

**Maintenance & Child Support Guidelines:
Can Anyone Afford to Get Divorced?
How To Use the New Formulas**

**Presented by
Steven Abel
for Rockland County Bar Association
March 2, 2016 at 12 noon**

Covering:

What's the Best Way to Calculate the Numbers:
The Back of a Used Envelope?
Family Law Software?
Steve Abel's Worksheets?
Joy Rosenthal's website?

What's the Cap – \$141,000 or \$178,000?

Is there any real difference in the caps?

What's the difference between child support income and maintenance income?

Do we have to explain why we're deviating?



THE NEW MAINTENANCE STATUTE
A Brief Synopsis by Steven L. Abel

The new law governing both temporary and post-divorce maintenance went into effect on Jan. 23, 2016.

TWO FORMULAS

The law contains two formulas for calculating the amount of maintenance and an advisory schedule for duration. One formula is for childless couples, the other for couples with children. The same formulas are used for temporary and post-divorce maintenance.

WHAT IS INCOME

Income is the same as Child Support Guidelines income, except that the maintenance to be paid using the formulas is not deducted from the payor's income, and income from income-producing property (stocks, bonds, rental real estate) being equitably distributed is a specific item to be added to income.

FOR A CHILDLESS COUPLE, to calculate the presumptive guideline amount:

- A. Take 30% of the income (up to \$178,000) of the higher income spouse (\$110,000): \$33,000

- B. Subtract 20% of the income of the lower income spouse (\$25,000): -\$5,000

- C. = \$28,000

- D. Calculate 40% of the combined income of the spouses (\$135,000): \$54,000

- E. Deduct the lower income (\$25,000) from the 40% amount (D.): \$29,000

The presumptive award amount is the lower of (C.) and (E.): \$28,000

(This formula is also used in the somewhat unusual situation where the maintenance payor is the custodial parent entitled to child support from lower income parent.)

FOR A COUPLE WITH CHILDREN, to calculate the presumptive guideline amount:

- A. Take 20% of the income (up to \$178,000) of the higher income spouse (\$110,000): \$22,000
 - B. Subtract 25% of the income of the lower income spouse (\$25,000): -\$6,250
 - C.. = \$15,750
 - D. Calculate 40% of the combined income of the spouses (\$135,000):. . \$54,000
 - E. Deduct the lower income (\$25,000) from the 40% amount (D.):. . . . \$29,000
- The presumptive award amount is the lower of (C.) and (E.):. \$15,750*

Child Support then continues to be calculated exactly as before under the Child Support Guidelines, except that the maintenance amount is deducted from the payor’s income and added to the payee’s income.

MATH SHORTCUT

Both of the formulas result in no maintenance when the payee’s income exceeds 2/3 of the payor’s income. So, if the payor has \$100,000/year, and the payee has \$66,666/year, no maintenance is required by the formulas.

INCOME CAP

The new law specifies an income cap for the *payor’s* income of \$178,000 as of Feb. 1, 2016 (NOT the \$141,000 specified for child support nor combined income). Using higher incomes is a discretionary function. For maintenance the statute states:

“(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph e of this subdivision; and
 (3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.”

For child support, the statute states:

“(3) Where the combined parental income exceeds the dollar amount set forth in subparagraph two of this paragraph, the court shall determine the amount of child support for the amount of the combined parental income in excess of such dollar amount through consideration of the factors set forth in paragraph (f) of this subdivision **and/or the child support percentage.**”

Because the maintenance statute omits any reference to using the formulas for income above the \$178,000 cap, the Courts may be reluctant to use the formulas in that situation. However, several reported cases use the formulas for income above the cap.

DURATION

For marriages of zero(?) to 15 years, maintenance would be awarded for 15% to 30% of the length of the marriage; for marriages of more than 15 up to 20 years, maintenance would be awarded for 30% to 40% of the length of the marriage; and for marriages of more than 20 years, maintenance would be awarded for 35% to 50% of the length of the marriage. This part of the law is labeled “advisory,” whatever that means.

