No. 23A724

# In the Supreme Court of the United States

LAURIE CRONAN, *pro se*

*Applicant*

*v.*

MICHAEL B. FORTE, in his official capacity as Chief Judge of the Rhode Island Family Court

*Respondent*

**EMERGENCY APPLICATION FOR A STAY PENDING PETITION FOR A WRIT OF CERTIORARI**

Laurie Cronan, *pro se*
148 Atwood Ave #154
Cranston, RI 02920

Date:

Michael B. Forte
Chief Judge of the Rhode Island Family Court
Garrahy Judicial Complex
1 Dorrance Plz.
Providence, Rhode Island 02903

## TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES



**STATUTES AND REGULATIONS**

**TO THE HONORABLE KETANJI BROWN JACKSON, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES:**

Pursuant to this Court's Rules 22 and 33.2 and the All Writs Act, 28 U.S.C. § 2101(f), Defendant-Petitioner Laurie Cronan, respectfully applies for:

1) A Stay of the lower court Judge's Temporary Orders which was to have automatically engaged upon Petitioner's filing of appeal to the state Supreme Court constitutionally challenging the court's and its Chief Judge's violations of administrative internal processes, precedence, the constitution, and state and federal rules and law. **(FC-Case No. P2020-2673)**

2) A Cease and Desist Stay preventing the Chief Judge of the Rhode Island Family Court from inflicting financial and personal harm on additional citizens in continuing to assign a general magistrate to pre-selected contested divorce cases while the constitutional challenges to those prejudicial assignments are pending, and while the question of whether a party should be financially burdened with the expenses required to correct/reverse court officials' noncompliance with internal administrative judicial processes and violations of state and federal Judicial rules and laws is pending.

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As described in detail in the attached Petition For Writ Of Certiorari, said Writ Petition and this accompanying Emergency Application For Stay raise questions of discrimination, constitutional and civil rights abuses, due process, jurisdictional authorities, financial burdens, and the harm that is caused to the greater population and society as a whole when state judicial officers and judges refuse to adhere to, and apply equally and without prejudice, internal administrative judicial processes, precedence, constitutional equal protections, due process rights and state and federal rules and laws.

## STATEMENT OF THE CASE

### OVERVIEW

This case began as a nominal divorce in the Rhode Island Family Court and became a contested divorce within two weeks of its filing. The case was originally appropriately assigned by the Family Court Chief Judge to an Associate Judge - Judge Felix Gill. Nearly a year into the case with Judge Gill presiding, the Family Court Chief Judge took the unprecedented step of removing the legitimately assigned associate judge from Defendant-Petitioner's case and replacing that judge with a newly confirmed general magistrate, who had been nominated to a magistrate post just two months before said transfer. These actions were taken by the court, not only without notice to Defendant-Petitioner and without her knowledge or consent, but under the false pretense that the magistrate would be, strictly within his limited duties and authorities as a general magistrate, assisting the legitimate judge with his pretrial work, in accordance with law - **R.I. Gen. Laws 8-10-3.2;** *(a) There is hereby created within the family court the position of general magistrate…(c) the primary function of the general magistrate shall be the enforcement of child support decrees, orders, and law relative to child support. The general magistrate shall have all the powers and authorities vested in magistrates…"* (not judges). **R.I. Gen. Laws 8-2-39 General Magistrate Appointment, duties and Powers;** *(c) The General Magistrate will be empowered to hear motions, pretrial conferences, arraignments, probable cause hearings, bail hearings, bail revocation hearings, …and to modify the terms and conditions of probation and other court ordered monetary payments…".* There is no Rhode Island law that allows the state's magistrates or general magistrate to assume the role of a judge or to behave as if they were a judge – to the contrary, such acts would be akin to a medical assistant fraudulently assuming the role of a licensed surgeon and performing surgical procedures on unsuspecting patients – it is reckless and dangerous.

### CONSENT

As detailed in the attached Writ Petition, both RI General Laws and the Rhode Island Constitution prohibit magistrates from presiding over contested divorces/cases. Federal

Law permits magistrate judges to conduct a civil action or proceeding only if all parties consent in writing subsequent to an extensive explanation of the parties' laws and rights, and only if that consent has been confirmed prior to the onset of the case. The consent must take place at the time the action is filed. and never in the middle of a case, much less one which had been properly assigned to a judge at the time of its filing: **Federal Rules of Civil Procedure Rule 73 (a) trial by Consent** –"*When authorized under 28 U.S.C. 636(c), a magistrate judge may, if all parties consent. conduct a civil action or proceeding, including a jury or non-jury trial but a record must be made in accordance with 28 U.S.C. 636(c)(5)-b...the clerk must give the parties written notice of their opportunity to consent under 28USC 636(c)and to signify their consent, the parties must jointly or separately file a statement consenting to the referral. A magistrate judge may be informed of a party's response to the clerk's notice only if all parties have consented to the referral.*"

While federal law permits this upon informed consent, there is no such consent provision in Rhode Island. Rhode Island's restrictions rise to prohibition as the RI Constitution and RI General Rules and Laws do not permit a magistrate to function as a judge in any scenario. Magistrates and General Magistrates do not have the authority to conduct contested divorces, civil actions, or proceedings in the state of Rhode Island under any circumstances. In this case, neither state nor federal law was followed by the lower court.

## APPEALS AND TEMPORARY ORDERS

Pursuant to the above cited laws and on several additional legal and constitutional grounds laid out fully in the attached Writ Petition, Petitioner's lawyers filed appeals immediately after the general magistrate wrote and issued a decision (DPEFJ) of the case, one of those grounds being that the magistrate's writing of a decision was outside of his limited duties and authorities and that his assignment to the case was an internal procedural error/infraction made by the Chief Judge. Out of an abundance of caution and due to the Chief Judge's and Family Court Lawyer's errors and misapplication of the above cited laws, Defendant's attorneys filed two appeals. One of the two appeals was filed laterally to the Family Court Chief Judge and the second appeal was filed directly to the Rhode Island Supreme court (as is laid out in detail in the attached Writ Petition). Upon their filings, Defendant-Petitioner's appeals were to have automatically engaged a Stay of the family

court Judge's Temporary Orders of the case, continuing them uninterrupted. However, both the Rhode Island Family Court (FC-No. P2020-2673) and the Rhode Island Supreme Court (No. SU-2022-0156-MP) refused to enforce the automatic Stay and also denied Defendant's Emergency Petition For Stay and Relief. As a result, Plaintiff, in acts of willful contempt, illegally closed all of the couple's joint bank accounts, redirected all the Judge's ordered direct deposit monies and income into new accounts opened in only his name, and took control of the entire jointly owned marital estate of $15.8 million, cutting Defendant off from all of her equally owned marital monies, pension funds, social security deposits and yearly income.

Every lawyer the Defendant consulted advised her that the courts cannot both refuse to stay the lower court Judge's Temporary Orders AND refuse to distribute her half of the marital estate monies to her, but that is exactly what the General Magistrate, the Family Court Chief Judge, and the RI Supreme Court did. They ignored law, refused to enforce the automatic Stay of Judge Gill's Temporary Orders which, by law, immediately engaged upon Defendant's filed appeals, refused to order Plaintiff to return the illegally seized jointly owned monies and direct-deposits back into the couple's joint accounts, and also denied Defendant-Petitioner her half of the couple's $15.8 million estate.

## ONGOING VICTIMS

Because none of the judges stayed/restricted the family court Chief Judge's unconstitutional magistrate appointments while the matter was pending before the RI Supreme court, for nearly two years from May 23, 2022 – present, the Family Court Chief Judge has continued to assign the General Magistrate to more than thirty (30) additional contested divorce cases (and counting) and, just as with Defendant-Petitioner, the Chief Judge is doing so without those sixty (60+) citizens' knowledge, in violation of the Rhode Island and United States Constitutions and in violation of state and federal laws. It is important to note that all of these additional cases, just like with Petitioner, involve Rhode Island's minority citizens – Citizens of Color, African Americans, Latinas/Hispanics, Interracial couples, women in same-sex marriages and/or women of the LGBTQIA+ community, most of whom cannot afford the exorbitant legal fees to correct the Chief

Judge's ongoing unconstitutional assignments of a magistrate to their contested divorces. These are acts of intentional discrimination and violations of all these minority citizens' civil and constitutional rights, including their equal protection and due process rights which, if not ordered stopped by this honorable court, will permit the Chief Judge to continue to cause more and more people severe emotional distress and life-altering consequences well beyond their monetary injuries.

***United States v Riley* 72 M.J. 115** - *waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.*

**Section 242 of Title 18, Color of Law,** *"makes it a crime for a public official acting under color of law to willfully deprive a person of an equal protection or due process right or privilege protected by the constitution or the laws and/or the abuse of power or acts done beyond the bounds of that official's lawful authority if the acts are done while the official is purporting to or pretending to be acting in the proper performance of his/her duties... this includes judges."*

**The Fifth Amendment's Due Process Clause,** "*requires the government to practice equal protection as does the* ***Fourteenth Amendment's Equal protection Clause****. These equal protection laws and these civil rights,* ***force states*** *to govern impartially* and *even-handedly*." Free from bias and discrimination.

## JURISDICTIONAL LAW

The Magistrate matter is not only a violation of constitutional, equal protection, and due process rights, what has been done in Petitioner's case and all these additional cases, was/is also a jurisdictional infraction. United States **28 U.S. Code 636 (3)** states - *"a magistrate judge may be assigned such additional duties as are not inconsistent with the constitution and laws of the United States."* United States **28 U.S. Code 636 (c)** states - *"notwithstanding any provision of law to the contrary, (1) "Upon the consent of the parties, a full-time United States magistrate...may conduct proceedings in a jury or non-jury civil*

*matter and order the entry of judgement when specially designated to exercise such jurisdiction…upon consent of the parties, pursuant to their specific written request…(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction and the decision of the parties shall be communicated to the clerk of court. Thereafter, the district court judge or magistrate judge may again advise the parties of the availability of the magistrate but in so doing* ***shall*** *also advise the parties that they are free to withhold consent without adverse consequences. Rules of court for the reference of civil matters to magistrate judges* ***shall*** *include procedures to protect the voluntariness of the parties' consent."* In this case, no notice was received and no consent was given, which not only violates both **RI Chapter 8 General Magistrate limited duties law** and **28 U.S. Code 636 consent law** but, because no consent was given by the parties, no jurisdictional authority was granted to the General Magistrate in this case, meaning that he was acting *out of his jurisdiction* when he presided over the contested trial and when he penned a Decision Pending Entry of Final Judgement (DPEFJ), making said decision null/void and leaving the case ongoing and open. Therefore, Judge Gill's Temporary Orders are still in effect and should have continued in full force unobstructed by the Rhode Island court, *"…consent is a precondition to the magistrate judge's exercise of case-dispositive power; without it, a magistrate judge cannot preside over a trial or enter judgement"* ***Pacemaker Diagnostic Clinic of Am., Inc. v Instromedix, Inc., 725 F.2d 537, 540 (CA9 1984) (en banc) (Kennedy, J.).***

Under 636 (c)(3), *"appellate jurisdiction over final judgements entered by a magistrate judge depends on whether the requirements of 636(c)(1) including consent are satisfied. Absence of consent means "absence of a judgement which in turn means absence of*

*jurisdiction. Thus, absence of consent is a jurisdictional defect and a court of appeals must raise such defects sua sponte".*

These laws mean that, in this case, neither the magistrate's decision (DPEFJ) nor the magistrate's Final Judgement Divorce (FJD) were legitimate or lawful, and both are "***void***". The couple is still married in the eyes of the law and the termination of Judge Gill's Temporary Orders upon the filing of the Magistrate's decision is non-existent in the eyes of the law. The magistrate had no consent, no jurisdiction, and no constitutional authority to write or issue a decision at all so *there is no decision in this case, the case remains open and the Judge's Temporary Orders are still in effect*.

## JUDICIAL RESPONSIBILTY

Both the RI Supreme Court and the Family Court as well as the family court Chief Judge and family court counsel, collectively have over 100 years of experience in their positions with the constitution and the law. They therefore should/would have known that their rulings and administrative processes were in violation of state and federal laws and should have ruled accordingly. If Petitioner - a high school graduate with only two years of community college in math and history classes under her belt, zero education in the study of law, and zero experience in any civil suits, trials, or courtrooms prior to her divorce - can read and research well enough to find and cite judicial administrative rules, process, case law, and precedence as they apply to every U.S. citizen's constitutional rights, then certainly the Family Court Chief Judge and the Rhode Island Supreme Court Justices with all their combined education and legal expertise should/would have known the same.

Petitioner should not have to suffer and be financially burdened for both courts' refusals to properly and even-handedly enforce state and federal laws, nor should she and all the additional minority citizens to whom the Chief Judge continues to assign an unauthorized General Magistrate, bear consequences and harm due to the internal errors and/or intentional breaches made by those Judicial Officials, who are entrusted to protect the public. The Family Court Chief Judge has put Defendant-Petitioner and those additional individuals in disastrous positions by continuing to assign the general magistrate to their contested divorces out of that magistrate's jurisdiction. If the Chief Judge is not restricted, many of these people will think they are divorced when in reality they are still married. They may re-marry and their new marriages will, unbeknownst to them, be illegitimate and not recognized by law. They may have children and assign their children names and identities believing that they birthed their offspring as a wedded couple when they have not. Moreover, all of these victims will be financially burdened with having to straighten out the legal mess the Rhode Island courts and judges have, themselves, unnecessarily created with their dereliction of duties and refusal to properly follow the laws they are sworn to uphold.

## RED-LINE CLARIFICATIONS

More proof that these Judicial Officers should/would have known that the general magistrate was acting outside his authorities lies in the fact that, prior to 2007 these restrictive Rhode Island laws were vague and, being as they were not clearly and concisely written, magistrates had briefly been assigned to some contested divorces at that time due to the needed clarification. As a result, in 2007 the Rhode Island state legislature made it a

priority to correct and clearly define (with red-line) the language of the limited duties and limited authorities of all magistrates and their constitutional differences from Judges so there would be no question or room for error. Those red-lined clarifications have been in place for over 16 years and the Family Court Chief Judge, who has been in his position as chief judge for more than seven (7) years and has been a Family Court judge for more than 35 years, is therefore well aware of the Legislature's 2007 re-written clarifications prohibiting General Magistrates and Magistrates from acting as Associate Judges.

## DISCRIMINATION

The practices of the Chief Judge in selectively administering Equal Protection and Due Process of Law only to certain selected groups deemed worthy and deserving by him, further demonstrate the biases and discrimination of the courts in knowing that a General Magistrate is prohibited from presiding over contested divorces and trials but assigning him to "selected persons" cases anyway. Attached **Ex.1** exposes how discriminatory practices by a handful of powerful judges, lawyers, and officials in the Rhode Island Judicial system are not new to the state. In August of 2020 (the same month as Defendant filed her counterclaim in this case and opposing counsel, in his illegal acts of retaliation, obstruction, threats, and intimidation, filed a false police report against her for felony bank wire fraud when she paid her attorney his firm's retainer), a "**DEI Discrimination Task Force**" was created in response to increasing complaints of racism, sexism, homophobia, discrimination and prejudicial treatment in the Rhode Island Judicial system and courts. **Ex.1**

A second investigation, **A Rhode Island Bar Association investigation** "*painted a stark portrait of inequities in the state's legal system. Nearly half of the respondents surveyed*

*encountered discrimination, sexism, racism and prejudice in the Rhode Island court system. Their account included lawyers of color being mistaken as defendants by judges and court staff in criminal cases and lesser treatment of litigants of color. Incidents of sexism encompassed sexual harassment by judges, and other lawyers toward females including those of color. The task force reported "many" stories about judges disrespecting lawyers of color and young female attorneys. Several referred to the legal community in Rhode Island as an "Ole Boys Club".* (Providence Journal)

The General Magistrate and opposing lawyer, throughout Defendant's post-judge hearings and trial, treated her with the same discriminatory sexist behaviors and language as was exposed in the DEI Task Force and Rhode Island Bar Association Investigations. Defendant-Petitioner filed a complaint with the Rhode Island Judicial Disciplinary Board against the lawyer due to his misconduct and mistreatment of her which broke several General rules, codes of ethics, and laws. Defendant also filed a *Motion to Correct Missing/Incorrect Transcripts* of her case, listing/noting specific errors thereto (some of which were audio recorded by her computer during Zoom/Webex hearings proving the inaccuracies), but the General Magistrate angrily denied her motion and would not even consider reviewing Defendant's recordings/notes, despite corrections to transcripts having been made in many past cases in these same Rhode Island courts.

More proof of discrimination by the court lies in the sexist, biased, sexually harassing, and misogynistic remarks, language and ridicule of Defendant's sexual identity and intimacy frequency that Defendant suffered throughout her case and trial, by the magistrate and opposing counsel. It is important to note that the Associate Judge originally assigned to the case was professional in every way – in his courtroom, in the lengthy in-person emergency hearing, and during all his presided-over Webex hearings. Judge Gill commanded respect for all involved, was firm but fair in his judicial conduct, and applied the law even-handedly without bias or discrimination - and opposing counsel did not dare to behave with his sexist, misogynistic, harassing conduct in front of that originally assigned Judge who presided over the first year of the case. (examples of the sexist and discriminatory verbal abuse, intimidation, scare tactics, bullying, and harassment that Defendant-Petitioner suffered

during her case are detailed in the attached Petition For Writ Of Certiorari). It wasn't until a year into the case, when Defendant's LGBTQIA+ identity was disclosed, that the Chief Judge took the unprecedented step of removing and replacing the originally assigned Associate Judge of her case with the General Magistrate in "behind the scenes" secrecy. As stated under **Ongoing Victims** on page 7 of this Stay Application, all of the additional cases to which the family court Chief judge continues to illegitimately assign a magistrate, just like with Petitioner, involve Rhode Island's minority citizens – citizens of color, African Americans, Latinas/Hispanics, interracial couples, and women of the LGBTQIA+ community and/or in same sex marriages. If not ordered stopped, these acts of discrimination and violations of these minority citizens' civil and constitutional rights, including their equal protection and due process rights, will send a "green-light" message to this Chief Judge, and to all 50 states' courts/judges, that these civil rights discriminations are acceptable, which will cause life-altering consequences and harm to an unimaginable number of this country's minority citizens.

***Obergefell v. Hodges, 576 U.S. 644***, ruled that the fundamental right to marry is guaranteed to same sex couples by both the Due Process Clause and the Equal Protection Clause. In that case, groups of gay couples sued their states to challenge the constitutionality of the states' bans on same sex marriage or their refusal to recognize their marriages as legal. Obergefell petitioned a Writ Of Certiorari with this U.S. Supreme Court, and the court ruled that all (fifty) 50 states must lawfully preform and recognize the marriage of same sex couples on the same terms and conditions of opposite sex couples. That Supreme Court case is an umbrella case that encompasses six (6) other lower court cases against state policies. Being as the court has ruled that same sex marriages must be lawfully performed and recognized on the identical terms and conditions as traditional opposite sex marriages - same sex divorces and/or LGBTQIA+ individuals' divorces from their marriages must not be seen as lesser valued or less deserving of proper judicial administrative procedures, nor considered unworthy of legitimately assigned judges who will deliberate and decide their cases with the same authorities, experience, skills, and competent applications of the law as traditional marriages, in an unbiased manner. The court ruled that these individuals' marriages **must** be equal and, therefore, this Petition argues that - said equality must span the full course of these individuals' marriages meaning the divorce process of their marriages must also be equal. Judges and judicial

systems must not be allowed to discriminate against certain individuals by assigning them inadequate unqualified officers of the court as if they are not deserving of an authorized associate judge, and as if their "consent" does not hold the same significance as a non-member of the LGBTQIA+ community.

*Loving v. Virginia 388 U.S. 1 (1967),* is another landmark civil rights decision of the U.S. Supreme Court, which ruled that laws banning interracial marriage violate the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. In June of 1967, the U.S. Supreme Court issued their Unanimous decision that an equal standard must be afforded all, including all women minorities, citizens of color, African Americans, Latinas, members of the LGBTQIA+ community and interracial couples.

One of the Questions of the attached Petition For Writ Of Certiorari asks:

> **QUESTION 3: Being as The U.S. Supreme Court landmark case *Obergefell v Hodges,* 576 U.S. 644 decided that the fundamental right to marry is guaranteed to members of the LGBTQIA+ community by both the Due Process Clause and the Equal Protection Clause and that all 50 states must lawfully perform and recognize marriages of same sex couples on the same terms and conditions as heterosexuals; and being as in the landmark 1967 civil rights case *Loving v Virginia* 388 U.S. 1 (1967) the U.S. Supreme Court unanimous ruled that all 50 states must lawfully perform and recognize interracial marriages with the same Equal Protection and Due Process - do these two decisions and their ordered *"equal terms, conditions, and recognition"* extend throughout the entirety of the marriages, meaning that those "equal terms, conditions, and processes" must also be applied by the judiciary when those individuals' marriages end in divorce, without bias or discrimination, and in the same manner and adhering to the exact same laws, rules, and procedures as with traditional marriages' divorces?**

In both *Obergefell v Hodges* and *Loving v Virginia*, the court ruled that a couple's or individual's race, gender, or sexual orientation cannot be discriminated against by any judge, court, or law and must not be seen as lesser valued or less deserving of equal and proper law, administrative court procedure, Due Process, and Equal Protection and their marriages must comply with the Fourteenth Amendment, case law and precedence. Petitioner's rights, in her contested divorce, and the rights of all the additional minorities whose contested divorce cases continue to be assigned to the family court General Magistrate without their awareness or consent, are being violated by the RI Family Court

Chief Judge - and it is ongoing. This Honorable Supreme Court has already ruled that these marriages must be treated equal to traditional marriages and it is the position of this Petition that said "equality and fairness", free from discrimination, must be applied to all marriages from their onset through their durations and, in the event of their dissolution by divorce, the contested divorces and trials of these marriages must be treated with the exact same administrative practices according to the Constitution, judicial rules and processes, and laws - not with inferior applications and assignments due to predisposed prejudices.

## REASONS FOR GRANTING THE STAY

There is a Reasonable Probability that this Court will Grant Certiorari and order the Rhode Island Family Court and its Chief Judge to enforce state and federal laws and adhere to State and United States Constitutional and Civil rights laws, and granting this Stay will protect future minority, LGBTQIA+ and racially diverse citizens from falling victim to the same judicial discrimination and infringements of their Fifth and Fourteenth Amendment Equal Protection and Due Process Rights while this Petition for Writ Of Certiorari is Pending before this Honorable United States Supreme Court:

1) An experienced and authorized Associate Judge was appropriately assigned to this case upon its filing in accordance with State and Federal Law.
2) The appropriately assigned Judge presided over and handled every aspect of the civil case for nearly a year before being removed mid-case, in an unprecedented and unlawful act, and replaced by an unauthorized General Magistrate, in violation of the state Constitution and state and federal Rules and Laws, without Defendant-Petitioner's knowledge, awareness or consent.
3) The appropriately assigned Judge deliberated and entered Temporary Orders for the case which directed the deposit of all income and company shares distributions into

jointly owned and restricted bank accounts, and ordered a $14,500 monthly spending allowance, each, to the husband and wife. The Temporary Orders were ordered from the date of their issuance through the **Judge's** written decision to the **Judge's** Final Judgement of Divorce (FJD), which never took place.

4) Nearly a year into the case, the illegitimately assigned General Magistrate reversed three of the Associate Judge's orders and also reversed a prior Chief Judge's FMV Estoppel, in violation of jurisdictional laws and procedures, case law and precedence (See attached Writ Petition for further cited case law and details).

5) The General Magistrate entered a Decision Pending Entry of Final Judgement (DPEFJ) outside of his authorities and jurisdiction, in violation of case law and in violation of RI General Rules and Laws and the Constitution, making said decision non-existent and void.

6) The Magistrate's illegitimate DPEFJ ruling, which supposedly ended Judge Gill's Temporary Orders, was made out of the family court's jurisdiction and out of the magistrate's jurisdiction, without consent and without his authority. It is therefore invalid, the case is open and ongoing, and the Temporary Orders remain in place uninterrupted - and retroactive.

7) The Judge's Temporary orders automatically stayed/continued when Defendant-Petitioner's appeals were filed (on the same day the invalid decision DPEFJ was written by the Magistrate), again removing it from the family court's jurisdiction. Husband/Plaintiff's confiscation of the couple's jointly owned and restricted monies, income, pensions, and marital estate was illegal, and all said monies must be returned in full.

8) The Rhode Island Supreme Court's failure to restrict/prohibit the Family Court Chief Judge from assigning the General Magistrate to additional contested

divorces/civil proceedings while the constitutional challenges are pending, has resulted in many more unsuspecting victims' rights being violated without their awareness which, if not stopped, will cause all of them severe financial and personal harm. Moreover, any future "Decisions" penned and entered by the General Magistrate in these additional citizens' cases will be made out of his and the court's jurisdiction and will also be invalid and void, creating even more legal confusion and chaos.

9) If allowed to continue, these constitutional abuses and denials of the equal protection and due process rights of hundreds of Rhode Island's minority citizens will set a precedent and send a message to the courts, and to judges in all 50 of these United States, that these types of discriminatory civil rights violations are considered acceptable, causing an unimaginable number of additional United States citizens severe emotional distress and life-altering consequences well beyond their monetary injuries.

For the foregoing reasons, and for those detailed in the attached Petition For A Writ of Certiorari, Petitioner Laurie Cronan humbly requests this Emergency Application for Stay and Relief be granted:

1) a) ordering the Rhode Island Supreme court and Family Court Chief Judge to comply with state and federal rules and law, with the United States Constitution, and with Rhode Island's State Constitution, and stay/restore Judge Gill's $14,500 per month Temporary Orders to Defendant, retroactively.

b) ordering Plaintiff to abide by the law and return wife to the legally mandated full Health Insurance Coverage and Health Savings Account (HSA) cards from which he illegally removed wife/Defendant with no notice, and for which he directed his own

medical practice/department to cancel her annual high-risk mammogram and untra-sound appointments which have been prescribed to her by her breast specialist physician for the past 20 years since her repeated surgical breast biopsies.

c) ordering Plaintiff to return the $15.8 million of marital estate monies, he illegally and in contempt, transferred into newly opened bank accounts in only his name, back into jointly owned bank accounts, and to direct all future direct deposit monies, company shares distributions, and social security deposits into the couple's joint and equally owned bank accounts as per the Associate Judge's Temporary Orders - restricted from future tampering, transfer and/or withdrawal.

2) ordering the family court Chief judge to Cease and Desist in continuing to assign the General Magistrate to contested divorces while these constitutional challenges are pending, so as to prevent more victims from being denied their Equal Protection and Due Process rights by a Rhode Island Judiciary that considers those rights to be reserved only for certain individuals and certain marriages deemed worthy by the court and those running it.

(PETITION FOR WRIT OF CERTIORARI ATTACHED)

The Providence Journal

Ex. 1

COURTS

# Survey finds inequities, discrimination in Rhode Island courts, legal profession

Katie Mulvaney
The Providence Journal

Published 6:01 a.m. ET Nov. 14, 2021

PROVIDENCE — The results of a Rhode Island Bar Association membership survey paint a stark portrait of inequities in the state's legal system: Nearly half of those who responded reported witnessing or experiencing discrimination in the workplace and in state courts.

A survey by the Rhode Island Bar Association Diversity & Inclusion Task Force found that a majority of respondents encountered discrimination — including instances of racism, sexism, homophobia and prejudice based on a person's disability — in the profession and in the Rhode Island court system. Female attorneys, lawyers of color, LGBT lawyers and those with disabilities reported experiencing barriers to their professional career, such as disparate treatment, lower pay and fewer opportunities to advance.

"Anecdotally, we've heard these different stories of racism, sexism and homophobia, but to see it on paper ...," said William Trezvant, chairman of the Thurgood Marshall Law Society in Rhode Island. "The question is what are we going to do next."

**More:** East Providence mayor calls for release of report into city clerk's discrimination claims

Trezvant welcomed the findings, saying that such a survey was long overdue.

"It supports our efforts to make the bar more inclusive," Trezvant said.

The task force was created in August 2020 in response to increasing calls both locally and nationally to prioritize diversity and inclusion and the need to promote a fair and equal justice system, the task force said in a statement. The group decided to survey members for voluntary demographic information and encourage candid responses, with a focus on

members' perceptions and experiences with discrimination and prejudice within the practice of law.

More than 300 members of the association's 5,000-plus members responded.

## RI's legal community called an 'old boys' club'

According to the survey, 47% of respondents indicated they have experienced discrimination, including racism, sexism, homophobia and bias due to a disability. Their accounts included lawyers of color being mistaken as defendants by judges or court staff in criminal cases and lesser treatment of lawyers and litigants of color.

Incidences of sexism encompassed sexual harassment by judges, colleagues and other lawyers toward female attorneys. Female lawyers, including those with a disability or of color, noted inequities such as unequal pay and fewer opportunities for advancement. Several referred to the legal community in Rhode Island as an "old boys' club," according to the survey.

Other observations included female lawyers and lawyers of color being ignored or overlooked and litigants being stereotyped. The task force reported "many" comments about judges disrespecting lawyers of color and young female attorneys.

**More:** Family Court judge blasts DCYF for treatment of girls, warns of discrimination lawsuit

Women working in the private sector recounted experiencing a bias against motherhood and being undermined by their male counterparts.

Examples of homophobia entailed disparaging comments and general discrimination against LGBTQ+ lawyers.

A total of 42% of lawyers who are part of an underrepresented identity group reported that they experienced social, opportunity or advancement barriers in their professional career, with 58% relating that they associated that treatment with their identity within the underrepresented group. The main complaints encompassed disparate treatment, including fewer opportunities, raises and promotions.

Other challenges included an increase in incivility and that jobs within the profession are too often based on family or political affiliations.

The findings did not come as a surprise to Trezvant, who said he had not experienced discrimination but had witnessed judges and lawyers treating female attorneys with disrespect. He had also heard about public defenders being mistaken for defendants.

## Recommendation: Mandatory training on diversity and inclusion

The task force has recommended that the bar association and the state Supreme Court impose mandatory annual continuing legal education courses focusing on diversity and inclusion and implicit bias. It emphasized, too, the importance of bar members in underrepresented groups participating in leadership, committees and governance.

Judges and the courts should commit to equitable hiring practices, annual implicit bias and anti-racism training, and emphasize outreach from judges to a diverse pool of lawyers, the task force said. It advocates establishing uniform standards for court practices, an open dialogue about mental health challenges, and better communication about the repercussions of discriminatory practice of the law and in the courtroom.

The majority of the lawyers who responded to the survey did, however, say they believed that both the bar association and the Rhode Island Supreme Court were committed to diversity and inclusion.

**More:** Embattled East Providence city clerk seeks separation deal

The task force, chaired by Superior Court Judge Linda Rekas Sloan, shared the results with the Rhode Island Supreme Court Committee on Racial and Ethnic Fairness, created by Chief Justice Paul A. Suttell in the aftermath of the killing of George Floyd in Minneapolis at the hands of a white police officer in May 2020. Floyd's murder sparked a national outcry for a renewed focus on racial justice.

Craig N. Berke, spokesman for the Rhode Island judiciary, said in an email that the survey results are under review. The Committee on Racial and Ethnic Fairness has a meeting with the Bar Association leadership later this month to discuss the results, he said. He declined to comment further.

Trezvant said the Thurgood Marshall Law Society hopes to work with Supreme Court Justice Melissa Long, who chairs the Committee on Racial and Ethnic Fairness, to increase inclusivity and diversity in the courts.

# Appendix "A"

January 24, 2024

**Supreme Court**

No. 2022-219-Appeal.
(P 20-2673)

John J. Cronan :

v. :

Laurie A. Cronan. :

**Supreme Court**

No. 2022-219-Appeal.
(P 20-2673)

John J. Cronan :

v. :

Laurie A. Cronan. :

Present: Suttell, C.J., Goldberg, Robinson, Lynch Prata, and Long, JJ.

## O P I N I O N

**Chief Justice Suttell, for the Court.** This appeal concerns the divorce of the plaintiff, John Cronan, and the defendant, Laurie Cronan. The defendant appeals from a decision pending entry of final judgment entered by the general magistrate of the Family Court. On appeal, the defendant argues that the general magistrate was not authorized to preside over the parties' contested divorce trial. The defendant additionally contends that the general magistrate erred with respect to the merits of his decision. For the reasons set forth in this opinion, we affirm the decision of the Family Court.

## I

## Facts and Travel

The plaintiff filed a complaint for divorce on July 8, 2020, citing "irreconcilable differences that exist between the parties which have caused the irremediable breakdown of the marriage." The parties were married in July 2006

and have no children together. Although the complaint requested that the case be placed on the nominal track calendar, matters soon became contested and the case was scheduled for trial. A justice of the Family Court heard several motions at the outset of the litigation, but the case was eventually assigned to the general magistrate, who presided over all subsequent proceedings.[1]

The trial commenced in October 2021 and was heard over five days. Five witnesses testified at trial, including both parties. We set forth only the testimony relevant to the issues on appeal.

The plaintiff presented Paul St. Onge, a certified public accountant, to testify as to the value of plaintiff's premarital assets. St. Onge testified that he has known plaintiff since 1983 and defendant since 2007. He testified that he, in the past, prepared tax returns for both parties and that he continues to prepare plaintiff's tax returns. St. Onge affirmed that "there c[a]me a time when John Cronan asked [him] to put together a list or a summary of investment assets or accounts that [plaintiff] had in June of 2006, which would be prior to John and Laurie's marriage on July 4th, 2006[,]" and that he complied with this request.

