

BRINGING FINALITY TO ‘POTS and PANS’

Uniform Superior Court Rule 24.7 provides in part that “...no divorce decree shall be granted unless all contestable issues in the case have been finally resolved...”

Prior to this Rule, the parties could be granted the divorce with the Court’s reserving jurisdiction over all other issues [this being possible when both parties admitted in sworn pleadings that the marriage was ‘irretrievably broken’ (or that the marriage was over on other grounds) and that a divorce should be granted]. The domestic relations ‘practice’ then inevitably experienced a party to a pending case (divorce granted with all other issues being reserved) re-marrying and then divorcing or dying before even the first case was resolved. Many ‘pots and pans’ – as well as many other assets – were left to be divided across multiple marriages.

Certainly to avoid such situation – and probably for other good reasons – Rule 24.7 was promulgated. While the wisdom of Rule 24.7 is quite clear in the domestic relations arena, its application as to one issue creates much consternation, frustration, and sometimes significant delay. Let me explain.

Most often parties resolve all of what this author will call the “more important issues” – i.e., child custody and parenting time, child support, alimony, and equitable division of most marital assets and liabilities; but here the operative word is “most”. Many times the division of the personal property – specifically, the furniture and furnishings, home tools, and the like – is purposely deferred to the very end of settlement negotiations. Many “affectionately” refer to this as the division of the “pots and pans”.

The division of these assets – whether just ordinary household goods or including items of significant value in art work, jewelry, or collectibles – **is a part of the**

‘Equitable Division of the Marital Estate’. The strict application of Rule 24.7 would dictate that any Final Judgment and Decree could not be entered until the division of every pot, pan, and knife and fork has been completed.

This author has experienced several mechanisms utilized by a Court or attorneys to deal with this last issue; those have been:

- Holding a hearing and enter an Order equitably dividing all the furnishings and furniture, etc;
- Refuse to enter the Final Judgment and Decree until the issue is resolved;
- Direct the parties to mediate the issue in an attempt to resolve the issues, with the Final Judgment and Decree being held in abeyance;
- Direct one party to make two lists of all items in dispute, dividing the items “equitably”, and then letting the other party choose which list to be awarded to each party; or
- Suggesting or directing binding arbitration (although this author has never had a Court direct this without it being suggested by a litigant).

However, much more often, rather than even presenting the “pots and pans” issue to the Court, the Settlement Agreement will either provide that:

- The parties will divide the furniture, furnishings and personal property by “mutual agreement”; or
- The parties, if unable to accomplish the division by “mutual agreement”, shall submit the issue to binding arbitration. ¹

This author believes that both of these Settlement Agreement provisions have problems with the “finality” required by Rule 24.7. The cynic in me leads to the

conclusion that these provisions calling for “agreement” could often be the perfect script for a “mission impossible”. The parties being asked to complete this mission are NOT two people who are getting divorced because they like each other or because they did so well as spouses “mutually agreeing”. How is it that the last thing to be decided - after both parties have most likely not gotten everything wanted and are not feeling “positive about the other - is left to the parties “goodwill and cooperation”? And, what is the recourse if one party refuses to agree – or even try to agree – or, if the parties truly try but cannot agree? The Court cannot order them to “mutually agree”; and that Court has no standard within the terms of the Agreement to determine compliance with the requirement to “mutually agree”. This becomes an issue without finality and without a remedy.

However, turning to the avenue of ‘Binding Arbitration’, as currently simply stated in most Settlement Agreements, is also NOT a smooth road to finality. Many questions do and have come to mind, a few being:

- How long do the parties have to try to “mutually agree” before arbitration is called for?
- How is the arbitration process requirement invoked and initiated?
- What if one party wants to arbitrate and the other wants to keep trying to “mutually agree”?
- What are the duties and responsibilities of the parties and of the arbitrator in the arbitration?
- What procedures govern and control the arbitration process?
- Who pays for the arbitration?

Other specific problems arise with the provision regarding arbitration current found in Settlement Agreements. Some of those are:

- The Agreement requires the arbitration to be concluded within an unrealistic short period of time. Do you need a Court Order extending the time?
- The Agreement specifies the arbitrator, but that person cannot serve and there is not mechanism for the selection of another. Do you have to go to the Court to appoint another arbitrator?
- The specified arbitrator cannot hold the arbitration within the specified time.

Again, do you need a Court Order to extend the time or to appoint another arbitrator?