But non-durational maintenance is permitted if it’s appropriate.

DEVIATION

Couples can agree to any deviation they desire and no explanation is required. Judges may also deviate but they must explain why. But, I have already been told that court clerks in both Manhattan and Nassau are requiring detailed explanations. This seems odd, as the maintenance statute does NOT require judicial approval of negotiated settlements. This is just the opposite of the child support law.

RETIREMENT

In determining the duration of maintenance, the court may consider anticipated retirement assets, benefits and retirement eligibility age. Actual or partial retirement will be a ground for modification of post-divorce maintenance if

it results in a substantial diminution of income.

NEW FACTORS

New factors in post-divorce maintenance include:

- d) the termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;**
- (h) the availability and cost of medical insurance for the parties;**
- (k) the standard of living of the parties established during the marriage;**
- (m) the equitable distribution of marital property and the income or imputed income on the assets so distributed;**

It's also interesting to note the factors that have been eliminated by the new law:

- (1) the income and property of the respective parties including marital property distributed pursuant to subdivision five of this part;
- (2) the length of the marriage;
- (8) the ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefor;
- (10) the presence of children of the marriage in the respective homes of the parties
- (12) the inability of one party to obtain meaningful employment due to age or absence from the workforce;
- (13) the need to pay for exceptional additional expenses for the child/children, including but not limited to, schooling, day care and medical treatment;
- (19) the loss of health insurance benefits upon dissolution of the marriage, and the availability and cost of medical insurance for the parties.

ENHANCED EARNINGS

Enhanced earnings will no longer be “distributed” but their value may be “considered” by the court in how other marital property is divided. How this will actually play out is one of the few major mysteries of the new law.

DOING THE MATH

While the formulas are not so complicated that you can't do the math with a calculator, it's really bit much when both child support and maintenance are involved. In my opinion, now's the time to buy, learn and use Family Law Software. Besides handling the basic calculation easily, it has pages for tax analysis that are just amazing. Go to <http://www.familylawsoftware.com/contact.html> or call 877.477.5488

A free alternative is the calculator provided in Joy Rosenthal's website at: <http://www.joyrosenthal.com/new-york-maintenance-child-support-calculator/>

If you like paper, use my worksheets, attached below.

SEPARATION AGREEMENTS

The new statute says:

“h. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the post-divorce maintenance guideline obligation.”

Unlike the CSSA, there is nothing about being required to be advised of the Maintenance Guidelines, nor setting forth the math, nor reasons for deviating. The Separation Agreement can properly leave out all of this.

But there is a reasonable argument that setting forth all of these details may help insulate the agreement from future attack. I've drafted a sample clause just for that purpose.

ADDITIONAL EXAMPLES

CHILDLESS COUPLE

A.	Take 30% of the income of the higher income spouse (\$160,000):	\$48,000
B.	Subtract 20% of the income of the lower income spouse (\$80,000):	-\$16,000
C.		= \$32,000
D.	Calculate 40% of the combined income of the spouses (\$240,000):	\$96,000
E.	Deduct the lower income (\$80,000) from the 40% amount (D.):	\$16,000
	The presumptive award amount is the lower of (C.) and (E.):	\$16,000

SAME COUPLE WITH TWO CHILDREN,

A.	Take 20% of the income of the higher income spouse (\$160,000):	\$32,000
B.	Subtract 25% of the income of the lower income spouse (\$80,000):	-\$20,000
C.		= \$12,000
D.	Calculate 40% of the combined income of the spouses (\$240,000):	\$96,000
E.	Deduct the lower income (\$80,000) from the 40% amount (D.):	\$16,000
	The presumptive award amount is the lower of (C.) and (E.):	\$12,000

In addition, Child Support under NY's guidelines would be \$37,583.