According to the document St. Onge prepared, plaintiff's funds totaled $1,755,506.34 on June 30, 2006, prior to his marriage to defendant. St. Onge further

[1] At no point during the hearings before the general magistrate did defendant object to having the general magistrate preside over the proceedings.

testified as to how he prepared the document, stating that he has "a system that keeps track of asset values on a daily basis. It keeps track of all transactions." He testified that this information was pulled "electronically" rather than from paper files and that he went into his portfolio accounting system where the information is stored to prepare the document. He further explained that plaintiff's largest asset—his 401(k) from Rhode Island Medical Imaging (RIMI)—was managed by Prudential Financial in 2006 and that he submitted a request to Prudential for a statement as to that asset, but was told that it might take a few weeks for Prudential to provide the statement.

Defense counsel objected to the document prepared by St. Onge being entered as a full exhibit, arguing that it is not the best evidence; he suggested that statements from Prudential would be the best evidence. Counsel for plaintiff countered that the document was "a business record." When questioned by the general magistrate, St. Onge affirmed that the document is "a true and accurate record of what [he] pulled off, the data from the databases, what the value of the accounts were" and that "[i]t's not a situation where [he] took the values today and tried to extrapolate back to what they were[;] those were actual records that [he] pulled information from[.]" St. Onge then explained that he had records dating back to the 1990s, but that paper statements ceased to exist after 2003, when he switched to electronic means. The general magistrate allowed the document to be entered as a full exhibit and indicated that,

"with respect to the assets, if paper verification from [Prudential] can be generated, you should submit that." It does not appear that those statements were produced.

The plaintiff then called Jane McAuliffe, a certified divorce financial analyst, to testify on the issue of defendant's entitlement to alimony.[2] In her testimony, McAuliffe stated that she "work[s] with clients one on one and help[s] them navigate the division of assets and budgeting and cash flow as they proceed through divorce." Her process involves three steps: (1) budgeting and identifying the client's expenses and cash flow; (2) identifying and quantifying the makeup of the marital estate; and (3) financial planning, money management, and tax planning. As noted by the general magistrate, McAuliffe "formulated a financial plan for [defendant] based on a life expectancy of age of 90, suggested assets of $3,946,605 from the marriage, and a listing of expenses identified in [defendant's] DR-6."

McAuliffe also testified that she did not include employment income for defendant in formulating her plan. Furthermore, she testified that, based on her projections—with an estimated 5.3 percent rate of return and with a budget of $163,000 a year, which includes taxes, healthcare, and lifestyle expenses—defendant would have an estimated $5.5 million left over upon turning ninety.

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[2] Although it does not appear from the transcript that plaintiff's counsel moved to qualify McAuliffe as an expert witness, it is clear from the transcript and from the decision that the court accepted her as an expert witness and treated her as such. Furthermore, her experience and qualifications were thoroughly laid out in the record.

McAuliffe additionally noted that 5.3 percent was "conservative" and that if defendant "stays a little bit more growth oriented in the investments and the market keeps on returning positively, she would do better than this scenario."

The defendant called John E. Barrett, Jr., a certified public accountant, who was qualified as an expert and testified as to the value of plaintiff's equity interest in RIMI. Barrett testified that he was hired to give the valuations for the dates of June 30, 2021, and June 30, 2006. Barrett testified that, in preparing his report, he spoke with the certified public accountant for RIMI, and he reviewed "financial statements prepared by the certified public accounting firm for the calendar years December 31st, 2016 through December 31st, 202[0]"; "[t]he federal corporate income tax returns for the calendar years December 31st, 2016 through December 31st, 2020"; "internal year-to-date financial information for the company through June 30th, 2021"; and "a forecast for the company for 2021."

Prior to Barrett's testimony as to the substance of his report, plaintiff's counsel indicated that he would not "dispute Mr. Barrett's amounts that he came up with, both for June of 2021 and for the non-marital amount he came up with for June of 2006[,]" but rather whether RIMI's shareholder agreement or Barrett's report is controlling. Barrett testified that he used the fair market value as the standard to determine the value of plaintiff's equity interest in RIMI because in Rhode Island,

for divorce purposes, that is the commonly used standard. He defined fair market value as follows:

> "[I]t's basically defined by the Internal Revenue Service. Revenue Ruling 59-60 would be the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts."

In his opinion, the fair market value for plaintiff's 2.1 percent equity interest in RIMI as of June 30, 2021, was approximately $1,229,000.

When questioned about the shareholder agreement on cross-examination, Barrett affirmed that the annual valuation indicated that plaintiff's 2.1 percent equity interest in RIMI was worth $366,200 as of December 31, 2020,[3] a "different outcome" than his approximately $1.2 million valuation. He further affirmed that the valuation he provided was "an estimate." Barrett then explained that it was his opinion that "the fair market value of a 2.1 percent equity interest in RIMI as of the 6/30/2021 valuation date is the $1,229,000"; however, he "understand[s] that the buy/sell agreement allows for a physician, nonowner physician of RIMI right now to buy in at the 366,200 number." He further indicated that the shareholder

[3] During plaintiff's testimony, he reviewed a letter from RIMI's CPA that was entered into evidence indicating that the value per share of RIMI as of December 31, 2020, was $3,662. A letter dated September 18, 2020, confirmed that plaintiff's 2.1 percent equity interest in RIMI is equivalent to one hundred shares.

agreement did not contain a requirement to sell in a specific manner, and that "there is language in [the agreement] that provides for the seller to go out and find an outside party that might be willing to pay more."

Following the trial and post-trial motions, the general magistrate issued a 108-page decision on May 3, 2022. The general magistrate laid out the testimony of each of the witnesses and the evidence before him. Thereafter, he addressed the contested issues and made twenty-seven findings of fact.

Ultimately, applying the factors set forth in G.L. 1956 § 15-5-16.1, the general magistrate determined that the marital estate should be divided on a 60/40 basis in favor of plaintiff. It was his determination that "both parties share equal responsibility for the breakdown of their marriage by their conduct and their spoken words to the other." He further found that "[i]t is uncontroverted that [plaintiff] was the sole source of income throughout the marriage, and the accumulated marital estate is solely from money earned by [plaintiff]."

On the issue of plaintiff's equity interest in RIMI, the general magistrate reviewed the testimony of Barrett and plaintiff's two challenges to Barrett's analysis: the first being that plaintiff owned greater than 2.1 percent interest in RIMI in 2006 and the second being that the equity interest is defined by the shareholder agreement.

Prior to trial, defendant had filed a motion *in limine* to preclude plaintiff from "contending that the value of his interests in Rhode Island Medical Imaging (RIMI)

and Melcor Corporation should be determined based on or in light of a shareholder stock redemption agreements [*sic*] between the shareholders of stock or other equity interests in RIMI and Melcor." She submitted that he had "litigated the exact same question in a prior divorce proceeding" involving plaintiff and his former wife and that the trial justice there "rejected plaintiff's claim and valued Dr. Cronan's interests in the business without regard to the shareholder redemption agreements."

The general magistrate ultimately declined to apply the doctrine of collateral estoppel "because of factual differences that exist today [with regard to plaintiff's first marriage] [and] because application of the doctrine would be inherently unjust." Specifically, he highlighted that the decision by the trial justice in the first divorce case was rendered twenty-two years ago, when plaintiff was early in his career and there was greater potential for RIMI to be sold; he determined that plaintiff is now approaching retirement and has expressed his intent to retire and that the value of his equity interest is unlikely to be enhanced by a merger, sale, or acquisition.

He further stated that "the shareholder agreement is a binding agreement between RIMI and [plaintiff] upon his retirement dictating the value of [plaintiff's] buy out value. To accept [defendant's] position would be inequitable in this circumstance, wherein she would receive a far greater value and portion of an asset that [plaintiff] is not likely to receive." He therefore determined that the value of

plaintiff's equity interest in RIMI would be based on the binding shareholder agreement and valued at $366,200, per the December 31, 2020 valuation.

As to the premarital assets, the general magistrate indicated that he found St. Onge's testimony to be "without bias to either party and [that] his testimony was accurate and reliable." He further stated that the document produced by St. Onge was created "in the normal course of his business * * *." Of the $1,755,506 premarital value that St. Onge identified, the general magistrate ultimately found that plaintiff used $261,676 to fund an account in defendant's name. Accordingly, he determined that the total value of plaintiff's premarital assets was $1,493,830.

The general magistrate additionally permanently denied defendant's request for alimony, based on defendant's "independent ability to support herself in the future." In coming to this conclusion, he relied on defendant's own testimony as well as on the testimony of McAuliffe, which he deemed "helpful, reliable, and credible."

A decision pending entry of final judgment entered on May 19, 2022. The defendant filed a notice of appeal to this Court the same day.

The defendant additionally filed a notice of conditional appeal from the general magistrate's decision to the chief judge of the Family Court pursuant to Rule 73 of the Family Court Rules of Domestic Relations Procedure citing "potentially

conflicting language" between Rule 73[4] and G.L. 1956 § 14-1-52.[5] The record indicates that the Family Court has not addressed the merits of this conditional appeal, which were set forth in a memorandum submitted on August 2, 2022, and appear to be the same as those issues now before this Court.

On June 15, 2022, defendant filed a motion for a new trial, arguing that "the [g]eneral [m]agistrate who presided over the trial did not have the requisite constitutional, statutory, administrative or other legal authority to do so." She submitted that the general magistrate's decision and the resulting decision pending entry of final judgment were void *ab initio*. The record indicates that defendant's motion for a new trial was not heard in Family Court.

On August 26, 2022, an amended final judgment was issued granting the divorce and indicating that "[a]ll other matters set forth in the Decision Pending Entry of Final Judgment, except the question of the divorce itself, are hereby left open pending the appeal to the Rhode Island Supreme Court."

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[4] Rule 73(a) of the Family Court Rules of Domestic Relations Procedure provides that "[a]n appeal from a judgment, order, or decree of a general magistrate or a magistrate shall be referred to the chief judge or the chief judge's designee. The review shall be appellate in nature and on the record."

[5] General Laws 1956 § 14-1-52(a) provides for an appeal to this Court "[f]rom any final decree, judgment, order, decision, or verdict of the family court * * *."

## II

## Discussion

On appeal, defendant submits that the general magistrate made a number of errors. First, she takes issue with the authority of the general magistrate in presiding over the contested divorce. Second, she contends that the general magistrate erred in his distribution of the marital assets. Third, she asserts that plaintiff "did not meet his burden in establishing the value of his 'alleged' premarital accounts." Fourth, she submits that the general magistrate erred in denying her request for alimony. Fifth, defendant argues that she "has essentially been frozen out of any portion of the marital estate * * *."

### A

### Power of the General Magistrate

The defendant submits multiple claims of error as to the general magistrate's authority to preside over a contested divorce trial. The defendant argues that the applicable statutes limit the function of presiding over a contested divorce to judges alone. Additionally, defendant alleges that a magistrate presiding over a trial in any court violates three state and federal constitutional principles: separation of powers, due process, and equal protection.

We need not, however, address the statutory and constitutional challenges to the general magistrate's authority because it is clear to us that defendant has failed

to preserve this issue for appellate review. Significantly, in her brief, defendant admits that "[t]here is no argument that the defendant did not raise at trial the issue of the magistrate's ability to conduct the proceeding." The defendant, however, argues that the raise-or-waive rule is inapplicable because the issue is one of subject-matter jurisdiction and, even if the raise-or-waive rule is applicable, this case meets the Court's narrowly applied exception to the rule. We review each contention *seriatim*.

**Subject-Matter Jurisdiction**

First, defendant argues that "the application of the raise or waive rule in this case is an issue of subject matter jurisdiction." Quoting this Court's opinion in *Pine v. Clark*, 636 A.2d 1319 (R.I. 1994), she submits that "[a] challenge to subject-matter jurisdiction questions the very power of the *court* to hear the case. It is an axiomatic rule of civil procedure that such a claim may not be waived by any party and may be raised at any time." *Pine*, 636 A.2d at 1321 (emphasis added).

Notably, defendant is not challenging the jurisdiction of the Family Court over the divorce proceeding—and there is no claim that the Family Court lacks subject-matter jurisdiction over a contested divorce proceeding—but rather she is challenging the *authority* of the general magistrate to preside over the contested divorce proceeding. The issue thus becomes whether subject-matter jurisdiction attaches to the *court* itself or the *officer* of the court.

As this Court has noted, "[s]ubject-matter jurisdiction is the very essence of the *court's* power to hear and decide a case." *Long v. Dell, Inc.*, 984 A.2d 1074, 1079 (R.I. 2009) (emphasis added). This Court has noted, on occasion, that the term "subject-matter jurisdiction" is often misused; "[w]hen properly used, it refers only to a court's power to hear and to decide a particular case * * *, and not to whether a court, having the power to adjudicate, should exercise that power." *Cranston Teachers Association v. Cranston School Committee*, 120 R.I. 105, 108-09, 386 A.2d 176, 178 (1978). "The term 'lack of jurisdiction over the subject matter' means quite simply that a given court lacks judicial *power* to decide a particular controversy." *Pollard v. Acer Group*, 870 A.2d 429, 433 (R.I. 2005).[6] Additionally, Black's Law Dictionary defines subject-matter jurisdiction as "[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a *court* can rule on the

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[6] This Court has recently addressed the meaning of "judicial power":

> "Furthermore, under our state constitution, 'the judicial power of this state shall be vested in one supreme court, and in such inferior courts as the general assembly may, from time to time, ordain and establish.' R.I. Const., art. 10, § 1. Thus, all judicial power is reserved to the courts and has been since the adoption of the state constitution in 1842. *Lemoine v. Martineau*, 115 R.I. 233, 238, 342 A.2d 616, 620 (1975). We have 'defined the exercise of judicial power as the control of a decision in a case or the interference with its progress, or the alteration of the decision once made.' *Id.* (emphasis omitted) (citing *Taylor v. Place*, 4 R.I. 324 (1856))." *Quattrucci v. Lombardi*, 232 A.3d 1062, 1066 (R.I. 2020) (brackets omitted).

conduct of persons or the status of things." Black's Law Dictionary 1020 (11th ed. 2019) (emphasis added).

In the case at bar, defendant takes issue with the authority of the general magistrate to preside over a contested divorce; such an issue does not implicate the subject-matter jurisdiction of the Family Court. *Cf. Clark v. Poulton*, 963 F.2d 1361, 1367 (10th Cir. 1992) (concluding that, even assuming that the magistrate exceeded his authority, such an error would be "a procedural lapse, not a jurisdictional failing"); *Griego v. Padilla*, 64 F.3d 580, 583 (10th Cir. 1995) ("A magistrate judge's lack of statutory authority is not a jurisdictional defect; thus, objection to such authority is waived if not timely raised."); *United States v. Wey*, 895 F.2d 429, 431 (7th Cir.), *cert. denied*, 497 U.S. 1029 (1990) ("Subject-matter jurisdiction is absent when a federal court may not issue a binding decree on a subject—perhaps because Congress has not authorized it, perhaps because the Constitution does not allow it. Which judicial officer presides during jury selection does not affect the court's subject-matter jurisdiction, for it has nothing to do with whether the tribunal may enter a judgment conclusively resolving this dispute. The judgment (that is, the sentence) of the district court concerns a federal crime and is binding. Everyone was in the right court. Courts may err, even offend against the Constitution, without losing subject-matter jurisdiction."); *United States v. Maragh*, 189 F.3d 1315, 1317 (11th Cir. 1999) ("We used [the term subject-matter jurisdiction] in Gomez as a

synonym for 'authority,' not in the technical sense involving subject-matter jurisdiction. The judgment here is the judgment of the District Court; the relevant question is whether it had subject-matter jurisdiction; and there is no doubt that it had. The fact that the court may have improperly delegated to the Magistrate a function it should have performed personally goes to the lawfulness of the manner in which it acted, but not to its jurisdiction to act."). It stands to reason that a challenge to a magistrate's *authority* is not an issue of subject-matter jurisdiction.

Accordingly, defendant's arguments as to the general magistrate's authority to preside over a contested divorce trial are subject to our well-settled raise-or-waive rule.

**Exception to the Raise-or-Waive Rule**

The defendant further argues that the issue of whether the general magistrate has authority to preside over a contested divorce falls into this Court's narrow exception to the raise-or-waive rule.[7]

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[7] We pause to address defendant's characterization of this Court's long-standing raise-or-waive rule. The defendant states the following in her brief:

> "The 'waive' element of the raise or waive rule requires the same elements as any other waiver. In order to apply, the waiver has to be knowing and intelligent. *See, e.g.*, *State v. Sampson*, 24 A.3d 1131, 1141 (R.I. 2011). Moreover, '[w]aiver is an intentional and voluntary relinquishment of a *known* right.' *Commonwealth v. Lucarelli*, 971 A.2d 1173, 1179 (Pa. 2009) (quoting

"According to this Court's well settled raise-or-waive rule, issues not properly presented before the trial court may not be raised for the first time on appeal." *Donnelly Real Estate, LLC v. John Crane Inc.*, 291 A.3d 987, 994 (R.I. 2023) (quoting *Borgo v. Narragansett Electric Company*, 275 A.3d 567, 576-77 (R.I. 2022)). "We also recognize that there is a narrow exception to the raise-or-waive rule where the alleged error is more than harmless, and the exception implicates an issue of constitutional dimension derived from a novel rule of law that could not reasonably have been known to counsel at the time of trial." *Decathlon Investments v. Medeiros*, 252 A.3d 268, 270 (R.I. 2021) (quoting *State v. Brown*, 9 A.3d 1240, 1246 (R.I. 2010)).

The defendant couches her argument in the three-part test set forth in *State v. Florez*, 138 A.3d 789 (R.I. 2016), which states:

> "To fall within this exception, the defendant must show: (1) that the error complained of amounts to more than harmless error; (2) that a sufficient record exists to permit

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> *United States v. Goldberg*, 67 F.3d 1092, 1099-1101 (3d Cir. 1995)[emphasis supplied]."

This is a misstatement of our raise-or-waive rule. The defendant conflates the criminal waiver standard, citing a case involving a criminal defendant's waiver of his constitutionally protected right to counsel, with this Court's well-settled rule regarding preservation of arguments on appeal. Put simply, under the raise-or-waive rule, "a litigant cannot raise an objection or advance a new theory on appeal if it was not raised before the trial court." *E.T. Investments, LLC v. Riley*, 262 A.3d 673, 676 (R.I. 2021) (quoting *Cusick v. Cusick*, 210 A.3d 1199, 1203 (R.I. 2019)). Therefore, if a party does not *raise* the argument before the trial court, then the argument is *waived* on appeal. *See id.*

> a determination of the issue; and (3) that counsel's failure to raise the issue before trial must be premised upon a novel rule of law that counsel could not reasonably have known during the trial." *Florez*, 138 A.3d at 796 (brackets omitted) (quoting *Cronan ex rel. State v. Cronan*, 774 A.2d 866, 878 (R.I. 2001)).

According to defendant, each element is met in this case. The defendant first submits that "the error here is not harmless since it determines whether there should have been a trial at all." Second, defendant argues that, because this issue is a question of law, "the existing record is sufficient to make a determination." Third, defendant contends that, because "the judicial officers themselves evidently did not know" that the general magistrate was not empowered to try a contested divorce case, "this Court should not find that the defendant's counsel knew or should have known[.]" She additionally suggests that the issue is novel because it "has not previously been litigated *on the merits*."

In making this argument, defendant fails to successfully distinguish this case from our previous cases dealing with the constitutional authority of magistrates. *See McKenna v. Guglietta*, 185 A.3d 1248, 1251 (R.I. 2018) ("[T]his Court has previously stated that a challenge to the constitutional authority of a magistrate is subject to our stringent raise-or-waive rule such that claimants must raise their arguments challenging the authority of the magistrate to act in the original proceeding before that magistrate."); *Gordon v. State*, 18 A.3d 467, 474 (R.I. 2011) ("We need not * * * address this constitutional challenge to the magistrate's

authority because it is clear to us that applicant has failed to preserve the issue for appellate review."); *Yates v. Wall*, 973 A.2d 621, 623 (R.I. 2009) (mem.) (concluding that an applicant for postconviction relief had lost the opportunity to challenge "the constitutionality of a magistrate's statutory authorization" by "failing to raise [that issue] at the trial level").

The defendant indicates that this case differs from that of *McKenna* because *McKenna* "did not involve the clear dichotomy extant here, *i.e.*, the difference—if there is one—between magistrates and judges." She contends that "*McKenna* was concerned with the process by which magistrates are appointed[,]" whereas the issue in this case is "whether magistrates are in fact judges in disguise * * * [a]nd if they are, then the disguise is so effective that ordinary lawyers appearing before them would have no way of knowing that there is an issue to raise." This distinction, however, does not reveal "a novel rule of law that could not reasonably have been known to counsel at the time of trial." *Decathlon Investments*, 252 A.3d at 270 (quoting *Brown*, 9 A.3d at 1246). The defendant's three constitutional challenges—separation of powers, due process of law, and equal protection—are not "novel," and the question of the general magistrate's authority could reasonably have been known to counsel at the time of trial.

Furthermore, this issue could have been "litigated on the merits," as defendant suggests, had she raised the issue in the Family Court. Notably, defendant filed a

motion for a new trial on June 15, 2022, the crux of her argument being that "the [g]eneral [m]agistrate who presided over the trial did not have the requisite constitutional, statutory, administrative or other legal authority to do so." This motion for a new trial came *after* she had already filed a notice of appeal to this Court on May 19, 2022; the Family Court did not address the motion for a new trial presumably because defendant had filed a notice of appeal to this Court.

Accordingly, because defendant did not challenge the authority of the general magistrate in the Family Court, we deem the issue waived on appeal.

**B**

**Claims of Error**

The defendant additionally submits multiple claims of error as to the merits of the general magistrate's decision pending entry of final judgment. General Laws 1956 § 8-10-3.1 provides, in relevant part:

> "(d) A party aggrieved by an order entered by a magistrate shall be entitled to a review of the order by a justice of the family court. Unless otherwise provided in the rules of procedure of the family court, such review shall be on the record and appellate in nature. The family court shall by rules of procedure establish procedures for review of orders entered by a magistrate, and for enforcement of contempt adjudications of a magistrate.
>
> "(e) Final orders of the family court entered in a proceeding to review an order of a magistrate may be appealed to the supreme court."

It appears that the Family Court did establish a relevant rule of procedure;[8] Rule 73(a) of the Family Court Rules of Domestic Relations Procedure states that "[a]n appeal from a judgment, order, or decree of a general magistrate or a magistrate shall be referred to the chief judge or chief judge's designee. The review shall be appellate in nature and on the record."

In accordance with Rule 73(a) and the procedure set forth therein, we are of the opinion that the merits of this case should have been addressed by the "chief judge or chief judge's designee" before defendant filed a notice of appeal to this Court. *See Bowman v. Forgue*, 184 A.3d 1130, 1130 (R.I. 2018) (mem.) ("Although the general magistrate of the Family Court heard the plaintiff's motions and granted the plaintiff partial relief, which was then upheld by a trial justice of the Family Court, the plaintiff nonetheless appealed to this Court."). However, in the interest of judicial economy and efficiency, we address the arguments here, stressing that future litigants should follow the procedure set forth in Rule 73.

**Standard of Review**

"This Court will not disturb findings of fact made by a trial justice or magistrate in a divorce action unless he or she has misconceived the relevant

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[8] Rule 73 of the Family Court Rules of Domestic Relations Procedure was adopted in 2014. *See In re Amendments to the Family Court Rules of Domestic Relations Procedure and the Family Court Rules of Practice* (Misc. Order entered Oct. 31, 2014).

evidence or was otherwise clearly wrong." *Sullivan v. Sullivan*, 249 A.3d 637, 641 (R.I. 2021) (quoting *Boschetto v. Boschetto*, 224 A.3d 824, 828 (R.I. 2020)). "Consequently, unless it is shown that the trial justice either improperly exercised his or her discretion or that there was an abuse thereof, this Court will not disturb the trial justice's findings." *Id.* (quoting *Boschetto*, 224 A.3d at 828).

**Distribution of Marital Estate**

The defendant argues that the general magistrate abused his discretion and/or committed clear error in equitably distributing the marital estate in two ways. First, she alleges that the general magistrate erred in determining the value of plaintiff's equity interest in RIMI. She maintains that collateral estoppel should apply because the issue was previously litigated in plaintiff's prior divorce case. Second, she contends that the general magistrate erred in awarding plaintiff 60 percent of the marital estate, arguing that he "ignored uncontradicted sworn statements of fact in his decision * * *."

**1**

We first address defendant's argument as to whether collateral estoppel should have applied to the determination of the value of plaintiff's equity interest in RIMI. The defendant contends that the magistrate erred by refusing to impose the doctrine of "offensive collateral estoppel" against plaintiff when considering the value of his equity interest in the medical practice. The defendant indicates that, in

plaintiff's first divorce, decided in 1999, the trial justice used the fair market value of RIMI rather than the shareholder agreement to assess the value of plaintiff's equity interest in the practice. The defendant suggests that collateral estoppel should apply to preclude plaintiff from relying on the shareholder agreement in this case because it was rejected in the prior case. The defendant also argues that evidence plaintiff presented to establish the value of RIMI was unreliable because it did not establish the fair market value of the practice.

"Under the doctrine of collateral estoppel, an issue of ultimate fact that has been actually litigated and determined cannot be re-litigated between the same parties or their privies in future proceedings." *Doe v. Brown University*, 253 A.3d 389, 396 (R.I. 2021) (quoting *Foster-Glocester Regional School Committee v. Board of Review*, 854 A.2d 1008, 1014 (R.I. 2004)).

> "'Subject to situations in which application of the doctrine would lead to inequitable results,' collateral estoppel is applied when: '(1) the parties are the same or in privity with the parties of the previous proceeding; (2) a final judgment on the merits has been entered in the previous proceeding; and (3) the issue or issues in question are identical in both proceedings.'" *Id.* (brackets omitted) (quoting *Foster-Glocester Regional School Committee*, 854 A.2d at 1014).

This Court has opined that collateral estoppel should not "be mechanically applied, for [it is] capable of producing extraordinarily harsh and unfair results." *Apex Oil Company, Inc. v. State by and through Division of Taxation*, 297 A.3d 96, 111 (R.I.

2023) (quoting *Casco Indemnity Company v. O'Connor*, 755 A.2d 779, 782 (R.I. 2000)). "To avoid unfairness, courts have declined to apply collateral estoppel in situations in which the doctrine would lead to an inequitable result." *Casco*, 755 A.2d at 782.

In addressing the RIMI issue in his decision, the general magistrate laid out the relevant testimony and addressed the arguments made in defendant's motion *in limine*. The general magistrate ultimately found that the doctrine of collateral estoppel does not apply "because of factual differences that exist today" and further that it should not apply "because application of the doctrine would be inherently unjust." He then supported that determination with the following facts:

> "The decision by [the former chief judge] was rendered twenty-two (22) years ago. [The plaintiff] was early in his working years and there was a much greater potential for RIMI to be sold or acquired by merger prior to [plaintiff's] retirement than there is today. [The plaintiff] is now 71 years old and retirement is imminent and/or soon approaching. His contract is expiring at Brown University and he would by necessity revert to a staff radiologist after June, which he is not planning to do. He has been a member of the Board at RIMI and testified it is rare for anyone to work at RIMI past the age of 65. He testified it is his intent to retire this year. There is a far less likelihood at this stage of [plaintiff's] career that the value of his RIMI stock would be enhanced by merger, sale or acquisition, as opposed to twenty-two (22) years ago when [the chief judge] heard and decided [plaintiff's] first divorce matter."

Based on the findings of fact made by the general magistrate, we are satisfied that the general magistrate did not err in declining to apply the doctrine of collateral estoppel. It is clear that he considered the facts and circumstances in concluding that "application of the doctrine would be inherently unjust." *See Casco*, 755 A.2d at 782.

**2**

We turn now to the crux of defendant's argument regarding the valuation of plaintiff's shares in RIMI.

"The justices of the Family Court are vested with broad discretion as they seek to fairly divide marital property between the parties in divorce proceedings." *Sullivan*, 249 A.3d at 641 (quoting *Boschetto*, 224 A.3d at 828). "It is well established that the equitable distribution of property is a three-step process." *Id.* (quoting *Boschetto*, 224 A.3d at 828). "The trial justice first must determine which assets are marital property, then must consider the factors set forth in G.L. 1956 § 15-5-16.1(a), and, finally, he or she must distribute the property." *Id.* (brackets omitted) (quoting *Boschetto*, 224 A.3d at 828).

At issue with regard to the first step is the determination of the value of plaintiff's equity interest in RIMI. The defendant submits that the general magistrate abused his discretion in determining the value of that equity interest in accordance with the shareholder agreement. Specifically, defendant submits that the proper

valuation of that equity interest is $1,229,000, which, according to her expert, is its fair market value.

The plaintiff presented evidence that his one hundred shares of the practice were worth $100,302.58, or $1,003.03 per share, in 2006, when the parties were married. According to plaintiff, those shares were worth $3,662 each, or $366,200 in total, as of December 2020. These amounts were based on RIMI's shareholder agreement, not on the practice's fair market value. That value, according to defendant's expert witness, Barrett, was $1,229,000 in 2021.

As Barrett readily acknowledged, utilization of the fair market value versus the annual valuation set forth by RIMI yielded "two different outcomes." Furthermore, Barrett testified that he "underst[oo]d that the buy/sell agreement allows for a physician, nonowner physician of RIMI right now to buy in at the 366,200 number." The general magistrate determined that the shareholder agreements "are clear in that, to perpetuate the corporation, provisions were made for the disposition of shares of stock among shareholders *upon death, retirement or withdrawal from employment*" and that those agreements "set the buy in/buy out price." He found that

> "the shareholder agreement is a binding agreement between RIMI and [plaintiff] upon his retirement, dictating the value of [plaintiff's] buy out value. To accept [defendant's] position would be inequitable in this circumstance, wherein she would receive a far greater

value and portion of an asset that [plaintiff] is not likely to receive."

We discern no error in the general magistrate's analysis. He highlighted the history of employees who have come and gone for a price consistent with the provisions of the shareholder agreements—both in 2019 and 2020—as testified to by Barrett. Such testimony and evidence further support the general magistrate's determination that the value of plaintiff's equity interest in RIMI is "to be set based on the terms of the binding shareholder agreement * * *."

Accordingly, we are satisfied that the general magistrate did not misconceive the relevant evidence, nor was he otherwise clearly wrong, as to the valuation of plaintiff's equity interest in RIMI as $366,200.

3

The defendant additionally takes issue with the general magistrate's execution of the second and third steps of the equitable distribution of property: the consideration of the factors set forth in § 15-5-16.1(a) and the distribution of the property. *See Sullivan*, 249 A.3d at 641. She submits that the general magistrate erred in awarding plaintiff 60 percent of the marital estate. Specifically, defendant relies upon her assertion that the general magistrate did not afford plaintiff's response to requests for admissions any evidentiary weight and that they were "sparsely referenced in passing (not considered, weighed, evaluated or factored) in the court's decision[.]"

The second step of the analysis requires the general magistrate to consider the factors set forth in § 15-5-16.1(a), which include:

> "(1) The length of the marriage;
>
> "(2) The conduct of the parties during the marriage;
>
> "(3) The contribution of each of the parties during the marriage in the acquisition, preservation, or appreciation in value of their respective estates;
>
> "(4) The contribution and services of either party as a homemaker;
>
> "(5) The health and age of the parties;
>
> "(6) The amount and sources of income of each of the parties;
>
> "(7) The occupation and employability of each of the parties;
>
> "(8) The opportunity of each party for future acquisition of capital assets and income;
>
> "(9) The contribution by one party to the education, training, licensure, business, or increased earning power of the other;
>
> "(10) The need of the custodial parent to occupy or own the marital residence and to use or own its household effects taking into account the best interests of the children of the marriage;
>
> "(11) Either party's wasteful dissipation of assets or any transfer or encumbrance of assets made in contemplation of divorce without fair consideration; and

> "(12) Any factor which the court shall expressly find to be just and proper."

The general magistrate noted the requests for admissions in his recitation of the facts, and he made at least one specific reference to the substance of the admissions. Indeed, in his discussion of the distribution of assets, the general magistrate noted that "[plaintiff] has acknowledged that he was looking at pornography, that he called [defendant] names that were demeaning and insulting and that there were incidents as [defendant] explained for which he later apologized." As this Court has continually stated, a judicial officer "need not 'explicitly list his or her findings on each factor' so long as this Court can determine that the [judicial officer] considered 'all the necessary facts and statutory factors.'" *DiDonato v. DiDonato*, 295 A.3d 828, 834 (R.I. 2023) (quoting *Sullivan*, 249 A.3d at 644).

In his decision, the general magistrate thoroughly reviewed the testimony of the parties and the witnesses in the case. We defer to the general magistrate's findings of fact in divorce proceedings. *DiDonato*, 295 A.3d at 834.

In the case at bar, the general magistrate engaged in a comprehensive discussion of the statutory factors enumerated in § 15-5-16.1(a). It was his determination that "both parties share equal responsibility for the breakdown of their marriage by their conduct and their spoken words to the other." After reviewing the testimony and assessing the credibility of the parties, it was his finding that "[i]t is

uncontroverted that [plaintiff] was the sole source of income throughout the marriage, and that the accumulated marital estate is solely from money earned by [plaintiff]. [The defendant] was laid off in or around the first year of the parties' marriage and has not earned any money since that time."

