

No. 11-5664

In The
Supreme Court of the United States

—————◆—————
MICHAEL RAMON OCHOA,

Petitioner,

v.

ERIN RUBIN,
a.k.a. ERIN RUBIN OCHOA,

Respondent.

—————◆—————
**On Petition For A Writ Of *Certiorari*
To The Superior Court Of Pennsylvania,
Pittsburgh Office**

—————◆—————
PETITION FOR WRIT OF *CERTIORARI*

—————◆—————
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QUESTIONS PRESENTED

At any point in this case, were the facts as presented sufficient to determine whether these orders and opinions were obtained by internal or external fraud as defined at Pa. Title 23 §3332?

Has the actual denial of those facts as presented had the effect of concealing well-founded allegations of more serious crimes, including criminal conspiracy as defined at Pa. Title 18 §903, causing or aiding suicide as defined at Pa. Title 18 §2505, racketeering offenses as defined at Pa. Title 18 §911 and corresponding federal laws?

Assuming that the facts are true as asserted, do these circumstances fall within the intended scope of Pa. Constitution Article 1 §11 as well as 18 U.S.C. §1346, but outside of the narrower scope of *Skilling v. United States*, No. 08-1394?

Was the majority in *Skilling v. United States*, No. 08-1394 therefore mistaken?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF *CERTIORARI*

Petitioner respectfully prays that a writ of *certiorari* issue to review the judgments below.



OPINIONS BELOW

The opinions of the highest state court to review the merits appear at Appendix A to this petition and are reported at Allegheny County Court of Common Pleas Docket FD-07-000190, which are published online at <https://dcr.alleghenycounty.us> and also online at <https://public.me.com/michaelochoa> password: vishnu43



JURISDICTION

The date on which the highest state court decided this case was 06/20/11. A copy of that decision appears at Appendix D.

A timely petition for rehearing was thereafter denied on 07/18/11, and a copy of the order denying rehearing appears at Appendix E.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. §1346. Definition of “scheme or artifice to defraud”

For the purposes of this chapter, the term “scheme or artifice to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

Pa. Constitution Article 1 §11. Courts to be open

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.



STATEMENT OF THE CASE

ἡ δὲ τυραννὶς τὰ μὲν δοκοῦντα πολλοῦ ἄξια κτήματα εἶναι ἀνεπτυγμένα θεᾶσθαι φανερὰ πᾶσι παρέχεται, τὰ δὲ χαλεπὰ ἐν ταῖς ψυχαῖς τῶν τυράννων κέκτηται ἀποκεκρυμμένα, ἔνθαπερ καὶ τὸ εὐδαιμονεῖν καὶ τὸ κακοδαιμονεῖν τοῖς ἀνθρώποις ἀπόκειται.

1. In the protection from abuse and divorce suit which initiated these legal actions, my wife of more than 10 years, Dr. Erin Rubin, a.k.a. Dr. Erin Rubin Ochoa, was an Assistant Professor of Human Organ Transplantation Pathology, and a recipient of a National Institutes of Health, National Institute of

Diabetes and Digestive and Kidney Diseases training grant (NIH NIDDK KO8), which paid 75% of her salary at the Thomas Starzl Transplantation Institute of the University of Pittsburgh Medical Center (UPMC).

2. I, Michael Ramon Ochoa, gave up my academic career to rear our 2 daughters, Jael and Esther, and to support my wife through her medical specialty training and career advancement from 1996-2006.

3. Prior to our separation, we had a household income of nearly \$200,000/year, more than \$250,000 in professionally managed retirement and college savings, substantial insurance, real estate in New York City then valued at \$600,000, substantial household goods, \$500,000 in mortgage debt and about \$25,000 in revolving debt.

4. Just prior to separation, I was home schooling our girls, studying Ancient Greek at the University of Pittsburgh, finishing a 4 year project to turn our former home in the Bronx into a New York State funded 11 bed ambulatory care facility for autistic adults, as well as ghost writing a research project on liver regeneration to support my wife's federal training grant.

