



**NEW YORK LAWYERS'
PRACTICAL SKILLS SERIES**

Matrimonial Law

2021–2022

Joshua B. Gruner, Esq.

* Willard H. DaSilva, Esq. previously served as author until 2016.



NEW YORK STATE BAR ASSOCIATION

New York State Bar Association publications are intended to provide current and accurate information to help attorneys maintain their professional competence. Publications are distributed with the understanding that NYSBA does not render any legal, accounting or other professional service. Attorneys using publications or orally conveyed information in dealing with a specific client's or their own legal matters should also research original sources of authority.

We consider the publication of any NYSBA practice book as the beginning of a dialogue with our readers. Periodic updates to this book will give us the opportunity to incorporate your suggestions regarding additions or corrections. Please send your comments to: Publications Director, New York State Bar Association, One Elk Street, Albany, NY 12207.

Copyright 2021
New York State Bar Association
All rights reserved
ISBN: 978-1-57969-048-9
Product Number: 412122

CONTENTS

I.	Introduction	1
II.	The New Maintenance Guidelines Law	1
	A. Enhanced Earning Capacity	2
	B. Temporary Maintenance.....	2
	1. Temporary Maintenance Calculation	3
	2. Temporary Child Support.....	4
	3. Post-Divorce Maintenance Awards	4
	4. Duration of Post-Divorce Maintenance	6
	5. Changes to the Family Court Act	7
	6. Effective Date	7
III.	Initial Conference/Consultation.....	7
	A. Purpose	7
	B. Scheduling the Client	8
	1. Arrangements.....	8
	2. Conference Time	8
	3. Conference Fees	8
	C. Attendees	8
	1. Confidential Relationship.....	8
	2. Third Parties	9
	3. Staff	9
	4. Children	9
	D. Marshaling of Information	9
	1. Identifying Information	9
	2. Marital History	10
	3. Payor's Income	10
	4. Payor's Assets.....	11
	5. Payee's Income.....	13
	6. Payee's Assets	13
	7. Joint Assets	13
	a. Existing Assets.....	13
	b. Transferred and Dissipated Assets.....	13
	8. Separate (Nonmarital) Assets	14
	a. Identification	14
	b. Transmutation	14
	c. Contamination.....	15
	9. Obligations.....	15
	a. Major Liabilities	15
	b. Other Obligations.....	15
	c. Potential Liabilities	16
	10. Support Routine	16
	11. Marital Problems	16
	12. Evaluation of the Case	18
	a. Grounds.....	18

	b. Projections of Equitable Distribution	18
	c. Projections of Maintenance and Child Support	19
	d. Projections of Custody and Visitation	19
	e. The Parenting Coordination Program	20
	13. Expenses of the Case	20
	a. Attorney Fees	20
	b. Experts' Fees	20
	c. Other Disbursements	20
	14. Time Required	21
	15. Alternative Procedures	21
	16. Statement of Client's Rights and Responsibilities	21
IV.	The Retainer	22
	A. Retainer Conference	22
	B. Retainer Agreement	23
	1. Services Included	24
	2. Expenses or Disbursements Not Included in the Retainer Fee	24
	3. Method of Computing Fees	24
	4. Refunds of Fees	25
	5. Signing the Retainer Letter	25
	6. Guarantee of Payment of Fees	26
	7. Filing the Retainer Letter and Closing Statement	26
	8. Social Media/Email Communications	26
V.	Additional Information	26
	A. Standard of Living	26
	B. Budgets	27
	C. Financial Records	27
	D. Detailed Marital History	28
	E. Action to Be Taken	28
	1. Injunctive Relief	28
	2. Custody and Visitation	29
	3. Support	29
	4. Venue	29
	5. Termination of the Acquisition of Marital Property	29
VI.	Basic Law	30
	A. Jurisdiction	30
	B. Grounds	30
	1. Void and Voidable Marriages	30
	2. Action for a Divorce	30
	3. Action for a Separation	31
	4. Residence Requirements	31
	C. Equitable Distribution	32
	1. Generally	32
	2. Definitions	32
	3. Professional Licenses and Higher Education	33
	4. Appreciation of Separate Property	33
	5. Transmutation and Contamination	34

	6. Valuations	34
	7. Distribution	34
	a. Factors	35
	b. Contributions to Separate Property	36
	c. Distributive Award	37
	D. Post-Divorce Maintenance Awards	37
	E. Child Support	41
	F. Custody	45
	1. Presumptions	45
	2. Factors	45
	3. Agreements	46
	4. Relocation	46
VII.	Agreements	47
	A. Generally	47
	1. Purpose of the Agreement	47
	2. Nature of the Agreement	48
	B. Contract Law	49
	1. The Making of the Agreement	49
	2. Proper Representation	50
	C. Drafting the Agreement	51
	1. Use of Forms	51
	2. Formatting the Agreement	52
	D. Content of the Agreement	52
	E. Execution of the Agreement	53
VIII.	Commencement of the Case	54
	A. Analysis of Information	54
	B. Communication With the Other Spouse	55
	1. Letter	55
	2. Litigation Papers	55
	3. Certification of Papers	56
	4. Attorney Contact	56
	C. Information From the Other Lawyer	56
	D. Negotiations	56
IX.	Commencement of the Action	57
	A. Mandatory Automatic Restraining Orders and the Preliminary Conference	57
	B. Motions	60
	1. Submission of Applications in Matrimonial Actions	60
	2. Temporary Support	60
	3. Custody and Visitation	62
	4. Attorney Fees	62
	5. Experts' Fees	63
	6. Injunctive Relief	64
	7. Procedural Motions	65
X.	Disclosure	66
	A. Purpose	66
	B. Net Worth Affidavit	66