The general magistrate ultimately determined that

> "In consideration of the length of the parties' marriage, the respective contributions made to the marriage by the parties, their respective contributions to asset accumulation and preservation during this fifteen (15) year marriage, their age and health, as well as all other factors explained herein, the Court is of the opinion that the marital estate should be divided 60/40 in favor of [plaintiff]."

We are of the opinion that the general magistrate did not abuse his discretion, nor was he otherwise clearly wrong, in awarding plaintiff 60 percent of the marital estate.

**Premarital Assets**

The defendant next contends that plaintiff failed to meet his burden of establishing the value of his premarital assets. Specifically, defendant argues that the magistrate erred in relying on the "inherently unreliable" testimony of plaintiff's accountant regarding the premarital value of his retirement accounts. Rather than present statements from this time, the accountant prepared a summary of plaintiff's investment accounts and their value as of June 30, 2006. The defendant claims that the general magistrate should not have relied on this summary because no source documents were presented to substantiate the summary.

To the contrary, the general magistrate found that plaintiff's witness, St. Onge, "testified without bias to either party and his testimony was accurate and reliable." He determined that the summary of plaintiff's assets offered by St. Onge was created in the normal course of business, by maintaining "a system that tracks transactions and the value of assets from the mutual fund companies daily."

It is clear from both the decision of the general magistrate during trial to admit the document prepared by St. Onge into evidence and his written decision that he classified the document as a business record of the kind referred to in Rule 803(6) of the Rhode Island Rules of Evidence. The general magistrate specifically questioned St. Onge as to the production and creation of the document he offered, and he ultimately allowed it into evidence over the best-evidence objection of defense counsel. He again indicated in his decision that "[t]he document was retrieved from [plaintiff's] file and is one customarily prepared by Mr. St. Onge at or near the time dated thereon."

The defendant cites one case in support of her contention that plaintiff failed to meet his burden in establishing the premarital value of his assets. *See Ryan-Gamron v. Gamron*, 47 A.3d 333, 335 (R.I. 2012) (mem.). Unlike the case at bar, the trial justice there determined that "[n]o credible evidence was provided at trial" as to a premarital mortgage and that the plaintiff "failed to provide valid documentation regarding a mortgage." *Id.* Here, the general magistrate found the

testimony of St. Onge to be "accurate and reliable" and, when questioned by the general magistrate as to how the document he produced was created, St. Onge affirmed that the document is "a true and accurate record of what [he] pulled off, the data from the databases, what the value of the accounts were" and that "[i]t's not a situation where [he] took the values today and tried to extrapolate back to what they were[;] those were actual records that [he] pulled information from[.]"

Although the general magistrate additionally noted in his decision that St. Onge made a request for paper statements as to the June 30, 2006 valuation of plaintiff's RIMI 401(k) that was formerly managed by Prudential, at the time of the decision it appears that no paper statements had been produced. Nevertheless, because the document was clearly established as a business record, we hold that the general magistrate did not abuse his discretion in admitting this evidence and, through this document and the "accurate and reliable" testimony of St. Onge, plaintiff met his burden of establishing the value of his premarital assets.

**Alimony**

Finally, defendant submits that the general magistrate erred in denying her claim for alimony. She argues that he erred in not considering all of the alimony factors, but instead in relying on McAuliffe, who made her projections on her assumption that defendant would receive a greater share of the marital assets.

"The grant of alimony is authorized by statute." *Saltzman v. Saltzman*, 218 A.3d 551, 558 (R.I. 2019) (quoting *Meyer v. Meyer*, 68 A.3d 571, 585 (R.I. 2013)). Pursuant to G.L. 1956 § 15-5-16(c)(2), "[a]limony is designed to provide support for a spouse for a reasonable length of time to enable the recipient to become financially independent and self-sufficient."

At the outset of his discussion of alimony, the general magistrate set forth the factors for determining an award of alimony as set forth in § 15-5-16(b). The general magistrate then found that defendant has an "independent ability to support herself in the future." He noted that, although she has not worked in private industry since just after her marriage in 2006, defendant indicated that she worked ten hours per day, seven days per week on her own business. The general magistrate further found that, even if defendant decides not to seek employment, she will have sufficient assets to support herself at the same standard of living she enjoyed during the marriage. He stated that his decision to deny defendant alimony "is not based on [plaintiff's] testimony that he is retiring in June, but rather on [defendant's] independent ability to support herself in the future."

The general magistrate further supported his decision to deny alimony with the "relevant and credible testimony of Jane McAuliffe, CDFA, [who was] accepted as an expert witness relating to divorce financial planning and analysis." He found that McAuliffe "formulated a financial plan for [defendant] based on a life

expectancy of age of 90, suggested assets of $3,946,605 from the marriage, and a listing of expenses identified in [defendant's] DR-6." After extensively reviewing McAuliffe's testimony, the general magistrate noted in his decision his awareness that the 60/40 division of assets in favor of plaintiff reduced the amount on which McAuliffe based her projections. He stated, "[h]owever, by the Court's calculations the marital estate to be divided has a total value of approximately $9,000,000 and the deviation still provides [defendant] with significant and substantial funds to support herself for the remainder of her life."

We discern no error in his analysis, nor in his decision to deny defendant's claim for alimony. Although he did not explicitly reference each factor as he considered it, it is clear to us that he considered each of the factors set forth in § 15-5-16(b). As long as the court did not overlook or misconceive material evidence, and as long as the court considered the elements set forth in § 15-5-16(b), we will not disturb the denial of the discretionary award of alimony. *Cf. Saltzman*, 218 A.3d at 559 ("[I]f the trial justice did not overlook or misconceive material evidence, and if he or she considered all the requisite statutory elements set forth in § 15-5-16, we will not disturb the discretionary award of alimony.") (brackets omitted) (quoting *Meyer*, 68 A.3d at 586).

It is clear from the testimony of McAuliffe and the findings of the general magistrate that without alimony, defendant will be "financially independent and

self-sufficient." Section 15-5-16(c)(2). Indeed, the general magistrate's decision was based on defendant's "independent ability to support herself" as demonstrated by her own testimony as to her business and McAuliffe's projections.

Accordingly, we conclude that the general magistrate did not err in denying the defendant's claim for alimony.[9]

## III

## Conclusion

For the reasons set forth herein, we affirm the decision pending entry of final judgment of the Family Court. The record may be returned to the Family Court.

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[9] The defendant additionally alleges that, "[o]ther than the $600,000 advancement to [defendant] after the sale of the marital domicile, [plaintiff] has been in full control of the lion's share of the marital estate with no support to [defendant,]" suggesting that defendant should have been entitled to temporary support during the pendency of the case. We now deem this issue moot.

# Appendix "B"

**STATE OF RHODE ISLAND**

**PROVIDENCE, SC.** **FAMILY COURT**

| | | |
|---|---|---|
| **JOHN CRONAN,** | : | |
| **PLAINTIFF** | : | |
| | : | |
| **v.** | : | **FC No. P2020-2673** |
| | : | |
| **LAURIE CRONAN,** | : | |
| **DEFENDANT** | : | |

# DECISION

**General Magistrate Daniel V. Ballirano**
**Rhode Island Family Court**
**May 2022**

**ATTORNEY FOR PLAINTIFF.....William Lynch, Esq.**

**ATTORNEY FOR DEFENDANT..... Evan Kirshenbaum, Esq.**

**STATE OF RHODE ISLAND**

**PROVIDENCE, SC.** **FAMILY COURT**

| | | |
|---|---|---|
| **JOHN CRONAN,** | : | |
| **PLAINTIFF** | : | |
| | : | |
| **v.** | : | **FC No. P2020-2673** |
| | : | |
| **LAURIE CRONAN,** | : | |
| **DEFENDANT** | : | |

## DECISION

**Ballirano, G.M.**: This divorce action was tried as a contested matter over five days October 14 and 15, November 9 and 12, and December 17, 2021 and post-trial memoranda were submitted by counsel.

## TRAVEL

The Court heard testimony from Plaintiff Husband and two witnesses called on his behalf, Jane McAuliffe, and Paul St. Onge. Defendant Wife testified and John Barrett was called as to the value of Husband's shareholder interest in RIMI. Wife filed a motion asserting offensive collateral estoppel seeking to prevent Husband from arguing that the valuation of RIMI should is restricted by the shareholder agreements he has with RIMI. Husband was previously divorced, after trial, and Wife asserted the issue had been decided by then Family Court Chief

Judge Jeremiah. With one exception, Husband agreed to the valuations arrived at by John Barrett, but asserted the shareholder agreement should be controlling as to value of the RIMI stock. The Court reserved ruling on this motion and has addressed it herein. Wife also filed a motion to strike the testimony of Paul St. Onge as relates to the premarital value of investment assets asserting that his testimony was unreliable. Wife further argued that the Court should not consider the testimony of Jane McAuliffe, CDFA as her opinion and testimony was based, in part, on a computer-generated model. Husband countered that the computer-generated modeling relied on by Ms. McAuliffe was a tool reasonably and customarily relied upon in the industry.

After the trial was concluded Wife motioned the Court to reopen the case to conduct further discovery based on newly discovered evidence. Wife asserted the evidence would change the values provided by Mr. St. Onge. Wife asserted she came across the document/s when going through a box after her move. The parties were allowed significant and ample time to conduct discovery prior to this case being presented and the trial took place over a two-month period. The Court ruled that this document had existed before trial and was not new evidence simply because Wife just discovered it. Wife's motion to reopen the case for further discovery was denied.

## TESTIMONY

### Husband's Case

Husband testified as to residency, the date of marriage, July 4, 2006, and the fact that the parties separated in February 2020. Husband testified the parties have differences, and those differences are irreconcilable. The parties have no minor children. Husband has two adult children, John and Candace, from a prior marriage. Husband adopted Wife's daughter, Eleanor, when she was an adult.

Husband testified the parties met in 2004. Husband testified Wife's demeanor changed immediately after they married. When Wife left the ceremony, she hugged Husband and said, "and all of my worldly possessions". Husband testified a prenuptial agreement was discussed with Wife, but it never came to fruition due to a lack of time. Eleanor was fourteen (14) years old when the parties married, and she was attending school at Tollgate. After the parties married, Eleanor went to Barrington High School. She transferred to Bay View Academy after a few months because she did not like attending Barrington. Eleanor eventually went on to Brown University and secured a bachelors' degree and later a masters' degree in public health. There was a gap year when Eleanor was not in school and she was worked at Rhode Island Hospital. Eleanor gained admission to Brown Medical School. Husband paid for all the aforesaid education expenses for Eleanor and paid for Eleanor's living expenses during her gap year. Husband

testified Wife did not pay any of the expenses for Eleanor's education or living expenses in the gap year. Eleanor is a doctor now and graduated debt free. Husband testified Eleanor is following in his footsteps studying radiology at Massachusetts General Hospital. Husband is 71 years old. Wife is 61 years old.

Husband has been a physician since 1976, working for Rhode Island Medical Imaging (RIMI) since 1982. Husband became a shareholder in RIMI in 1985. *(See, Plaintiff's Exhibit 9, full).* Husband testified in 1993 there were 15 original shareholders, today there are over 70. Husband testified there have been two (2) subsequent amendments to the shareholders agreement, the first on December 31, 2010 and the second on December 31, 2017. *(See, Plaintiff's Exhibits 10 and 11, full).* Husband testified his ownership interest in RIMI is 2.1 percent.

Husband testified Wife was working when they were dating and at the time of their marriage. She was working for Print Source, East Providence and had been working there approximately five to six years. Wife worked for Danka, a copier company before that. Wife quit her job within a month of the parties being married. There was no discussion between them about Wife's decision. Wife did not obtain a job or seek to obtain a job from a third party after she left Print Source. Husband testified she became self-employed and attempted to start several companies.

Husband testified he is Chairman of Radiology at Brown University and Chief of Radiology for Lifespan. About one half of his work is clinical and one half is administrative. He typically begins his workday at 7:00 a.m. He is on call every 6th week which requires working Saturday and Sunday and being on-call at night during that week. For fifteen (15) years early on in his career he was on call every 3rd day. As an owner of RIMI, he does not have a fixed salary. He has a contract with Brown University that is set to expire in June 2022. Husband has plans to completely retire at that time. Husband is aware of the shareholder agreements he signed freely and voluntarily and the provisions therein for buy in/buy out values of owners' interest in RIMI. Husband's intention is to accept the payout from RIMI upon his retirement per the terms of the shareholders agreement.

He receives a monthly draw on a targeted base salary based on projections and dividends as an owner of RIMI. He receives and extra $10,000 per month as chairman of the department. Husband also receives his social security retirement benefit. He does not receive pay from Brown University. Husband also has done medical/legal analysis and consults in the past, but he no longer does this work. When he retires, Husband's compensation will end, and he will rely on accumulated assets as his retirement income.

Husband testified as to differences he had with his wife. Husband testified Wife spent money routinely without consulting him and they had different

financial goals. Wife was spending money like crazy and his perspective was to be more frugal. Husband moved into the marital domicile first. When Wife moved in, she moved into the guest bedroom and they never slept in the same bed. I had a different person. Husband testified he contemplated divorce after only 4-6 weeks of marriage and consulted a lawyer, but he decided to give it a little more time. The issues in the marriage did not change, and Husband testified he just got used to them. Husband testified Wife found the Barrington house. He testified the home was paid for solely by him.

Husband testified he had full custody of his children from a prior marriage and they had lived with him. Before the marriage, Husband had an excellent relationship with his two children. They were emancipated at the time of this marriage. Husband testified there was tension immediately between Wife and his daughter. The couple attended Candace's graduation from the University of Tampa and a discussion ended up somehow where Wife said to his daughter, "don't call us unless you are ready to apologize". This created distance between Husband and his daughter that did not come to pass. Since the parties' separation, Husband talks with his daughter regularly and visits with her in Florida. She is a practicing attorney.

Husband's son John is an attorney in the State of Maine. The relationship with John and his first wife, Morgan, who passed from cancer, was a good one.

Wife, however, without even meeting her, did not like John's new girlfriend who he eventually married. John wanted to drive down to Rhode Island so they could meet her. Wife insisted the meeting had to take place in a Dunkin Donuts, and it could only be for ten (10) minutes. The relationship with his son was standoffish after that, and they never came to the house because Wife did not want them there.

In February 2020, Husband was having dinner with friends before a Providence College basketball game. He ran into his son and his wife who were in town visiting friends. Husband picked up his son's meal tab and went off to the game with his friends. His son texted him later thanking him. Wife saw the text message and went "ballistic" on Husband. Wife stated Husband was seeing his own son behind her back. Husband testified that is when he packed his bags and never came back. Since the parties' separation, Husband's relationship with both his children has improved. Husband is living in an apartment in East Providence. The rent is $1,400 per month. During the pendency of the divorce, Husband paid all the household expenses at the former marital domicile. Wife did not contribute.

Husband provides a current value of his ownership interest in RIMI at $366,200. *(See, Plaintiff's Exhibit 8, full).* Husband testified RIMI formerly used Kahn, Litwin, Renza & Co. for approximately fifteen (15) years as its accounting firm. RIMI currently uses DeSanto Priest. All stockholders get a memo from the accounting firm as to the restricted value of the stock in accordance with the

Shareholder Purchase Agreements for buy in/ buy out purposes. *(See, Plaintiff's Exhibit 7, full).*

Husband has a 401K from RIMI with a value of $8,374,485 as of June 30, 2021. *(See, Plaintiff's Exhibit 3, full).* Husband began working for RIMI in 1993 and was contributing to his 401K before the marriage. Husband testified Paul St. Onge has been his financial and investment advisor since 1983. He is also Wife's accountant. He managed his portfolio and had information and records as to what the current value and premarital values of his retirement assets are. *(See, Plaintiff's Exhibit 4, full).* Husband requested that Paul St. Onge provide him with information as to the premarital value of his assets. There is a Westminster Financial 401K (formerly Washington Mutual) with a value of $276,972 as of August 31, 2021. *(See, Plaintiff's Exhibit 5, full).* Husband testified the premarital value of this 401K was $122,000 according to Mr. St. Onge. There is a second Westminster Financial 401K with a value of $798,377 as of June 30, 2021 in Wife's name. *(See, Plaintiff's Exhibit 12, full).* There is an American Fund with a value of $105,518 as of September 30, 2021. *(See, Plaintiff's Exhibit 6, full).* Husband funded all those accounts; Wife did not contribute any. There is also a Santander Money Market Account with a value of $126,773. There is a second American Fund in Wife's name with a value of $53,870 as of June 30, 2021. This account was partially funded by Wife's rollover IRA and Husband. *(See,*

*Plaintiff's Exhibit 13, full).* Husband uses a leased Lexus automobile. Wife uses a 2008 Mercedes and a 2012 Mercedes. Husband is not seeking possession of either vehicle that Wife uses.

Husband testified he also contributed to the business Wife wanted to pursue manufacturing garments. Wife obtained a patent that took several years. Fabric was developed in China, manufactured in North Carolina, and shipped to their home. Wife's company was "Babe You", and she had a second company intended to manufacture and market less expensive garments. *(See, Plaintiff Exhibit 16, full).* Husband estimated he contributed well over $1,000,000 to the business and it never sold anything or generated any money. The basement of the home was finished to Wife's specifications so she could operate her business there. The basement work cost approximately $150,000. An inventory of fabric at the marital domicile listed by Wife with a value of $465,000 was determined by experts to have little if any value and was discarded.

Wife went to New York to create a marketing video. She lived in a rented apartment in Manhattan for approximately 2 years around 2008-2010. Husband paid for the costs of the apartment and Wife's living expenses in New York. Wife also wanted to market her product with branded bottled water. Following New York, Wife wanted to create a marketing CD, and she traveled back and forth to

Boston 2-3 days per week, for 2-3 years for use of a music studio. Husband paid these expenses as well. None of Wife's products were ever sold.

Husband testified he tried to make the marriage work. He asked Wife to not spend that kind of money without consulting him, to no avail. The parties were sleeping in different rooms. When Wife became annoyed with him, she would not talk to him for weeks at a time. Wife was much less romantic, there was no kissing. The marriage got to the point where Husband felt he was being nagged all the time.

Eleanor got married in Rhode Island recently. Husband paid for the wedding. The cost exceeded $100,000 and Wife did not contribute any money to the wedding. Husband has a great relationship with Eleanor, they see each other 1-2 times per month and stay in contact by texting. While he has a great relationship with Eleanor, he did not attend the wedding as he felt uncomfortable because Wife was saying he was threatening her, and she was uncomfortable in his presence. Husband arranged with Wife to get something from the house. When he arrived at the house with a business associate, Wife was not present, and he was greeted by a security guard. He made the decision not to attend the wedding for fear that his Wife would have the security guard present and/or that she would accuse him of something.

Husband testified why he had motions filed during the pendency of this case over Wife's spending. Husband acknowledged that a Ten Thousand ($10,000) Dollar check was explained as a replacement check for one previously issued to Wife, but never cashed. *(See, Plaintiff Exhibit 18, full).* Husband testified he believed Wife charged approximately $41,000 to the Southwest credit card in August and September that she should not have. Husband is not seeking an alimony award and is requesting Wife's request for alimony be denied.

On cross examination, Husband was questioned about his income for the year 2020. Husband's W-2 for 2020 was $526,085, stated as gross wages. *(See, Defendant's Exhibit H, full).* In addition, Husband received distributions from RIMI. *(See, Defendant's Exhibit I, full).* Husband's total income for 2020 was $996,288. *(See, Defendant's Exhibit K, full).* In 2019 Husband had total income of $1,059,597. *(See, Defendant's Exhibit J, full).* Husband testified he did not know what his total gross earnings were going to be for the year 2021. Husband testified he stopped performing medical/legal consultation work last year during the pandemic as he was not going to travel.

Husband testified he decided last winter he was going to retire. He has developed high blood pressure. If he does not, he will have to go back to work as a regular staff radiologist, and that does not appeal to him. He is the first to his knowledge to work in the group past age sixty-five (65). His contract with Brown

University is expiring and will not be renewed because he is over the age of 70. This will result in his losing $120,000 in income, plus he will lose a $10,000 expense stipend. Husband was questioned about the RIMI shareholder agreements. The agreements offer the right to sell shares to another shareholder. The agreements also offer the right to dispute value through arbitration.

Husband was questioned about what he told Eleanor when he did not attend the wedding. Husband indicated he told her about being embarrassed or having someone make up a story about what he did. He told his daughter he talked to other people and his lawyer about this. He told her that he was advised by his lawyer not to attend. He did not want to risk Wife having a security guard present at the wedding.

Husband was questioned about his assertion that Wife violated court orders for charges on the Southwest credit card. Eleanor was married on August 14, 2021. Husband was directed to specific charges at or around the time of the wedding. Husband denied specific knowledge whether the charges to the Chandler in Newport, Sound Choice, and Ureniz were wedding related expenses for a florist, the venue, and a disc jockey. Other expenses Husband was referred to included costs to ready the marital domicile for sale. The house had to be cleaned, and landscapers and movers were needed. Husband was not living in the residence at that time.

Husband was cross examined about his relationship with his daughter Candace, and his attention was also brought to a restraining order case, P2010-1534A. *(See, Defendant's Exhibit L, full).*

Husband testified that he was informed by Brown that his contract was not going to be renewed. As to his intention to retire from RIMI, Husband has not officially notified them, but he intends to give a ninety (90) day notice. Husband testified RIMI was originally started with fifteen (15) radiologists. The company now has seventy-two (72) radiologists. Husband's work on the board helped grow RIMI. He works 40-60 hours per week depending on whether he has on-call coverage. Husband testified he brought to Wife's attention the issues of spending and the lack of attention he was feeling. Husband was also questioned about whether Wife quit Print Source, or whether she was laid off from the company, but he was not exactly sure. Husband stated he was absolute in his testimony that Wife spent nights in the guest room since 2006.

Cross examination also covered Wife's business. Wife started the business in or around 2008 and she was working through the patent process. Husband testified Wife withdrew money from the accounts for the business and he was never told beforehand. She spent money without a plan and without consulting him. Husband testified he aired his complaints to Wife, but he did not close the account. Husband received a sum of money from an inheritance from his aunt

Jean. Husband testified Wife took the check and put it into her business. Husband did not intend for this money to be put into her business. Husband was referred to his answers to interrogatories, wherein he stated he gave Wife the money. *(See, Defendant's Exhibit M, full).* Husband testified the check was taken out of his hand by Wife, and he was being polite when he said it was given.

Husband testified he believes Wife should only receive a 40% distribution of assets. This was different from his response of 50% in his interrogatory answers. Husband was questioned about the sum of $25,000 he wrote out of a money market account to his son, which was more than the agreed upon cap $8,000 on withdrawals. Husband was referred to notes he wrote to Wife between 2006 and 2016. Husband testified the parties' level of communication was through notes. *(See, Defendant's Exhibit N, full).* Husband golfed 2-3 times per week before the marriage and only 2-3 times per year after the marriage.

Husband was questioned about a woman named Kathy who he followed on the computer. This was a woman he dated before the parties married. *(See, Defendant's Exhibit O, full).* Husband was further questioned about his internet accounts. *(See, Defendant's Exhibit P, full).* He used the name "RadChief". He had a tumbler account. He viewed women and other things as well. Wife had complete access to his computer. Wife confronted him about the pictures he was looking at some of which was pornography. Husband began to clear the browsing

history on his computer. He testified he was concerned that some information on the computer may be work related personal health information. Husband acknowledged what was alleged to be part of his search history. *(See, Defendant's Exhibit Q, full).*

Husband testified Wife's New York apartment at first was week to week, and it expanded to a month to month lease. The lease turned out to be for two years. Husband did not have specific recollection of signing the lease. Husband was referred to and acknowledged cards from his children, and his son's first wife, Morgan, as well as his mother and father. *(See, Defendant's Exhibit R, full).* Husband also acknowledged a note he wrote to Wife after the computer incident, *(See, Defendant's Exhibit S, full),* as well as an additional note *(See, Defendant's Exhibit T, full).*

On re-direct, Husband testified he has been on the board of RIMI for twenty-five (25) years and no one has ever challenged the buy in/buy out values.

Wife was called in Husband's case in chief. Wife confirmed date of marriage, residency, and that the parties had no minor children. Wife testified the parties discussed the adoption of Eleanor when she was a minor but waited until she was an adult. Wife moved to Grandville Apartments, West Greenwich after the house sold. She is not employed. Wife testified the parties separated in February 2020. Wife testified Husband did not leave, rather she changed the locks

and locked him out after an abusive episode and threats. Wife remained in the marital domicile and Husband paid the bills at the house.

Wife held jobs before the marriage. She last worked as a Vice President of sales and marketing at Print Source. Wife worked there for seven (7) years and worked there and into the first year of the parties' marriage. Before that, Wife worked as a sale associate at Danka, a copier and main frame business for approximately 5 years. Before Danka, Wife worked in the banking industry working her way up from teller to the mortgage division. She has not applied to any banks for employment and believes her skills are outdated. Wife has not made any attempts to seek employment, rather she desires to try to make the business she wanted to start successful.

Wife has been working on her business venture "Babe You, LLC", since 2011. Wife testified the business is to manufacture undergarments and lingerie to uplift the spirits of women with breast and/or ovarian cancer. Wife's mother died at the age of 56 from breast cancer and this was work near and dear to her heart. Wife also wanted to create music and a brand of bottled water in furtherance of her business. Wife testified at this point she does not know how much of the marital funds were invested in the business nor does she know how much money in total was invested in this business venture. Wife testified Husband was very supportive in all ways through the whole thing.

Wife traveled back and forth to Boston between 2010 - 2011 to work on creating uplifting music for women who were survivors of breast and/or ovarian cancer. Also, around that time, Wife began by working with a Boston law firm to obtain a patent for a body shaping garment for women who had undergone a mastectomy. It took approximately five (5) years to obtain her first patent. Wife believes she obtained three (3) patents in total. The music was going to be given to women who purchased the lingerie as a free gift.

Wife testified she did all aspects of this work and worked ten (10) hours per day, seven (7) days per week, except for Christmas. The costs associated with these patents were paid out of the marital accounts. Wife received an inheritance of $45,000 from her late father approximately seven (7) years ago. Wife believes she initially put approximately $13,000 of that inheritance money in the joint account. Except for the time when Wife worked during the first year of their marriage, all money deposited into the joint marital accounts was earned by Husband.

Wife approximates five (5) years ago the couple leased an apartment in New York. It was in the garment district because Wife needed to be in walking distance to that area. When Husband was not there, Wife worked on her business. When Husband came to the apartment, the couple would go to dinner, shows, and see friends. The couple had the apartment for approximately eighteen (18) months.

Wife testified the New York apartment was like a second home for the couple. The expenses for the apartment and expenses in New York were paid out of the marital account. Wife's daughter, Eleanor, received an inheritance of $150,000 from Husband's father. Wife testified Eleanor believed in Wife's business and gave her this inheritance money for the business. Wife testified she also spent the balance of the money from her Father's inheritance, approximately $29,000 on the business. While in New York, Wife wanted to develop a "pitch reel" to market her business. Wife hired actors, actresses and a camera man to make a four-minute pitch reel that would be sent out to different companies and TV stations to gain interest in her music. No company or TV station picked up on her product and no money was ever generated from it.

The material for Wife's garments was manufactured in China and shipped to California. A transportation company was hired to ship the material to a North Carolina manufacturing plant to create the garments. All these costs were paid out of the marital accounts. Wife testified she learned the business and called many places and accomplished connections on her own. She had business dealings with an attorney in California, the Women's Collaborative, and the New Yorker. Babe You, LLC, however, has yet to sell any product and has not generated any sales. At the time Wife completed her DR-6 she believed the inventory of product and

materials for Babe You, LLC had a value of $465,000, but this product was eventually disposed of when the house was sold.

Wife moved into a two (2) bedroom apartment in August 2021. Her rent is $3,300 per month. Wife was questioned about the expenses she listed on her DR-6 form filed with the court. The water, sewer and insurance expenses listed related to the former marital domicile, not her apartment. She lists $15,000 per year for a clothing expense and $30,000 per year for vacation expenses. Wife testified she has asthma and needs $400 per month as a house keeping expense. Wife's asthma, which she has had since being a child, is movement induced and she is affected by stairs, humidity, and dust. Wife indicates the $30,000 attorney fees and $50,000 monthly retirement contributions should not be part of her updated DR-6.

As to the retirement assets listed on Wife's DR-6, there is a RIMI 401K with an approximate value of $8,000,000, there is an IRA Husband funded in the approximate amount of $172,000, there is an additional Roth IRA funded by Husband, and a Roth IRA funded by Wife when she rolled over her Print Source IRA. There is a Westminster account under Wife's name in the amount of $786,000. Wife testified Husband gifted her $300,000 three years after they were married.

Wife had access to Husband's cell phone and computer from the time they were married until he left the marital domicile in February 2020. Wife testified

Husband attempted to limit her access to his cell phone when she discovered pornography in 2017, but his old passwords were not disabled, and she still had access to his phone. Wife believes Husband did not know she had access to his phone after 2017. Husband did not change passwords to his computer.

Wife testified the parties had an oral contract and she is seeking pursuant to that oral contract 50% of the entire estate accumulated before and after the marriage. Wife testified Husband agreed to this because he wanted to keep her silent to protect his career and reputation with his business, family, club, and Brown University. Wife testified she did not pull out of the contract, rather Husband did. Wife testified this oral contract was referenced in emails to Attorney Lynch. In the alternative, Wife is seeking 60% of the marital estate because Husband pulled out of their oral agreement for 50% of all assets. Wife is also seeking alimony of $10,000 per month until she reaches the age of 67 ½ to bring her to retirement age where she can withdraw from her assets without penalty based on what Wife was told from Husband during the case involving the termination of alimony case with his former wife.

Wife testified she has been out of the work force since 2007. Wife testified her business was not successful due to the Covid-19 pandemic. Wife has not looked for work since the parties separated in February 2020 as she has been able to live on the temporary allowance granted to her of $8,000 per month, plus the

additional $12,000 per month paid to household expenses. Wife testified she has had to work on this divorce and ready the house for sale thus she has had no time to look for a job, and no time to work full time. She does not plan to look for work, but would rather pursue her Babe You, LLC business interest. Wife testified she has had asthma since childhood, and has limitations caused by dust, humidity, exercising and navigating stairs. Despite these limitations, Wife was able to conduct her business ten (10) to twelve (12) hours per day from her home. Wife was able to, on her own, manage the acquisition of material from Asia and have it routed through California to North Carolina to be manufactured into garments.

Wife testified she reached out to television celebrities such as Ronan Farrow and others of the New Yorker magazine and Gloria Alred of the Women's Collaborative. The purpose of her contact is voicing her story about what she has had to suffer at the hands of powerful and connected men, and how physical and emotional abuse and Husband's pornography addiction destroyed her marriage and her life. Wife has not had talks with any of these celebrities because she did not know if she could do so with the ongoing trial. If it is allowed, she will do so.

Wife testified again that the reason she began Babe You, LLC was because of her interest in breast and ovarian cancer survivors. The products manufactured were for body shaping. The web site created does not reference breast or ovarian cancer survivors. *(See, Plaintiff's Exhibit 16, full).* The web site features pictures

of models. Wife testified the web site contractor labeled the garments. Wife testified the patent lawyer was provided with information as to why she started the business. The company started with making a bra and body shaper. Wife testified medications women receive causes bloating and the base garment is intended to slenderize their bodies. The business progressed with a broader patent and broader descriptions, so Wife opened the product line to plus size women, new mothers, and older women.

Wife testified she first asked Husband for a divorce in July 2019. On further inquiry, Wife testified she did not recall telling her Husband in July 2017 that she wanted a divorce as soon as his case with his first wife was over. She testified, however, they could have had an argument and she could have said that after the case with his first wife was over.

Paul St. Onge, a self-employed CPA, was called by the Plaintiff. Mr. St. Onge also provides investment management services as an independent contractor with Westminster Financial Services. He has done this work for forty (40) years. He became acquainted with Husband in 1983, and with Wife in 2007 after the parties married. At one time he prepared tax returns for both parties; he still prepares Husband's tax returns. Husband requested Mr. St. Onge prepare a list of his premarital assets and their value. Mr. St. Onge authenticated a summary of Husband's assets as of June 30, 2006. *(See, Plaintiff's Exhibit 19, full).* Husband

had several mutual funds that Mr. St. Onge managed with a total value of $1,755,506 as of June 30, 2006.

Mr. St. Onge testified that the values reflected on the report would have been generated back in 2006. Mr. St. Onge, in the normal course of his business, maintains a system that tracks transactions and the value of assets from the mutual fund companies daily. He has maintained these records back to the 1990's. Mr. St. Onge reviewed Husband's file and the last paper statements he could find were from 2003. He testified that the business practice over the years has changed and much of this information is transmitted electronically from the funds rather than through paper statements. Mr. St. Onge in the normal course of his business produces summaries, exhibit 19, for clients. The largest holding of Husband was his RIMI 401K and that was formerly managed by Prudential. Mr. St. Onge contacted Prudential and has made a request for paper statements as to the June 30, 2006 values. In the event paper copies are received from Prudential, Husband will provide them to Wife.