5. In October 2006, I discovered that my wife and her colleagues were involved in dangerous and unethical practices involving high risk human liver transplants, as well as fraud involving her federal training grant and extra marital sexual escapades.

6. I went into acute shock.
7. In order to control the situation, she used her Pa. medical license to prescribe to me psychiatric medication which has been causally linked to suicidal behavior.
8. Then, on 10/11/06, without my knowledge or consent, she fraudulently transferred the \$25,000 in marital credit card debt to a new card in my name only.
9. I begged her to stop her destructive behavior and to get clinical help.
10. She refused, and under the combination of dangerously inappropriate medication and extreme stress, my condition deteriorated.
11. So, on 11/07/06 she escorted me to the entrance of Western Psychiatric Institute and Clinic of UPMC (WPIC), where I was admitted voluntarily, although I was in no condition to give informed consent.
12. Upon my admission, Dr. Rubin was able to change my status to involuntary.
13. While I was heavily medicated and being held involuntarily, Dr. Rubin pressured me to continue working on her federally funded liver regeneration project.
14. She literally had to remove the paper clips and staples from my research materials, and even the wire bindings from my notebooks, to bring them into

my locked ward, lest I use them to escape or to hurt myself.

15. This project was described in University of Pittsburgh Institutional Review Board (IRB) #0501051.

16. When I resisted and paged her supervisor, Dr. Anthony Jake Demetris, he consulted University of Pittsburgh Department of Pathology Chairman, Dr. George Michalopoulos, who brought in Atty. David Pollock, of the family law firm of Pollock, Begg, Komar & Glasser (PBKG), to eliminate me without implicating UPMC.

17. The strategy was to strip me of access to assets and to initiate fraudulent no-fault divorce proceedings against me.

18. On 12/07/06, Dr. Rubin was able to obtain power of attorney to move most of our marital assets into new accounts in her name only.

19. She then made false claims to obtain an emergency protection from abuse order (PFA), and the next day, 12/08/06, I was turned out on the street with \$200, a two month supply of potent psych-meds and sleeping pills, and nowhere to go.

20. After a near fatal overdose I was re-institutionalized.

21. After that, Dr. Rubin withheld all access to my girls, while repeatedly pressuring me to consent to fraudulent no-fault divorce proceedings.

22. Meanwhile, she either concealed or destroyed my handwritten notes and unpublished manuscripts which connected me with her research, including irreplaceable works entitled “Tissue Engineering and the Ethics of Translational Research” as well as “The New Curriculum of the MGH Department of Pathology.”

23. When I was finally released 3 months later, on 03/13/07, I was coerced into signing a PFA barring direct contact with Dr. Rubin or my daughters for 3 years.

24. I then liquidated my only remaining assets to retain Atty. James Beck, of the family law firm of Gillotti, Capristo & Beck, who refused to represent me on any PFA issues or any issues arising from my involuntary hospitalization and near fatality.

25. So, with little more than my laptop computer and the clothes on my back, I fled Pittsburgh “as though the Devil were chasing me.”

26. Fortunately, my laptop contained my liver regeneration data, extensive manuscript drafts and even NIH compliance letters which I had written for Dr. Rubin.

27. With no work history or assets, I resumed the academic career which I had abandoned as a condition of marriage through the University of California at Berkeley.

28. Meanwhile, Dr. Rubin and her counsel used the coerced PFA and an edited version of my clinical

records to control my access to my girls through Bonnie McNally-Brown, LPC, NCC, who was appointed to supervise my limited phone contact.

29. My repeated attempts to obtain those records were simply ignored by UPMC.

30. Then, on 10/16/07, I gave a telephone deposition concerning my claims for spousal support, and I briefly returned to Pittsburgh on 11/07/07 for a hearing on related matters before Court Officer Gary Gilman.

