. Insurance costs, generally, including the costs of the plans, limitations of the plans (i.e. pre-authorizations, specialists, high deductible plans, etc.);
4. Medications, cover and uncovered by insurance;
5. Special dietary needs that inflate the monthly food budget for the family;
6. Schooling Needs, including transportation to and from as well as tuition rates for attendance;

7. In home, after school, before school, overnight, weekend, respite care;
8. Home renovations and maintenance necessary to accommodate the special needs child, like ramps, widening hallways, entryways, chair lifts, etc.; and
9. Vehicles, the purchase, and maintenance of accessible vehicles when public transportation is not an option. Vehicles may also require modifications to be accessible to the child, and who maintains primary ownership over the modified vehicle or is it shared between parents who share custody of the child.
10. Unexpected expenses or worsening of child's medical condition. A child with seizures may be walking, talking, and requiring minimal supports today, but one gran mal seizure and they could be completely physically and mentally impaired tomorrow.

b. <u>Protecting the Receipt of State and Federal Benefits</u>

Practitioners must ask the following questions when representing a parent of a special needs child:

a. Is Medicaid providing benefits?
b. Are SSI benefits received – under the age of 22?
c. Are SSD benefits received – over the age of 23?
d. Does the child hold substantial gainful employment?
e. Has the Family Established a Special Needs Trust for the child or should they?

f. Has the Family applied to the Division of Developmental Disability?

Special Needs Trusts are regulated at the federal and state level. The primary purpose of a Special Needs Trust is to permit the use of assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State, or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving. Some of the requirements for a Special Needs Trust are:

a. The beneficiary of the Special Needs Trust be disabled pursuant to the federal guidelines;
b. The Special Needs Trust it be established before the person's 65th birthday;
c. The Special Needs Trust benefits only one singular person;
d. The Special Needs Trust must be irrevocable; and
e. The Special Needs Trust must be drafted to include a provision, upon the death of the trust beneficiary, to reimburse New Jersey Medicaid for the total amount of the benefits paid on behalf of the beneficiary during his/her lifetime.

See N.J.A.C. 10:71-4.11(g)(1).

There are a multitude of other requirements and regulations all of which affect the Medicaid planning for the individual to assure the receipt of maximum state and federal benefits. These trusts can be established by a parent, grandparent, or legal guardian. A Court can even require the establishment of a Special Needs Trust.

Similarly, Achieving a Better Life Experience or "ABLE" accounts, which allow deposits up to $17,000 per year, are tax-advantaged savings account to which contributions, like child support or financial maintenance, can be made. These monies

can then be used to meet the expenses and needs of the child. An ABLE account is akin to a 529 account, but instead of being designated solely for educational expenses, the funds in an ABLE account can be utilized to pay expenses related to that person's disability. ABLE accounts receive favorable treatment and are excluded from resources in whole or in part, for purposes of certain means-tested Federal programs which is economically beneficial when care for the child may increase with age and are so critically important.

Lauren A. Miceli is a Partner in Arndt, Sutak & Miceli, LLC in East Brunswick, New Jersey, where she concentrates her practice in divorce and family law matters, including divorce litigation, equitable distribution, alimony, child support, child custody and post-judgment modification and enforcement issues.

Admitted to practice in New Jersey and New York, Ms. Miceli is a member of the New Jersey State and Middlesex County Bar Associations. She is a Trustee of the Middlesex County Bar Association, a member of the Family Law Executive Committee, and a member of the Early Settlement Panel. Ms. Miceli is a member of the NJSBA Family Law Section Executive Committee ("FLEC"). She formerly worked with a Middlesex County-based family law firm and as a Special Education attorney, where she represented families in disputes involving New Jersey public school districts.