On cross examination, Mr. St. Onge testified he met with Wife's counsel. Mr. St. Onge testified he used to make charts like this for Husband monthly back in 2006 and he clarified the document, exhibit 19, was in Husband's file. Husband's RIMI 401K has an approximate current value of $8,427,000, and the premarital value of what was in the RIMI 401K is designated with "PRU" on

Plaintiff's exhibit 19. Husband also has a Westminster account now with an approximate value of $294,000. Husband also has a Roth IRA now with a value of approximately $105,000. *(See, Plaintiff's Exhibit 6, full).* Husband made contributions to this account over the last ten (10) years; husband did not have that Roth IRA that account back in June 2006.

The accounts designated as CB&T are those associated with Husband's sole proprietor 401K. *(See, Plaintiff's Exhibit 19, full).* The accounts designated as AF, were Husband's investments in funds that were not held as an IRA. Husband used the accounts designated as AF to fund Wife's Westminster investment account, which now has grown to a value of $788,000. Mr. St. Onge further testified that the Roth IRAs are the most valuable because withdrawals would be tax free, while withdrawals from the traditional IRAs or 401Ks would taxable income to either party. There would be no penalties associated with withdrawals, however, because both parties are over 59 ½ years old.

The Court also heard testimony from Jane McAuliffe, CDFA. Ms. McAuliffe is a partner and financial advisor with Access Advisors, East Providence. She is the owner of Collaborative Divorce Strategies (hereinafter CDS) which is a divorce financial planning and mediation firm. Prior to that, Ms. McAuliffe was an investment advisor at Forbes Financial Planning, East Greenwich. At CDS, Ms. McAuliffe works with divorce clients to navigate

division of assets and related budgeting and cash flow issues. She utilizes a three-part approach, first identifying expenses and creating a budget, second identifying the marital estate, and third doing income and financial planning, money management, and tax planning. Her work at Access Advisors is fee-based financial planning and investment management.

Ms. McAuliffe holds a B.S. degree in management from Bryant University. She holds a broker's series seven license. She holds a series six license and series sixty-three license and life, accident, and health insurance licenses. She holds a series sixty-five 65 license for fiduciary investment advising. In 2016, she received certification as a certified divorce financial analyst and completed mediation training. Ms. McAuliffe is a board member of the Institute for Divorce Financial Analysts and the Financial Planning Association of Rhode Island. She has had speaking engagements with the Rhode Island Bar Association and Bryant University. Ms. McAuliffe previously testified in a matter involving Husband and his former wife, Diane, and she was admitted and testified as an expert witness therein. The Court accepted Ms. McAuliffe as an expert witness an accepted her report as a full exhibit. *(See, Plaintiff's Exhibit 20, full).*

Ms. McAuliffe is offered as a paid expert on the issue of alimony as it relates to Wife. Ms. McAuliffe was provided financial documents related to the parties' income, assets, and expenses. Ms. McAuliffe formulated a financial plan

for Wife based on a life expectancy of age of 90 and based on the suggested figure of $3,946,605 from Husband, as well as a listing of expenses identified in Wife's DR-6. Ms. McAuliffe identified that Wife will be moving from an accumulation of asset phase to a distribution of asset phase from this point on in her life. Ms. McAuliffe also acknowledged that the suggested figure of $3,946,605 was a proffer by Husband, and not a figure offered by the Court.

Ms. McAuliffe's analysis began with a breakdown of a suggested division of assets in the amount of $3,946,605 suggested by Husband. *(See, Plaintiff's Exhibit 20, tab 4, full).* Ms. McAuliffe applied to her analysis a conservative market rate of return on investment for Wife of 5.3%. The rate of return of 5.3% was based on actual ten (10) year rates of return for the investment categories suggested. If Wife's rate of return on investment was higher than estimated, she would in turn do better than as suggested in the analysis. Ms. McAuliffe provided a second scenario for a different portfolio investment strategy that would provide for a 7.8% rate of return, but that would come with a greater risk on investment. Ms. McAuliffe opines that Wife would have a 100% probability of reaching or meeting her income needs with a conservative 5.3% rate of return.

The second step in her analysis was to review Wife's expenses as provided on her DR-6. Non-recurring expenses of legal fees were not considered. Retirement contributions were not considered because Wife is not working and

therefore not eligible to make contributions. Ms. McAuliffe also scaled back some of Wife's living expenses as some of the expenses were related to the Barrington property, such as home insurance, water, and sewer charges. *(See, Plaintiff's Exhibit 20, tab 2, full).* Ms. McAuliffe provided for continued lifestyle expenses as indicated on Wife's DR-6, totaling $11,500 per month, $138,000 per year. *(See, Plaintiff's Exhibit 20, tab 4, full).* In addition, she considered estimated tax payments of $19,000 per year and health care costs of $5,716 per year for a total annual expense of $163,000. The analysis provided for an inflation rate of approximately 2.2% per year. Ms. McAuliffe also opined that if Wife were to receive the $3,954,000, her income from a return on investment at 5.3% would provide for her with sufficient income with a zero-short fall. She would not be reducing the principal amount of her investments to maintain her standard of living. *(See, Plaintiff's Exhibit 20, page 9, full).* The analysis assumed Wife would not work or earn any income, but that she would be eligible to collect $1,344 per month in social security payments starting at age 62. If Wife were to wait until age 67 to collect social security, that amount would increase to $1,921 per month. The analysis also anticipated Wife will have to draw down on the principal balance of her portfolio in year one to meet her needs for the first year.

The plan also considered required 4% minimum distributions starting at age 72 under the tax code, and the tax implications associated with the distributions.

Ms. McAuliffe opined that at age 90, Wife will still have assets in the range of $5,500,000, based on a budget of $163,000 adjusted for inflation because she is spending about 1% less than her annual rate of return. *(See, Plaintiff's Exhibit 20, page 15, full).* If she spent 100% of her portfolio's rate of return, her breakeven point would be $209,000 annually. Ms. McAuliffe's analysis is based on Wife having a conservative rate of return on investments and zero income except for the lowest amount of anticipated social security benefits. If Wife's portfolio were to achieve a 7.8% rate of return with the same assumption on expenses, Ms. McAuliffe's second scenario showed Wife could have accumulated assets at age 90 as high as $15,000,000.

On cross examination, Ms. McAuliffe acknowledged she did not arrive at the net worth statement in her report, rather it was provided to her by Husband's counsel. Ms. McAuliffe used software created by Right Capital in her financial planning projections. The projections include the Monte Carlo analysis that simulates market returns. Ms. McAuliffe provided the information for Wife, to include her assets, income, and expenses. It is Ms. McAuliffe's opinion that Wife does not need an award of alimony and Ms. McAuliffe relied on the simulated market return on investments in her analysis to come to that conclusion. The Monte Carlo analysis targets an average of market outcomes and shows the probability of success given a range of market outcomes. The Monte Carlo

analysis here used a blended rate of inflation of approximately 3% to address the overall rate of inflation for general, tax, social security, education, and health costs. As relates to Wife and her needs, the blended rate of inflation worked out to be 2.5% because some factors such as education planning with a high inflationary rate do not apply to her situation. *(See, Plaintiff's Exhibit 20, page 10, full).*

Ms. McAuliffe's projection and analysis are based on Wife's status and expenses provided on her DR-6, some of which were accepted and some of which were excluded. The assumption does not include a decision by Wife if she decided to use available cash to purchase a home. The analysis also includes Wife spending available cash accounts first to keep money in deferred accounts for as long as possible. Ms. McAuliffe opined that if Wife decided to purchase a home with available cash her annual expenses would decrease because she would not be paying rent, thus she would draw down less on her portfolio. Ms. McAuliffe also testified that under her analysis, Wife would have approximately $1,411,739 in non-qualified assets from which to purchase a home. *(See, Plaintiff's Exhibit 20, page 4, full).*

Ms. McAuliffe was questioned about various options Wife could make, to include converting assets in the portfolio to cash. If Wife did convert all assets to cash, which Ms. McAuliffe would not advise in light of the tax implications, Ms. McAuliffe opined she would have approximately $2,160,000 net of taxes available

and she would earn approximately 5.3% per year, or $114,480 in annual interest to live off of without depleting principal. The interest earned would be subject to income taxes. Ms. McAuliffe testified her analysis used a conservative capital preservation rate of return of 5.3% for all assets including cash, while Wife is currently invested in a growth-oriented portfolio and is averaging a 13.5% annual return on investments. The capital preservation rate is based on historical rates of return for bonds, cash, and conservative type investments. Ms. McAuliffe acknowledged her analysis is subject to variations in Wife's investment returns, changes in the inflation rate and Wife's personal financial decisions.

Ms. McAuliffe provided inputs for use in her analysis such as choosing the preservation model, estimating Wife's social security income at age 62, and Husband's social security information. Ms. McAuliffe did not meet with Wife or discuss her financial plans. In Ms. McAuliffe's analysis her withdrawal rate at the outset is 4.2%, while her growth rate is anticipated to be 5.3%. Wife's withdrawal rate will decrease when she begins receiving social security. Ms. McAuliffe was questioned about using a 4.0% rate of return rate in a case involving Husband's former Wife, which she explained was used for the purpose of comparing differing expert analysis. The 5.3% rate of return Ms. McAuliffe used in this case was established by the Right Capital computer model as the preservation rate based on historical returns.

On redirect, Ms. McAuliffe testified she reviewed Wife's rates of return on investments since 2014 and her Roth IRA averaged 13.23%, her Disney stock averaged 18.5%, and her American New World Fund averaged 8.91%. Ms. McAuliffe also testified her analysis did not include any work-related income earned by Wife. If Wife did elect to obtain a job, she would draw less off her portfolio in future years.

On further cross examination, Ms. McAuliffe acknowledged her analysis did not include other capital expenses, such as if she were to buy a car. Ms. McAuliffe testified she is of the belief that accounting for $11,500 per month for living expenses provided for on Wife's DR-6 is a generous budget for a lifestyle. Ms. McAuliffe also testified she did not discuss expenses and financial decisions with Wife because she is not her client, and if she had, the report may look different.

On further redirect, Ms. McAuliffe testified the DR-6 provided to her included a mortgage expense of $3,800 per month, a property tax expense of $23,000 per year, home maintenance expense of $2,000, lawn care and snow removal of $7,000 per year. *(See, Plaintiff's Exhibit 20, DR-6 page 4, full).* Ms. McAuliffe's budget estimates a rent expense of $2,750 per month and the utility expenses for her current residence. Included on the DR-6 were an expense of $15,000 per year for dues and memberships and $30,000 for annual vacation costs.

Line items for attorney fees of $30,000 per year and retirement account investments of $50,000 were not included in her analysis.

On further cross examination, Ms. McAuliffe testified she did not include in her budget analysis any of the housing expenses listed on Wife's DR-6, rather she used an estimate of the expenses Wife listed. Ms. McAuliffe also did not include the nonrecurring expenses that Wife listed. The dues and clubs expense included in the analysis was $3,000, not $15,000 per year, based on a reported amount of $250 per month on Wife's DR-6. Expenses that Ms. McAuliffe did use in her budget analysis were, in part, based on estimates that Ms. McAuliffe thought were reasonable. *(See, Plaintiff's Exhibit 20, tab 2, full).* Ms. McAuliffe's budget provided Wife with an annual needs amount of $136,250, after taxes. Wife will have approximately $1,400,000 in available cash assets to draw down from before she incurs any tax liability. Ms. McAuliffe testified the budget does not include consideration of emergency spending or the acquisition of capital assets, such as a home or automobile. If Wife decided to purchase a capital asset or have emergency expenses that would affect her cash flow in future years.

Ms. McAuliffe was asked by the Court as to what the estimated outcome would be if the assumed beginning principal balance of Wife's portfolio amount of $3,946,000 were to change. *(See, Plaintiff's Exhibit 20, page 16, full).* Ms. McAuliffe responded that if the number goes up or down, the Court should apply

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those changes to the initial principal and the rate of return would change based on a 5.3%. The analysis also included a budget used for Wife, the annualized amount calculated to be $143,716, and the software included estimated tax payments in that amount. At age 72, under the current tax laws, Wife is required to draw down money on her retirement assets. Wife can either use that money to pay current living expenses or she can reinvest all or some of it, but her expenses adjusted for inflation are projected to exceed her social security amount plus her required minimum deductions.

On further cross, Ms. McAuliffe testified the current analysis shows cash outflows for Wife for the first ten (10) years. If Wife runs out of cash before ten (10) years, she will have to draw down on her retirement assets sooner than the analysis projects, and that would reduce her overall gain on investments. Wife, at age 59 ½, is currently eligible to pull money from her retirement assets. These scenarios are all dependent upon financial decisions Wife makes in the future.

Defendant's Case

Wife was testified as part of her case in chief. Wife testified to an oral contract she asserts she made with Husband. Wife testified they argued about his pornography addiction and she asked him for a divorce in July 2019. Wife testified Husband's pornography addiction led to his abuse. Husband suggested

they go to Attorney Lynch to act as an arbitrator because they both trusted him. Wife testified the parties agreed she would not make his abuse or pornography addiction public. Wife testified the parties orally agreed to split all assets 50/50, and Husband was to get help for his addiction and outbursts. Wife would remain quiet to protect his reputation and career. Wife was going to file for divorce, but she testified Husband wanted to give the marriage a chance. Wife testified the parties contacted Attorney Lynch and she believed Attorney Lynch was her lawyer. Wife testified Attorney Lynch sent her paperwork to execute with her as the Plaintiff. Wife testified she conferred with Attorney Lynch about the oral contract. Wife testified they talked on the phone about it approximately five (5) times. Wife testified she thereafter learned Attorney Lynch filed the divorce with Husband as the Plaintiff. Wife testified she has emails where she inquired about putting the 50/50 agreement in writing. Wife testified her testimony is supported by Husband's response to requests for admissions.

Wife confirmed the date of marriage and Husband's residency. Wife testified she picked her current residence because she could not find anywhere else within the time frame she needed to move. Wife testified she did not come across any apartments for $1,400, as Husband did. She would have rented it if she had and if it was safe, clean, and not going to affect her asthma. Wife testified her health is relatively good, but for her asthma, bad knees, and chest pains.

Wife testified she last worked for someone other than herself ten (10) years ago. Wife testified she believes she was laid off in the second year of their marriage. After that, Wife testified she supported Husband's career and traveled with him for business. In 2010, she then started developing her uplifting music idea and started to work on obtaining patents for her garment business. Wife attended college for two years; she does not have a degree. Wife testified she believes the printing industry and the mortgage industry have changed so much since she last worked, that she does not believe she could do it now. Wife testified when she was laid off from Print Source and Husband was comforting to her and he told her not to worry about it because she was only earning $60,000 per year, and based on his salary they would just pay it over in taxes. Wife testified Husband never suggested that he wanted her to go back to work. Husband wanted Wife to travel with him and host his events. Wife testified the couple did a lot of things together in support of his career as well as taking care of our children.

Wife testified the parties dated for three years. Husband asked her to marry him three (3) times. First, Husband asked her to marry him walking to the XO Café. Husband then asked her to pick out a ring and, although his friends cautioned Husband that she would pick out an expensive ring, the ring she picked out only cost $2,700. The second time, in a very romantic fashion, Husband planned to put the ring in one of the holes at the Rhode Island County Club for her

to find, but it rained. Instead, Sal at Capriccios restaurant served it to her on a bed of rose pedals. The third time, the couple was in bed at Husband's house eating grapes and he said he did not want to wait. The couple opened the yellow pages and decided to call Judge Little who was across the street from the Sacred Heart School Wife attended. Eleanor was their maid of honor. Wife testified three months after the parties married, they had a wedding reception at Rhode Island Country Club. Forty (40) people attended in all, from both families. *(See, Defendant's Exhibit V, full).*

Wife addressed Husband's assertion that she said to him, "you're mine and all your worldly possessions". Wife testified she did not say it on the day they were married. Wife testified, six years after they were married, the couple was at a family Thanksgiving event. She made a joke when something came up about money she spent on a gift. Wife testified she said, "I was there when you said it, and all my worldly goods." Wife testified the couple joked about that several times throughout the marriage. Wife testified she never went to Attorney McIntyre's office to discuss a prenuptial agreement. Husband sent her to another law firm, and they presented her with a prenuptial agreement, but she refused to sign it as they never discussed one. Wife called Husband and told him they could just date and they did not have to get married. He told her to forget signing it, it was a bad idea.

Wife testified Husband never expressed displeasure with the marriage in the first six (6) months, and he never told her he went to see Attorney McIntyre. Wife described the first ten (10) years of their marriage as beautiful and wonderful. The couple loved each other dearly. Wife disputes Husband's testimony that they slept in separate beds. Wife testified when she and her Husband were together at night, whether it be in New York, Florida, or Rhode Island, they slept in the same bed. It was only the last two and a half years that they did not sleep in the same bed.

Wife testified she supported her Husband emotionally. She would email him if he had a function to go to. She would write up a packing list for him so he would not forget things. If he left something at home, he would call, and she would bring it to him. She sometimes made him lunch and she took care of things around the home. She arranged for yard maintenance and she raised Eleanor. Wife prepared and sent thankyou notes to people. She hosted business receptions, graduation events and accompanied Husband to Lifespan events and on business travel events.

Husband secured the lease for the New York apartment. *(See, Defendant's Exhibit W, full).* The lease was originally for one year, and then month to month thereafter. Wife testified for the first ten (10) years of their marriage, every morning before work, Husband would leave cards and notes for her. *(See, Defendant's Exhibits H and X, full).* The cards and notes described the couples'

relationship, generally and sexually, and events in their lives such as when they got the family dog, Daisy, 5 ½ years ago. Wife estimates there were thousands of notes from Husband during their marriage. Wife disputes Husband's testimony that a switch went off and they were not romantic the day after the couple married and she asserts that the cards and notes he left her disprove his assertions. Wife testified Husband left similar notes and cards until late in the marriage when the couple began having troubles.

Wife testified that during the first years of the marriage, they talked and texted throughout the day. The calls and texts were very sweet and loving. He was a very good husband at that time. Wife testified after about eleven (11) years into the marriage, Husband became withdrawn. Wife estimates the parties were sexual once per week for the first five (5) years and once every two weeks in the next five (5) years. Husband was less affectionate to her after that. His demeanor changed. He would not hold her hand and he responded coldly when she would call him. Notes he left were curt. He would call her names such as, fat ass, wrinkled, and frumpy old bitch. He would tell her to shut up. She would ask him to stop and she would let him know he was scaring her. He would later write her a note or text her to apologize. Wife testified the couple were on a long drive home and she offered to drive part of the way. Husband initially declined, but then he suddenly pulled off to the side of the road, called her an explicative and told her to drive.

Husband was coming home around 7:00 p.m. each night and began spending approximately three (3) hours each night in the downstairs home office. Following this period, the couple stopped being intimate. Husband told her he was working on emails. The parties shared a laptop in the home office for work. In the later part of 2017, Wife went into the office to pay bills and discovered Husband left tabs open. Some of the tabs were work and golf related. Wife testified she was devastated, however, when she saw there was also pornography, Pinterest and Instagram sites Husband was looking at on his computer. Wife testified she was stunned and did not know what to do, so she waited a period of time before talking to Husband about it. She wanted to know whether this was a one-time thing, or if this was a problem. She checked his computer every day and saw that he continued to look at these sites. Wife testified Husband followed about twenty (20) gorgeous women and wrote down the pages and their names. Wife testified the sites depicted violence against women and rape. He was looking at the Ashley Madison and Fubar site. Wife took pictures of Husband's search history. *(See, Defendant's Exhibit Q, full).*

Wife confronted Husband after about five (5) or six (6) months. Wife called Husband at work and asked him what was happening to him and to them. Wife told him she discovered the pornography. Wife testified she told Husband she read that a porn addiction can cause men issues with intimacy, performance and it can

destroy careers. Wife testified the couple would attempt to have sexual relations, but Husband was not able to. Based on her online reading, Wife believed there was a correlation between Husband's porn addiction and issues the couple was experiencing with intimacy and their relationship. They discussed it for approximately twenty (20) minutes and Husband admitted to it. Wife testified she told Husband she was not mad and that she still loved him. Husband apologized and said she was a great wife. Wife testified the couple met at a Shaw's Market parking lot later that day. The couple talked, Husband apologized and stated that he never wanted to hurt her. Wife showed Husband what she had read. Husband promised he would stop. Husband left her a note the following day thanking her for confronting him with his "bizarre addiction" and was again apologetic. Wife does not have this note. Wife testified she is not aware of Husband getting any treatment. She testified Husband's behavior changed for one week only and Husband slowly resumed his ways, with the name calling and still looking at these sites. Wife testified through 2018 Husband's name calling, derogatory comments and sexual comments to her escalated. Husband would make inappropriate sexual comments in restaurants. Wife testified this made her feel worthless, disgusting, and inadequate. Wife felt that her Husband's only interest in her was that she had sexual parts. His comments were not playful and were not courteous.

Wife testified Husband began to get physical with her. He threw a light bulb package at her face. He would get within inches of her face and push her. They were working with a tarp and ropes and he whipped the tarp at her and threw ropes at her. He would be vulgar and scream at her. Wife testified she left the marital bedroom in mid to late 2018 and moved into the guest bedroom. Wife would put a hamper in front of the door at night with heavy books on it because she was afraid he would come in at night and do something to her. Wife testified she told her Husband about a Wellesley doctor, Dirk Greineder that killed his wife with a knife after she discovered pornography her husband was looking at on his computer. Wife analogized her circumstances with that of Dr. Greineder's wife. Wife became fearful something would happen and she told Husband she put pictures of the pornography in a safe deposit box. She also told Husband she sent letters with instructions to her siblings if she suffered a fall, was found dead or if someone tried to kill her.

Wife testified Husband had an Instagram, Tumbler and Pinterest account he opened under "Radchief". Wife testified Husband had a list of women he followed. He commented to some of them. He kept a list of women on his phone. He viewed videos, live cams about violence, rape and sadism and masochism. Husband had a prescription for testosterone. The couple discussed this beforehand and she wanted him to promise he would stop if it affected his personality.

Husband also had a prescription for Cialis, but this was not discussed. Wife questioned why he kept them in his brief case and why he needed it as they were not intimate in a year. In 2018, Wife testified there was unwanted touching of her by Husband. He grabbed her breast and crotch. When she would have her bathrobe on in the house and on an occasion when they were vacationing in Florida, Husband would lift Wife's bath robe and expose her, without warning and without her permission. Every time it happened, Wife would tell him to stop.

Wife testified she had the locks changed in February 2020 after Husband left for work because she was concerned for her safety. The couple had an argument the night before where there was pushing, screaming and threats by Husband. Wife blocked herself in a room. Husband said he could make this ugly. Additionally, Wife testified there were two vile pornographic pictures she had discovered, but Husband did not know she found them. Wife testified Husband was escalating and the porn she found was turning into violent porn. Wife sent Husband a text telling him he was not welcome back to the home.

Wife testified Husband has an excellent relationship with Eleanor, who was ten (10) years old when they started dating. Neither has had a harsh word to say about the other. One year after the parties married, Husband considered Eleanor his daughter. Husband bragged about Eleanor's academic accomplishments and awards. Husband suggested Eleanor attend St. Mary's Bayview and Brown

University for undergraduate, graduate, and medical school. Husband volunteered to pay for Eleanor's schooling. Wife testified she found the home in Barrington shortly before the couple married and her Husband was in agreement to buy it. They each were selling their homes. Wife testified she never forced Husband to buy the 5,100 square foot marital domicile. Wife is covered on her Husband's medical insurance plan. Wife is not sure if she will be covered after the divorce is final.

Wife testified she is not working, and she tried to start a business. The business was to sell garments, and Wife wanted to create branded water and a music CD to be giveaways to incentivize women in an effort to build her business. It is Wife's testimony that approximately $160,000 of marital funds were invested into her business over ten (10) years. As to Husband's inheritance from his aunt Jean in the amount of $180,000, Wife identified a TB Bank signature card bearing Husband and Wife's signatures. *(See, Defendant's Exhibit Y, full).* Wife testified she and Husband went to the bank together to get a certified check so she could deposit the money in her business account. Instead, however, the bank told them they had to open an account and deposit the funds first due to IRS rules. Wife testified Husband was wonderful and supportive of her business efforts. He bragged about it to friends and associates. Husband never once refused to fund this business, nor did he ever indicate he wanted to stop funding it. Wife testified she

always asked his permission if she ever wanted or needed to take any money beyond what he offered. Wife testified the $160,000 does not include the money for the basement construction or the New York apartment. The basement construction costs were approximately $175,000 - $190,000.

Wife testified she put her own money into the business as well. She received a $45,000 inheritance from her father. She initially put $13,000 into the parties' joint account, and the balance of her inheritance was used for her business. Wife also put into her business $60,000 she received upon the sale of her home and Eleanor gave her the $150,000 she inherited from Husband's father. Wife also withdrew $150,000 from her Westminster account being managed by Paul St. Onge. Wife testified Husband's estimate of $1,000,000 was absurd.

Wife testified Husband enjoyed the New York apartment. He would travel to New York almost every weekend when she did not come back to Rhode Island. He also came down on some weekdays. Husband typically had Fridays off from work and he would come down on Thursday night and spend the weekend. Wife would travel back home at times. They would go to plays, restaurants and visit his friend when they were in New York. Husband never complained about having to rent the New York apartment.

Wife testified about the expenses she listed on her DR-6. The rent for her new apartment is $3,300 per month. She is paying approximately $500 extra

because she could not have carpeting due to her asthma, she had a dog, needed a garage, and she did not want to commit to an eighteen (18) month lease. Her heat, cable, electric, apartment insurance and cell phone bills are separate. Wife testified this is only temporary and it is her intention to buy a house after the divorce. She does not have to pay property taxes or maintenance bills at present. Wife has two Mercedes Benz automobiles, both are more than ten (10) years old. Wife listed a $30,000 annual expense for travel on her DR-6 because she and Husband traveled 6 to 8 weeks per year and she would like to continue that. Wife is also currently a member of Rhode Island Country Club. Wife also provided for a clothing expense of $15,000 annually, although she believes she spends more. Wife does not anticipate recurring attorney fees as an expense, and the retirement account deposit listed annually is a discretionary expense. All total Wife testified her needs and expenses are approximately $190,000 per year.

Wife listed as assets on her DR-6 a Westminster Fund with a fluctuating balance of approximately $788,872. The couple netted the sum of $611,000 from the sale of the marital domicile. Wife also listed a net marital value of RIMI to be $777,000. Wife does not have any debts.

Wife testified she was not the cause of any differences between Husband and his children. Husband's relationship with Candace was good when the couple had gotten married. Candace was attending the University of Tampa. When the

children came to Rhode Island, they would visit and they would all go to dinner together. The couple also went with Eleanor three times to Florida. The relationship was very good. Three or four years into the marriage, Husband's relationship with Candace changed. Husband and Candace would argue about how Candace was spending money from her trust fund. Candace used some of the money for a car and wanted her father to give her money for plastic surgery. Wife testified she was not part of any of these discussions. Husband filed for a restraining order against Candace, and Wife testified the filing had nothing to do with her.

Wife testified, in the early years of her marriage, she was a mother figure to Husband's son John as he was estranged from his mother and sister. She visited him at college and attended his graduation. Wife participated in the mother/son dance with John at his first wedding. Wife organized a bridal shower and rehearsal dinner, and she attended dress fittings with John's bride. Wife organized father/son golf trips. Husband and Wife would go to dinner with John and his wife in Boston every weekend. When John's first wife passed, he called Wife from the hospital and told her. They talked and texted daily around this time. After John's wife died, he visited Wife at the New York apartment and stayed with her for approximately two (2) weeks. Until June 2020, even after the parties separated, Wife's relationship with John was fabulous. John and his second wife had a baby.

Husband and Wife would meet John and his second wife in Peabody for dinner on weekends. They would also visit John and his wife at their home in Maine. Wife attended the couple's wedding and the christening for their son. Wife established a trust fund for John's son. Wife visited John after she and Husband separated. Wife learned John's mother in law was traveling and she arranged to send her masks, shields, and gloves to protect her from Covid-19.

Wife presents cards she received from her Husband and John over the years before the couple separated. Wife testified Husband was romantic at one time and he told her it would take a long time to pick out cards for her because he wanted just the right one. He would read them aloud to her and tell her how much he loved her. Wife estimated she received at least 2,000 cards over the years. *(See, Defendant's Exhibit Z, full)*. Wife testified Husband was very affectionate and complementary to her. They had a wonderful love life. On Valentines' Day for approximately the first seven (7) years of their marriage, the couple would stay at the Castle Hill cottages. Wife testified she would arrange other romantic getaways to Newport and Nantucket, and she arranged visits with Husband's son. Wife testified it was an absolute lie by Husband when he testified that she slept in another bedroom right after the couple got married. Wife testified Husband gifted her approximately $300,000, which has grown to the amount of $760,000. Wife

testified Husband told her he was going to make Wife a co-equal on all his accounts. *(See, Defendant's BB, full).*

Wife was asked about a motion Husband filed asserting Wife spent money beyond what was permitted under a temporary order of the court. *(See, Defendant's CC, full).* Wife testified $10,000 was transferred into the couples' checking account from their money market account to pay bills in accordance with the court's order. Wife testified there were charges made on the Southwest credit card to ready the house for sale and to move and store items. Wife also paid painters to perform work at the home and hired a company to remove junk. Wife testified she emailed the realtor and Husband to keep them informed. Husband did not take part in the move, and he did not voice any objection to Wife's course of action. The landscapers also came more often and did additional work for the house showings. There were expenses paid to an electrician as well. Wife also paid $8,426 toward her apartment. Wife transferred $10,000 out of the account to replace a check for that amount that she never cashed.

Wife was referenced to a second motion filed by Husband over charges made to the Southwest credit card. *(See, Defendant's Exhibit DD, full).* Wife charged $3,553 for a wedding brunch at the Chandler, Newport the day after Eleanor's wedding. Wife testified this was part of the total amount paid to the Chandler, and Husband previously was involved with the decision to use that

location. Other vendors had the card on file and received final payments for wedding expenses in accordance with the wedding contracts signed. AAA charged the card automatically on an annual basis. There was payment to Sound Choice, the disc jockey for the wedding, and payment to a limousine company that was planned, and Husband was aware of. Wife also paid $1,800 to repair her car.

Wife testified she needs alimony to maintain her lifestyle and so she can continue to work on her business. Wife testified she launched her business in 2019 and she has a lot invested in it so she would like to see if she can make something come of it. Wife still has possession of some of the inventory from her business. Wife desires to purchase a condominium and estimated she will need $450,000 to $550,000 to do so. Wife does not intend to collect social security benefits early because she wants the full amount she would receive at age 67. Wife is seeking alimony for six years.

Wife testified she is devastated her marriage is ending and she still loves her Husband. She testified the pornography was a punch in the gut and her Husband's personality changed. She waited to confront her Husband to collect her thoughts. Wife did not have the intent to seek a divorce at that time. Wife attributes the breakdown of the marriage to either the testosterone or pornography.

On cross examination, Wife testified she did not use the Southwest credit card from August to October 2020. Wife acknowledged the prior order of the

court was that expenses such as car expenses and routine home maintenance expenses were to be paid from the Santander checking account, not Southwest.

Wife testified to amounts invested in her business over ten (10) years. The sum of $160,000 came from a joint marital account where Husband deposited his earnings, $180,000 was Husband's inheritance from his aunt Jean, $150,000 was Eleanor's inheritance money from Husband's father, $150,000 was withdrawn from Wife's Westminster account that was started with a gift of approximately $300,000 to her from Husband and which she took part in managing, $60,000 came from the sale of Wife's former home, and $34,000 was from Wife's inheritance from her father. Wife reported a business loss of $294,000 on her tax return. When the case began, Wife's initial DR-6 listed inventory from her business with a value of approximately $465,000. Wife maintains the inventory had value, but that due to the rushed move it needed to be discarded. Wife wanted to keep it, and her heart was broken when she was made to throw it away. Wife did keep some of the inventory she had, some of it is in storage and some of it is in North Carolina. Wife testified the material in North Carolina is scraps of fabric and it does not have any value. She is trying to find someone who wants it rather than just discarding it in a landfill.

Wife again testified she did not begin sleeping in a separate bedroom in 2006. Wife testified Husband was outright lying when he testified to that. The

cards and notes that Husband left her, with some exceptions, were left for her in the morning. Wife testified that was not because they were in separate bedrooms, rather because Husband got up earlier than her. Wife testified she also gave Husband cards on every occasion, such as birthdays, anniversaries, and Father's Day. Wife kept his cards and notes, she does not know what Husband did with his. Sometimes the couple cooked together, but typically Wife did not cook. The couple had a housekeeper who assisted with doing the laundry. Wife did laundry as well. The couple had landscapers and Wife would direct them as to what needed to be done around the house. Wife also took care of sending cards and gifts on Husband's behalf.

Wife testified she did not tell Husband she wanted a divorce in 2017 and denied she told her husband she was going to divorce him at the conclusion of the matter with his first wife. Wife denies she ever told her Husband she wanted a divorce before discovering he was looking at pornography. Wife testified she did not discover Husband looking at pornography until the end of 2017. She does not know if he was looking at it beforehand. Wife testified she, Husband and Attorney Lynch worked on every aspect of the termination of alimony case involving Husband's first wife. Wife testified that, if she had asked Husband for a divorce at that time, she would not have been involved in that other case. Wife testified the litigation involving Husband's first wife began in June 2017.

Wife testified Husband left the home daily between 5:00-6:00 a.m. and he would return around 7:00 p.m. From the start of their marriage, Wife had complete and total access to their laptop computer. She had access to his phone for about ten (10) minutes while Husband showered at night. Wife began checking Husband's phone after she discovered the pornography on his computer.

