

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_

X

Index No.: \_\_\_\_\_

Plaintiff

-against-

Defendant

X

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

The issues of this action having  been submitted to me as one of the  Justices  
 been heard by  Special Referees  
 Judicial Hearing Officers  
of this Court at Part \_\_\_\_\_ hereof, held in and for the County of \_\_\_\_\_ on the  
day of \_\_\_\_\_ 20\_\_, and having considered the allegations and proofs of the  
respective parties, and due deliberation having been had thereon.

NOW, after  reading and considering the papers submitted I do hereby make the  
 hearing the testimony

following findings of essential facts which I deem established by the evidence and reach the  
following conclusions of law.

**FIRST:** The Plaintiff and Defendant were both eighteen (18) years of age or over  
when this action was commenced.

**SECOND:** Residency as required by DRL §230 has been satisfied as follows:

A) The  Plaintiff  
 Defendant has resided in New York State for a continuous period in excess of two  
years immediately preceding the commencement of this action.

**OR**

B) The  Plaintiff  
 Defendant has resided in New York State for a continuous period in excess of one  
year immediately preceding the commencement of this action, **AND:**

a.  the parties were married in New York State.

**or**

b.  the Defendant has lived as husband or wife in New York State  
with the Plaintiff.

**or**

c.  the cause of action occurred in New York State.

**OR**

C)  The cause of action occurred in New York State and both parties were  
residents thereof at the time of the commencement of this action.

**THIRD:** The Plaintiff and the Defendant were married on the date of \_\_\_\_\_ in the City, Town or Village of \_\_\_\_\_, County of \_\_\_\_\_, State or Country of \_\_\_\_\_; in a  civil  religious ceremony.

**FOURTH:**  There are no children of the marriage and none are expected.  
 There are no children of the marriage under 21 years of age and none are expected.

**FIFTH:** Plaintiff has  submitted a Plaintiff's Affidavit  testified in open court at inquest as to the allegations made to establish a cause of action for divorce.

- Cruel and Inhuman Treatment [DRL § 170(1)]
- Abandonment [DRL § 170(2)]
- Imprisonment [DRL § 170(3)]
- Adultery [DRL § 170(4)]
- Conversion of Judgment of Separation [DRL § 170(5)]
- Conversion of a Written Agreement of Separation

**Cruel and Inhuman Treatment (DRL §170(1)):**  
At the following times Defendant committed the following acts which endangered the Plaintiff's physical or mental well being and rendered it unsafe or improper for Plaintiff to continue to reside with Defendant.  
( Spell out in lettered subparagraphs, the acts, behavior, conduct of the Defendant ).

A) On or about \_\_\_\_\_ at or near \_\_\_\_\_ the Defendant \_\_\_\_\_  
*Date address / place of occurrence*

B) On or about \_\_\_\_\_ at or near \_\_\_\_\_ the Defendant \_\_\_\_\_  
*Date address / place of occurrence*

C) On or about \_\_\_\_\_ at or near \_\_\_\_\_ the Defendant \_\_\_\_\_  
*Date address / place of occurrence*

(Attach an additional sheet, if necessary ).

**Abandonment (DRL 170(2)):**

That commencing on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and continuing for  
*Month Year*

a period of more than one (1) year immediately prior to commencement of this action, the Defendant left the marital residence of the parties located at \_\_\_\_\_, and did not return. Such absence was without cause or justification, and was without Plaintiff's consent.

That commencing on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and  
*Month Year*

continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant refused to have sexual relations with the Plaintiff despite Plaintiff's repeated requests to resume such relations. Defendant does not suffer from any disability which would prevent  her  him from engaging in such sexual relations with Plaintiff. The refusal to engage in sexual relations was without good cause or justification and occurred at the marital residence located at \_\_\_\_\_.

That commencing on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and  
*Month Year*

continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant willfully and without cause or justification abandoned the Plaintiff, who had been a faithful and dutiful  husband  wife, by depriving Plaintiff of access to the marital residence located at \_\_\_\_\_.

This deprivation of access was without the consent of the Plaintiff and continued for a period of greater than one year.