TOTAL SUPPORT = \$49,583

Pre-tax incomes: \$160,000 minus \$49,583 = \$110,417

\$80,000 plus \$49,583 = \$129,483

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

-----X

Index/Docket No.: _____

Plaintiff,

**MAINTENANCE/
CHILD SUPPORT
WORKSHEET**

-- against --

Defendant

-----X

Prepared by _____

This Worksheet is submitted by Plaintiff Defendant

(All numbers used in this worksheet are YEARLY figures. Convert weekly or monthly figures to yearly numbers.)

STEP 1 MANDATORY INCOME *b(5)*

PLAINTIFF DEFENDANT

1. Gross (total) income (as reported on most recent Federal tax return, or as computed in accordance with Internal Revenue Code and regulations): *b(5)(I)*..... _____

The following items MUST be added if not already included in Line 1:

- 2. Investment income: *b(5)(ii)*..... _____
- 3. Workers' compensation: *b(5)(iii)(A)*..... _____
- 4. Disability benefits: *b(5)(iii)(B)*..... _____
- 5. Unemployment insurance benefits: *b(5)(iii)(C)*..... _____
- 6. Social Security benefits: *b(5)(iii)(D)*..... _____
- 7. Veterans benefits: *b(5)(iii)(E)*..... _____
- 8. Pension/retirement income: *b(5)(iii)(F)*..... _____
- 9. Fellowships and stipends: *b(5)(iii)(G)*..... _____
- 10. Annuity payments: *b(5)(iii)(H)*..... _____
- 11. If self-employed, depreciation greater than straight-line depreciation used in determining business income or investment credit: *b(5)(vi)(A)*.... _____
- 12. If self-employed, entertainment and travel allowances deducted from business income to the extent the allowances reduce personal expenditures: *b(5)(vi)(B)*..... _____
- 13. Former income voluntarily reduced to avoid child support: *b(5)(v)*. _____
- 14. Income voluntarily deferred: *b(5)(iii)*..... _____

A. TOTAL MANDATORY INCOME:..... _____

STEP 2 NON-MANDATORY INCOME

These items must be disclosed here. Their inclusion in the final calculations, however, is discretionary. In contested cases, the Court determines whether or not they are included.

In uncontested cases, the parties and their attorneys or mediators must determine which should be included.

- 15. Income attributable to non-income producing assets: (b)(5)(iv)(A)..... _____
- 16. Employment benefits that confer personal economic benefits: (b)(5)(iv)(B)
(Such as meals, lodging, memberships, automobiles, other)..... _____
- 17. Fringe benefits of employment: (b)(5)(iv)(C)..... _____
- 18. Money, goods & services provided by relatives & friends: (b)(5)(iv)(D) _____

B. TOTAL NON-MANDATORY INCOME:..... _____

C. TOTAL INCOME (add Line A + Line B): _____

STEP 3 DEDUCTIONS

- 19. Expenses of investment income listed on line 2: (b)(5)(ii)..... _____
- 20. Unreimbursed business expenses that do not reduce personal expenditures:
(b)(5)(vii)(A)..... _____
- 21. Alimony or maintenance actually paid to a former spouse: (b)(5)(vii)(B) _____
- 22. Child support actually paid to other children the parent
is legally obligated to support: (b)(5)(vii)(D)..... _____
- 23. Public assistance: (b)(5)(vii)(E)..... _____
- 24. Supplemental security income: (b)(5)(vii)(F)..... _____
- 25. New York City or Yonkers income or earnings taxes actually paid:
(b)(5)(vii)(G)..... _____
- 26. Social Security & Medicare taxes (FICA) actually paid:(b)(5)(vii)(H)... _____

D. TOTAL DEDUCTIONS:..... _____

E. Plaintiff's Income (Line C minus Line D):.....\$ _____

F. Defendant's Income (Line C minus Line D):..... \$ _____

MAINTENANCE CALCULATIONS
*If maintenance is not an issue,
skip forward to Step 8 for Child Support*