Wife testified in July 2019, when she asked Husband for a divorce for the first time, the parties sat on their bed and came to an oral agreement about the divorce and decided together to divide the entire estate, marital and non-marital 50/50. Husband told Wife what he wanted, and Wife told him what she wanted. Husband did not want to make this public, and Wife told him she wouldn't if he got help. Wife told Husband what she wanted, 50/50 of the entire estate because she was not at fault for the divorce, and he agreed to give her what she wanted. Wife testified this was not her saying "if you don't do this, then I'll do this". Wife testified the couple was going to continue dating after the divorce to see if Husband switched back to his old self.

Wife testified she and Husband went to Florida every year. Wife testified they would sometimes, but not every time, get a place to stay that had two bedrooms. Wife testified she recalled staying in a one-bedroom unit when they traveled to South Beach 6-7 years ago because they could not get a two-bedroom unit in the location they wanted. Wife testified they typically wanted a two-

bedroom. Husband liked to have a two bedroom because sometimes he would want to go to bed later and get up earlier and go work out. Sometimes Wife would want to go to sleep at different times. Wife testified they definitely made love on the couch. Wife denied the couple was sleeping in different bedrooms, even when they went on trips to Florida. Wife testified it would be a lie to say otherwise. Wife testified the couple had a very passionate love life. Wife testified sometimes Husband would fall asleep on the couch, or sometimes she would go to bed earlier and he would go to the second bedroom because they needed a bigger space. One-bedroom units were not big enough, and the couple sometimes rented units with more than two bedrooms.

Wife denied ever telling Husband's daughter Candace that she was coming between Husband and Wife. Wife also denied ever telling Candace she would file for divorce if the relationship between Candace and her father continued. Wife testified when Candace came to visit her father in 2006/2007, Candace stayed at a hotel, rather than with them, because Husband said his former wife would barge in when the kids were home. Candace staying at a hotel was not at the insistence of Wife. They would rent rooms for the adult children when they came to town, to avoid issues with Husband's former wife because Husband was afraid of her. Wife testified, in February 2021, she placed one 60-second phone call to Candace on her direct line at the law firm where she worked. Wife got Candace's number from her

stepson John, who Wife states is estranged from Candace. Wife called and spoke to Candace because she wanted to tell her that she felt badly Candace was accused of forging a signature in Court, and she wanted Candace to know she had nothing to do with it. Candace told her she was in a deposition and that she did not want to talk to her. Wife told Candace she respected that, and she would never call her again. Wife testified she has the call log from the phone with Candace's direct line to her. Wife denied that she told Candace she wanted to meet with her and her mother to discuss financial information Husband hid during the termination of alimony case.

Wife testified she was as close to Husband's son's second wife as Husband was. Wife testified she and Husband would meet John and Bridgette once every couple of weeks at a restaurant in Peabody, the halfway point between them. When the baby was born, Bridgette would tell her things she needed for the baby and Wife would shop for them. Conversations were great. The couple would also facetime with Husband and Wife. Wife would arrange surprise trips for Husband to go see John and Bridgette. Wife denied that she told Husband when John wanted to introduce Bridgette to them that the meeting had to take place at a Dunkin Donuts and for ten (10) minutes maximum. Wife testified they met in Peabody all the time. Wife testified neither she nor Husband attended John and Bridgette's engagement party. Wife testified she did not refuse to go, she doesn't

think they got invited and she doesn't know if they even had an engagement party. Wife testified she had nothing to do with the decision not to give John money for his second wedding. Wife testified it was not because she refused him. Wife testified she spent over $50,000 on John's first wedding. Wife testified Husband told John to use the $150,000 he had gotten from his grandfather. If Husband testified any differently, it would not be true. Husband and Wife attended John and Bridgette's wedding. Wife testified Husband would not be telling the truth if he testified she would not let him have a close relationship with his son.

Wife testified the incident that caused them to separate was not when Husband came home from the Providence College basketball game. Wife testified Husband is mixing up two nights. Wife denied checking Husband's phone after the game and seeing a text message from Husband's son thanking him for buying dinner. Wife also denied she confronted Husband because she did not want him to be in contact with his son and that he was doing it behind her back. Wife testified Husband did not pack a bag and leave the house. He left for work on February 6th as he typically did with his briefcase. He did not come back to the house because Wife sent him a text telling him not to come back and informing him she had the locks changed.

Wife testified she started taking pictures and putting them in a package, like a journal, in 2018. Wife did not take any pictures of things she found for six (6)

months after 2017. Wife testified it was not until it led to abuse that she put them in drawers and told her siblings. Wife believes it was in the middle to the end of 2018, when Husband became physical, that she addressed sealed letters to her siblings to tell them where the keys to the drawers were. The drawers contained a folder of pictures and notes about what she knew about Dr. Greineder and what he had done to his wife. Wife did not put them in a safe deposit box as previously testified to.

Wife was asked if she thought Husband might kill her like Dr. Greineder did to his wife. Wife testified when she became aware of Dr. Greineder's story, she told Husband several times, and by text message as well, just in case he was thinking of doing anything to her, that she had pictures as assurance. Wife testified she did not ever file any complaints against Husband with the police or anyone else. Wife also testified the parties discussed their oral divorce agreement in July 2019. They were going to file a nominal divorce to remain friendly and maybe even date. Wife testified the couple did date and they went to Tyler Point a few times. Wife testified this was in 2019 when she first asked him for a divorce, and he had not become physical yet. Wife testified she asked Husband for a divorce a second time, a year after. The second time was when things escalated and he became physical. Wife testified Attorney Lynch was supposed to file the

paperwork for the divorce in July 2020 with Wife as the plaintiff. This never happened.

On redirect examination, Wife testified she suggested and Husband agreed that the couple hire Attorney Lynch to put their agreement in writing and file their paperwork. Wife testified Attorney Lynch's office prepared and emailed her divorce paperwork with Wife as the plaintiff. *(See, Defendant's Exhibit EE, full).* Wife testified this was done in furtherance of the oral agreement she had with Husband. Wife testified Attorney Lynch never prepared an agreement for her to sign for the division of all assets 50/50 and she was not comfortable with that.

Wife testified Husband liked to go out for dinner, and that going out to dinner rather than Wife cooking was never a problem between them. Wife never had an issue with Husband going out to dinner. Husband did not let her turn on the stove for fear the flames would discolor the stove. Wife sent her Husband many loving texts. She does not have any of the cards she gave Husband. The cards were his and she did not go looking for them. Wife does not know what Husband did with the cards she gave him. Wife testified that none of the images or web site searches she submitted were hers or done by her. Wife testified Husband also had notes on his phone about other woman and notes about what they looked like, such as "beautiful fakes."

Wife testified she did not black mail her Husband for the 50/50 agreement. Wife testified she got an inkling from talking with her Husband on June 29, 2020 that he was not going through with their oral agreement. Wife called Attorney Lynch and they spoke on June 30th. She told Attorney Lynch she thought Husband was changing his mind. Wife sent text messages to her Husband asking what was happening and she did not receive a response. Wife testified she received an email from Attorney Lynch indicating that because so much time had passed, he filed for divorce on behalf of Husband. Wife testified that there was an email exchange between her and Attorney Lynch. She received an email from Attorney Lynch on June 29, 2020 @ 5:20 p.m., and she responded to him that same day @ 5:59 p.m. *(See, Defendant's Exhibit FF, full).* Wife testified she was served with the divorce on July 13th.

Wife testified the units they rented in Florida did not have a reflection on how she felt about Husband. Wife testified they were very close and loving. They did a lot together. Up to that point he was a wonderful, loving, and excellent Husband. From Wife's perspective, the couple was going to spend their golden years together. Wife testified the testosterone or pornography demon invaded their lives and changed Husband and destroyed their marriage.

On re-cross, Wife testified, despite what she found in 2017, she tried to hold onto her marriage, but Husband was changing. Wife testified she would have been

the plaintiff in the divorce because she asked Husband for the divorce. Wife testified she never filed for divorce because Attorney Lynch never filed it. Wife denied the complaint that she received from Attorney Lynch's office was sent to her weeks prior to June 29th. Wife worked with Attorney Lynch on Husband's termination of alimony case. She testified she did not know Attorney Lynch represented Husband as part of his first divorce. Wife was aware, however, the firm Husband used was McIntyre, Tate & Lynch.

Wife denied the paperwork was prepared for her to file on her own behalf. Wife testified the couple went to dinner together at the Rhode Island Country Club in celebration of their wedding anniversary the day after the July 4th weekend. Wife testified Attorney Lynch sent her the paperwork to come sign on July 3rd. Wife testified she felt duped when Attorney Lynch filed it with the Court without filing it for her. Wife testified she had no choice but to file for divorce because Husband was becoming abusive physically and the pornography was getting worse, not better. It had gotten to the point where she had to leave. Wife denied she is using the pornography to blackmail her Husband. Wife testified she would have no reason to do so because she is a co-owner of all Husband's assets, including his pre-marital assets. Her name is not on his pension, however. Wife testified Husband's pre-marital assets were made marital because Husband had Paul St. Onge put Wife's name on them as co-equal, co-joint owner. Wife testified

she believes Husband is entitled to keep $1,300,000 he had in his pension before they got married. Wife testified she believes the entire estate is worth approximately $12,000,000. Wife testified to her opinion that the only pre-marital monies is the $1,300,000 from Husband's pension and he can have that.

Wife called John Barrett, Jr. as an expert witness for the purpose of rendering an opinion as the current and premarital value of RIMI and Husband's interest in RIMI. Mr. Barrett's qualifications as an expert witness and the admissibility of his reports were stipulated to by Husband. *(See, Defendant's Exhibits GG, HH, and II, full).* Mr. Barrett was retained to give an opinion as to the value of RIMI for the dates of June 30, 2006 and June 30, 2021. As step one, Mr. Barrett initially submitted a document request list and questionnaire. Mr. Barrett received relevant documents requested. The questionnaire is about 12 pages, 60-70 generic questions, of which a lot of the questions may not be applicable. The questionnaire is intended for company management to complete to cover his bases as to what he should be looking for and looking at. Mr. Barrett did not receive a completed questionnaire in this case. Mr. Barrett requested of Wife's counsel to speak to the COO and CFO at RIMI. Mr. Barrett never got that opportunity, but he did speak with the CPA for RIMI, Emilio Colapietro of DiSanto, Priest & Company (hereinafter "DPC"). Mr. Barrett testified DPC has been the accounting firm for RIMI for approximately 18-24 months.

RIMI is a medical imaging practice with approximately twelve (12) locations throughout Rhode Island. According to RIMI's website it has seven (7) hospital partnerships. Mr. Barrett reviewed financial statements and federal corporate tax returns prepared by RIMI's accounting firms for years 2016-2020. Mr. Barrett also reviewed financial information for RIMI provided through June 30, 2021 and a financial forecast for the company for 2021.

Mr. Barrett testified the standard of value varies by assignment. For purposes of this Rhode Island divorce case, Mr. Barrett commonly uses the fair market value (hereinafter "FMV") standard. FMV is defined by the IRS. Mr. Barrett testified FMV is the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy or the latter is not under any compulsion to sell, with both parties having reasonable knowledge of relevant facts. Mr. Barrett testified his value of Husband's 2.1 percent equity interest in the common stock on a non-controlled basis of RIMI is approximately $1,229,000. Mr. Barrett testified compulsion to buy or sell means the parties are free to transact without any undue outside influences, for example if someone was cash strapped and they needed to sell something quickly.

In arriving at that value, Mr. Barrett reviewed the historical balance sheets and income statements. He then made normalization adjustments to the income

statements and balance sheets provided. In this process some items are restated to market values and others are eliminated as non-business, non-necessary or discretionary. For example, in this case owner physician compensations were adjusted downward to what was believed to be FMV and there was a rent expense adjustment to FMV because a RIMI subsidiary owns three (3) of the properties they operate out of. Depreciation was also adjusted based on historical capital expenditures over five (5) years. If there were charitable contributions, they would not be considered as they are a discretionary/non-necessary expenses.

Mr. Barrett determined RIMI was negatively impacted by Covid, and the year 2020 was down based on the historical data. RIMI performed well in the years 2016, 2017, 2018 and 2019. Based on the forecast provided by RIMI's accountants, Mr. Barrett opined the company would perform like it had through those pre-Covid years. Using a capitalization rate of 16%, Mr. Barrett opined the value of RIMI in total was $91,454,000 after the normalization adjustments.

Mr. Barrett explained the physician owner salary normalization adjustment. Mr. Barrett testified it is an appraiser's job to analyze and adjust to market if compensation is not at market. In the case of RIMI, compensation paid for 2016 - 2019 was high. Profits were being distributed out as bonuses to owner physicians at year end. According to RIMI's CPA, in 2020 RIMI adjusted compensation of owner physicians downward to be more in line with non-owner physicians. The

owner physicians also then receive a profit distribution at year end. *(See, Defendant's Exhibit HH, page 49, full).* In 2019, for example profits were paid out as part of salary. Thus, Mr. Barrett anticipates Husband will be receiving a distribution before April 15th, the amount and timing of the distribution is undetermined at this time.

Mr. Barrett used an income method to determine the value of RIMI. He considered market data, but it was not helpful in this case. He also considered the adjusted book value method, but it was much lower than the income value. For the income approach, Mr. Barrett looked at the historical after-tax cash flows of RIMI and used them to predict expected future cash flows of the business. Mr. Barrett testified, in his opinion, the historic data for RIMI was a strong indicator of the practice's future performance. Mr. Barrett testified the 16% capitalization rate he used in this case, was a little bit on the lower side, but appropriate based on the associated business and company risk. Mr. Barrett noted Husband's ownership interest in RIMI was 2.1%. Based on that ownership level, he discounted the capitalization rate by 20% because with that amount of ownership interest he lacked control of the business and he discounted the capitalization rate an additional 20% as a marketability discount.

Mr. Barrett's report included the balance sheets provided by RIMI *(See, Defendant's Exhibit HH, page A-2, full),* as well as adjustments he made to the

balance sheets based on real estate appraisals provided by Attorney Kirshenbaum. *(See, Defendant's Exhibits HH, page A-3, full).* Mr. Barrett's report also included the historical income statements provided by RIMI *(See, Defendant's Exhibit HH, page A-4, full),* as well as adjustments Mr. Barrett made to those financial statements. *(See, Defendant's Exhibits HH, page A-5, full).* On page A-17 of his report, Mr. Barrett explained he arrived at the overall current value of RIMI, which he estimates at $91,454,000. From there Mr. Barrett reduced that amount by the 20% marketability discount and by the 20% lack of control discount, to arrive at a figure of $58,530,560 of which Husband has a 2.1% interest in to arrive at $1,229,000.

Mr. Barrett also testified the FMV of a 2.1% interest in RIMI as of June 30, 2006 is approximately $465,000. *(See, Defendant's Exhibits II, full).* Mr. Barrett testified the value of RIMI has grown from approximately $34,000,000 in 2006 to approximately $91,000,000 in 2021. Mr. Barrett explained to be consistent he used the same methodology for establishing value in his analysis of both years. For the 2006 valuation, he used company financial data from 2004 and 2005 provided by RIMI's accountants, used the same normalization analysis, and applied the same discounts for marketability and lack of control.

Mr. Barrett sought to conduct a management interview with RIMI. He did not meet with RIMI's COO or CFO and he would have preferred to do that, but he

did conduct a sort of management interview by meeting with RIMI's CPA. Mr. Barrett also testified part of the questionnaire that was not completed asked about plans for sale or acquisitions. Mr. Barrett was not focused on the issue of RIMI acquisitions. Mr. Barrett testified he inquired of the CPA firm on whether, to his knowledge, RIMI had any negotiations to sell the company to a larger such as Lifespan. Mr. Barrett testified he was advised as far as the accountant knew, they had no indication that there was anything going on in that area. Mr. Barrett testified Attorney Kirshenbaum informed him of a write up in the Providence Business news that there may be discussions between RIMI and another diagnostic services agency, XRA. Mr. Barrett testified he would have liked to have known about it.

On cross examination, Mr. Barrett testified he is standing by his reports. Mr. Barrett testified that he is not suggesting that his report is incomplete or inaccurate because he did not meet with RIMI's COO or CFO. While Mr. Barrett would have preferred to meet with them, he is of the opinion he had enough information to go forward with his valuation, and he did. For the 2006 valuation, Mr. Barrett used a 2.1% ownership interest in RIMI for Husband. Mr. Barrett testified that if Husband had a greater ownership interest in RIMI in 2006, it would change that value. Mr. Barrett opined that the value would change by multiplying his ownership percentage to the overall value of RIMI. Thus, if Husband had an

ownership interest greater than 2.1%, this would increase the value of his interest in 2006, and it would reduce the marital value of this asset. Mr. Barrett added that he attempted to establish what Husband's equity interest in RIMI was in 2006, but he was not provided with that information by RIMI's CPA.

As part of his analysis, Mr. Barrett reviewed the three (3) RIMI shareholder purchase agreements. Mr. Barrett was referenced to provisions in the agreements relative to the purchase price of company stock. Mr. Barrett testified he is aware of the difference in value he provided in his report as opposed to the values assigned by the shareholder agreements. Mr. Barrett's valuation of Husband's stock in RIMI is based on his percentage of ownership in the FMV of RIMI. Mr. Barrett's valuation of Husband's interest is not based on the buy/sell price set forth in the shareholder agreements. Mr. Barrett referenced the shareholder purchase agreements so as not to be misleading. Mr. Barrett indicates in his report that there has been a company history, that when physicians are bought out, they are paid in accordance with the terms of the shareholder agreement. Mr. Barrett cites in his report transactions in 2019 and 2020 that took place based on the financial statements provided. Mr. Barrett testified he was aware of and agreed that the value of Husband's 2.1 percent interest in RIMI in accordance with the December 31, 2020 shareholder agreement's annual valuation prepared by RIMI's CPA firm

would be $366,200, rather than the FMV he established at $1,229,000. Mr. Barrett testified they are two different outcomes.

Mr. Barrett also testified that coming up with a value of Husband's interest is not an exact science, it is an estimate. Valuations can change depending upon the capitalization rates and discount rates used among differing evaluators. Mr. Barrett again testified IRS rule 59-60 defines what FMV is, that is the value of something that exchanges hands between a willing buyer and a willing seller, with reasonable knowledge of relevant facts, when no one is under a compulsion to buy or sell. Mr. Barrett is aware that to be an equity holder in RIMI, a person would have to be a medical doctor. Mr. Barrett testified he believed there to be 25-28 non-owner physicians employed by RIMI. Mr. Barrett is aware that the buy in price of 2.1% of RIMI for a non-owner physician would be $366,200 as provided for by the buy/sell agreement. Mr. Barrett testified that the buy/sell agreement allows for a non-equity physician the opportunity to buy in at a price lower than FMV, which he testified was $1,229,000. Mr. Barrett testified he is further aware that exchanges have been happening below FMV on a regular basis and he documented such on page 1-60 of his report. He testified the rub is that he does not know if any of the selling physicians documented are FMV sellers with reasonable knowledge of the FMV of RIMI.

The Court inquired of Mr. Barrett as to whether the shareholder agreements constituted a compulsion under revenue rule 59-60 that could affect the FMV. Mr. Barrett indicated that it was not. Mr. Barrett testified that it is important that sellers have some understanding as to the value of what they are selling under the revenue rule in a FMV transaction, and he is suggesting they probably do not in these transactions. Mr. Barrett also opined, that if you leave certain parameters in the shareholder buy/sell agreements, RIMI physicians might be under a compulsion to sell. Mr. Barrett's opinion was that the question of whether RIMI physicians must sell under the formula prescribed in the agreements is a matter of legal interpretation. Mr. Barrett references language in the agreements providing for arbitration or circumstances where a seller, with knowledge of RIMI's FMV may go out and find an outside party willing to pay more.

On redirect, Mr. Barrett testified that based on RIMI's FMV, his expectation is that Husband would avail himself to sell his interest for a higher value if the agreements permitted him to do so. Mr. Barrett also testified that he did not receive any information to indicate Husband's ownership interest in RIMI was 5% in 2006. Mr. Barrett testified this information would not have changed either the 2006 or the current FMV of RIMI. In preparation of his report, Mr. Barrett had the value of RIMI as calculated by Kahn, Litwin in 2006 available to him under the shareholder agreement formula, but he did not have the equity percentage Husband

had in RIMI. As of December 31, 2020, RIMI had 51 owner physicians, but the valuation reports do not get into specifics about each owner's relative percentage of the total company. Mr. Barrett testified the valuation done for the shareholder agreements is not guided by revenue rule 59-60, and the valuation he did was to establish the FMV of RIMI, in consideration of revenue rule 59-60.

On further cross examination, Mr. Barrett was shown Plaintiff's exhibit 7. He was not sure if he had ever seen the document before from Kahn, Litwin dated January 3, 2006, but he acknowledged he was aware of the valuation amount of $100,302 for the year 2006. The exhibit provided a value of $1,003 per share. Mr. Barrett was also shown Plaintiff's exhibit 8, dated December 31, 2020. That exhibit provided a per share stock value of $3,662. Mr. Barrett testified, while he never had confirmation of it, it was his understanding Husband owned 100 shares of RIMI in 2006. He further testified he made the assumption that Husband owned the same number of shares in 2020. Mr. Barret testified, while he tried to find out, he did not know what the total number of owners were in 2006 and 2020 to establish Husband's ownership percentage in the company in those years. Mr. Barrett acknowledged that if Husband owned a greater percentage of RIMI in 2006, than he does currently, this would have an effect on the bottom line value of Husband's 2006 and 2020 ownership interests.

Husband was briefly re-called to testify in Wife's case. Husband identified two documents. He was shown and acknowledged as his, an income tax K-1 form prepared by Kahn, Litwin, Renza. The K-1 indicated Husband's ownership interest in RIMI in 2006 was 2.409 percent. *(See, Defendant's Exhibit JJ, full).* Husband also testified Mr. St. Onge would give him an annual statement of investments that he managed for him since 2006. Although Husband had a vague recollection of his 2006 investments, he identified a document that looked familiar to what he received from Mr. St. Onge in the past and he recognized the American Funds contained therein as something he held as an investment. *(See, Defendant's Exhibit KK, full).*

Wife was called in rebuttal. Wife testified she just recently came across the two (2) exhibits shown to Husband today. Wife testified to her belief that the document she found, Defendant's exhibit KK, demonstrates that the premarital value of Husband's assets managed by Mr. St. Onge is $700,000 less than what Mr. St. Onge testified to.

Wife reasserts that Husband did not voluntarily leave the marital home. Wife testified he was verbally abusive towards her, worse than normal, and she discovered two vile and disgusting pornographic pictures and that was the last straw for her. Wife testified she locked the doors after he left that morning

because she was afraid of him. Husband never once asked her for a divorce and never expressed any unhappiness.

Wife testified she called a locksmith to change the locks. She had seen on television and read several articles about doctors who had killed their spouses, such as Dirk Greineder. Wife testified there were five or six different doctors with the same scenario with pornography addictions or online cheating who ended up killing their wives. Wife testified that doctors or people kill their wives every day, probably every three minutes. Wife testified the night before Husband left, she went into the other room and put a hamper on the other side of the door. Husband's testimony that he packed a suitcase and left the house was not truthful. Wife testified she asked Husband for a divorce three (3) times, the first was in July 2019. Wife reiterated prior testimony that the couple discussed what each of them wanted sitting on the bed in the master bedroom. Wife testified she was still sleeping in the master bedroom at that point in time.

Wife testified to a text message exchange with Husband on February 6, 2020. Wife told Husband to tell her what he wanted in a suitcase. She told him he was threatening her, and she did not feel safe with him in the house. Husband responded for her to take a ride and he would be in an out of the home. She told him she would put the suitcase in the garage. She told Husband not to think he was going to harm her like Dr. Greineder, who verbally and emotionally abused

then killed his wife over the exact type of addiction to online pornography and Viagra. She communicated to Husband that she had documentation and a journal. She mailed sealed letters to her siblings with the location of where she kept the journal and the key to get access to it. She gave her siblings instructions only to open the letters if something were to happen to her. *(See, Defendant's Exhibit MM, full).* Wife does not recall if Husband ever responded to her texts. Wife left the home that day and Husband came to get his suitcase. Wife testified she would leave the home whenever Husband needed to access it. She would check the security cameras and return after he had left. Wife hired a security company to be at the house when Husband was there, because her sister and brother felt uncomfortable doing it.

Wife testified she and Husband came to an oral agreement in July 2019 to resolve this case while they were sitting together in their bedroom. This was after the 2017 discussion they had in the Shaw's parking lot. As of July 2019, there wasn't physical abuse yet, it was just the pornography that she found. They both civilly told each other what they wanted, and they both agreed to what the other wanted. They came up with their own special agreement and Wife suggested using Attorney Lynch to put it in writing. Husband agreed Wife would file as plaintiff. Wife testified Husband asked for another chance and they did not go forward at that point.

Wife testified they ended up contacting Attorney Lynch in May 2020, and she expected the agreement they reached in July 2019 to be honored by Husband. Wife testified she was never told Husband was not going to honor their oral agreement. Paul St. Onge was Wife's accountant for approximately four (4) years, and thereafter Mr. St. Onge worked only as Wife's wealth advisor. Mr. St. Onge never contacted Wife prior to Husband filing for divorce. Wife testified on July 9, 2020, two days after Attorney Lynch sent her divorce paperwork where she was listed as the plaintiff, she got a letter from him indicating he was filing the action with Husband as the plaintiff. *(See, Defendant's Exhibit NN, full).* Wife testified she had no knowledge prior to receiving the letter that Attorney Lynch was discussing both her and Husband's finances with Husband and Paul St. Onge.

Wife again testified about her business. Wife testified Husband gave her the money he received from his Aunt Jean. She testified the couple went to TD Bank together, and the money was deposited into an account opened in her name. Wife testified Husband never suggested that she needed to pay him back. Wife testified she was copied on an August 29, 2018 email from Husband to Attorney Lynch. *(See, Defendant's Exhibit OO, full).* Wife testified Attorney Lynch also sent a letter on her behalf to Husband's daughter, Candace, her law firm, and Chubb Insurance Company because Candace was cyberstalking Wife and her business. *(See, Defendant's Exhibit PP, full).*

Wife testified about a motion filed by Husband in which he asserts she called Candace's office hysterical and screaming stating there was a family emergency. Wife testified she never harassed Candace and Husband's accusations are a lie. Wife again testified she had nothing to do with putting pornography on Husband's computer. Wife testified Husband thanked her for confronting him for his bizarre addiction. Wife testified Husband was also addicted to testosterone and Cialis.

Wife testified on the issue of alimony. Wife is seeking $10,000 per month until she reaches age 67 ½ so that she can withdraw funds thereafter without penalty or high taxes. Wife does not intend to stay living where she is currently at because she does not feel safe there. Wife testified there was an incident recently where a husband held a gun to his Wife's head. Wife intends to purchase a home or condominium and she believes she will need approximately $525,000 from what she has seen online. Wife is also seeking an equitable distribution of 60% of the marital estate. Wife testified Husband wrote her a note indicating the divorce was not her fault. Husband wrote that he was going to beat his bizarre addiction, and that she was a wonderful care companion and partner. Wife testified they talked for many years about a time when she saved Husband from choking by giving him the Heimlich maneuver while at Capriccio's restaurant. Husband never complained to Wife about laundry not being done. Wife testified Husband never

complained that they were not being intimate often enough. Wife testified their intimacy was not lacking.

Wife testified she planned many surprise getaways, such as to Nantucket or Newport throughout the marriage. Wife disagrees that the reason for the divorce was how she treated Husband's children. Wife testified she had a fabulous relationship with her stepson, they were very close. Wife testified she was closer to him and both his wives than Husband was. Wife testified Husband's family has a history of being estranged from one another for various reasons, none of which had to do with her.

Wife testified Husband's statement that she became upset with him for having seen his son at a restaurant and paid for his dinner was not true. Wife testified it was not a surprise Husband bumped into his son because he knew they were coming down from Maine on the 4th. It was the following night, on the 5th, that she and Husband had their episode leading up to her locking him out of the house on the 6th. Wife testified she had access to Husband's computer when he was at work, but she never tampered with the search history on Husband's computer. Wife testified Husband would typically be on it in the evenings. She had access to Husband's cell phone for about ten (10) minutes when he was taking a shower at night. Wife would pay bills and do the couple's banking during the day. She used the computer to do so. Wife testified Husband, in August, filed a

false police report against her for hacking and bank fraud, for transferring money from their money market account. Wife transferred the money to pay a retainer to her first lawyer.

Wife testified she heard Mr. St. Onge testify that the value of Husband's investment accounts was approximately $1,700,000 in July 2006. Wife testified to her belief that the report she found contradicts his testimony. *(See, Defendant's Exhibit KK, full).* Wife testified she believes the value of the marital estate is $12,500,000, and that includes Mr. Barrett's valuation of RIMI and consideration for Husband's premarital assets of $1,057,000. Wife also testified Husband was involved in the planning for Eleanor's wedding. Wife testified they made the invitations together and more than one half the guests were Husband's friends and colleagues. *(See, Defendant's Exhibit QQ, full).*

On further cross examination by Attorney Lynch, Wife indicated there was no court order keeping Husband out of the house, but that none was needed because he could not get in as she had changed the locks. Wife testified she had no fear that Husband would harm her sister or brother, and that is why she reached out to them to see if they would be at the house when Husband needed to get in. Wife referred to Husband as a domestic abuser, not that he would harm anyone else. Wife acknowledged the couple has been out at restaurants after February 2020 when he was no longer living in the house. Wife testified she knew Husband had a

criminal conviction against him for beating his first wife. Wife again testified that she had nothing to do with Husband's strained relationship with his children.

On further re-direct, Wife testified she developed fear of her Husband because she knew he had been convicted of domestic violence against his first wife. His personality changed with testosterone use and his pornography addiction and he was getting more aggressive toward women. Wife also knew about the actual death of women who were in her same circumstances.

## ANALYSIS

### Children: Custody, Possession & Parenting Time

The parties do not have any minor children.

### Assets & Debts

It is well established in Rhode Island that the equitable-distribution process requires three steps. The trial justice must determine which of the parties' assets are marital property and which are non-marital property. The trial justice must consider the factors enumerated in R.I. Gen. Law §15-5-16.1, and s/he must distribute the marital property. *Ruffel v. Ruffel, 900 A.2d 1178 (R. I. 2006); Vanni v. Vanni, 535 A.2d 1268, 1270 (R.I. 1988).* The factors enumerated in R.I. Gen. Law §15-5-16.1, Assignment of property, are in relevant part:

(1) The length of the marriage;
(2) The conduct of the parties during the marriage;

(3) The contribution of each of the parties during the marriage in the acquisition, preservation, or appreciation in value of their respective estates;
(4) The contribution and services of either party as a homemaker;
(5) The health and age of the parties;
(6) The amount and sources of income of each of the parties;
(7) The occupation and employability of each of the parties;
(8) The opportunity of each party for future acquisition of capital assets and income;
(9) The contribution by one party to the education, training, licensure, business, or increased earning power of the other;
(10) The need of the custodial parent to occupy or own the marital residence and to use or own its household effects taking into account the best interests of the children of the marriage;
(11) Either party's wasteful dissipation of assets or any transfer or encumbrance of assets made in contemplation of divorce without fair consideration; and
(12) Any factor which the court shall expressly find to be just and proper.

The Court's analysis of the statutory factors is as follows. The parties have been married for a total of fifteen (15) years. They last lived together in February 2020. The Court heard approximately two full days of testimony by the parties primarily on the issue of fault. Both parties assert the conduct of the other led to the breakdown of the marriage. As will be discussed, the Court is convinced both parties share equal responsibility for the breakdown of their marriage by their conduct and their spoken words to the other. This is a case where both parties did not hear enough, care enough or consciously chose to ignore comments and clues of the other that resulted in an erosion of their marriage over time. At present, the

parties are consumed only with the negative parts of their marriage and assigning fault.

Wife testified the parties had a loving and blissful marriage until she discovered Husband was looking at pornography and had other internet accounts where he followed women in late 2017. It was at that time, according to Wife, that the two began to experience problems. Wife testified Husband also had been taking testosterone, which they had discussed and that she was aware of. The couple began to argue increasingly and Husband began to demean Wife. He had also become increasingly aggressive and abusive to her. Wife attributes this to Husband's pornography addiction and the testosterone. Wife asserts there was unwanted touching, Husband touching her breasts, making sexual comments, and flipping her robe open. Husband made her feel as though he was only interested in her body parts. Husband has acknowledged that he was looking at pornography, that he called his Wife names that were demeaning and insulting and that there were incidents as Wife explained for which he later apologized. Wife testified she became increasingly fearful of her Husband and fearful he was going to hurt her. Wife likened her husband to Dr. Greineder who, Wife read about on-line, and who murdered his wife due to a pornography addiction. Wife thereafter began to compile a file about Husband, and she notified her siblings where to locate the file should something happen to her.

Husband asserts Wife was at fault for the divorce because she changed almost immediately following their marriage. Husband described his Wife as cold and impersonal and that she would get angry and not speak to him for weeks at a time. Husband testified Wife started sleeping in a different bedroom almost immediately after the marriage. Wife counters that she only left the bedroom in the middle of 2018. She left for fear Husband was going to harm her and she would put a hamper in front of the door to block him out. The couple also traveled frequently. Wife testified it was typical for the couple to get units with two bedrooms. Wife stated this was because they needed the space and had different sleep times as Husband usually would get up early and sometimes stay up late. Although Wife denied that she and Husband slept in different rooms prior to 2018, the testimony regarding their travel habits supports Husband's assertion that Wife would sleep in a different room at the marital domicile. The circumstances of different sleeping habits between Wife and Husband existed all the time, not just while the parties were on vacation. Husband left many notes for Wife, and while the notes are not dated, they indicate the time Husband wrote them, usually early in the morning. Wife also testified Husband would be in the basement on his computer until late in the evening.