31. Dr. Rubin and her counsel hired a vocational expert, Karen Krull, to question me and to provide a report of my earning capacity.

32. In her report and sworn testimony, Ms. Krull unequivocally stated that her information showed that I had been collaborating with Dr. Rubin on her research.

33. Based primarily on Ms. Krull's report, a nominal earning capacity of \$20,000/year was attributed to me without further education, while Dr. Rubin's net income was found to be more than \$11,000/month.

34. Nevertheless, the Court then reduced my spousal support to an amount which left me homeless and unable to continue school.

35. Dr. Rubin and her counsel then filed suit against their own paid expert, effectively destroying more testimony and evidence of my primary contributions

to her research, as well as concealing her actions while I was hospitalized.

36. At that point, I reasoned that defending myself would require appropriate, coordinated action at the institutional, state and federal levels.

37. So, on 12/07/07 I reasonably and respectfully confronted Deans Arthur Levine, Steven Kanter and Anne Thompson of the University of Pittsburgh Medical School with confidential allegations of systemic corruption and abuse within the human liver transplant program of the Starzl Institute.

38. In a series of emails from 12/07/07-02/25/08, the Deans refused to disclose disciplinary standards, while flatly denying any validity to my allegations, attributing unsupported claims to me and exposing me to further retaliation.

39. Dean Anne Thompson disingenuously concluded that my contributions to Dr. Rubin's research while inappropriately medicated, falsely imprisoned in a UPMC facility and suicidal, were "voluntary."

40. On 03/04/08, one week after my final exchange with the Deans, the head of the Starzl Institute, Dr. Amadeo Marcos, with whom Dr. Rubin had been "partying," was fired for sexual violence against a junior UPMC employee.

41. At the same time, the esteemed Dr. Thomas Starzl exposed systematic attempts to conceal serious complication rates of live donor human liver transplants within the Starzl Institute.

42. These revelations closely matched my allegations to the Deans.

43. Meanwhile at the state level, I submitted a 03/18/08 criminal complaint through the Pa. Attorney General's online Healthcare Complaint website.

44. The complaint passed through several jurisdictions before resulting in an unannounced investigation of WPIC by the Pa. Dept. of Health Bureau of Facility Licensure & Certification on 05/30/08.

45. It was reported to me that:

. . . review of your medical record revealed that you were observed working on "papers" for your wife's program by the nursing staff.

46. Even so, Bureau Director Melanie Waters declined to take further actions because she could see no evidence that the situation was coercive and "They didn't act like they had anything to hide."

47. Several weeks later, UPMC sent me an edited version of my hospital records with a cover letter backdated to 05/29/08, the day before the investigation.

48. There is a conspicuous gap in those inpatient records between 11/07/06 and 12/15/06, which should have included records of my near fatal overdose.

49. There are no records from the series of physicians who "treated" me while I was being held, including Drs. Pierre Azzam, Samuel Westmoreland, Mukesh Sah, and Duane Spiker.

50. However, there were notes reporting that Dr. Rubin had admitted to prescribing dangerous psych-meds to me prior to my WPIC admission, even though this falls far outside of her clinical duties as a transplant pathologist.

51. Meanwhile, I initiated 2 series of actions at the federal level.

52. First, I applied for copyright protection on 05/12/08 and preliminary patent protection on 06/19/08 from the most complete manuscript on my laptop hard drive and the data described in University of Pittsburgh IRB #0501051 as “Toward a Computable Model of Epithelial Differentiation in Hepatogenesis and Liver Regeneration.”

53. In that protected paper I make novel advances from a naive “stem cell” theory of liver regeneration to a generalizable theory of cellular plasticity by re-thinking the relationship between liver specific transcription factor expression patterns and functional tissue architecture as a continuous topological space which responds as an organic whole to various disease and trauma conditions to restore homeostasis.