**Imprisonment (DRL §170(3)):**

That after the marriage of Plaintiff and Defendant, Defendant was confined in prison for a period of three or more consecutive years, to wit: that Defendant is/was confined in \_\_\_\_\_ prison on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and

*Name of correctional facility* *Month Year*

remained confined until the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_;  
*Month Year*

**OR**  remains confined to this date.

**Adultery (DRL §170(4)):**

That on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_  
*Month Year Location*

the Defendant voluntarily committed of an act of sexual or deviate sexual intercourse with a person other than the Plaintiff after the marriage of Plaintiff and Defendant; **and** not more than five years elapsed between the date of the discovery of said adultery and the date of commencement of this action.

**Conversion of a Judgment of Separation (DRL §170(5)):**

That the \_\_\_\_\_ Court, \_\_\_\_\_ County, \_\_\_\_\_ (State or Country) granted a decree or judgment of separation on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, under Index No. \_\_\_\_\_; and

that the parties have lived separate and apart for a period of one year or longer after the granting of such decree; and that the Plaintiff has substantially complied with all the terms and conditions of such decree or judgment.

**Conversion of a Written Agreement of Separation (DRL §170(6)):**

That the Plaintiff and Defendant entered into a written agreement of separation, which they subscribed and acknowledged on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the form

required to entitle a deed to be recorded; and that the  agreement  memorandum of said agreement was filed on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in the Office of

the Clerk of the County of \_\_\_\_\_, wherein  Plaintiff  Defendant resided; and that the parties have lived separate and apart for a period of one year or longer after the execution of said agreement; and that the Plaintiff has substantially complied with all terms and conditions of such agreement.

**SIXTH:** No decree, judgment or order of divorce, annulment or dissolution of marriage has been granted to either party against the other in any Court of competent jurisdiction of this state or any other state, territory or country, and that there is no other action pending for divorce by either party against the other in any Court.

**SEVENTH:**

A)  A sworn statement pursuant to DRL §253 that Plaintiff has taken all steps within his or her power to remove all barriers to Defendant's remarriage following the divorce was served on the Defendant.

OR

B)  A sworn statement as to the removal of barriers to remarriage is not required because the parties were married in a civil ceremony.

OR

C)  Defendant  Both Plaintiff and Defendant has/have waived the need for a sworn statement as to the removal of barriers to remarriage in his/her affidavit(s).

**EIGHTH:** A) The parties have entered into an agreement dated \_\_\_\_\_, wherein the parties agreed that  Plaintiff  Defendant will receive maintenance in the sum of \$\_\_\_\_\_  per week  bi-weekly  per month  \_\_\_\_\_ for such period of time as set forth in the parties' agreement.

The terms of the agreement, as to maintenance, were fair and reasonable at the time of the making of the agreement, and are not unconscionable at the time of the signing of the judgment, as it relates to General Obligations Law § 5-311.

OR

B) The court has determined that  Plaintiff  Defendant will pay maintenance to  Plaintiff  Defendant in the sum of \$\_\_\_\_\_  per week  bi-weekly  per month  \_\_\_\_\_, for a period of \_\_\_\_\_;

commencing on \_\_\_\_\_, and expiring on \_\_\_\_\_. In making such award, the court has considered the factors contained in DRL § 236(B)(6)(a), which are incorporated herein by reference.

OR

C)  The plaintiff has requested  The parties have agreed that the existing \_\_\_\_\_ County \_\_\_\_\_ Court order(s) issued under  Index No. \_\_\_\_\_  Docket No. \_\_\_\_\_ continue as to maintenance, and that the payments for maintenance shall continue unless subsequently modified by any court of competent jurisdiction.

OR

D)  Neither party seeks maintenance.  The Court has declined to award maintenance

**NINTH:**

A)  Equitable Distribution and other marital issues have been resolved in the agreement dated \_\_\_\_\_.

OR

B)  The Court has determined that the marital property is subject to equitable distribution, and has set forth such distribution in a separate writing or transcript attached hereto. In determining such equitable distribution, the court has considered the factors contained in DRL § 236 (B)(5)(d).

OR

C)  Neither party seeks equitable distribution.

**TENTH:**  *Plaintiff's* former surname (*maiden name*) is: \_\_\_\_\_  
 *Defendant's*

Both parties will be authorized to resume the use of any former surname.

**ELEVENTH:**  *Plaintiff* is entitled to judgment of divorce and granting the  
 *Defendant* incidental relief awarded in the JUDGMENT signed this date.

This constitutes the Courts' decision pursuant to CPLR § 4213.

Dated: \_\_\_\_\_

\_\_\_\_\_ NY

\_\_\_\_\_  
J.S.C./Special Referee/ Judicial Hearing Officer

Hon. \_\_\_\_\_