- While the Agreement implies cooperation between the parties and cooperation by both parties with the arbitrator to facilitate the arbitration, there is no specific requirement to do so and no standards by which to judge cooperation. So, how is this accomplished? And,
- Does the arbitrator have the authority to establish and enforce a procedure and a schedule for the arbitration? And even if so, what are the consequences if a party does not comply with the procedures and schedule promulgated by the arbitrator?

There are many provisions in Settlement Agreements that require actions by the parties after the entry of the Final Judgment and Decree – e.g., transfer titles to vehicles, sign real estate documents, and transfer assets. There are also provisions that set standards and guidelines for future actions; for example, a party must maintain a residence in a “marketable and presentable condition”; or, mechanisms are provided by which the listing price is to be adjusted or by which a specified sales price (in dollars or

in applicable terms such as “break even”) is to be determined and is required to be accepted. However, the arbitration provision as generally used today provides no such specificity as to what actions are required and what standards apply to determine compliance. The current approach to Binding Arbitration at best encourages the parties to “mutually agree” so that the fees of the arbitrator can be avoided; otherwise, the provision is a good example of “form over substance”, leaving the parties and the arbitrator with little direction as to how to proceed.

In the last ten (10) to twelve (12) years, this author has conducted at least fifty (50) arbitrations of ‘pots and pans’. Most of these arbitrations have been accomplished despite the scarcity of direction in the Settlement Agreement or from the Court; the few that were not accomplished was because there were no “ground rules” for the initiation and conducting of the arbitration process, with those cases ending back in front of the Court. Therefore, two forms submitted for your consideration and utilization. One form is an attachment that could be referenced in an Agreement using the language often used now and referenced earlier; the second form is the same attachment in the form of a Court Order should that be required. To repeat myself, both forms place the division of the ‘pots and pans’ in the context of the ‘EQUITABLE DIVISION’ of the Marital Estate; therefore, this division is subject to the same factors that govern the division of all other marital assets. ²

ARBITRATION STIPULATION ATTACHMENT ³

The parties, as part of the complete and final resolution of their divorce case, and as part of the Equitable Division of the Marital Estate, have agreed to a Binding Arbitration of specific issues detailed below if they are not able to resolve these issues detailed below. Those issues are:

1. _____; and,
2. _____.

Each party signing this document expressly and specifically acknowledges that he/she agrees that

the listed issues is complete and that he/she agrees to submit those issues to Binding Arbitration. Each party expressly and specifically understands that the Court's entry of a Final Judgment and Decree will incorporate this provision and will be an Order directing that these identified issues be submitted to Binding Arbitration.

Further, in agreeing to Binding Arbitration of these identified issues, each party understands that:

A. ADVERSARIAL PROCESS: Arbitration is an adversarial process that will result in an Award by the Arbitrator; however, the normal Rules of Evidence may be relaxed by the Arbitrator as the Arbitrator deems appropriate and may be interpreted liberally so that each party is given ample opportunity for a full and fair hearing. The purpose of this Binding Arbitration is to obtain an independent review of the evidence and the entry of a "Binding Arbitration Award" as to the issues listed above in the case of _____ in the _____ Court of _____ County, Civil Action No. _____.

B. GOVERNING LAW & RULES: The Arbitrator, as the neutral, will conduct the arbitration in accordance with Georgia Law and other applicable Rules of Arbitration and Alternative Dispute Resolution, (the specific governing rules to be determined by the Arbitrator). The Arbitrator may request all information he / she deems relevant to the issue(s) to be resolved by this arbitration and may visit and inspect any premises or other venue where any asset which is the subject of the arbitration is located. Each party and each party's respective Counsel (if Counsel is involved) agree to cooperate fully with the Arbitrator and to participate fully and in good faith with the Arbitrator in all arbitration sessions and to provide documents and information reasonably requested by the Arbitrator.

C. WAIVERS: Each party - after consultation with Counsel - acknowledges that by entering into this BINDING ARBITRATION certain specific rights are forfeited, those including, but not being limited to: 1. The right to have this matter heard by a Judge or a Jury having jurisdiction of this matter. And, 2. The right to appeal the Arbitrator's Award except as provided by Georgia Law.

D. ARBITRATOR'S ROLE: The Arbitrator is not acting in the capacity of an attorney and does not offer any legal, tax, financial or any other advice; specifically, the Arbitrator is acting as the Judge and decisions-maker. All parties have been informed of and have been encouraged to retain independent legal counsel to participate in and to present evidence at the arbitration.