	C. Bill of Particulars.....	68
	D. Discovery and Inspection	68
	E. Interrogatories.....	69
	F. Depositions	69
	1. Examination of the Spouse	69
	2. Third Parties.....	71
	G. Experts' Reports	71
XI.	Trial Preparation	72
	A. Dispositional Statement.....	72
	B. Trial Outline	72
	C. Preparation of Exhibits	73
	D. Trial Memoranda	74
	E. Client Preparation	74
	1. Review of Facts	75
	2. Review of Procedures	75
	3. Review of Strategy	76
	F. Witnesses.....	77
	1. Generally.....	77
	2. Expert Witnesses	77
	3. Children	78
XII.	The Trial	79
	A. Pretrial Conference	79
	B. Prima Facie Case	80
	C. Stipulations.....	80
	D. Spouse's Case	81
	E. Rebuttal.....	81
	F. Attorney Fees.....	81
	G. Temporary Orders	81
XIII.	Judgment.....	82
	A. Decision.....	82
	B. Judgment.....	85
	C. Notice of Appeal.....	85
XIV.	Enforcement	86
	A. Generally	86
	B. Enforcement of Contracts.....	87
	1. Remedies.....	87
	2. Choice of Forum	88
	3. Procedures.....	88
	4. Attorney Fees.....	89
	C. Enforcement of Orders	89
	1. Choice of Forum	91
	2. Attorney Fees.....	91
XV.	Modification	92
	A. Modification of Agreements.....	92
	1. Generally.....	92
	2. Modification at the Time of Divorce	92

3.	Contract Provisions.....	92
B.	Modification of Orders	93
1.	Generally	93
2.	Procedures	93
3.	Disclosure Procedures	94
4.	Trial of the Issues	94
5.	Attorney Fees.....	94
XVI.	The Recognition of Same-Sex Marriages.....	95
XVII.	Conclusion.....	96
Appendix A	N.Y. Rules of Professional Conduct: Amended Disciplinary Rules	97
Appendix B	Rules Governing the Conduct of Lawyers in Matrimonial Actions	99
Appendix C-1	Uniform Rules for the New York State Trial Courts, Section 202.16.....	105
Appendix C-2	Uniform Rules for the New York State Trial Courts, Section 202.16-a.....	111
Appendix C-3	Uniform Rules for the New York State Trial Courts, Section 202.16-b.....	113
Appendix D-1	Statement of Client’s Rights and Responsibilities.....	115
Appendix D-2	Statement of Client’s Rights and Responsibilities (When Representation is Without Fee)	119
Appendix E	Child Support Standards Chart	121
Appendix F	2015 New York Laws Chapter 269	143
	Matrimonial Law Forms Index	163
	Table of Authorities	459
	About the Author	465

JOSHUA B. GRUNER, ESQ.

Joshua B. Gruner graduated with a Bachelor of Arts in Political Science from the University of Delaware in 1997 and received an Advanced Honors Certificate upon graduation. While at the University of Delaware, he founded the school's Pre-Law Society.

Mr. Gruner attended Hofstra University School of Law from 1997–2000. He served as the Managing Editor of the Family & Conciliation Courts Review (now known as the Family Courts Review). Before graduating in 2000, Mr. Gruner participated in the NITA Trial Advocacy Program, assisted in the creation of a Family Law Clinic and interned for Nassau Supreme Court Justice Gabriel Kohn. Upon graduating, he received the Distinguished Service to the School Award for all of his contributions to the school, particularly in the areas of family law.

Mr. Gruner was admitted to practice law in New York in January 2001. After graduating, he immediately began working in various areas of law, including real estate, corporate litigation and all phases of matrimonial and family law. In 2005, he became an associate at the firm of Gassman & Keidel (predecessor to Gassman Baiamonte Gruner, P.C.) and since that time has focused exclusively in the fields of matrimonial and family law. Mr. Gruner became a partner of the firm on October 1, 2015.

He is currently a member of the Nassau County Bar Association, where he was appointed as a member of the Judiciary Committee and WE CARE Advisory Board, and the New York State Bar Association, where he was appointed Co-Chair of the Membership and Long Range Planning Committees. For many years, he has been asked to assist in teaching the Family Law with Skills course offered at Hofstra University School of Law. He completed the intensive week-long trial program offered by the National Family Law Trial Institute. Mr. Gruner has been recognized nationally and state-wide as a family law attorney by the American Institute of Family Law Attorneys (2014 & 2015, Under 40 Client Satisfaction Award), National Academy of Family Law Attorneys (2014 Top 10 Under 40), N.Y. "Super Lawyers" (2013 Rising Star), and New York Metro's Top Lawyers (Rising Star 2015).