Ms. Miceli is co-founder, Secretary and an Associate Member of the Aldona E. Appleton Family Law Inns of Court, dedicated to advancing the knowledge, collegiality and professionalism of family law attorneys in Middlesex County. She was awarded the Martin S. Goldin Award by the Middlesex County Bar Association for her dedication to the practice of divorce and family law. Ms. Miceli received her B.A., cum laude, from Douglass College, Rutgers University, and her J.D. from Rutgers School of Law-Camden. For the 2013-2014 term, Ms. Miceli served as judicial clerk for the Honorable Lisa M. Vignuolo, J.S.C., Middlesex County Courthouse.

Income – Why the Tax Return Doesn't Paint the Whole Picture

John O'Grady, CVA, MSA – Eisner Advisory Group LLC

Often times we are told "just look at the tax return" when it comes to determining a parties' joint or individual income. The reality is that the tax return does not paint the whole picture. In this blog, I will explain what is presented on the tax return, what else should be considered, and what other documents and information should be obtained in order to determine the parties' true income available to them.

What information is presented on the tax return?

Income information that is typically presented on a personal income tax return includes:

1. Salaries and wages – Form W-2 wages earned by one or more of the parties.
2. Interest and dividend income – information regarding both taxable and non-taxable (such as on municipal bonds, etc.) interest will be contained on the tax return.
3. IRA, pension or annuity distributions – not all distributions are taxed, however, taxable and non-taxable portion amounts will be presented on the return.
4. Social security benefits.
5. Capital gains or losses.
6. Sales of business assets or ownership in business entities.
7. Business income or losses reported on Schedule C.
8. Pass-through income for rental real estate, partnerships, S Corporations, trusts, etc. (Schedule E income).

Most of these items are straight-forward and represent true income received by the parties. However, pass-through income needs to be discussed a bit further.

What is pass-through income and why is it misleading?

Pass-through income, especially from partnerships, S Corporations, trusts, etc., represents an individual's share of the entity's income based upon ownership interest. The term "pass-through" indicates that the taxes are paid by the individual owner(s), not by the entity. For example, if a party owns 50% of their business that is organized as an S Corporation, that party will report 50% of the business's net income on his or her individual tax return; the entity itself will not pay any income tax. This income (or loss) could be misleading in that it doesn't necessarily mean that the party received that income personally. Many

times, entity income that is reported on a pass-through basis is retained in the entity, and the owners instead receive distributions. Owners are not taxed on distributions, therefore, they are not included in the calculation of taxable income on their individual tax returns. Distribution totals can be found on the Schedule K-1 that the entity includes with its tax returns and issues to the owner(s).

What else is not included on a tax return?

There are other items that could be additional income available to a party that may not be reported on a party's tax return. For example, a business owner may have sold their ownership interest to another individual or a trust, and rather than take a one-time payout for their ownership interest, the business established a note payable to the selling owner. Many times, when this situation arises, the selling owner may have the business pay expenses directly or receive funds from the business and the business treats these expenses or transfers as pay-down of principal and interest on the note payable to the owner. This activity would not be reflected on the tax return of the individual and would require review and analysis of the books and records of the business, primarily on any transaction activity in the notes receivable/shareholder loan accounts on the balance sheet.

Additionally, as we see with many closely-held businesses, the business pays various perquisites on behalf of the owner(s). This could include such items as cell phone expenses, automobile insurance, meals and entertainment, travel expenses, etc. However, there are many instances when the perquisites paid on behalf of the owner(s) include many more items. Often times, these items are not included in distributions or taxable compensation to the owner(s). In order to quantify the total amount of perquisites paid, thorough review of the general ledger of the business is required, as well as potentially a review of the bank account and credit card account statements of the business.

Other potential income items that should be evaluated include deferred compensation, stock options, inheritances or gifts, or additional income received from third-parties not listed in the categories discussed. The parties' personal bank accounts should be reviewed to determine if any other income sources may exist.

Summary

In summary, when determining the income of the parties in a divorce proceeding, it is critical to look beyond the federal income tax returns as there could be a number of income categories that are not

presented on the returns. At a minimum, information to review to determine available income should include bank statements (personal and business), credit cards statements, business tax returns, and general ledgers of the business.