E. SPECIFIC PROCEDURES & AUTHORITY: If the parties have not resolved all of the issues detailed above [(i) within ____ days of the date of this Settlement Agreement; (ii) within ____ days after the entry of the Final Judgment and Decree; or (iii) by _____ (specified date)], then any issue not resolved shall be submitted to Binding Arbitration. The specific procedures shall apply and govern:

1. ARBITRATOR: [Place 'X' by alternative selected.]

____ The Arbitrator shall be _____; or,

____ The Attorneys of Record of the parties shall agree on an Arbitrator; or,

____ The 'Alternative Dispute Resolution' office of _____ County shall, upon application by either party by submitting this Attachment, shall

appoint an Arbitrator.

Additionally, if the Arbitrator named or selected is not able to serve as the Arbitrator, then the 'Alternative Dispute Resolution' office of _____ County shall, upon application by either party by submitting this Attachment, appoint an Arbitrator.

2. INITIATE ARBITRATION PROCESS: Upon expiration of the allowed time or date stated in Paragraph E. above, (and upon the identification of the Arbitrator if not already identified), each party shall contact that person within twenty-one (21) days; this contact can be by mail, phone, and/or email and shall include the party's name and all contact information – i.e., mailing address, business / home and cell phone numbers, and email address. Failure of a party to do so timely may be deemed by the Arbitrator as a waiver of that party's intention to participate in the arbitration, and the Arbitrator may in his/her sole discretion elect to proceed with the arbitration without the participation of the other party. Contemporaneously with the contacting of the Arbitrator, each party shall submit a current sworn 'Domestic Relations Financial Affidavit' and a copy of the Settlement Agreement signed by the parties.

3. ARBITRATOR'S FEE: As stated below, the Arbitrator shall have the right to require a retainer to be paid by each party; if the Arbitrator does so, the amount and the date due (no less than 10 days after the setting of the amount) shall be communicated to each party. Failure of either party to pay the requisite retainer by the due date may be deemed by the Arbitrator as a waiver of that party's intention to participate in the Arbitration.

4. ARBITRATION RULES & PROCEDURES: The Arbitrator is authorized and empowered to establish the rules and procedures that are to apply to the arbitration; in doing so, the Arbitrator may speak with each party (or attorney) to determine the most efficient and effective rules and procedures to apply to the arbitration; any such conversation by the Arbitrator shall not be considered an ex parte communication. These Rules and Procedures shall be binding on the parties, and each party's compliance is an absolute requirement of the arbitration; failure of a party to comply with the Rules and Procedures established by the Arbitrator may be deemed by the Arbitrator as a waiver of that party's intention to participate in the arbitration.

The Rules and Procedures established by the Arbitrator shall be communicated to each party (and respective counsel if attorneys are to be involved in the arbitration). In these Rules and Procedures the Arbitrator may require each party to submit documents and information prior to any Hearing and may specify a schedule to apply to the arbitration. If the Arbitrator requires each party to provide specified documents and/or other information, a party's failure to do so may be deemed by the Arbitrator as a waiver of that party's intention to participate in the arbitration or may be grounds for the Arbitrator to deny the documents being admitted into evidence or to deny testimony related to or based on the requested documents. The Arbitrator shall have the right to amend and/or modify these Rules and Procedures as deemed necessary to facilitate the arbitration, notifying each party of any such changes. The failure of a party to appear for any Hearing without good and justifiable cause shall be deemed a waiver of the party's right to participate in that

Hearing; the Hearing may proceed without the party's presence and any Finding or Award of the Arbitrator shall be valid and binding despite the party's absence. If a party misses the Arbitration Hearing (or any part of that hearing), that party shall immediately notify the Arbitrator in writing of the reasons for the failure to be present; the Arbitrator shall have absolute discretion to determine if the reason for not being present is sufficient cause to re-conduct the Hearing.

5. WAIVER of RIGHT to PARTICIPATE: The Arbitrator may find that a party's failure to comply timely with promulgated Rules and Procedures - either one time or cumulatively - constitutes a waiver of the party to participate in the arbitration. If the Arbitrator determines this to be the case, the Arbitrator shall issue a sworn Affidavit stating the basis of this determination and shall send this to each party. This determination by the Arbitrator shall be sufficient grounds for a party to file a Motion for Contempt for the other party's failure to comply with this arbitration procedure and any related Court Order.