Husband asserts Wife made him feel like he was only an ATM machine to her. Wife made a comment to him following the wedding to the affect, "and all

my worldly possessions". Wife testified she may at one point used that phrase "all of my worldly possessions" and if she did, she said it in a joking manner. It is apparent from Husband's testimony that he genuinely took Wife's comment differently and he did not appreciate the humor in it. Husband asserts Wife spent large sums of money without consulting him, and they had different goals and priorities in that regard. Wife did not contribute financially throughout the marriage, but for a very short period at the beginning. Husband expended a lot of money on her business.

Husband played a significant role in Eleanor's life, Wife's daughter from a prior relationship. Husband paid for all of Eleanor's secondary private school, college, graduate school, medical school, and her living expenses. Eleanor is now a physician seeking to specialize in radiology, following in Husband's path. Husband adopted Eleanor when she was an adult. Eleanor has since gotten married and Husband paid for the wedding expenses. Husband did not attend Eleanor's wedding fearful that Wife would have a security guard present that would disturb the wedding, or that Wife would falsely accuse him of something. Wife acknowledges that Eleanor and her Husband share a mutual fondness, neither has spoken a negative word about the other. Without any doubt, Husband contributed financially, emotionally and as a mentor for Eleanor, and had a tremendous positive impact in helping Eleanor, who through her own hard work,

dedication, and efforts, has achieved and will continue to achieve great successes in her personal and professional life.

Husband also asserts Wife interfered with the relationship he had with his own children. He testified Wife created tension with his daughter Candace, and had difficulty accepting John's second Wife. Wife testified any acrimony between Husband and his children had nothing to do with her. Wife testified she had a good relationship with John and both his first and second wife. Wife testified Husband had issues with Candace after her college graduation over money issues relating to her trust fund. Husband asserts he did not see Candace for some time after her graduation because Wife told her not to contact them until she apologized to them. Concerning to this Court, and lending credibility to Husband's testimony, Wife acknowledged calling Candace at her work in 2021. Wife indicated she wanted to explain to Candace she had nothing to do with accusations allegedly made by Husband during a case involving his former wife. The Court does not find Wife's explanation behind this call credible. The phone call, despite however good intentioned Wife believes it to have been, would certainly have the effect of driving a wedge between Husband and his daughter. Husband also testified about an argument the parties had on or around February 6, 2020, the night before he last stayed at the marital domicile. Husband cites the reason behind this fight was because Wife accused him of seeing John behind her back. Husband stated he left

for work in the morning and was not intending to return. Wife denied this, and stated her Husband was abusive and threatening to her and she locked him out after he left for work the next morning. Wife corroborates Husband's testimony that the couple had a fight, and in fact apparently fought two nights. She did not, however, offer to the Court what precipitated the couple's argument, but rather she testified Husband was conflating two separate incidents that night and the night before. The Court finds Husband to credible as to the reason as to why the couple had argued that night. On cross examination, Wife also testified while she did not specifically recall asking Husband for a divorce the first time in 2017, but she may have said it in an argument.

The contribution of each of the parties during the marriage in the acquisition, preservation, or appreciation in value of their respective estates is also a factor. It is uncontroverted that Husband was the sole source of income throughout the marriage, and the accumulated marital estate is solely from money earned by Husband. Wife was laid off in or around the first year of the parties' marriage and has not earned any money since that time. Wife testified Husband told her she did not have to work because the money she earned would just be consumed by taxes. Wife also testified she wanted to start and build a business. The business to this date has not generated any money. It is clear from the testimony that approximately $1,000,000 or more was expended in furtherance of Wife's business

interest. This amount included approximately $300,000 from an investment account Husband transferred to Wife after the marriage, $150,000 from an inheritance Eleanor received from Husband's father, $180,000 Husband inherited from his Aunt Jean, Wife's inheritance money of approximately $45,000, and other money from the marital accounts. Money was spent to secure an apartment for Wife in New York for approximately two years, renovations to the basement for an at home office, fabric, manufacturing, inventory, legal fees, web design, and developing marketing materials.

Wife testified she worked ten (10) hour days, seven (7) days per week on her business. She lived in New York City for approximately two (2) years in furtherance of her business, during which time she would sometimes travel home, and Husband would travel to her. Wife testified she contributed to the marriage assisting Husband with travel plans, social events, thank you correspondence and bringing him together with his son, John. She would accompany him at work events and business trips. The couple had a housekeeper who assisted with the laundry. They also had a landscaping company. The parties dined out most of the time.

Wife is 61 years old and in fair health. She has trouble with her knees and has had asthma since childhood. Wife has not had any income in over ten (10) years, however, she has an ability to work and earn based on the testimony she

offered with respect to her work ethic and details surrounding her business. Wife last worked as a Vice President of Sales and Marketing for Print Source. Husband is 71 years old and in good health. Husband, at present, earns a substantial and comfortable living, approximately $1,000,000 annually. Husband testified it was his intent to completely retire this year and support himself on accumulated assets. Husband has the greater opportunity to acquire future assets should he decide to continue to work, however, he is closer to the end of his work life than Wife is. There are substantial assets available for distribution where both parties will be able to maintain their current lifestyle if neither decided to work again in the future.

In deciding what should be an equitable distribution between the parties, a single statutory factor should not control a trial justice's decision. *See, Tarro v. Tarro, 485 A.2d 558, 561 (R.I. 1984). See also, Diorio v. Diorio, 751 A.2d 747 (R.I. 2000).* Conduct is not limited to bad conduct or marital fault but also encompasses good conduct during the term of the marriage. *Tarro @ 561.* In consideration of the length of the parties' marriage, the respective contributions made to the marriage by the parties, their respective contributions to asset accumulation and preservation during this fifteen (15) year marriage, their age and health, as well as all other factors explained herein, the Court is of the opinion that the marital estate should be divided 60/40 in favor of Husband.

RIMI

The value of Husband's RIMI stock is at issue. Wife filed a motion in limine, which the Court reserved decision on. The motion asserts that Husband should be precluded from arguing that Husband's RIMI stock holdings should be valued according to the RIMI's shareholder agreements. Wife asserted that as a matter of offensive collateral estoppel, Husband is precluded from re-litigating that issue in this case and that the value should be set based on the FMV of RIMI. In Husband's first divorce, Chief Judge Jeremiah determined the value of Husband's interest in RIMI based on the FMV of RIMI, and not on the provisions of the shareholder agreement. *See, John Cronan v. Diane Cronan, P1996-2268, Jeremiah, CJ, decided January 19, 1999.*

Wife called John Barrett, Jr. as an expert witness for the purpose of rendering an opinion as to the value of RIMI for the dates of June 30, 2006 and June 30, 2021, and the resulting stock value of Husband's interest. Mr. Barrett's qualifications as an expert witness and the admissibility of his reports were stipulated to by Husband. *(See, Defendant's Exhibits GG, HH, and II, full).* Mr. Barrett testified he valued Husband's 2.1 percent equity interest in the RIMI common stock on a non-controlled basis is approximately $1,229,000. Mr. Barrett also testified the FMV of a 2.1% interest in RIMI as of June 30, 2006 is approximately $465,000. *(See, Defendant's Exhibits II, full).* Accordingly, Mr.

Barrett determined the net marital value of Husband's interest in RIMI is $764,000.

Husband challenged Mr. Barrett's analysis in two respects. First, Husband raised the issue that he owned a greater than 2.1 percent interest in RIMI in 2006. Mr. Barrett testified this would not have the effect of changing his valuation of RIMI for that year, however, if Husband did it have a greater percentage, that would increase Husband's premarital interest and reduce the marital value. An income tax K-1 form prepared by Kahn, Litwin, Renza was introduced indicating Husband's ownership interest in RIMI in 2006 was 2.409 percent. *(See, Defendant's Exhibit JJ, full).* Applying a 2.409 percent ownership interest in RIMI for the year 2006, Husband's premarital interest in RIMI would increase to $533,171 under Mr. Barrett's analysis. *(See, Defendant Exhibit II, page 18, full).* This would have the effect of decreasing the overall marital value proposed by Mr. Barrett to $695,829, of which Wife would be entitled to a percentage.

Second, as he did in his first divorce, Husband asserts that his shareholder interest is defined by the shareholder agreements. Husband asserts the value of his RIMI holdings under the shareholder agreements is $366,200 currently and the premarital value of the date of marriage was $100,302. Accordingly, Husband proffers Wife is only entitled to a percentage of $265,898. Mr. Barrett testified he was aware of and agreed that the value of Husband's 2.1 percent interest in RIMI

in accordance with the December 31, 2020 shareholder purchase agreement annual valuation prepared by RIMI's CPA firm would be $366,200, rather than the FMV he established at $1,229,000. Mr. Barrett testified they are two different outcomes.

As part of his analysis, Mr. Barrett reviewed the now three (3) RIMI shareholder purchase agreements. Mr. Barrett was referenced to provisions in the agreements relative to the purchase price of company stock. Mr. Barrett testified he is aware of the difference in value he provided in his report as opposed to the values assigned by the shareholders agreements. Mr. Barrett's valuation of Husband's stock in RIMI is based on his percentage of ownership in the FMV of RIMI. Mr. Barrett's valuation of Husband's interest is not based on the buy/sell price set forth in the shareholder purchase agreements. Mr. Barrett testified he referenced the shareholder purchase agreements in his reports so as not to be misleading. Mr. Barrett acknowledged in his report that there has been a company history, that when physicians are bought out, they are paid in accordance with the terms of the shareholder agreement. Mr. Barrett cites in his report transactions in 2019 and 2020 that took place based on the financial statements provided under the shareholder agreement.

Mr. Barrett testified IRS rule 59-60 defines what FMV is, that is the value of something that exchanges hands between a willing buyer and a willing seller, with reasonable knowledge of relevant facts, when no one is under a compulsion to buy

or sell. Mr. Barrett testified compulsion to buy or sell means that the parties are free to transact without any undue outside influences, for example if someone was cash strapped and they needed to sell something quickly. Mr. Barrett is aware that to be an equity holder in RIMI, a person would have to be a medical doctor. Mr. Barrett testified that the buy/sell agreement allows for a non-equity physician the opportunity to buy in at a price lower than FMV. Mr. Barrett testified he is further aware that exchanges have been happening below FMV on a regular basis and he documented this fact on page 1-60 of his report. He testified the rub is that he does not know if any of the selling physicians documented are FMV sellers with reasonable knowledge of the FMV of RIMI.

Mr. Barrett testified to his opinion that the shareholder agreements did not constitute a compulsion under revenue rule 59-60 that could affect the FMV. Mr. Barrett testified that it is important that sellers have some understanding as to the value of what they are selling under the revenue rule in a FMV transaction, and he is suggesting they probably do not in these transactions. However, Mr. Barrett also opined, that if you leave certain parameters in the shareholder buy/sell agreements, RIMI physicians might be under a compulsion to sell. The question of whether RIMI physicians must sell under the formula prescribed in the agreements is a matter of legal interpretation. Mr. Barrett references language in the agreements

providing for arbitration or circumstances where a seller, with knowledge of RIMI's FMV may go out and find an outside party willing to pay more.

For several reasons hereafter discussed, the Court does not believe the doctrine of offensive collateral estoppel applies because of factual differences that exist today or that it should apply to this case because application of the doctrine would be inherently unjust. The decision by Chief Judge Jeremiah was rendered twenty-two (22) years ago. Husband was early in his working years and there was a much greater potential for RIMI to be sold or acquired by merger prior to Husband's retirement than there is today. Husband is now 71 years old and retirement is imminent and/or soon approaching. His contract is expiring at Brown University and he would by necessity revert to a staff radiologist after June, which he is not planning to do. He has been a member of the Board at RIMI and testified it is rare for anyone to work at RIMI past the age of 65. He testified it is his intent to retire this year. There is a far less likelihood at this stage of Husband's career that the value of his RIMI stock would be enhanced by merger, sale or acquisition, as opposed to twenty-two (22) years ago when Chief Judge Jeremiah heard and decided Husband's first divorce matter.

Further, the shareholder agreements were reviewed by the Court and, it is this Court's opinion they are clear in that, to perpetuate the corporation, provisions were made for the disposition of shares of stock among shareholders *upon death,*

*retirement or withdrawal from employment.* This provision is imminently applicable to Husband who is 71 years old and planning to retire. *See, Plaintiff Exhibit 9.* The shareholder agreements set the buy in/buy out price. The provisions of the shareholder agreement cite and are consistent with R.I. Gen. Law § 7-5.1-5, which provides in part,

> [i]f any shareholder becomes ineligible, he or she shall transfer his or her shares to an eligible person or offer them to the corporation for redemption at their fair-market value. If the articles of incorporation or the bylaws of the corporation restrict transfer of its shares, and transfer of the shares to an eligible person is prevented, the corporation shall redeem the shares of the ineligible shareholder, and compensate the ineligible shareholder in full for the fair-market value of his or her shares determined as of the date that the ineligibility occurred. *Nothing contained in these provisions is to be interpreted to prevent a shareholder and the corporation from making a binding agreement as to a method for determining the fair-market value or for determining what constitutes the fair-market value of his or her shares...*

It is this Court's opinion that the shareholder agreement is a binding agreement between RIMI and Husband upon his retirement, dictating the value of Husband's buy out value. To accept Wife's position would be inequitable in this circumstance, wherein she would receive a far greater value and portion of an asset that Husband is not likely to receive.

Mr. Barrett recognized, that if you leave certain parameters in the shareholder buy/sell agreements, RIMI physicians might be under a compulsion to sell. Applicability of the agreements is a question of legal interpretation. There is a history of employees cited by Mr. Barrett that have come and gone for a price consistent with the provisions of the shareholder agreements. He identified

transactions in 2019 and 2020 where there was an exchange within the terms of the shareholder agreement.

The Court does not accept the view of Mr. Barrett that doctors complying with the shareholder agreement may not have had full knowledge of the company's value. To the contrary, the shareholder agreements speak for themselves, and the accounting firm that sets values in accordance with those agreements clearly indicate the purpose for which the values are intended. Accordingly, the Court is satisfied that the doctrine of offensive collateral estoppel does not apply as the circumstances today are factually different than they were when Chief Judge Jeremiah considered the issue, and further that the doctrine should not be applied as it would be inherently unfair to Husband. The value of Husband's interest RIMI is accordingly to be set based on the terms of the binding shareholder agreement as proffered by Husband.

Marital/ Non-marital Assets

The assets at issue are Husband's RIMI retirement account with an approximate value of $8,374,485 as of June 30, 2021. *(See, Plaintiff's Exhibit 3, full).* Husband's Westminster Financial 401K (formerly Washington Mutual) with an approximate value of $276,972 as of August 31, 2021. *(See, Plaintiff's Exhibit 5, full).* A second Westminster Financial 401K with an approximate value of $798,377 as of June 30, 2021 in Wife's name. *(See, Plaintiff's Exhibit 12, full).* An

American Fund account with an approximate value of $105,518 as of September 30, 2021. *(See, Plaintiff's Exhibit 6, full).* A second American Fund in Wife's name with an approximate value of $53,870 as of June 30, 2021. A Santander Money Market Account with an approximate balance of $126,773. Cash of approximately $621,000 that was proceeds from the sale of the marital domicile. Cash that Husband received as an advance distribution at the end of the trial to assist his son. Wife's two motor vehicles. Husband uses a leased Lexus automobile.

Paul St. Onge, a self-employed CPA, and investment management advisor testified as to the premarital value of Husband's assets. Mr. St. Onge became acquainted with Husband in 1983, and with Wife in 2007 after the parties married. At one time he prepared tax returns for both parties; he still prepares Husband's tax returns. The Court found Mr. St. Onge testified without bias to either party and his testimony was accurate and reliable. Offered through Mr. St. Onge was a summary of Husband's assets as of June 30, 2006. *(See, Plaintiff's Exhibit 19, full).* Mr. St. Onge, in the normal course of his business, maintains a system that tracks transactions and the value of assets from the mutual fund companies daily. He has maintained these records back to the 1990's. Mr. St. Onge reviewed Husband's file and the last paper statements he could find were from 2003. He testified that the business practice over the years has changed and much of this

information is now transmitted electronically from the funds rather than through paper statements. Mr. St. Onge in the normal course of his business produces summaries for clients such as Exhibit 19. The document was retrieved from Husband's file and is one customarily prepared by Mr. St. Onge at or near the time dated thereon. Husband had several mutual funds accounts that Mr. St. Onge managed with a total premarital value of $1,755,506 as of June 30, 2006. Of that amount $1,371,588, designated as PRU, was the premarital value of Husband's RIMI retirement account. The amount of $122,740, designated as CBT, was the value of Husband's premarital interest in the Westminster account. The amount of $261,676, designated as AF, was the total of other investments Husband had at the time of the marriage. Mr. St. Onge explained, accounts designated as AF were used to fund the Westminster account in Wife's name. Accordingly, the Court finds the premarital funds totaling $261,676 were transmuted and the total value of Husband's premarital assets was $1,493,830. No evidence was presented as to the premarital value of the American Fund in Wife's name with an approximate value of $53,870 as of June 30, 2021. This account was a rollover of a 401K Wife had premarital and Husband testified he contributed to that fund as well during the marriage. There is also Husband's RIMI stock holdings with the net marital value subject to equitable distribution of approximately $265,898.

## Alimony

Husband is not seeking alimony and the Court finds he can support himself. Wife has made a request for alimony until she reaches the age of 67 ½. R.I. Gen. Law § 15-5-16, provides in part…

(1) In determining the amount of alimony or counsel fees, if any, to be paid, the court…shall consider:
(i) The length of the marriage;
(ii) The conduct of the parties during the marriage;
(iii) The health, age, station, occupation, amount and source of income, vocational skills, and employability of the parties; and
(iv) The state and the liabilities and needs of each of the parties.
(2) In addition, the court shall consider:
(i) The extent to which either party is unable to support herself or himself adequately because that party is the primary physical custodian of a child whose age, condition, or circumstances make it appropriate that the parent not seek employment outside the home, or seek only part-time or flexible-hour employment outside the home;

(ii) The extent to which either party is unable to support herself or himself adequately with consideration given to:
(A) The extent to which a party was absent from employment while fulfilling homemaking responsibilities, and the extent to which any education, skills, or experience of that party have become outmoded and his or her earning capacity diminished;
(B) The time and expense required for the supported spouse to acquire the appropriate education or training to develop marketable skills and find appropriate employment;
(C) The probability, given a party's age and skills, of completing education or training and becoming self-supporting;
(D) The standard of living during the marriage;
(E) The opportunity of either party for future acquisition of capital assets and income;
(F) The ability to pay of the supporting spouse, taking into account the supporting spouse's earning capacity, earned and unearned income, assets, debts, and standard of living;

Wife is denied alimony permanently based on the following. The parties have been married for fifteen (15) years. As discussed herein, the conduct of both parties

equally that led to the breakdown of this marriage. Wife is sixty-one (61) years of age and Husband is seventy-one (71) years old. While Husband earns a substantial living at this juncture, Husband testified he is planning to retire in June, and he is going to support himself in retirement off his accumulated assets. Even if Husband does not retire as planned in June, he is clearly of an age where retirement is forthcoming, sooner than later. The Court's decision to deny alimony to Wife is not based on Husband's testimony that he is retiring in June, but rather on Wife's independent ability to support herself in the future.

Wife has not worked in private industry since early on in this marriage. Wife asserts that industry changes make her skills outdated and makes her unemployable in the market. There was no testimony Wife had the desire to return to school in furtherance of her education. At the time she left the workforce, Wife held a position of Vice President of Sales and Marketing for Print Source. Wife was working at the time the parties married and her daughter Eleanor was of school age. After having been laid off, Wife's decision not to return to third party employment was driven in part by the fact that she desired to start her own business.

Wife's testimony makes it clear that she has the skills and ability to be employed if she so chooses. While she has not worked in private industry since a year into her marriage, she testified she worked ten (10) hours per day, seven (7) days per week on her business. She worked in New York and Boston on various aspects of the business, and on her own, made national and international contacts in furtherance of

her business efforts. Wife regularly worked from home on a computer. Additionally, should Wife not seek employment, as the expert testimony provided, Wife is nearing social security age and she has those benefits available as early as age 62. Additionally, using a conservative rate of return on investments, Wife will have sufficient assets to adequately support herself at a standard of living she enjoyed during the marriage and she has no debt.

The Court's decision is supported by the relevant and credible testimony of Jane McAuliffe, CDFA accepted as an expert witness relating to divorce financial planning and analysis. Ms. McAuliffe's opined that Wife does not need an award of alimony to support herself in the future. The Court found Ms. McAuliffe's testimony helpful, reliable, and credible. Ms. McAuliffe works with divorce clients to navigate division of assets and related budgeting and cash flow issues. She utilized a three-part approach, first identifying expenses and creating a budget, second identifying the marital estate, and third doing income and financial planning, money management, and tax planning. Ms. McAuliffe formulated a financial plan for Wife based on a life expectancy of age of 90, suggested assets of $3,946,605 from the marriage, and a listing of expenses identified in Wife's DR-6.

Ms. McAuliffe applied a conservative market rate of return on investment for Wife of 5.3%. The rate of return of 5.3% was based on actual ten (10) year rates of return for the investment categories suggested. Ms. McAuliffe opined that

Wife would have a 100% probability of reaching or meeting her income needs with a conservative 5.3% rate of return. McAuliffe analyzed Wife's expenses as provided on her DR-6. Ms. McAuliffe appropriately adjusted some of Wife's living expenses. She considered estimated tax payments of $19,000 per year and health care costs of $5,716 per year for a total annual expense of $163,000. The analysis provided for an inflation rate of approximately 2.2% per year.

Ms. McAuliffe also opined that if Wife were to receive the $3,954,000, her income from a return on investment at 5.3% would provide for her with sufficient income with a zero short fall. The analysis also assumed Wife would not work or earn any income, but that she would be eligible to collect $1,344 per month in social security payments starting at age 62. If Wife were to wait until age 67 to collect social security, that amount would increase to $1,921 per month. The plan considered minimum distributions starting at age 72 under the tax code, and the tax implications associated with the distributions. Ms. McAuliffe opined that at age 90, Wife will still have assets in the range of $5,500,000, based on a budget of $163,000 adjusted for inflation because she is spending about 1% less than her annual rate of return.

Ms. McAuliffe testified while her analysis used a conservative capital preservation rate of return of 5.3% for all assets including cash, Wife is currently invested in a growth-oriented portfolio and is averaging a 13.5% annual return on

investments. Ms. McAuliffe acknowledged her analysis is subject to variations in Wife's investment returns, changes in the inflation rate, and Wife's financial decisions. Ms. McAuliffe testified her analysis did not include any work-related income for Wife. If Wife did elect to obtain a job, she would draw less off her portfolio in future years. The amount budgeted for was $11,500 per month for living expenses, or $136,250 annually, after taxes.

The Court is cognizant that its 60/40 division of assets in favor of Husband has reduced the amount suggested to Ms. McAuliffe from which she based her projections on. However, by the Court's calculations the marital estate to be divided has a total value of approximately $9,000,000 and the deviation still provides Wife with significant and substantial funds to support herself for the remainder of her life.

Husband's Motion to Adjudge Wife in Contempt

Husband asserts that Wife violated the temporary orders in this case spending approximately $50,000 beyond the scope thereof. Of this amount, $10,000 was accounted for as a fee check replacement. The Court reviewed the temporary orders entered herein and is satisfied, to a large extent, the excess money spent by Wife was within the confines and spirit of the order. Wife was residing in the marital domicile and had to ready the house for sale. The couple

had planned and contracted with various vendors for Eleanor's wedding. For the most part the excess money spent by Wife over the temporary allowances was directly related to these two events. While there were payments made by Wife relating to her motor vehicle that were beyond the temporary order, the motion necessitated extra legal expenses by Wife in defense of the motion. No offset is necessary.

## FINDINGS OF FACT

1. Both Husband and Wife have been residents and domiciled inhabitants of the State of Rhode Island for at least one (1) year next prior to the filing of the complaint for divorce. An answer and counterclaim for divorce was filed by Wife.
2. The parties were married on July 4, 2006 and they separated in February 2020.
3. The parties experienced differences in their marriage. The differences are irreconcilable, and the marriage is irretrievably broken down.
4. There were no children born of the marriage.
5. The parties, by their words and actions, share equal responsibility for the breakdown of the marriage.
6. Husband's earnings were the sole source of money that led to the accumulation of the assets of the parties.

7. Wife was laid off shortly after the marriage. Wife embarked on a business venture that produced no income.
8. Husband emotionally and financially supported Wife in her business efforts, and there was approximately $1,000,000 invested therein.
9. Husband emotionally and financially supported Wife's daughter Eleanor from a prior marriage to include all costs related to schooling. Eleanor is now a physician looking to specialize in radiology.
10. The parties have no marital debts.
11. Husband is 71 years of age and indicated his intention to retire this year. Wife is 61 years of age and has demonstrated through her efforts and work in her business that she has the skills and abilities to work for a third party if she so chooses.
12. Wife will be eligible for social security benefits at or after age 62 if she elects to receive them at that time.
13. The marital assets are as follows:
    a. Husband's RIMI retirement account with an approximate value of $8,374,485 as of June 30, 2021, less a premarital value of $1,371,588. The net value subject to equitable distribution is approximately $7,002,897.

b. Husband's Westminster Financial 401K (formerly Washington Mutual) with an approximate value of $276,972 as of August 31, 2021, less a premarital value of $122,740. The net value subject to equitable distribution is approximately $171,260.

c. Westminster Financial 401K with an approximate value of $798,377 as of June 30, 2021 in Wife's name.

d. An American Fund with an approximate value of $105,518 as of September 30, 2021.

e. An American Fund in Wife's name with an approximate value of $53,870 as of June 30, 2021.

f. A Santander Money Market Account with an approximate balance of $126,773.

g. Cash of approximately $621,000 that was proceeds from the sale of the marital domicile and a certain sum of cash advanced to Husband at the conclusion of the trial to assist his son.

h. Husband's RIMI stock holdings with a value of $366,200 currently less the premarital value of $100,302. The net value subject to equitable distribution is approximately $265,898.

i. Wife's two motor vehicles.

14. No evidence was presented as to the premarital value of the American Fund in Wife's name with an approximate value of $53,870 as of June 30, 2021, and there was testimony that Husband contributed to this fund as well. wrong its mine + was $5000 in 2004

15. Husband used $261,676, designated as AF, of the $1,755,506 premarital investment holdings to fund the Westminster account in Wife's name. The Court finds that premarital funds totaling $261,676 were transmuted. The total value of Husband's premarital investment holdings, excluding the RIMI stock, was $1,493,830. wrong - has an IRA

16. The Court found Paul St. Onge testified without bias to either party and his testimony was credible, accurate and reliable. wrong - I presented actual statements

17. Husband and Wife received an advance on distribution in cash at the conclusion of the trial. Wife received cash proceeds from the sale of the home and Husband received an advance to assist his son.

18. The Court heard testimony from Jane McAuliffe and finds Ms. McAuliffe's analysis of Wife's need for alimony based on conservative estimates to be reliable and sound, and within her expertise to render an opinion.

19. The Court finds Wife will have sufficient assets based on the Court's division of assets to support herself in the future and enjoy a substantially similar standard of living as she enjoyed during the marriage.

20. Wife can work if she so chooses.

21. The Court finds that the facts and circumstances of this matter are significantly different from Husband's first case so as not to make the doctrine of offensive collateral estoppel applicable to this matter.

22. It would be unjust and unfair to apply the doctrine of offensive collateral estoppel to the circumstances of this case.

23. The Court finds the analysis of John Barrett to be credible and accurate for the purpose for which it was rendered.

24. The Court finds the terms of the RIMI shareholder agreements is the proper mechanism to determine valuation of Husband's shareholder interest in RIMI and not by way of the analysis proposed by Mr. Barrett.

25. Wife did not violate the intent and spirit of the temporary order as alleged by Husband in his Motion to Adjudge in Contempt.

26. The Court found the testimony of Paul St. Onge to be unbiased, and accurate based on business records he compiled and reasonably relied on in his business. wrong - See Emails the judge denied between John Paul H Westbrooke

27. There is a carry-over loss attributable to Wife's business that needs to be divided between among parties.

**NOW THEREFORE, based on those Findings of Fact,**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

1. Plaintiff's Complaint for Divorce and Defendant's Counterclaim for Divorce are granted on the grounds that there are irreconcilable differences that have led to the irremediable breakdown of the marriage.
2. Husband and Wife are each awarded all right, title and interest in and to the personal property in their respective possession, to include their automobiles, and they shall be solely responsible for any debts or costs associated with their separate property, pay said debts timely and hold the other harmless thereon.
3. The marital estate enumerated in Findings of Fact 13(a-h) shall be divided 60/40 in favor of Husband, adjustment to be made upwards or downwards to reflect the current values of said accounts at the time of disposition.
4. Wife shall receive all right, title, and interest in and to her two Mercedes automobiles and without any offset credit to Husband for the value of same.
5. Adjustment shall be made by counsel to equalize attorney fees prior to the distribution of the estate as indicated herein.

6. An adjustment shall be made to account for the advance in proceeds Wife received in cash from the sale of the marital domicile and that Husband received as agreed upon at the conclusion of the trial.
7. Husband shall maintain Wife on his employer related health insurance under the terms of the Rhode Island Health Insurance Continuation Act for as long as she is eligible. If there is a cost to maintain Wife, she shall be responsible for said cost if she wishes to remain thereon. If Wife cannot remain on Husband's health insurance, Wife shall be solely responsible for her own separate coverage and the cost thereof. Husband and Wife shall each be responsible for their own uncovered medical costs.
8. Any remaining carryover tax losses shall be divided 60/40 in favor of Husband. Each party shall be responsible for their own separate tax filings hereafter unless they otherwise agree.
9. There shall be no offset due and owing to Husband relative to the allegations Wife violated the temporary order.
10. All temporary orders entered in this matter shall end with the month of May 2022 and the parties shall each be responsible for their individual expenses commencing June 1, 2022.
11. The cost of any Qualified Domestic Relations Orders necessitated to complete the division of assets shall be shared equally between the parties.

12. Wife is denied alimony permanently.

13. Husband is permitted to waive alimony permanently.

14. Counsel for the Plaintiff shall prepare decisions consistent with this Court's decision and order.

/s/ Ballirano, G.M. 5/3/2022

General Magistrate Daniel V. Ballirano Date

**CERTIFICATION**

I hereby certify that on the 3rd day of May 2022, a true copy of this within Decision was uploaded to the Court portal to William Lynch, Esquire, 320 Newport Avenue, Rumford RI 02916 and Evan Kirshenbaum, Esquire, 1000 Chapel View Blvd, Suite 270, Cranston, RI 02921.

/s/ Nancy Zullo, Deputy Clerk 5/3/2022

Date

# Appendix "C"

Case Number: P20202673
Filed in Providence/Bristol County Family Court
Submitted: 8/11/2022 10:01 AM
Envelope: 3741655
Reviewer: Doreen D

# STATE OF RHODE ISLAND

**FAMILY COURT**
***FINAL JUDGMENT***

| COUNTY | CIVIL ACTION - FILE NO. |
|---|---|
| **PROVIDENCE** | **P2020-2673** |
| PLAINTIFF | DEFENDANT |
| **JOHN J. CRONAN** | **LAURIE A. CRONAN** |

***The findings of facts have been made and are so contained in the Interlocutory decree pending entry of the final decree, subject to the pending appeal before the Rhode Island Supreme Court.***

☒ ANSWERED ☐ UNANSWERED

This action came on for hearing before this Honorable Court, the Honorable General Magistrate Ballirano presiding, as a contested matter over five days (October 14, October 15, November 9, November 12 and December 17, 2021), and the issues having been tried and a decision having been duly rendered in favor of the Plaintiff and the Defendant on May 3, 2022.

NOW THEREFORE, three months have elapsed and no reason appearing why a final judgment should not be entered, it is ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's Complaint for Divorce and Defendant's Counterclaim for Divorce are granted on the grounds that there are irreconcilable differences that have led to the irremediable breakdown of the marriage.

2. Husband and Wife are each awarded all right, title and interest in and to the personal property in their respective possession, to include their automobiles, and they shall be solely responsible for any debts or costs associated with their separate property, pay said debts timely and hold the other harmless thereon.

3. The marital estate enumerated in Findings of Fact 13(a-h) shall be divided 60/40 in favor of Husband, adjustment to be made upwards or downwards to reflect the current values of said accounts at the time of disposition.

4. Wife shall receive all right, title, and interest in and to her two Mercedes automobiles and without any offset credit to Husband for the value of same.

5. Adjustment shall be made by counsel to equalize attorney fees prior to the distribution of the estate as indicated herein.

6. An adjustment shall be made to account for the advance in proceeds Wife received in cash from the sale of the marital domicile and that Husband received as agreed upon at the conclusion of the trial.

7. Husband shall maintain Wife on his employer related health insurance under the terms of the Rhode Island Health Insurance Continuation Act for as long as she is eligible. If there is a cost to maintain Wife, she shall be responsible for said cost if she wishes to remain thereon. If Wife cannot remain on Husband's health insurance, Wife shall be solely responsible for her own separate coverage and the cost thereof. Husband and Wife shall each be responsible for their own uncovered medical costs.