STEP 4

G. Insert Income from income-producing property distributed or to be distributed pursuant to equitable distribution.....\$ _____

H. Add Line G to Plaintiff or Defendant's Income from Line E or F.....\$ _____

STEP 5 *Select either Childless Couple or Couple with Child(ren)*

CHILDLESS COUPLE (for couples with no children, or all children are over age 21, or Couples where the Payor is the Custodial Parent):

27. Multiply the income (up to \$178,000) of the higher income spouse (from Line E, F or H)

by 30%:..... \$ _____
 28. Multiply the income of the lower income spouse (from Line E, F or H) by 20%: ..\$ _____
 29. Subtract Line 27 from Line 28:= \$ _____
 30. Add the combined income of the spouses (Line E or H plus Line F or H):.....\$ _____
 31. Multiply Line 30 by 40%:\$ _____
 32. Insert the income of the lower income spouse (from Line E, F or H):\$ _____
 33. Subtract Line 32 from Line 31:= \$ _____
I. ENTER THE LOWER OF (29) OR (33): \$ _____

COUPLES WITH CHILD(REN) and Payor is the Non-Custodial Parent

34. Multiply the income (up to \$178,000) of the higher income spouse (from Line E, F or H) by 20%:..... \$ _____
 35. Multiply the income of the lower income spouse (from Line E, F or H) by 25%: ..\$ _____
 36. Subtract Line 35 from Line 34:= \$ _____
 37. Add the combined income of the spouses (Line E or H plus Line F or H):\$ _____
 38. Multiply Line 37 by 40%:\$ _____
 39. Insert the income of the lower income spouse (from Line E, F or H):\$ _____
 40. Subtract Line 39 from Line 38:= \$ _____
J. ENTER THE LOWER OF (36) OR (40): \$ _____

STEP 6

K. DECIDE the amount of maintenance to be paid on any payor income exceeding \$178,000 per year _____

L. ADD Lines I or J and Line K: _____

*If there are no children and low income exemptions do not apply, Line L is the amount of maintenance under NYS' guidelines.
 If there are children and low income exemptions do not apply, then insert Line L on Line U below.*

STEP 7 LOW INCOME EXEMPTIONS

M. INSERT amount of payor's income from Line E, F or Line H:..... \$ _____

N. ENTER amount of maintenance from Line L \$ _____

O. SUBTRACT Line N from Line M:..... _____

If Line O is more than the self-support reserve (\$15,890 in 2015-6), then the low income exemptions do not apply and Line I is the amount of maintenance owed under the NYS' guidelines. If there are children, then insert Line O on Line U below.

For the most current self-support reserve, go to https://www.childsupport.ny.gov/dcse/child_support_standards.html

If Line O is less than the self-support reserve (\$15,890 in 2015-6), then

P. INSERT amount of payor's income from Line E, F or H:..... _____

Q. Self-support reserve:..... \$15,890

R. SUBTRACT Line Q from Line P:..... _____

*If the amount on Line R is greater than zero, enter that amount in Line S.
 If the amount on Line R is less than or equal to zero, enter zero in Line S. (The law says "If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.")*

S. Amount of maintenance under NYS' guidelines after low income adjustment: ..\$ _____

If there are children, then insert Line S on Line U below

CHILD SUPPORT CALCULATIONS

STEP 8 T. Insert incomes from Lines E & F..... _____

U. SUBTRACT maintenance amount from payor's income and **ADD** to recipient's income and insert results on Line V:

V. Parental Income for Child Support

W. Combined Parental Income (ADD together Line V of both) (b)(4):\$ _____

STEP 9 (b)(3) and (c)(2)

MULTIPLY Line W (up to \$141,000) by the proper percentage below and insert result in Line U:

For 1 child.....17% For 3 children.....29% For 5 or more children.....35%
For 2 children.....25% For 4 children.....31%

X. COMBINED CHILD SUPPORT:.....

STEP 10 (c)(2)

DIVIDE the noncustodial parent's amount on Line V:.....
by the amount of Line W:.....