6. AWARD: At the completion of the arbitration, the Arbitrator shall issue an Award; that Award may – but is not required to – contain a Finding of Facts. The Award shall be in writing, with the original filed with the Court in the file for the case and with a copy sent to each party and to each party's Attorney of Record in the case (even if the attorney did not participate in the Arbitration). The Arbitrator shall issue an Award even if the Arbitrator has found that one party has waived the right to participate in the arbitration.

7. MERGER into FINAL JUDGMENT and DECREE: Each party - after consulting with counsel - specifically and expressly agrees that the filing of the Arbitrator's Award with the Clerk of the Court makes the Award a part of the Settlement Agreement entered in to by the parties and also a part of the Final Judgment and Decree and may be enforced accordingly.

F. LIABILITY of ARBITRATOR: Absent misconduct, fraud, or gross negligence, the Arbitrator shall not be subject to liability to the parties as a result of his services as the Arbitrator. Furthermore, each party agrees to indemnify fully, to reimburse, and to hold this Arbitrator harmless for any and all claims, damages, judgments, costs, expenses (including attorney's and any other professional's fees incurred by or on behalf of the Arbitrator) as a result of any subsequent claim, demand or cause of action arising out of or in any way whatsoever related to this arbitration.

G. COMPENSATION of ARBITRATOR: The Arbitrator shall be compensated at the rate established by the Arbitrator. The Arbitrator shall be compensated for all time dedicated to this award including but not limited to any arbitration session(s) held, for all time spent in the arbitration process including any preparation for any such session, for all time meeting with one or both parties (individually or together), and for all time reviewing all evidence and preparing the Arbitration Award; also the Arbitrator shall be reimbursed for any and all out-of-pocket expenses incurred by him or his agent in this matter. The Arbitrator shall be entitled to require that each party pay an initial retainer in an amount specified by the Arbitrator, this to be submitted as required by the Arbitrator; that retainer shall be applied to the Arbitrator's fees and expenses to be paid by each party. The Arbitrator may require the payment of an additional retainer at any time; additionally, and unless otherwise specifically agreed in writing by the

parties or ordered by the Arbitrator as a part of the Arbitrator's Findings and Award, each party shall pay one-half (1/2) of the Arbitrator's total fees and expenses, this to be paid prior to the Arbitrator's presenting his Arbitration Award. The Arbitrator may order that one party pay all or more than one-half (1/2) of the Arbitration costs if a party fails to cooperate with the arbitration process or if, based on the facts and evidence presented, the Arbitrator deems this to be equitable. Provided however, if a party fails to pay all of the fees ordered to be paid by the Arbitrator, then the Arbitrator may withhold the submission of the Award and / or may also seek a Hearing to submit the Award and to obtain a Court Order regarding the payment of the Arbitrator's fees and expenses. Provided further, if a party has paid more than ordered to be paid by the Arbitrator, then that party may seek reimbursement from the other party, and failure of the party to reimburse the other shall be deemed non-compliance with the Court's Order and shall invoke the contempt powers of the Court.

This ____ day of _____, 2____.

Plaintiff *

Defendant *

Counsel of Record *

Ga. State Bar # _____

Counsel of Record *

Ga. State Bar # _____

* Print Name under signature

***IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA***

Plaintiff,

v.

Defendant.

Civil Action No.:

ORDER

The parties, as part of the complete and final resolution of their divorce case, and as part of the Equitable Division of the Marital Estate, have agreed to a Binding Arbitration of specific issues detailed below if they are not able to resolve these issues detailed below within ____ days of this date [Or, by _____ (specific date)]. Those issues are:

3. _____; and,

4. _____.

Each party signed the Settlement Agreement containing a provision detailing the arbitration

process and expressly and specifically acknowledging that he/she agreed that the listed issues is complete and that he/she agrees to submit those issues to Binding Arbitration.

NOW THEREFORE IT IS ORDERED THAT:

The above identified issues shall be submitted to Binding Arbitration.

IT IS FURTHER ORDERED THAT:

A. ADVERSARIAL PROCESS: The purpose of this Binding Arbitration is to obtain an independent review of the evidence and the entry of a "Binding Arbitration Award" as to the issues listed above in the case between _____ in the _____ Court of _____ County, Civil Action No. _____. This arbitration is an adversarial process that will result in an Award by the Arbitrator; however, the normal Rules of Evidence may be relaxed as deemed appropriate by the Arbitrator and may be interpreted liberally so that each party is given ample opportunity for a full and fair hearing.