JOHN O'GRADY

732.243.7416 | JOHN.OGRADY@EISNERAMPER.COM
DIRECTOR | EISNER ADVISORY GROUP LLC

John O'Grady is a Director in the Financial Advisory Services Group. With over fifteen years of experience, John specializes in matrimonial litigation, business valuations, fraud and forensic accounting, and commercial damages assessments.

While John has performed valuation and other services for a broad range of industries, he has particular expertise in the professional services, manufacturing, retail, not-for-profit, health care, and real estate sectors. He is experienced in assisting attorneys in mediation, prepare questioning for opposing counsel and experts for use at deposition and cross-examination at trial, as well as experience testifying in depositions and arbitration.

John has authored a number of articles, including some that have been featured in The Valuation Examiner. He has also been a recepient of the National Association of Certified Valuation Analysts "40 Under 40" honor, having been honored in 2016 and 2019.

SPECIALTIES

- Matrimonial Disputes
- Forensic Investigations
- Shareholder Disputes
- Business Valuations
- Commercial Litigation

CREDENTIALS/EDUCATION

- Certified Valuation Analyst (CVA)
- The College of New Jersey: BS, Accounting
- St. Peter's University: MSA, Accounting

AFFILIATIONS

- Association of Certified Fraud Examiners
- National Association of Certified Valuation Analysts
- Freehold Volunteer Fire Department

CROSSOVER CAPITAL

Using Financial Planning Tools For Mediation

Location of Assets	Account Type	Account Number	Joint	Gordon(Defendant)	Freda (Plaintiff)	Exempt from Division	Dates
House Value - Summit			$1,500,000				
Wells Fargo	Checking			$40,392			11/3/2017
Peapack Gladstone	Checking				$135,355		9/22/2017
Etrade	Brokerage	3310		$158,573			11/3/2017
Etrade	Brokerage	1676		$20,160			11/3/2017
Etrade Stock Plan	Brokerage	1676		$2,068,949			11/3/2017
Morgan Stanley	Brokerage	7592		$137,041			11/3/2017
Wells Fargo	Brokerage	3371			$205,296		9/30/2017
Wells Fargo	Brokerage	2187	$239,478				8/31/2017
PNC Celgene	401K			$582,391			11/3/2017
Valle NYBC	403B			$3,129			9/30/2017
T Rowe Price - Daiichi Sankyo	Deferred Comp				$913,583		6/30/2017
T Rowe Price - Daiichi Sankyo	Savings and Retirement				$273,085		6/30/2017
Morgan Stanley	IRA	7567		$59,347			10/18/2017
Morgan Stanley	IRA	7716		$108,740			10/18/2017
Wells Fargo	IRRA	1400			$494,933		9/30/2017
Wells Fargo	Roth IRA	4239			$106,429		9/30/2017
Wells Fargo	IRA	8434		$91,007			8/31/2017
Wells Fargo	IRA	5113			$126,060		9/30/2017
Metlife	Life Insurance	88USU		$46,776			8/31/2017
Metlife	Life Insurance	112UM			$37,090		8/31/2017
Freda's	RSUs/SOS - Daiichi Sankyo				$1,903,910		7/5/2017
Goodbye's	RSUs/SOS - Celgene			$272,436			11/1/2017
Wells Fargo	529	5489				$278,929	8/31/2017
Wells Fargo	529	5914				$190,139	8/31/2017
Wells Fargo	Inherited IRA					$6,904	8/31/2017
	TOTALS		**$1,739,478**	**$3,588,941**	**$4,195,741**	**$475,972**	
Wells Fargo	Mortgage		-$293,781				
UNKNOWNS							
Killington Timeshare		TBD					

50/50 Split of Assets			
Freda Age	Gordon Age	Freda Balance	Gordon Balance
56	68	$4,928,047	$4,456,903
57	69	$5,284,636	$4,352,373
58	70	$5,655,532	$4,235,290
59	71	$6,041,861	$4,103,980
60	72	$6,446,375	$3,957,488
61	73	$6,868,286	$3,789,405
62	74	$7,307,288	$3,603,345
63	75	$7,764,631	$3,391,015
64	76	$8,238,475	$3,137,774
65	77	$8,271,408	$2,861,204