Y. to obtain the percentage allocated to the noncustodial parent:.....%

Z. MULTIPLY line X by Line Y for child support on \$141,000 (c)(2) :.....

STEP 11 (c)(3)

AA. DECIDE the amount of child support to be paid on any combined parental income exceeding \$141,000 per year. (If less than \$141,000 insert 0)

BB. ADD Line Z and Line AA:.....

Unless the Low Income Exemptions apply (see Step 13) Line BB is the amount of child support to be paid by the non-custodial parent to the custodial parent for all costs of the children, except for child care expenses, health care expenses, and college, post-secondary, private, special or enriched education.

STEP 12 SPECIAL NUMERICAL FACTORS

CHILD CARE EXPENSES

CC. Cost of child care resulting from custodial parent's:

seeking work (c)(6)[discretionary] working attending elementary education

attending secondary education attending higher education

attending vocational training leading to employment: (c)(4).....

DD. MULTIPLY Line CC by Line Y:.....

This is the amount the non-custodial parent must contribute to the custodial parent for child care.

HEALTH EXPENSES (c)(5)

EE. Health insurance & health care expenses not covered by insurance:.....

FF. MULTIPLY Line EE by Line Y: \$ _____

This is the amount the non-custodial parent must contribute to the custodial parent for health insurance and health care.

GG. EDUCATIONAL EXPENSE, if appropriate (c)(7)

STEP 13 LOW INCOME EXEMPTIONS (d)

- HH. INSERT amount of noncustodial parent's income from Line V:..... \$ _____
- II. ADD amounts on Line BB, Line DD, and Line FF:..... _____
- JJ. SUBTRACT Line II from Line HH:..... _____

If Line JJ is more than the self-support reserve (\$15,890 in 2016-6), then the low income exemptions do not apply and Line BB is the amount of child support owed under the NYS' guidelines. If so, go to Step 14.

For the most current self-support reserve and poverty level, go to https://www.childsupport.ny.gov/dcse/child_support_standards.html

If Line JJ is less than \$11,770 (the poverty level), then

- KK. INSERT amount of non-custodial parent's income from Line V: :..... _____
- LL. Self-support reserve: \$15,890
- MM. SUBTRACT Line LL from Line KK: _____

If Line MM is more than \$300 per year, then Line BB is the amount of basic child support. If Line MM is less than \$300 per year, then basic child support must be determined by Court based on the factors in DRL §240 (1-b)(f). In addition the Court also has discretion to award child care expenses, health care expenses, and college, post-secondary, private, special or enriched education.

If Line JJ is less than the self-support reserve (\$15,890) but more than the poverty level (\$11,770), then

- NN. INSERT amount of noncustodial parent's income from Line V:.....:..... _____
- OO. Self-support reserve:..... \$15,890
- PP. SUBTRACT Line OO from Line NN:..... _____

If Line PP is more than \$600 per year, then Line PP is the amount of basic child support. If Line PP is less than \$600 per year, then basic child support must be a minimum of \$600 per year. However, if the Court finds such amount to be unjust and inappropriate, based on the factors in DRL§ 240 (1-b)(f), the Court can order less than \$600 per year. In addition the Court also has discretion to award child care expenses, health care expenses, and college, post-secondary, private, special or enriched education.

STEP 14 NON-NUMERICAL FACTORS

NON-RECURRING INCOME (e)

A portion of non-recurring income, such as life insurance proceeds, gifts and inheritances or lottery winnings, may be allocated to maintenance and child support. The law does not mention a specific percentage for such non-recurring income. Such support is not modified by the low income exemptions.