B. GOVERNING LAW & RULES: The Arbitrator, as the neutral, will conduct the arbitration in accordance with Georgia Law and other applicable Rules of Arbitration and Alternative Dispute Resolution, (the specific governing rules to be determined by the Arbitrator). The Arbitrator may request all information he / she deems relevant to the issue(s) to be resolved by this arbitration and may visit and inspect any premises or other venue where any asset which is the subject of the arbitration is located. Each party and each party's respective Counsel (if Counsel is involved) shall cooperate fully with this Arbitrator and shall participate fully and in good faith with the Arbitrator in all arbitration sessions and shall provide documents and information reasonably requested by the Arbitrator.

C. WAIVERS: By entering into this BINDING ARBITRATION the parties have waived certain rights, including: 1. The right to have this matter heard by a Judge or a Jury having jurisdiction of this matter. And, 2. The right to appeal the Arbitrator's Award except as provided by Georgia Law.

D. ARBITRATOR'S ROLE: The Arbitrator is not to act in the capacity of an attorney and shall not offer any legal, tax, financial or any other advice; specifically, the Arbitrator shall act as the Judge and decisions-maker as to the issues detailed above. The Arbitrator shall inform all parties of the right to retain independent legal counsel and to have counsel to participate in and to present evidence at the arbitration.

E. SPECIFIC PROCEDURES & AUTHORITY: If the parties have not resolved all of the issues detailed above within the stated period of time or by the specified date, then any issue not resolved shall be submitted to Binding Arbitration. The specific procedures shall apply and govern:

1. ARBITRATOR: [Place 'X' by alternative selected.]

- ____ The Arbitrator shall be _____; or,
____ The Attorneys of Record of the parties shall agree on an Arbitrator; or,
____ The 'Alternative Dispute Resolution' office of _____ County shall, upon application by either party, appoint an Arbitrator.

Additionally, if the Arbitrator named or selected is not able to serve as the Arbitrator, then the 'Alternative Dispute Resolution' office of _____ County shall, upon application by either party by submitting this Attachment, appoint an Arbitrator.

2. INITIATE ARBITRATION PROCESS: Upon expiration of the allowed time or date stated in Paragraph E. above, (and upon the identification of the Arbitrator if not already identified), each party shall contact that person within twenty-one (21) days; this contact can be by mail, phone, and/or email and shall include the party's name and all contact information – i.e., mailing address, business / home and cell phone numbers, and email address. Failure of a party to do so timely may be deemed by the Arbitrator as a waiver of that party's intention to participate in the arbitration, and the Arbitrator may in his/her sole discretion elect to proceed with the arbitration without the participation of the other party. Contemporaneously with the contacting of the Arbitrator, each party shall submit a current sworn 'Domestic Relations Financial Affidavit' and a copy of the Settlement Agreement signed by the parties.

3. ARBITRATOR'S FEE: As stated below, the Arbitrator shall have the right to require a retainer to be paid by each party; if the Arbitrator does so, the amount and the date due (no less than 10 days after the setting of the amount) shall be communicated to each party. Failure of either party to pay the requisite retainer by the due date may be deemed by the Arbitrator as a waiver of that party's intention to participate in the Arbitration, and the Arbitrator may in his/her sole discretion elect to proceed with the arbitration without the participation of the other party.

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The Rules and Procedures established by the Arbitrator shall be communicated to each party (and respective counsel if attorneys are to be involved in the arbitration). In these Rules and Procedures the Arbitrator may require each party to submit documents and information prior to any Hearing and may specify a schedule to apply to the Arbitration. If the Arbitrator requires each party to provide specified documents and/or other information, a party's failure to do so may be deemed by the Arbitrator as a waiver of that party's intention to participate in the arbitration or may be grounds for the Arbitrator to deny the documents being admitted into evidence or to deny testimony related to or based on the requested documents. The Arbitrator shall have the right to amend and/or modify these Rules and Procedures as deemed necessary to facilitate the arbitration, notifying each party of any such changes. The failure of a party to appear for any Hearing without good and justifiable cause shall be deemed a waiver of the party's right to participate in that Hearing; the Hearing may proceed without the party's presence and any Finding or Award of the Arbitrator shall be valid and binding despite the party's absence. If a party misses the Arbitration Hearing (or any part of that Hearing), that party shall immediately notify the Arbitrator in writing

of the reasons for the failure to be present; the Arbitrator shall have absolute discretion to determine if the reason for not being present is sufficient cause to re-conduct the Hearing.