50/50 Split of Assets with Alimony @ $75K			
Freda Age	Gordon Age	Freda Balance	Gordon Balance
56	68	$4,850,885	$4,239,231
57	69	$5,128,088	$4,237,033
58	70	$5,417,310	$4,230,855
59	71	$5,719,611	$4,216,229
60	72	$6,037,674	$4,192,659
61	73	$6,370,643	$4,157,477
62	74	$6,718,139	$4,111,270
63	75	$7,081,339	$4,053,395
64	76	$7,458,325	$3,983,048
65	77	$7,462,663	$3,899,381

50/50 Split of Assets with Alimony @ $100K			
Freda Age	Gordon Age	Freda Balance	Gordon Balance
56	68	$4,825,164	$4,278,406
57	69	$5,075,905	$4,315,270
58	70	$5,337,903	$4,349,256
59	71	$5,612,194	$4,376,812
60	72	$5,901,440	$4,397,407
61	73	$6,204,762	$4,408,897
62	74	$6,521,756	$4,412,018
63	75	$6,853,575	$4,406,212
64	76	$7,198,276	$4,390,806
65	77	$7,193,085	$4,365,094

Assets Split with extra $300K to Goodbye and Alimony @ $150K			
Freda Age	Gordon Age	Freda Balance	Gordon Balance
56	68	$4,461,235	$4,727,201
57	69	$4,644,994	$4,884,210
58	70	$4,836,825	$5,043,080
59	71	$5,037,098	$5,203,807
60	72	$5,246,203	$5,366,382
61	73	$5,464,549	$5,517,112
62	74	$5,692,564	$5,667,745
63	75	$5,930,695	$5,818,179
64	76	$6,179,413	$5,968,243
65	77	$6,183,295	$6,117,840

CROSSOVER CAPITAL

~~Goals~~ Values-Based Financial Planning

Emotional

- Nurture My Relationships
- Spend Without Guilt

Spiritual

- Help Others Live A More Purposeful Life
- Volunteer My Time

Intellectual

- Master New Skills Or Knowledge

Environmental

- Live In A Better Place
- Protect The Environment

Social

- Be More Socially Active
- Dedicate More Time To Those I Care About

Occupational

- Make Work Optional

1. Spend Without Guilt
2. Feel Confident In My Finances
3. Support & Protect Those I Love
4. Volunteer My Time
5. Nurture My Relationships

Visit us at www.crosscapadvisors.com

CROSSOVER CAPITAL

Tasha Shadle, CIMA®, CDFA®, CBDA

Founder, Wealth Management Advisor

EDUCATION:
Penn State University, B.S.
The Institute for Divorce Financial Analysts — Certified Divorce Financial Analyst

PROFESSIONAL DESIGNATIONS OBTAINED:
Certified Investment Management Analyst (CIMA®)
Certified Divorce Financial Analyst (CDFA®)
Certification in Blockchain and Digital Assets (CBDA)

Contact Information:
215-396-5524
tasha@crosscapadvisors.com

Tasha has worked in the financial services industry since 2001. She specializes in working with women who aren't confident in their ability to manage their finances during and after the divorce process.

While many financial advisors confuse their clients with fancy financial jargon, Tasha teaches her clients in ways that make finance easier to understand.

She also absorbs a lot of the financial coordination work amongst key partners (divorce attorney, CPA, estate attorney, etc.), helping the client avoid overwhelming to-do lists while creating a simple and organized workflow.

Tasha has added several financial designations to her educational background, including the Certified Divorce Financial Analyst (CDFA®) designation. This has allowed her to understand all aspects of the divorce process so that she can assist her clients' needs appropriately.

Tasha resides in Newtown PA with her certified therapy dog, Chloe. Tasha and Chloe volunteer at "Angels on a Leash" where they bring comfort to women transitioning out of abusive relationships and into the next phase of life.