EDUCATIONAL EXPENSES (c)(7)

New York's child support law does not contain a specific percentage method to determine how parents should share the cost of education of their children. Traditionally, the courts have considered both parents' complete financial circumstances in deciding who pays how much. The most important elements of financial circumstances are income, reasonable expenses, and financial resources such as savings and

investments.

ADDITIONAL FACTORS (f)

The child support guidelines law lists 10 factors that should be considered in deciding on the amount of child support for:

combined incomes of more than \$141,000 per year, or
to vary the numerical result of these steps because the result is "unjust or inappropriate".

These factors are:

1. The financial resources of the parents and the child.
2. The physical and emotional health of the child and his/her special needs and aptitudes.
3. The standard of living the child would have enjoyed if the marriage or household was not dissolved.
4. The tax consequences to the parents.
5. The non-monetary contributions the parents will make toward the care and well-being of the child.
6. The educational needs of the parents.
7. The fact that the gross income of one parent is substantially less than the gross income of the other parent.
8. The needs of the other children of the non-custodial parent for whom the non-custodial parent is providing support, but only (a) if Line 22 is not deducted; (b) after considering the financial resources of any other person obligated to support the other children; and (c) if the resources available to support the other children are less then the resources available to support the children involved in this matter.
9. If a child is not on public assistance, the amount of extraordinary costs of visitation (such as out-of-state travel) or extended visits (other than the usual two to four week summer visits), but only if the custodial parent's expenses are substantially reduced by the visitation involved.
10. Any other factor the court decides is relevant.

NON-JUDICIAL DETERMINATION OF SUPPORT (h)

Outside of court, parties are free to agree to any amount of support, so long as they sign a statement that they have been advised of the provisions of the child support guidelines law, the amount of "basic child support" (Line W) resulting from the Guidelines and the reason for any deviation. Further, the Court must approve any deviation. In addition, the courts retain discretion over child support.

Signature (check which applies) Plaintiff Defendant
(The name signed must be printed beneath)

Subscribed and Sworn to
before me on _____

NOTARY PUBLIC

ARTICLE 1
MAINTENANCE GUIDELINES

a, The parties agree that they have been advised of and are fully aware of the provisions contained in the New York State Maintenance Guidelines (codified inter alia in Section 236, Part B, subdivision 6, of the New York Domestic Relations Law and which is hereinafter referred to as the "Maintenance Guidelines").

b. The maintenance obligation as defined in DRL §236 presumptively results in the correct amount of maintenance to be awarded.

c. Maintenance in accordance with DRL §236 is based on the following:

I. The Plaintiff had an annual gross income of \$_____ in 201____, and deductions for Social Security taxes (retirement and Medicare contributions actually paid) of \$_____, resulting in maintenance income of \$_____.

ii. The Defendant had an annual gross income of \$_____ in 201____, and deductions for Social Security taxes (retirement and Medicare contributions actually paid) of \$_____, resulting in a maintenance income of \$_____.

iii. The combined annual income was \$_____.

[use one of the next two formulas]

FOR A CHILDLESS COUPLE

(This formula is also used when the maintenance payor is the custodial parent entitled to child support from lower income parent.)

A. Take 30% of the income (up to \$178,000) of the higher income spouse: _____

B. Subtract 20% of the income of the lower income spouse: _____

C. (A minus B) = _____

D. Calculate 40% of the combined income of the spouses: _____

E. Deduct the lower income from the 40% amount (D.): _____

The guideline amount is the lower of (C.) and (E.):..... _____

FOR A COUPLE WITH CHILDREN

A. Take 20% of the income (up to \$178,000) of the higher income spouse: _____

B. Subtract 25% of the income of the lower income spouse: _____

C. (A minus B) = _____

- D. Calculate 40% of the combined income of the spouses: _____
E. Deduct the lower income from the 40% amount (D.):..... _____

The guideline amount is the lower of (C.) and (E.):..... _____

[add if appropriate]