5. WAIVER of RIGHT to PARTICIPATE: The Arbitrator may find that a party's failure to comply timely with promulgated Rules and Procedures - either one time or cumulatively - constitutes a waiver of the party to participate in the arbitration. If the Arbitrator determines this to be the case, the Arbitrator shall issue a sworn Affidavit stating the basis of this determination and shall send this to each party. This determination by the Arbitrator shall be sufficient grounds for a party to file a Motion for Contempt for the other party's failure to comply with this arbitration procedure and this Order.

6. AWARD: At the completion of the arbitration, the Arbitrator shall issue an Award; that Award may – but is not required to – contain a Finding of Facts. The Award shall be in writing, with the original filed with the Court in the file for the case and with a copy sent to each party and to each party's Attorney of Record in the case (even if the attorney did not participate in the Arbitration). The Arbitrator shall issue an Award even if the Arbitrator has found that one party has waived the right to participate in the arbitration.

7. MERGER into FINAL JUDGMENT and DECREE: The filing of the Arbitrator's Award with the Clerk of the Court makes that Award a part of the Settlement Agreement entered in to by the parties and also a part of the Final Judgment and Decree and may be enforced accordingly.

F. LIABILITY of ARBITRATOR: Absent misconduct, fraud, or gross negligence, the Arbitrator shall not be subject to liability to the parties as a result of his services as the Arbitrator. Furthermore, each party agrees to indemnify fully, to reimburse, and to hold this Arbitrator harmless for any and all claims, damages, judgments, costs, expenses (including attorney's and any other professional's fees incurred by or on behalf of the Arbitrator) as a result of any subsequent claim, demand or cause of action arising out of or in any way whatsoever related to this arbitration.

G. COMPENSATION of ARBITRATOR: The Arbitrator shall be compensated at the rate established by the Arbitrator. The Arbitrator shall be compensated for all time dedicated to this award including but not limited to any arbitration Session(s) held, for all time spent in the arbitration process including any preparation for any such Session, for all time meeting with one or both parties (individually or together), and for all time reviewing all evidence and preparing the Arbitration Award; also the Arbitrator shall be reimbursed for any and all out-of-pocket expenses incurred by him or his agent in this matter. The Arbitrator shall be entitled to require that each party pay an initial retainer in an amount specified by the Arbitrator, this to be submitted as required by the Arbitrator; that retainer shall be applied to the Arbitrator's fees and expenses to be paid by each party. The Arbitrator may require the payment of an additional retainer at any time; additionally, and unless otherwise specifically agreed in writing by the parties or ordered by the Arbitrator as a part of the Arbitrator's Findings and Award, each party shall pay one-half (1/2) of the Arbitrator's total fees and expenses, this to be paid prior to the Arbitrator's presenting his Arbitration Award. The Arbitrator may order that one party pay all or more than one-half (1/2) of the

Arbitration costs if a party fails to cooperate with the arbitration process or if, based on the facts and evidence presented, the Arbitrator deems this to be equitable. Provided however, if a party fails to pay all of the fees ordered to be paid by the Arbitrator, then the Arbitrator may withhold the submission of the Award and / or may also seek a Hearing to submit the Award and to obtain a Court Order regarding the payment of the Arbitrator's fees and expenses. Provided further, if a party has paid more than ordered to be paid by the Arbitrator, then that party may seek reimbursement from the other party, and failure of the party to reimburse the other shall be deemed non-compliance with the Court's Order and shall invoke the contempt powers of the Court.

SO ORDERED this ____ day of _____, 2____.

Judge, Superior Court of _____

Consented to as To Form:

Attorney for Plaintiff
Ga. State Bar # _____

Attorney for Defendant
Ga. State Bar # _____

These forms will be available at my web site – twinjehlaw.org – under the
“Forms” section; they are also posted at _____.

¹ Sometimes this clause reads in part: “divide item by item”. But, what is an “item”? Is the dining room table with matching chairs an “item”, or just the table, or each chair? Is the set of fine china an “item”, or is each fork, knife, etc.? Other times this clause reads in part: “divide equally”. But what is “equal”? Does this mean number of pieces equally or equal value? And if the latter, does this price paid, replacement value, or yard sale value?

² See Concurring Opinion of Mr. Justice Hill in Stokes v. Stokes, 246 Ga. 765, 273 S.E.2d 169 (1980), and Superior Court Pattern Jury Charges.

³ It is this Author's recommendation that any provision in a Settlement Agreement simply read something like this: “The furniture, furnishings, and any other personal property of the parties not divided in this Settlement Agreement shall be equitably divided in accordance with the procedure detailed in Exhibit ‘__’ attached hereto and made a part of this Settlement Agreement by this reference.”