☑ Check this box if a continuation page is used.

Case Number: P20202673
Filed in Providence/Bristol County Family Court
Submitted: 8/11/2022 10:01 AM
Envelope: 3741655
Reviewer: Doreen D

8. Any remaining carryover tax losses shall be divided 60/40 in favor of Husband. Each party shall be responsible for their own separate tax filings hereafter unless they otherwise agree.

9. There shall be no offset due and owing to Husband relative to the allegations Wife violated the temporary order.

10. All temporary orders entered in this matter shall end with the month of May 2022 and the parties shall each be responsible for their individual expenses commencing June l, 2022.

11. The cost of any Qualified Domestic Relations Orders necessitated to complete the division of assets shall be shared equally between the parties.

12. Wife is denied alimony permanently.

13. Husband is permitted to waive alimony permanently.

/s/ Daniel Ballirano
General Magistrate

Approved: 08/16/2022
JUSTICE OF THE FAMILY COURT

Vacated on form
Ballirano J.
8/24/2022 @ 9:53AM

Presented by attorney for prevailing party:

Attorney's Name (Printed): William J. Lynch, Esquire (#2817)

Attorney's Signature: /s/ William J. Lynch

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of August 2022:

X I electronically filed and served this document through the electronic filing system on the following: Evan M. Kirshenbaum. Esq., Attorney for the Defendant. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Deborah J. Chadwick
Deborah J. Chadwick

# STATE OF RHODE ISLAND

**FAMILY COURT**
***AMENDED***
***FINAL JUDGMENT***

| COUNTY | CIVIL ACTION - FILE NO. |
|---|---|
| **PROVIDENCE** | **P2020-2673** |
| PLAINTIFF | DEFENDANT |
| **JOHN J. CRONAN** | **LAURIE A. CRONAN** |

***The findings of facts have been made and are so contained in the Interlocutory decree pending entry of the final decree, subject to the pending appeal before the Rhode Island Supreme Court.***

☒ ANSWERED ☐ UNANSWERED

This action came on for hearing before this Honorable Court, the Honorable General Magistrate Ballirano presiding, as a contested matter over five days (October 14, October 15, November 9, November 12 and December 17, 2021), and the issues having been tried and a decision having been duly rendered in favor of the Plaintiff and the Defendant on May 3, 2022.

NOW THEREFORE, three months have elapsed and no reason appearing why a final judgment should not be entered, it is ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's Complaint for Divorce and Defendant's Counterclaim for Divorce are granted on the grounds that there are irreconcilable differences that have led to the irremediable breakdown of the marriage; and

2. All other matters set forth in the Decision Pending Entry of Final Judgment, except the question of the divorce itself, are hereby left open pending the appeal to the Rhode Island Supreme Court.

Approved: _____
JUSTICE OF THE FAMILY COURT 8/26/2022 @ 9:54 AM.

Presented by attorney for prevailing party:

Attorney's Name (Printed): William J. Lynch, Esquire (#2817)

Attorney's Signature: /s/ William J. Lynch

☑ Check this box if a continuation page is used.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25 day of August 2022:

X I electronically filed and served this document through the electronic filing system on the following: Evan M. Kirshenbaum. Esq., Attorney for the Defendant. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Deborah J. Chadwick
Deborah J. Chadwick

Ex. 2

**View the 2021 Rhode Island General Laws** | View Previous Versions of the Rhode Island General Laws

# 2012 Rhode Island General Laws
# Title 11 - Criminal Offenses
# Chapter 11-32 - Obstructing Justice
# Chapter 11-32-2 - False report of crime.

**Universal Citation:** RI Gen L § 11-32-2 (2012)

**§ 11-32-2 False report of crime.** – Every person who shall knowingly make or cause to be made a false statement of a crime, either oral or written, with intent that it be relied upon by a police officer of any city or town or by any member of the state police, shall be deemed guilty of obstructing an officer and shall be imprisoned not exceeding one year and/or be fined not exceeding five hundred dollars ($500), and shall in addition to this imprisonment and/or fine be ordered to make restitution to the person falsely accused of a crime for any damage which the person sustained as a result of the false complaint.

History of Section.
(P.L. 1971, ch. 184, § 1; P.L. 1985, ch. 176, § 1.)

EX. 2

JUSTIA

View the 2021 Rhode Island General Laws | View Previous Versions of the Rhode Island General Laws

# 2012 Rhode Island General Laws
# Title 11 - Criminal Offenses
# Chapter 11-32 - Obstructing Justice
# Chapter 11-32-3 - Obstruction of the judicial system.

**Universal Citation:** RI Gen L § 11-32-3 (2012)

**§ 11-32-3 Obstruction of the judicial system.** – Whoever corruptly, maliciously, recklessly, by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror or officer in or of any court of this state or officer who may be serving at any examination or other proceeding before any justice, magistrate, or other officer of the court, in the discharge of his or her duty; or injures any party on his or her person or property on account of his or her attending or having attended such court or examination before such justice, magistrate, or other officer, or on account of his or her testifying or having testified to any matter pending in it; or injures any grand or petit juror in his or her person or property on account of any verdict or indictment assented to by him or her, or on account of being or having been a juror, or injures any justice, magistrate, or other officer in his or her person or property on account of the performance of his or her official duties; or corruptly, maliciously, recklessly, or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice; shall be fined not more than five thousand dollars ($5,000), or imprisoned not more than five (5) years, or both.

Ex. 2

# Title 11
# Criminal Offenses

## Chapter 32
## Obstructing Justice

### R.I. Gen. Laws § 11-32-2

**§ 11-32-2. False report of crime.**

Every person who shall knowingly make or cause to be made a false statement of a crime, either oral or written, with intent that it be relied upon by a police officer of any city or town or by any member of the state police, shall be deemed guilty of obstructing an officer and shall be imprisoned not exceeding one year and/or be fined not exceeding five hundred dollars ($500), and shall in addition to this imprisonment and/or fine be ordered to make restitution to the person falsely accused of a crime for any damage which the person sustained as a result of the false complaint.

History of Section.
P.L. 1971, ch. 184, § 1; P.L. 1985, ch. 176, § 1.

Headquarters
Incident Report

Ex. 2

**Incident #: 20RIX1-1096-OF**

Date/Time Reported: 08/17/2020 0900
Report Date/Time: 08/18/2020 0855
Status: Incident Closed
Reason Closed: NOTHING FURTHER TO BE DONE

Reporting Officer: Detective MICHAEL O'NEILL
Approving Officer: Sergeant MICHAEL BROCK

Signature: _____

Signature: _____

| # | OFFENSE(S) | ATTEMPTED | TYPE |
|---|---|---|---|
| 1 | **BANK FRAUD** | Y | **Felony** |

LOCATION TYPE: Government/Public Building Zone: Scituate Area
STATE POLICE HEADQUARTERS
311 DANIELSON PKE
SCITUATE RI 02857

**19-9-29** **19-9 29**
OCCURRED: 08/17/2020 0900

| # | VICTIM(S) | SEX | RACE | AGE | SSN | PHONE |
|---|---|---|---|---|---|---|
| 1 | **CRONAN, JOHN J JR** | M | W | 69 | | 401-[redacted] |

1580 WAMPANOAG TRL Apt. #201
EAST PROVIDENCE RI 02914

DOB: [redacted]
EMPLOYER: RI HOSPITAL
ETHNICITY: Not of Hispanic Origin
RESIDENT STATUS: Resident
VICTIM CONNECTED TO OFFENSE NUMBER(S): 1
CONTACT INFORMATION:
Home Phone (Primary) 401-[redacted]
Home Phone 401-[redacted]

| # | PERSON(S) | PERSON TYPE | SEX | RACE | AGE | SSN | PHONE |
|---|---|---|---|---|---|---|---|
| 1 | **CRONAN, LAURIE A** | **PARTICIPANT** | F | W | 60 | | |

6 ATLANTIC CRSG
BARRINGTON RI 02806
DOB: [redacted]

Ex. 2

On Monday, August 17, 2020, I, Detective Michael O'Neill, was assigned to investigate a complaint pertaining to potential bank fraud. The Rhode Island State Police Financial Crimes Unit received a letter dated August 6, 2020 from attorney William Lynch of WJ Lynch Law on behalf of his client, Dr. John Cronan Jr., DOB: [redacted], of 1580 Wampanoag Trail, Apt. 201, East Providence, Rhode Island. According to Dr. Cronan, he was notified by Santander Bank that his personal checking account (#[redacted]) was withdrawn thirty thousand dollars ($30,000.00) on August 5, 2020. Dr. Cronan confirmed that he is the only name on the account and that he did not make this transaction. Furthermore, Dr. Cronan asserted that his estranged wife, Laurie Cronan, may be responsible.

Shortly after, I made contact with Dr. Cronan via telephone. Dr. Cronan confirmed the information documented in the letter provided by his attorney, Mr. Lynch. Moreover, Dr. Cronan added that the aforementioned money was transferred from his money market/savings account into his joint checking account. It should be noted that Dr. Cronan's money market/savings account is solely in his name and the joint account is shared between he and his wife, Laurie. Dr. Cronan advised that he and his wife are in the process of getting a divorce; however, they are still legally married. Santander Bank advised Dr. Cronan that they were able to terminate the transfer and return the funds to his money market/savings account. Neither Dr. Cronan or Santander Bank sustained any monetary loss as a result of this transaction.

On Tuesday, August 18, 2020 at approximately 11:30 AM, I made contact with Laurie Cronan, DOB: [redacted], of 6 Atlantic Crossing, Barrington, Rhode Island, via telephone. I inquired about the incident with Mrs. Cronan; however, she stated that she wanted to speak with her attorney prior to giving any other statements. At approximately 3:08 PM, I received a call from Mrs. Cronan's attorney, Tim Conlon. According to Mr. Conlon, Mrs. Cronan had accessed their Santander Bank account via a laptop at their residence. Mr. Conlon added that the account login information was saved on the laptop, therefore, Mrs. Cronan was able to access Dr. Cronan's money market/savings account. Apparently, Mrs. Cronan was unaware that this was not a shared account. Mrs. Cronan proceeded to transfer funds from the money market/savings account to the joint checking account in anticipation of the check she was writing to Mr. Conlon as a retainer fee. Mrs. Cronan wanted to confirm that there were enough funds in the checking account so the check to Mr. Conlon did not bounce.

Mr. Conlon added that Mr. Lynch contacted him regarding the incident and he informed him as to what occurred. Therefore, Dr. Cronan willingly transferred thirty thousand dollars ($30,000.00) to the joint account for the purpose of Mrs. Cronan's legal fees. Mr. Conlon added that he has received the check and it has cleared with no issue.

**NOTHING FURTHER TO REPORT.**

August 6, 2020

EX. 2

Lieutenant Matthew Salisbury
RI State Police
Financial Crimes Unit
311 Danielson Pike
North Scituate, RI 02857

***Re: Bank Fraud: Santander Bank, Acct. #5901***
***Account Owner: John J. Cronan***

Dear Lt. Salisbury:

Please be advised that the undersigned represents Dr. John J. Cronan of Barrington, RI.

Dr. Cronan was just notified by Santander Bank that his personal bank account (Account #5901) was accessed and $30,000.00 debited on August 5, 2020. I have attached a copy of the service alert from Santander.

Dr. Cronan did not make this transaction, was not aware of it nor was it authorized.

Although Dr. Cronan was not told any other information by Santander, he believes it is possible this his estranged wife (Laurie Cronan) may have fraudulently managed to access his account and divert his funds. Please note that the account is John Cronan's personal account and is in his name only. Laurie Cronan's name has never been on the account nor has she ever had access to this account. Laurie Cronan does not have the password(s) to access John Cronan's account so Dr. Cronan does not know how (or if) she is the person responsible for the fraudulent access and theft of his funds.

I conferred with Lori Tellier today regarding this issue and she was kind enough to suggest that Dr. Cronan file his complaint with you. Dr. Cronan wishes to proceed with a formal complaint.

Dr. Cronan can be reached at 401-480-3062 (cell) or via email at: johnjcronan@gmail.com. I am available also to confer with you or your designee at any time either at my office (401-648-2100) or my cell phone (401-338-7444).

Thank you very much.

Sincerely,

*William J. Lynch*

William J. Lynch

[redacted]

EX 2

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

FAMILY COURT PROVIDENCE, SC

JOHN CRONAN :

V : F. C. NO.: P2020-2673

LAURIE CRONAN :

H E A R D before Judge Felix Gill on October 23, 2020 in Providence Family Court.

APPEARANCES

WILLIAM LYNCH, ESQ.....FOR PLAINTIFF

TIMOTHY CONLON, ESQ.....FOR DEFENDANT

ANGELINA LANDI, ESQ.....FOR DEFENDANT

THE WITNESS: No, just routine utilities and --

THE COURT: Anything over $1,000.00?

THE WITNESS: My monthly rent is 1,400.

THE COURT: Your rent?

THE WITNESS: I'm renting. I'm living in an apartment now, 1,400 a month. That's the only one over a thousand.

THE COURT: Are you paying the mortgage out of that checking account?

THE WITNESS: Yes. Well, it's being direct deposited -- it's directed out.

THE COURT: All right go ahead.

Q. You still have Exhibit D with you, Sir?

THE CLERK: It is here (indicating).

A. No.

Q. Take a look at the final page, if my pages and your pages are in the same order as it's xeroxed copies of checks; do you see that?

A. I do.

Q. And, the upper right-hand corner dated August 4, there's a check to TJC, ESQ in the amount of $30,000.00; do you see that?

A. I do.

Q. Do you contend that there were two checks for

$30,000.00 written to my firm?

A. No.

Q. So when you said a moment ago to the Judge that it was last month, that was not accurate; correct?

A. No, it was 8/4, so it was longer than that.

Q. After you served her with the Divorce Complaint?

A. Correct.

Q. And you're aware that there were discussions between my office and Attorney Lynch's office with regard to our request for the $30,000.00 retainer; you were aware of that?

A. No, I had no idea.

Q. You had no idea?

A. No.

Q. And then going down to the bottom of that page, there is a William Lynch Law for Eight-Six Hundred Dollars on August 14th.

A. Yes.

Q. Would that be the gentleman standing -- seated to my right?

A. It would be.

MR. CONLON: Okay.

Q. Did you forget about that a moment ago when you were making a list for the Judge?

MR. LYNCH: Objection.

it's --

THE COURT: If her name's not on it, that's what you're worried about?

MR. CONLON: Correct.

THE COURT: I don't have an issue if you want to add her name. It doesn't --

MR. CONLON: Super. That will be wonderful. Thank you.

THE COURT: It is completely marital, it was opened in January.

MR. LYNCH: There is no dispute that the funds in the money market account are marital. We are trying to resolve this, otherwise I would have asked Dr. Cronan why that happened.

THE COURT: I know. I didn't ask him. I didn't ask him when did you do it or why did you do it. You don't have to do that at this point.

MR. LYNCH: The other issue I would like to address, however, is I would like to have funds released against Dr. Cronan's share of the estate, which we now know is more than sufficient to cover it, for the $50,000.00 that I requested for his son. That is a timely reason. We can have testimony if necessary, but I don't understand why there's any resistance to that. It doesn't cost

EX. 2



Mrs. Cronan a dime. It's completely out of his funds. If she wants to $50,000.00 against her share even I would say is fine, but there is a family reason that we want to accomplish that. I don't know what the problem is with that.

THE COURT: Okay.

MR. CONLON: I can respond to that. The problem with it is two-fold; A, I wrote to Mr. Lynch about wanting to address this particular problem in the very early September asking him to put these monies back so that we could see what was going on and, for whatever reason, Dr. Cronan would admit that he moved the money from their account to sole account, but would not put it back. So at that point my leverage, if you will, with my client goes down because she has been basically six weeks and reached the point where we filed an emergency, we can't get the money under control and there's $80,000.00 being paid, etc. Okay. So that's the first prong.

The second prong is that I've gotten two different representations. My Brother just said that he didn't have a problem with the same dough going to her. But independently in other documents he suggested it's coming from nonmarital funds,

EX. 2



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC. FAMILY COURT

* * * * * * * * * * * * * *

**JOHN J. CRONAN** *

**VS.** * **F.C. NO. P2020-2673**

**LAURIE A. CRONAN** *

* * * * * * * * * * * * * *

**H E A R D** before The Honorable Associate Justice Felix E. Gill, in the Providence County Courthouse, **(VIA WEBEX)**, on October 21, 2020.

**APPEARANCES:**

FOR THE PLAINTIFF.....WILLIAM LYNCH, ESQUIRE

FOR THE DEFENDANT.....ANGELINA LANDI, ESQUIRE

Since leaving in February, he has paid and continues to pay 100 percent of Laurie Cronan's expenses both marital and individual. 100 percent with zero contribution from her.

In July, when the divorce was finally filed, he was continuing to do that voluntarily and without a court order, and he continues to do that, by the way. I'll get to that in a minute. But what had been left out here is that in July, when the divorce was filed, my client was contacted by Santander Bank, and he found out through Santander Bank that Laurie Cronan had hacked into an individual personal account that was never marital and attempted to withdraw $30,000 from that account.

Santander actually caught that, contacted my client and stopped that wire transfer. The next day Laurie Cronan went into the joint checking account and withdrew $30,000, which she paid to Tim Conlon. And by the way, I don't have any objection to the lawyers being paid. I've never objected in over 30 years to the lawyers being paid; however, I do think it's appropriate that there be an exchange of information with respect to legal fees, because they should be an advancement

EX. 2



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC. FAMILY COURT

* * * * * * * * * * * * * *

**JOHN J. CRONAN** *

**VS.** * **F.C. NO. P2020-2673**

**LAURIE A. CRONAN** *

* * * * * * * * * * * * * *

# E X C E R P T

**H E A R D** before General Magistrate Daniel V. Ballirano, in the Providence County Courthouse, on November 9, 2021.

**APPEARANCES:**

FOR THE PLAINTIFF.....WILLIAM J. LYNCH, ESQUIRE

FOR THE DEFENDANT.....EVAN M. KIRSHENBAUM, ESQUIRE

into not following through with this trial. And they are all speaking with me about that.

Q. Beautiful. And that includes me?

A. What do you mean beautiful?

Q. I'm asking you if that includes me? You said me.

A. What did you say, beautiful? Did you say beautiful?

Q. I'm asking the questions.

A. Wait, I didn't ask you a question.

THE COURT: Next question.

A. Go ahead.

Q. So who else have you talked to from any TV shows?

A. I haven't talked to anybody from a TV show.

Q. Well, you say under oath in your answers that you've talked to several prominent, national magazines and TV shows. So what TV shows --

A. Well, I should have said --

Q. Let me finish, please. What TV shows have you --

A. I should have said TV celebrities.

MR. LYNCH: Please, Judge, I want to be able to finish my question.

THE COURT: Mrs. Cronan, let him finish his question.

THE WITNESS: Okay.

Q. What TV shows have you been in contact with?

Ex. 2

# STATE OF RHODE ISLAND

**SUPREME COURT**
Disciplinary Board
Noel Judicial Complex
222 Quaker Lane – Room 1083
Warwick, RI 02886
(401) 823-5710
Fax (401) 822-6071

| **Complainant** | **Disciplinary File Number** |
|---|---|
| LAURIE A. CRONAN | DI-2020-210 |
| v. | |
| **Respondent** | |
| WILLIAM J. LYNCH | |

Dear LAURIE A. CRONAN:

Please find enclosed a copy of a response received in our office by attorney WILLIAM J. LYNCH relative to your complaint. Please review this information and provide this office with your further written comments on or before **January 4, 2021**.

Your cooperation in this matter is appreciated.

| | |
|---|---|
| This letter was generated on 12/15/2020. | Kerry Reilley Travers<br>Deputy Disciplinary Counsel |
| This letter was sent to:<br><br>LAURIE A. CRONAN<br>6 ATLANTIC CROSSING<br>BARRINGTON, RI 02806 | |

Enclosure

EX. 2

enforcement to file a false police report against her". I assume that Laurie is referring to the Rhode Island State Police opening an investigation of her when Santander Bank realized that Laurie was attempting to access John's personal individual bank account in an attempt to wire money out of John's account without John's knowledge or permission.

44. This paragraph does not really require a response other than a blanket denial of Laurie's allegations contained in said paragraph. Any motions filed with the Court on behalf of John will be dealt with by the Court in its normal course of business.

44B. Denied as to any involvement in the Rhode Island State Police investigating Laurie for attempting to hack into John's personal bank account. It is my understanding that Santander Bank contacted my client, John, to advise John that someone had hacked into his personal bank account and attempted to wire $30,000.00 out of his bank account. When Santander questioned the legitimacy of that attempt at wiring the funds from John's account, Santander Bank contacted John to inform him of same and asked him if he was aware of this attempt at wiring $30,000.00 out of his account. John immediately advised Santander Bank that he did not authorize nor approve any such wire of $30,000.00 and Santander immediately stopped the wire of said funds. Santander also asked John if he wanted the Santander to proceed with the normal course of affairs and notify the Rhode Island State Police of this activity on his account, and John responded by informing Santander that they should go ahead and contact the appropriate police authorities. Upon information and belief, the Rhode Island State Police in conjunction with Santander Bank, were able to determine that it was Laurie who had hacked into John's Santander Bank account and attempted to wire $30,000.00 out of John's account without his knowledge, permission or approval. Any further information with respect to this would have to be secured from the Rhode Island State Police.

Ex. 2



# 2009 Rhode Island Code
# Title 11 - Criminal Offenses
# CHAPTER 11-33 - Perjury and False Swearing
# § 11-33-1 - Perjury.

## SECTION 11-33-1

**§ 11-33-1 Perjury.** – (a) Every person under oath or affirmation who knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing it contains any false material declaration, shall be deemed guilty of perjury.

(b) An indictment or information for violation of this section alleging that on oath or affirmation the defendant has knowingly made two (2) or more declarations which are inconsistent to the degree that one of them is necessarily false need not specify which declaration is false if:

(1) Each declaration was material to the point in question; and

(2) Each declaration was made within the period of the statute of limitations established in § 12-12-17.

(c) In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the

 EX. 2

# Rule 3.3: Candor Toward the Tribunal



*Advocate*

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who

Case Number: P20202673
Filed in Providence/Bristol County Family Court
Submitted: 10/20/2020 5:06 PM
Envelope: 2799656
Reviewer: Lorna L.

EX. 2

8. Shortly after filing the instant divorce, the Plaintiff learned that the Defendant, without the Plaintiff's knowledge or authorization, had authorized a masonry business to install a $12,500.00 patio at the former marital domicile.

9. The Defendant's unilateral decision to authorize the installation of a $12,500.00 patio in the former marital domicile in July 2020 was, in addition to the Defendant's reckless and non-stop excess spending. resulting in a consistent and continued dissipation of the marital estate.

10. That in addition to attempting to spend the aforementioned $12,500.00 on a patio, the Defendant, despite having unfettered access to the parties' joint bank account and her credit card, hacked into the Plaintiff's individual Santander Bank account and withdrew individual non-marital funds in the amount of $30,000.00 from the Plaintiff's individual Santander Bank account.

11. Plaintiff, being unaware of the Defendant's hacking into his Santander Bank account, was contacted by the Santander Bank Fraud Department and informed that a third party had in fact accessed his personal account and attempted to remove $30,000.00 therefrom.

12. The Plaintiff advised and informed Santander that they should take any and all steps necessary to secure said bank account, including contacting the police authorities with respect to the same.

13. The Defendant presumably, upon being notified that she had been caught hacking into the Plaintiff's Santander bank account, then proceeded to withdraw $30,000.00 from the parties' joint bank account.

14. The Defendant, since the onset of the instant divorce matter, has had and continues to have unfettered access to the parties' joint bank account and the funds in said joint bank account. In addition thereto, the Defendant, despite having no marital bills or personal individual bills for which she is responsible continues to have access to a joint Chase credit card account with a credit limit of $15,000.00 per month. The Defendant continues to have access to said credit card, as well as the parties' joint account while the Plaintiff continues to pay 100% of the Defendant's bills and expenses on a monthly basis.

15. Plaintiff has and continues to maintain perfect records of his finances, including any and all income with respect to his employment, which the Defendant and her counsel are welcome to and privy to at any time.

16. That the Defendant, despite owning and operating a business in which the Plaintiff has contributed in excess of $1 Million Dollars, has yet to provide any information with respect to said business and simply claims under oath that she has "no independent income".

EX. 2

**STATE OF RHODE ISLAND** **FAMILY COURT**
**PROVIDENCE, SC.**

**JOHN J. CRONAN** :
:
**v.** : **F.C. No. P2020-2673**
:
**LAURIE A. CRONAN** :

**PLAINTIFF'S OBJECTION AND MOTION TO DISMISS DEFENDANT'S "EMERGENCY MOTION"**

Now comes the Plaintiff, John J. Cronan, by and through his attorney in the above-entitled matter and hereby objects to the Defendant's "Emergency Motion" and requests that same be denied and dismissed forthwith for good and sufficient cause.

In so objecting, Plaintiff states as follows:

1. That the "Emergency Motion" filed by the Defendant is in no way nor does it even remotely constitute an "emergency".

2. Defendant states in her Affidavit that she has "spent the majority of our marriage as a homemaker, supporting Plaintiff's career. I have no independent income." In fact, the Plaintiff was long established in his career prior to his marriage to the Defendant and in addition thereto, the Defendant owns and operates a business to which the Plaintiff has contributed in excess of $1 Million Dollars during the parties' marriage.

3. Since voluntarily vacating the former marital domicile presently valued at $1.2 Million Dollars in February 2020, the Plaintiff has consistently paid 100% of all of the Defendant's bills and expenses, including all of the bills and expenses associated with the subject real estate, despite the fact that the Plaintiff does not reside therein.

4. Plaintiff has previously filed a Motion before this Honorable Court to sell the subject real estate since the Defendant, by her own admission, clearly cannot afford to retain said real estate based on her statement that she has "no independent income".

5. Plaintiff has renewed his Motion to Sell the Former Marital Domicile forthwith since the longer the parties retain said marital domicile, the more dissipation of the marital estate occurs.

6. That the Plaintiff for a period of time after voluntarily vacating the marital domicile continued to have his income deposited into a joint account.

7. The Plaintiff continued to pay 100% of all of the marital bills and expenses, including all of the Defendant's personal bills and expenses without contribution from the Defendant after vacating the marital home in February 2020 through July 2020 without incident.

Ex. 2

17. That the Defendant's "Emergency Motion" and Affidavit are patently an attempt to harass and aggravate the Plaintiff having been filed in retaliation for the Plaintiff, through his counsel, advising Defendant's counsel that the Plaintiff wished to access certain **non-marital** funds in order to assist his adult son from his prior marriage. Defendant's own Affidavit substantiates that her "emergency" occurred in July 2020 – more than three months ago and was never an emergency until Defendant's counsel was so advised by Plaintiff's attorney.

18. Of particular interest and objection with respect to the Defendant's Affidavit, is paragraph 24 wherein she states under oath "I have no way to support myself without this income".

19. In point of fact, the Defendant knows full well that the Plaintiff has been paying 100% of her bills and expenses, both marital and individual, and in addition thereto, the Defendant has access to joint bank accounts as well as her credit card.

20. Of further interest and cause for objection is the Defendant's statement under oath that "I am concerned if I am not granted emergency relief I am at risk of immediate and irreparable financial harm". Defendant cannot even remotely substantiate any such alleged immediate and irreparable harm of any kind and in fact her statement under oath is disingenuous at best or perjurious at worst.

WHEREFORE, Plaintiff requests that Defendant's "Emergency Motion" be denied and dismissed and that the Plaintiff be awarded attorneys' fees incurred in having to defend against same, as well as any and all further relief as this Court deems meet and just under the circumstances.

Plaintiff, John J. Cronan
By and through his Attorney,

/s/ William J. Lynch
William J. Lynch, Esq. (#2817)
WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916
401-648-2100; 401-648-2103 (Fax)
bill@wjlynchlaw.com

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that this matter will be called for hearing before this Honorable Court on the 21st day of October 2020 at 10:00 a.m. **(PLEASE NOTE THAT THIS MATTER IS ALREADY ON THE CALENDAR FOR THIS DATE).**

## CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2020:

X I electronically filed and served this document through the electronic filing system on the following: Timothy J. Conlon, Esq., Attorney for the Defendant. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Deborah J. Chadwick
Deborah J. Chadwick

EX. 2

5. Plaintiff further states that this is not the first time that the Defendant has engaged in this type of willful contempt with respect to bank accounts.

6. The Defendant previously hacked into the Plaintiff's individual non-marital Santander bank account and withdrew non-marital funds in the amount of $30,000.00. Defendant's misconduct and hacking into the Plaintiff's Santander Bank account resulted in the Santander Bank Fraud Department contacting the Plaintiff who had no knowledge that the Defendant had in fact hacked into his personal account and removed $30,000.00 therefrom.

WHEREFORE, Plaintiff requests, on an emergency basis, that:

1. The Defendant be adjudged in willful contempt;

2. That the Defendant be forthwith ordered to return the sums that she took from the parties' Santander accounts in direct violation of this Court's Order;

3. That the Plaintiff be permitted to maintain the funds normally deposited into the two aforementioned joint bank accounts and Santander bank accounts in his name alone, provided that the Plaintiff continue to pay all of the marital bills and expenses which he has continued to do since the filing of the instant divorce;

4. That the Defendant be sanctioned in an amount to be determined by this Honorable Court for her knowing and intentional contempt;

5. That the Defendant be ordered to pay to the Plaintiff's attorney reasonable counsel fees incurred in having to prosecute this Motion due to the Defendant's willful contempt; and

6. That the Plaintiff be awarded such other further relief as this Court deems meet and just under the circumstances.

Plaintiff, John J. Cronan
By and through his Attorney,

/s/ William J. Lynch

William J. Lynch, Esq. (#2817)
WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916
401-648-2100; 401-648-2103 (Fax)
bill@wjlynchlaw.com

EX. 2

**STATE OF RHODE ISLAND** **FAMILY COURT**
**PROVIDENCE, SC.**

**JOHN J. CRONAN** :
:
**v.** : **F.C. No. P2020-2673**
:
**LAURIE A. CRONAN** :

**PLAINTIFF'S EMERGENCY MOTION**
**TO ADJUDGE DEFENDANT IN CONTEMPT**

Now comes the Plaintiff, John J. Cronan, by and through his attorney in the above-entitled matter and moves to adjudge the Defendant in knowing and intentional contempt of this Court's prior orders.

In so moving for emergency relief and a finding that the Defendant is in willful contempt, your Plaintiff states as follows:

1. That by prior Order of this Honorable Court entered by Justice Gill on January 21, 2021, both parties were specifically restricted from spending money from the Santander Account #5901.

2. Paragraph 3 of said Court Order states as follows:

> "3. The parties shall pay their reasonable and ordinary expenses from the Santander checking account #5901, specifically including: mortgage, taxes, insurance, rent, utilities, routine home maintenance and car expenses. The parties shall, as needed, transfer funds from the Santander money market account #0579 to the Santander checking account #5901 sufficient funds to pay these expenses. Absent a failure to do so in a timely fashion, Plaintiff shall be responsible for initiating the transfers so that all of the aforementioned expenses are paid."

3. Paragraph 4 of said Court Order states:

> "4. The parties shall each establish individual checking accounts. In addition to the payment of the above-referenced expenses from the parties' joint Santander checking account #5901, the parties shall each be entitled to the sum of $8,000.00 per month from the Santander money market account #0579 to be used for their miscellaneous personal expenses. This sum shall be transferred from the Santander money market account #0579 to each parties' individual account on a monthly basis."

4. Despite said Court order, the Defendant has recently unilaterally withdrawn approximately $55,000.00 from the aforementioned Santander accounts without the knowledge, approval or authorization of the Plaintiff in direct violation of this Court's Order. (See Plaintiff's Exhibits attached hereto and incorporated herein by reference).

EX. 3


**Midge Pa...** 5/10/2
**To:** laurie_crona... >

i Laurie! Please be advised
at the clerk has scheduled th
eb-ex for May 19, 2021 at
l:00 a.m. If for any reason,
e date changes, I'll let you
ıow but as of now, it's May 1ᵹ
ere is Magistrate's Ballarino's
ık. https://ricourts.webex.com/meet/
ballirano

Ex. 3

**From:** Deana Guglielmo
**Sent:** Thursday, March 4, 2021 4:50 PM
**To:** Laurie Cronan
<laurie_cronan@yahoo.com>
**Subject:** NOTICE OF COURT DATE

Hi Laurie, please be advised that your case is scheduled for a hearing on May 5, 2021 at 2:00 before Judge Gill.

Thank you.

Deana M. Guglielmo
Legal Assistant
Evan M Kirshenbaum, Esquire

EX. 4

**WJ Lynch Law**
**320 Newport Avenue**
**Rumford, RI 02916**
**401.648.2100 (Office) / 401.648.2103 (Fax)**
**bill@wjlynchlaw.com / www.wjlynchlaw.com**

January 11, 2022

***Via Email: emk@kirshenbaumlaw.com***

Evan M. Kirshenbaum, Esq.
Kirshenbaum Law Associates
1000 Chapel View Blvd, Suite 270
Cranston, RI 02920

***Re: John J. Cronan v. Laurie A. Cronan, F.C. No. P2020-2673***

Dear Evan:

Attached hereto please find a proposed Order that I have prepared after receiving the transcript from our December 17, 2021 court appearance.