Because the payor's income exceeds \$178,000 per year, the parties have considered such excess income in determining the amount agreed to herein.

d. Any computations contained in this Article are not material provisions of the Agreement nor are such computations material to the waivers and acknowledgments contained herein. Neither party is relying upon these computations in entering into this Agreement.

e. The guideline amount of maintenance set forth above does not contain "attributed" or "imputed income", nor does it contain any calculation based upon combined income in excess of \$178,000 because only a court of competent jurisdiction can determine whether or not to attribute or impute income or to determine a maintenance award to combined income in excess of \$178,000.

f. To the fullest extent permitted by law, each of the parties waives any rights he or she may have pursuant to the "Maintenance Guidelines" as it presently exists or may be amended in the future, and instead agrees to be bound by the terms and conditions of this Agreement. As such, the parties intend that this Article be deemed to be a waiver as contemplated by DRL §236, Part B, subdivision 6, paragraph h. Each of the parties hereby specifically waives the right to seek maintenance under the provisions of the "Maintenance Guidelines" or under the comparable laws of any other jurisdiction, which laws provide for maintenance or alimony obligations to be determined on any basis which would alter either party's maintenance obligations under this Agreement.

g. Notwithstanding anything contained in this Article or any other clause, paragraph or Article of this Agreement, or of any statute presently in existence or which may be enacted in the future, the parties expressly waive the right to recover the difference between what would have been the maintenance award under the "Maintenance Guidelines" and the maintenance arrangement set forth in this Agreement, regardless of which party would benefit from asserting such right. No overpayment or underpayment of maintenance resulting from any theoretical application of the Guidelines shall be recoverable, nor form the basis for any claim or cause of action by either party, or any third party claiming through or on behalf of either party against the other.

h. None of the provisions for maintenance shall establish any third-party beneficiary rights in favor of either party, and the parties expressly agree that no third-party beneficiary claims may be made pursuant to the provisions of this Agreement.

I. The parties acknowledge that neither is receiving public assistance. The parties agrees that immediate income execution for maintenance is unnecessary.

[use one of the next two subheadings]

MAINTENANCE GUIDELINES CONFORMING

j. The amount of maintenance agreed to herein conforms to the "Maintenance Guidelines" provided for in DRL §236, Part B.

MAINTENANCE GUIDELINES DEVIATION

j. The amount of maintenance agreed to herein deviates from the "Maintenance Guidelines" provided for in DRL §236, Part B and the parties' reasons for not providing that amount are

k. The parties have been advised that the Guidelines provide that nothing contained in the formula provided for in DRL §236, Part B shall be construed to alter the right of the parties to enter into a validly executed agreement which deviates from the "Maintenance Guidelines."

l. To the extent that the support in this Agreement deviates from any calculation of the maintenance award as defined in the "Maintenance Guidelines" the parties waive the application of the "Maintenance Guidelines" The parties understand that DRL §236, Part B does not require the amount of such maintenance award pursuant to the "Maintenance Guidelines" to be specified, nor does it require setting forth the reason or reasons why this Agreement does not provide for payment of that amount. The parties understand that this Article is inserted herein solely to clarify that they have been advised of and know the results of calculating a maintenance award pursuant to the "Maintenance Guidelines."

Steven Abel,, is a divorce mediator and family law attorney with more than 40 years of experience. He is available as a consultant to mediators and also handles the drafting of QDROs. He is one of the co-authors of "The Friendly Divorce Guidebook for New York", articles on divorce law (including "Social Security Retirement Benefits"), and several forms for divorce, including Child Support Worksheets. He is a past President of the New York State Council on Divorce Mediation, the Academy of Professional Family Mediators, and the New York State Chapter of AFCC. He was recently honored by the NYSCDM, which named its annual award for service as the Abel Award. Steve served on the Board of Directors of the Center for Safety & Change (formerly Rockland Family Shelter) for more than 36 years.

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