Please advise if the Order meets with your approval so that I can have it entered accordingly.

If I do not hear from you within seven days, I will presume that the proposed draft is acceptable and I will e-file the original.

Thank you very much.

Very truly yours,

*/s/ William J. Lynch*

William J. Lynch

Enclosure
WJL/djc

EX. 4

**STATE OF RHODE ISLAND** **FAMILY COURT**
**PROVIDENCE, SC.**

**JOHN J. CRONAN** :
:
**v.** : **F.C. No. P2020-2673**
:
**LAURIE A. CRONAN** :

## ORDER

This matter was scheduled for trial (continued) on Friday, December 17, 2021, before General Magistrate Ballarino presiding, and after hearing thereon, with both parties being present and represented by counsel, it is hereby

## ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the parties have agreed to advance defendant Laurie Cronan the sum of $600,000.00 as an advance against her ultimate distribution in said matter.

2. The parties have agreed that the full amount of the Plaintiff's anticipated year-end distribution for calendar year 2021 (new bonus) from RIMI will be direct deposited into the parties' joint checking account and the parties have agreed to advance plaintiff John Cronan the sum of $150,000.00 as an advance against his ultimate distribution in said matter.

3. Plaintiff shall provide his total compensation for 2021 including regular pay, bonus, if any, dividend amounts, shares distributions, expert testimony payments received, as well as the RIMI end-of-year 2021 dividend not yet received and will identify any and all deductions or withholding amount for taxes, state, federal or other deductions.

4. Both parties shall provide 2021 year-end updates to any and all investment accounts, bank accounts, retirement accounts, 401(k) accounts and the like, and will identify any withdrawal of funds or transactions, reduction to employee contributions to said 401(k), investment and/or retirement accounts and/or changes made to said accounts during the pendency of this matter.

5. Plaintiff's counsel shall provide the names of the individuals from Prudential that he said he has contacted requesting the statements establishing the value of the Plaintiff's RIMI 401(k) accounts owned by the plaintiff as of the date of the parties' marriage on July 4, 2006.

6. The parties shall each provide a total of their attorneys' fees already disbursed to their individual counsels from the parties' marital joint bank accounts.

Ex. 4

7. All prior orders remain in full force and effect.

APPROVED:

_____
Judicial Officer

Presented By:

/s/ William J. Lynch
William J. Lynch, Esq. (#2817)
WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916
401-648-2100; 401-648-2103 (Fax)
*bill@wjlynchlaw.com*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2022:

X I electronically filed and served this document through the electronic filing system on the following parties: Evan M. Kirshenbaum. Esq., Attorney for the Defendant. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Deborah J. Chadwick
Deborah J. Chadwick

EX. 4

**From:** Deb <Deb@WJLYNCHLAW.COM>
**Sent:** Wednesday, January 5, 2022 4:38 PM
**To:** Evan Kirshenbaum <emk@kirshenbaumlaw.com>; Deana Guglielmo <dguglielmo@kirshenbaumlaw.com>; Midge Pacheco <gracep@kirshenbaumlaw.com>
**Cc:** Bill Lynch <Bill@WJLYNCHLAW.COM>
**Subject:** Cronan v. Cronan

Attorney Kirshenbaum: Attached please find the proposed Order with Attorney Lynch's modifications (redlined) for your convenience. Thanks. Deb

Deborah J. Chadwick
WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916
401-648-2100; 401-648-2103 (fax)
deb@wjlynchlaw.com

Ex. 4

**STATE OF RHODE ISLAND**
**PROVIDENCE, SC.**

**FAMILY COURT**

**JOHN J. CRONAN** :
:
**v.** : **F.C. No. P2020-2673**
:
**LAURIE A. CRONAN** :

## ORDER

This matter was scheduled for trial (continued) on Friday, December 17, 2021, before General Magistrate Ballarino presiding, and after hearing thereon, with both parties being present and represented by counsel, ~~after a conversation on the record, the above~~ it is hereby~~,~~

## ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the parties have agreed to advance defendant Laurie Cronan the sum of $600,000.00 as an advance against her ultimate distribution in said matter.

2. The parties have agreed that the full amount of the Plaintiff's anticipated year-end distribution for calendar year 2021 (~~the~~ new bonus) from RIMI will be direct deposited into the parties' joint checking account and the parties have agreed to advance plaintiff John Cronan the sum of $150,000.00 as an advance against his ultimate distribution in said matter.

3. Plaintiff shall provide his total compensation for 2021 including regular pay, bonus, if any, ~~on~~ dividend amounts, shares distributions, expert testimony payments received, as well as the RIMI end ~~of~~ year 2021 dividend ~~bonus~~ not yet received and will identify any and all deductions or withholding amount for taxes, state, federal or other deductions ~~for agreement and court ordered opposing party approval BEFORE removing or paying them~~.

4. Both parties shall provide 2021 year-end updates to any and all investment accounts, bank accounts, retirement accounts, 401(k)~~K~~ accounts and the like, and will identify any withdrawal of funds or transactions, reduction to employee contributions to said 401(k), investment~~,~~ and/or retirement accounts and/or changes made to said accounts during the pendency of this matter.~~, indicating their value as of December 31, 2021.~~

5. Plaintiff's counsel shall provide the names of the individuals from Prudential ~~and/or companies~~ that he~~'s~~ said he has contacted requesting the statements establishing the value of the Plaintiff's RIMI ~~any and all~~ 401(k) accounts ~~, investment accounts, and retirement accounts~~ owned by the plaintiff as of the date of the parties marriage on July 4, 2006.

EX.4

6. The parties shall each provide a total of their attorneys' fees already disbursed to their individual counsels from the parties' marital joint bank accounts.

7. All prior orders remain in full force and effect.

APPROVED:

_____
Judicial Officer

Presented By:

/s/ William J. Lynch
William J. Lynch, Esq. (#2817)
WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916
401-648-2100; 401-648-2103 (Fax)
*bill@wjlynchlaw.com*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2022:

X I electronically filed and served this document through the electronic filing system on the following parties: Evan M. Kirshenbaum. Esq., Attorney for the Defendant. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Deborah J. Chadwick
Deborah J. Chadwick

EX. 4

Santander

Statement Period 12/01/21 TO 12/31/21
SIMPLY RIGHT CHECKING

For your convenience our Customer Service Center is available from 6 am - 10 pm EST, 7 days a week.
Call us at 1-877-768-2265
Hearing and speech impaired customers may use 7-1-1
www.santanderbank.com

JOHN J CRONAN JR
LAURIE A CRONAN
14338 PATRIOT WAY
WEST GREENWICH RI 02817

0000
7 7 31

**We updated our overdraft policy** *and reduced and eliminated some of our fees effective November 8, 2021:*

- If a transaction causes your account's balance to be overdrawn by one hundred dollars ($100.00) or less, we will not assess any Insufficient or Unavailable Funds – Item Paid fee(s) for that item.
- We have reduced from a maximum of six (6) to three (3) the number of Item Paid fees that may be charged per Business Day and similarly we have reduced from a maximum of six (6) to three (3) the number of Item Returned fees that may be charged per Business Day.
- We have eliminated the Overdraft Protection Transfer Fee.
- We have eliminated the ATM Balance Inquiry Fee.

Please visit santanderbank.com for current versions of Deposit Agreements and Fee Schedules for additional details.

21110DPL 605801 11/2021

**SIMPLY RIGHT CHECKING** — **Statement Period 12/01/21 - 12/31/21**

JOHN J CRONAN JR
LAURIE A CRONAN

**Account # 8940110579**

## Balances

| | | | |
|---|---|---|---|
| Beginning Balance | $65,858.21 | Current Balance | $50,554.79 |
| Deposits/Credits | +$294,696.58 | Average Daily Balance | $75,984.41 |
| Withdrawals/Debits | -$310,000.00 | | |

## Interest

| | | | |
|---|---|---|---|
| Paid this Period * | $3.70 | Annual Percentage Yield Earned | 0.06% |
| Earned this Period | $3.70 | Paid Last Year | $1,216.99 |
| Paid Year-To-Date | $1,099.26 | | |

* The interest earned and the interest paid may differ depending on when interest is credited to your account.

## Account Activity

| Date | Description | Additions | Subtractions | Balance |
|---|---|---|---|---|
| 12-01 | **Beginning Balance** | | | $65,858.21 |
| 12-08 | XXSSA TREAS 310 XXSOC SEC 120821 **********SA | $3,842.00 | | $69,700.21 |
| 12-20 | INTERNET TRANSFER TO ACCT *5901 - SANTANDER PREMIER CHECKING | | $2,000.00 | $67,700.21 |
| 12-22 | RIMF - PFD CCD C SH DISTRIB DISTRIBUTION | $280,000.00 | | $347,700.21 |
| 12-23 | INTERNET TRANSFER TO ACCT *7073 - SANTANDER PREMIER PLUS CHECKING | | $280,000.00 | $67,700.21 |
| 12-30 | RHODE ISLAND MED Payroll 127480 **********70 | $10,850.88 | | $78,551.09 |
| 12-30 | TRANSFER TO ACCT *7073 - SANTANDER PREMIER PLUS CHECKING | | $8,000.00 | $70,551.09 |
| 12-30 | TRANSFER TO ACCT *7065 - SANTANDER PREMIER PLUS CHECKING | | $8,000.00 | $62,551.09 |
| 12-30 | TRANSFER TO ACCT *5901 - SANTANDER PREMIER CHECKING | | $12,000.00 | $50,551.09 |

Ex. 4

**STATE OF RHODE ISLAND**
**PROVIDENCE, SC.**

**FAMILY COURT**

**JOHN J. CRONAN** :
:
**v.** : **F.C. No. P2020-2673**
:
**LAURIE A. CRONAN** :

**ORDER**

This matter was scheduled for trial (continued) on Friday, December 17, 2021, before General Magistrate Ballarino presiding, after a conversation on the record, the above is hereby,

**ORDERED ADJUDGED AND DECREED:**

1. That the parties have agreed to advance defendant Laurie Cronan the sum of $600,000.00 as an advance against her ultimate distribution in said matter.

2. The parties have agreed that the full amount of the Plaintiff's anticipated year-end distribution for calendar year 2021 (~~the~~ new bonus) from RIMI will be direct deposited into the parties' joint checking account and the parties have agreed to advance plaintiff John Cronan the sum of $150,000.00 as an advance against his ultimate distribution in said matter.

3. Plaintiff shall provide his total compensation for 2021 including regular pay, bonus, if any, ~~on~~ dividend amounts, shares distributions, expert testimony payments received, as well as the RIMI end ~~-~~ of ~~-~~ year 2021 dividend ~~bonus~~ not yet received and will identify any and all deductions or withholding amount for taxes, state, federal or other deductions ~~for agreement and court ordered opposing party approval BEFORE removing or paying them~~.

4. Both parties shall provide 2021 year-end updates to any and all investment accounts, bank accounts, retirement accounts, 401(k)~~K~~ accounts and the like, and will identify any withdrawal of funds or transactions, reduction to employee contributions to said 401(k), investment and/or retirement accounts and/or changes made to said accounts during the pendency of this matter~~, indicating their value as of December 31, 2021.~~

5. Plaintiff's counsel shall provide the names of the individuals from Prudential ~~and/or companies~~ that he~~'s~~ said he has contacted requesting the statements establishing the value of the Plaintiff's RIMI ~~any and all~~ 401(k) accounts ~~, investment accounts, and retirement accounts~~ owned by the plaintiff as of the date of the parties marriage on July 4, 2006.

6. The parties shall each provide a total of their attorneys' fees already disbursed to their individual counsels from the parties' marital joint bank accounts.

EX.4

7. All prior orders remain in full force and effect.

APPROVED:

Justice of the Family Court

Presented by:
KIRSHENBAUM LAW ASSOCIATES, INC.
Attorney for Defendant,

/S/Evan M. Kirshenbaum
1000 Chapel View Boulevard, Suite 270
Cranston, Rhode Island 02920
401-467-5300
Email: emk@kirshenbaumlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of January 2022:

X I emailed and electronically served this document through the electronic filing system on the attorney for Plaintiff, William J. Lynch, Esquire at bill@wjlynchlaw.com.

/s/ Deana M. Guglielmo

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Ex. 4

**STATE OF RHODE ISLAND**
**PROVIDENCE, SC.**

**FAMILY COURT**

**JOHN J. CRONAN** :
:
**v.** : **F.C. No. P2020-2673**
:
**LAURIE A. CRONAN** :

# PLAINTIFF'S POST-TRIAL MEMORANDUM

## *TABLE OF CONTENTS*

EX. 4

## XIV. PROPOSED DISTRIBUTION OF MARITAL ESTATE
## *(TOTAL MARITAL ESTATE: $8,912,682.60)

| | |
|---|---|
| 55% to John | $4,901,975.50 |
| 45% to Laurie | $4,010,707.10 |

(*Does not include 2021 year-end update of Laurie's Westminster Account 0850)

***Adjustments***:

A) Laurie: Already received $600,000.00 (real estate escrow)
B) Laurie: Already received $50,000.00 (motor vehicles)
C) John: Already received $280,000.00 (RIMI 2021 year-end dividend) Lie to cover up
D) Legal Fee Adjustment: Laurie owes John $37,609.97
E) Laurie owes John $50,000.00 (payment re: Motions to Adjudge in Contempt)

Total Adjustments (Laurie owns John): $457,609.97

***ODROS***:

1) RIMI 401(k) $7,149,076.10
   45% Laurie - $457,609.97
   55% John +457,609.97

2) Fidelity 401(k) (0085) 138,265.46
   55% John
   45% Laurie

3) Roth IRA (John) 112,422.04
   55% John
   45% Laurie

4) Westminster Financial (Laurie) (0850) MUST BE UPDATED
   55% John
   45% Laurie

5) Roth IRA (Laurie) (4615) 53,450.32
   55% John
   45% Laurie

ATTY. FOR Plaintiffs Attachment Lying to TRIBUNAL

Santander

EX. 4

**Statement Period 12/01/21 TO 12/31/21**
**SIMPLY RIGHT CHECKING**

For your convenience our Customer Service Center is available from 6 am - 10 pm EST, 7 days a week.
Call us at 1-877-768-2265
Hearing and speech impaired customers may use 7-1-1.
www.santanderbank.com

**JOHN J CRONAN JR**
**LAURIE A CRONAN**
**14338 PATRIOT WAY**
**WEST GREENWICH RI 02817**

0000
7 7 31

**We updated our overdraft policy** and *reduced and eliminated* some of our fees effective November 8, 2021:

- If a transaction causes your account's balance to be overdrawn by one hundred dollars ($100.00) or less, we will not assess any Insufficient or Unavailable Funds – Item Paid fee(s) for that item.
- We have reduced from a maximum of six (6) to three (3) the number of Item Paid fees that may be charged per Business Day and similarly we have reduced from a maximum of six (6) to three (3) the number of Item Returned fees that may be charged per Business Day.
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- We have eliminated the ATM Balance Inquiry Fee.

Please visit santanderbank.com for current versions of Deposit Agreements and Fee Schedules for additional details.

21110DPL 605801 11/2021

**SIMPLY RIGHT CHECKING** **Statement Period 12/01/21 - 12/31/21**

**JOHN J CRONAN JR**
**LAURIE A CRONAN**

**Account # 8940110579**

## Balances

| | | | |
|---|---|---|---|
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| Deposits/Credits | +$294,696.58 | Average Daily Balance | $75,984.45 |
| Withdrawals/Debits | -$310,000.00 | | |

## Interest

| | | | |
|---|---|---|---|
| Paid this Period * | $3.70 | Annual Percentage Yield Earned | 0.06% |
| Earned this Period | $3.70 | Paid Last Year | $1,216.99 |
| Paid Year-To-Date | $1,093.26 | | |

* The interest earned and the interest paid may differ depending on when interest is credited to your account.

## Account Activity

| Date | Description | Additions | Subtractions | Balance |
|---|---|---|---|---|
| 12-01 | **Beginning Balance** | | | $65,858.21 |
| 12-08 | XXSSA TREAS 310 XXSOC SEC 120821 **********SA | $3,842.00 | | $69,700.21 |
| 12-20 | INTERNET TRANSFER TO ACCT *5901 - SANTANDER PREMIER CHECKING | | $2,000.00 | $67,700.21 |
| 12-22 | RIMI - PPD CCD C SH DISTRIB DISTRUBITION | $280,000.00 | | $347,700.21 |
| 12-23 | INTERNET TRANSFER TO ACCT *7073 - SANTANDER PREMIER PLUS CHECKING | | $280,000.00 | $67,700.21 |
| 12-30 | RHODE ISLAND MED Payroll 127480 **********70 | $10,850.88 | | $78,551.09 |
| 12-30 | TRANSFER TO ACCT *7073 - SANTANDER PREMIER PLUS CHECKING | | $8,000.00 | $70,551.09 |
| 12-30 | TRANSFER TO ACCT *7065 - SANTANDER PREMIER PLUS CHECKING | | $8,000.00 | $62,551.09 |
| 12-30 | TRANSFER TO ACCT *5901 - SANTANDER PREMIER CHECKING | | $12,000.00 | $50,551.09 |

RIMI 2021 Dividends



EQUAL HOUSING LENDER

EX. 4

Plaintiff, John J. Cronan
By and through his Attorney,

/s/ William J. Lynch
William J. Lynch, Esq. (#2817)
WJ Lynch Law
320 Newport Avenue
Rumford, RI 02916
401-648-2100; 401-648-2103 (Fax)
bill@wjlynchlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2022:

X I electronically filed and served this document through the electronic filing system on the following: Evan M. Kirshenbaum, Esq., Attorney for Defendant. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Deborah J. Chadwick
Deborah J. Chadwick

Case Number: P20202673
Filed in Providence/Bristol County Family Court
Submitted: 8/11/2022 10:01 AM
Envelope: 3741655
Reviewer: Doreen D

Ex. 6

# STATE OF RHODE ISLAND

**FAMILY COURT**
***FINAL JUDGMENT***

| COUNTY | | CIVIL ACTION - FILE NO. |
|---|---|---|
| **PROVIDENCE** | | **P2020-2673** |
| PLAINTIFF | | DEFENDANT |
| **JOHN J. CRONAN** | | **LAURIE A. CRONAN** |

***The findings of facts have been made and are so contained in the Interlocutory decree pending entry of the final decree, subject to the pending appeal before the Rhode Island Supreme Court.***

☒ ANSWERED ☐ UNANSWERED

This action came on for hearing before this Honorable Court, the Honorable General Magistrate Ballirano presiding, as a contested matter over five days (October 14, October 15, November 9, November 12 and December 17, 2021), and the issues having been tried and a decision having been duly rendered in favor of the Plaintiff and the Defendant on May 3, 2022.

NOW THEREFORE, three months have elapsed and no reason appearing why a final judgment should not be entered, it is ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's Complaint for Divorce and Defendant's Counterclaim for Divorce are granted on the grounds that there are irreconcilable differences that have led to the irremediable breakdown of the marriage.

2. Husband and Wife are each awarded all right, title and interest in and to the personal property in their respective possession, to include their automobiles, and they shall be solely responsible for any debts or costs associated with their separate property, pay said debts timely and hold the other harmless thereon.

3. The marital estate enumerated in Findings of Fact 13(a-h) shall be divided 60/40 in favor of Husband, adjustment to be made upwards or downwards to reflect the current values of said accounts at the time of disposition.

4. Wife shall receive all right, title, and interest in and to her two Mercedes automobiles and without any offset credit to Husband for the value of same.

5. Adjustment shall be made by counsel to equalize attorney fees prior to the distribution of the estate as indicated herein.

6. An adjustment shall be made to account for the advance in proceeds Wife received in cash from the sale of the marital domicile and that Husband received as agreed upon at the conclusion of the trial.

7. Husband shall maintain Wife on his employer related health insurance under the terms of the Rhode Island Health Insurance Continuation Act for as long as she is eligible. If there is a cost to maintain Wife, she shall be responsible for said cost if she wishes to remain thereon. If Wife cannot remain on Husband's health insurance, Wife shall be solely responsible for her own separate coverage and the cost thereof. Husband and Wife shall each be responsible for their own uncovered medical costs.

☑ Check this box if a continuation page is used.

8. Any remaining carryover tax losses shall be divided 60/40 in favor of Husband. Each party shall be responsible for their own separate tax filings hereafter unless they otherwise agree.

9. There shall be no offset due and owing to Husband relative to the allegations Wife violated the temporary order.

10. All temporary orders entered in this matter shall end with the month of May 2022 and the parties shall each be responsible for their individual expenses commencing June 1, 2022.

11. The cost of any Qualified Domestic Relations Orders necessitated to complete the division of assets shall be shared equally between the parties.

12. Wife is denied alimony permanently.

13. Husband is permitted to waive alimony permanently.

/s/ Daniel Ballirano
General Magistrate

Approved: 08/16/2022
JUSTICE OF THE FAMILY COURT

Vacated on form
Ballirano J.M.
8/26/2022 @ 9:53AM

Presented by attorney for prevailing party:

Attorney's Name (Printed): William J. Lynch, Esquire (#2817)

Attorney's Signature: /s/ William J. Lynch

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of August 2022:

X I electronically filed and served this document through the electronic filing system on the following: Evan M. Kirshenbaum. Esq., Attorney for the Defendant. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Deborah J. Chadwick
Deborah J. Chadwick

Ex. 7

**SECTION 9.**

**8-10-3.2. General magistrate of the family court. –**

**(a)** There is hereby created within the family court the position of general magistrate of the family court who shall be appointed by the ~~governor~~ CHIEF JUDGE OF THE FAMILY COURT with the advice and consent of the senate for a ~~life~~ term OF TEN (10) YEARS AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED. NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE ASSIGNMENT OF THE GENERAL MAGISTRATE TO MORE THAN ONE SUCH TERM, SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE.

**(b)** The general magistrate shall be an attorney at law and a member in good standing of the Rhode Island bar . ~~with a minimum of ten (10) years experience as a general magistrate in the Rhode Island family court.~~

**(c)** The primary function of the general magistrate shall be the enforcement of child support decrees, orders, and law relative to child support. The general magistrate shall have all the authority and powers vested in magistrates by virtue of sections 8-10-3, 8-10-3.1, 9-15-19, 9-15-21, 9-14-26, 9-18-8, 9-18-9, and 36-2-3, and any other authority conferred upon magistrates by any general or public law or by any rule of procedure or practice of any court within the state.

**(d)** The chief justice of the supreme court with the agreement of the chief judge of the family court may specially assign the general magistrate to ~~perform judicial duties within~~ any court of the unified judicial system ~~in the same manner as a judge may be assigned pursuant to chapter 15 of this title~~ ; provided, however, that the general magistrate may be assigned to the superior court subject to the prior approval of the presiding justice of the superior court. When the general magistrate is so assigned he or she shall be vested, authorized, and empowered with all the powers belonging to the ~~justices~~ MAGISTRATES of the court to which he or she is specially assigned.

Ex. 7

**SECTION 10.** Section 8-15-3.1 of the General Laws in Chapter 8-15 entitled "Court Administration" is hereby amended to read as follows:

**8-15-3.1.**
~~Chief justice -- Power to assign judges.~~ - CHIEF JUSTICE - POWER TO ASSIGN MAGISTRATES. -- The Chief justice of the supreme court has the power to assign any magistrate of the superior court, family court, and/or district court to any court of the unified judicial system with the consent of the presiding justice and/or chief judge of the relevant courts . ~~in the same manner as a judge may be assigned pursuant to chapter 15 of this title.~~ When a magistrate is so assigned, he or she shall be vested, authorized, and empowered with all the powers belonging to the ~~justices and/or~~ magistrates of the court to which he or she is specially assigned.

2007 R.I. ALS 73, 2007 R.I. Pub. Laws 73, 2007 R.I. Pub. Ch. 73, 2007 R.I. HB 5300, 2007 R.I. ALS 73, 2007 R.I. Pub. Laws 73, 2007 R.I. Pub. Ch. 73, 2007 R.I. HB 5300

This enactment is significant on several levels but most importantly, it is not subject to any argument that it created something new out of whole cloth and the legislature could have therefore overlooked something in that process. Rather, this was a deliberate and specific use of language designed to make it clear that magistrates—whatever they are, and whatever functions they serve, and however much assistance they provide to the court on a day-to-day basis—are not judges.

c. Magistrates Are Not Judges.

As the Legislature recognized in enacting R.I.Pub.L. c. 73 in 2007, there are significant distinctions between magistrates and judges, and they took great pains to

Ex. 7

circumscribe them. From a logical and common sense standpoint—the perspective from which statutory interpretation must be viewed—the entirety of these amendments would have had no purpose if judges and magistrates were interchangeable.

(i) Legislative Intent.

As noted above, R.I.G.L. §8-10-3(a) provides that "[t]here is hereby established a family court, consisting of a chief judge and eleven (11) associate justices" (emphasis supplied). While the General Assembly could have simply amended this statute to increase the number of associate justices to provide more judicial personnel at that level; however it did not. Instead, it created a *different position*—i.e., magistrate. It did not install more personnel on the bench with all the same powers given to judges.

(ii) Qualification Process.

There is no question that the appointment process for judges (A) follows a specific statutory format[13] and (B) is different from that applied to the selection of magistrates. Among the major differences are that (1) judicial appointments are

[13] R.I.Const. Art. X, §4 provides in relevant part:

> The governor shall fill any vacancy of any judge of the Rhode Island Superior Court, Family Court, . . . or any other state court which the general assembly may from time to time establish by nominating on the basis of merit, a person from a list submitted by the aforesaid judicial nominating commission, and by and with the advice and consent of the senate, shall appoint said person to the court where the vacancy occurs.

The Providence Journal Ex. 8

COURTS

# Survey finds inequities, discrimination in Rhode Island courts, legal profession

Katie Mulvaney
The Providence Journal

Published 6:01 a.m. ET Nov. 14, 2021

PROVIDENCE — The results of a Rhode Island Bar Association membership survey paint a stark portrait of inequities in the state's legal system: Nearly half of those who responded reported witnessing or experiencing discrimination in the workplace and in state courts.

A survey by the Rhode Island Bar Association Diversity & Inclusion Task Force found that a majority of respondents encountered discrimination — including instances of racism, sexism, homophobia and prejudice based on a person's disability — in the profession and in the Rhode Island court system. Female attorneys, lawyers of color, LGBT lawyers and those with disabilities reported experiencing barriers to their professional career, such as disparate treatment, lower pay and fewer opportunities to advance.

"Anecdotally, we've heard these different stories of racism, sexism and homophobia, but to see it on paper ...," said William Trezvant, chairman of the Thurgood Marshall Law Society in Rhode Island. "The question is what are we going to do next."

**More:** East Providence mayor calls for release of report into city clerk's discrimination claims

Trezvant welcomed the findings, saying that such a survey was long overdue.

"It supports our efforts to make the bar more inclusive," Trezvant said.

The task force was created in August 2020 in response to increasing calls both locally and nationally to prioritize diversity and inclusion and the need to promote a fair and equal justice system, the task force said in a statement. The group decided to survey members for voluntary demographic information and encourage candid responses, with a focus on

members' perceptions and experiences with discrimination and prejudice within the practice of law.

More than 300 members of the association's 5,000-plus members responded.

## RI's legal community called an 'old boys' club'

According to the survey, 47% of respondents indicated they have experienced discrimination, including racism, sexism, homophobia and bias due to a disability. Their accounts included lawyers of color being mistaken as defendants by judges or court staff in criminal cases and lesser treatment of lawyers and litigants of color.

Incidences of sexism encompassed sexual harassment by judges, colleagues and other lawyers toward female attorneys. Female lawyers, including those with a disability or of color, noted inequities such as unequal pay and fewer opportunities for advancement. Several referred to the legal community in Rhode Island as an "old boys' club," according to the survey.

Other observations included female lawyers and lawyers of color being ignored or overlooked and litigants being stereotyped. The task force reported "many" comments about judges disrespecting lawyers of color and young female attorneys.

**More:** Family Court judge blasts DCYF for treatment of girls, warns of discrimination lawsuit

Women working in the private sector recounted experiencing a bias against motherhood and being undermined by their male counterparts.

Examples of homophobia entailed disparaging comments and general discrimination against LGBTQ+ lawyers.

A total of 42% of lawyers who are part of an underrepresented identity group reported that they experienced social, opportunity or advancement barriers in their professional career, with 58% relating that they associated that treatment with their identity within the underrepresented group. The main complaints encompassed disparate treatment, including fewer opportunities, raises and promotions.

Other challenges included an increase in incivility and that jobs within the profession are too often based on family or political affiliations.

The findings did not come as a surprise to Trezvant, who said he had not experienced discrimination but had witnessed judges and lawyers treating female attorneys with disrespect. He had also heard about public defenders being mistaken for defendants.

## Recommendation: Mandatory training on diversity and inclusion

The task force has recommended that the bar association and the state Supreme Court impose mandatory annual continuing legal education courses focusing on diversity and inclusion and implicit bias. It emphasized, too, the importance of bar members in underrepresented groups participating in leadership, committees and governance.

Judges and the courts should commit to equitable hiring practices, annual implicit bias and anti-racism training, and emphasize outreach from judges to a diverse pool of lawyers, the task force said. It advocates establishing uniform standards for court practices, an open dialogue about mental health challenges, and better communication about the repercussions of discriminatory practice of the law and in the courtroom.

The majority of the lawyers who responded to the survey did, however, say they believed that both the bar association and the Rhode Island Supreme Court were committed to diversity and inclusion.

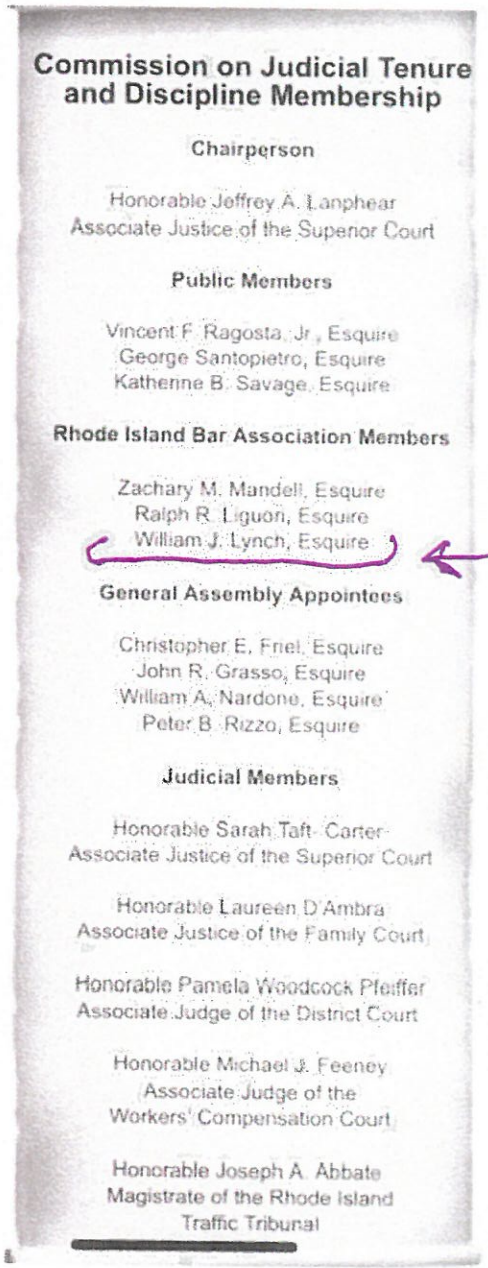
**More:** Embattled East Providence city clerk seeks separation deal

The task force, chaired by Superior Court Judge Linda Rekas Sloan, shared the results with the Rhode Island Supreme Court Committee on Racial and Ethnic Fairness, created by Chief Justice Paul A. Suttell in the aftermath of the killing of George Floyd in Minneapolis at the hands of a white police officer in May 2020. Floyd's murder sparked a national outcry for a renewed focus on racial justice.

Craig N. Berke, spokesman for the Rhode Island judiciary, said in an email that the survey results are under review. The Committee on Racial and Ethnic Fairness has a meeting with the Bar Association leadership later this month to discuss the results, he said. He declined to comment further.

Trezvant said the Thurgood Marshall Law Society hopes to work with Supreme Court Justice Melissa Long, who chairs the Committee on Racial and Ethnic Fairness, to increase inclusivity and diversity in the courts.

Ex. 9



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Ex. 9

**Filter** Filter below results

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**Engagement** 06/27/2022

**Term Expiration** 04/01/2023

EX. 10 Chris's Judicial Responsibility

# RHODE ISLAND CODE OF JUDICIAL CONDUCT

## TABLE OF CONTENTS

EX. 10

a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known* by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

## RULE 2.12
## *Supervisory Duties*

(A) A judge* shall encourage court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code in the performance of their official duties or in the presence of the judge.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

## COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge

EX. 10

may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge. To the extent that court personnel fails to act in a manner consistent with the judge's obligations under this Code in the performance of their official duties, the judge shall report such conduct to the appropriate authority.*

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

## RULE 2.13
## *Administrative Appointments*

(A) In making administrative appointments, a judge:*

(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

### COMMENT

[1] Appointees of a judge include magistrates, assigned counsel, and officials, such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law,* nepotism is the appointment or hiring of any relative within the third degree of relationship* of either the judge or the judge's spouse or domestic partner,* or the spouse or domestic partner of such relative.

## RULE 2.14
## *Disability and Impairment*

A judge,* having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, should respond appropriately.

### COMMENT

[1] An appropriate response includes actions intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, an appropriate response may include but is