54. In later versions, of which I am now the sole possessor, that space resembles a Klein bottle within a Klein bottle, which I have named “Ochoa’s Knot.”

55. More recently still, I am working with 4 such structures corresponding to the 2 component pairs of molecular pathways which co-determine cellular plasticity.

56. Individually, these pathways control cellular proliferation, *apoptosis*, or programmed cell death, cellular function, such as the production of metabolic proteins, and cellular structure, which largely entails the expression of various cytokeratins.

57. By mapping experimental data from hepatogenesis and pathological stages onto these structures, then solving for the system of relations, it should be possible to arrive at the single underlying algorithm, which I call the Prometheus Formula.

58. Finding this formula would enable the prediction of hepatic response to disease and trauma as well as molecular and surgical intervention strategies, and also contribute to the rational design and production of functional human liver tissue for transplantation.

59. Several months later, on 08/01/08 insiders in the University of Pittsburgh Department of Pathology attempted to discredit my work by promoting Dr. Rubin.

60. This was done by publishing a trite interpretation of the same data described in University of Pittsburgh IRB #0501051 in a respected medical journal with Dr. Rubin as final, or senior author, and Drs. Michalopoulos and Demetris supporting her as middle, or contributing authors.

61. Their version does not give a complete and consistent account of the data.

62. Second, on 01/24/08 I initiated a complaint with the NIH NIDDK, which is a subsidiary of the federal Department of Health and Human Services (DHHS).

63. My complaint escalated to the NIH Office of Research Integrity (NIH ORI) where I argued that Drs. Rubin, Demetris and Michalopoulos had been circumventing the terms of Dr. Rubin's training grant as well as violating norms of research conduct by hiring a foreign post-doc do all of Dr. Rubin's benchwork while pressuring me to do all of her research and writing from within the confines of a locked ward in WPIC.

64. Deputy Director Sally Rockey of the NIH Office of Extramural Research eventually concluded that she could see nothing wrong with the situation and that "... this is a University matter" which did not concern the NIH.

65. As I later told DHHS Inspector General Daniel Levinson, the NIH ORI decided to let the fox guard the henhouse.

66. Escalating my claims at the institutional level, from 09/12/08-01/20/09 I reasonably and respectfully sent a series of allegations to the entire Board of Trustees of the University of Pittsburgh and Officers of UPMC, including University of Pittsburgh Chancellor Mark Nordenberg, UPMC CEO Jeffrey Romoff and former Pa. Supreme Court Chief Justice Ralph Cappy, who was then Chairman of the Board of Trustees.

67. Meanwhile, someone else must have started talking, because on 11/21/08 the Wall Street Journal ran a front page story entitled "Doing a Volume Business in Liver Transplants," which substantially mirrored my repeated allegations.

68. This front page news report in a well respected national publication gave Mark Nordenberg, Jeffrey Romoff, the Hon. Ralph Cappy, the entire University of Pittsburgh Board of Trustees and Officers of UPMC, independent corroboration of the truth of my claims sufficient to convince an unbiased person of ordinary prudence and diligence in similar circumstances.

69. Yet instead of making any inquiries, exercising any diligence or voicing any opinions regarding these crimes, they persisted in unjustified reliance upon their Office of General Counsel, who continued to destroy evidence, intimidate the victim, and circumvent the Board's fiduciary duties in violation of Pa. Title 18 §911 regarding corrupt organizations.

70. During the same time that I was addressing serious allegations to the Board, the University of Pittsburgh Office of General Counsel directed Dr. Rubin and her counsel in filing an inappropriate series of motions before Judge Thomas E. Flaherty in Allegheny County Family Court to seize my laptop computer.

71. Her counsellors, Attys. David Pollock and Brian Vertz, disingenuously argued that I had illegally obtained and disseminated University owned data,

even though Dr. Rubin's own interpretation of that same data had already been published and made publicly available.

72. Arguing that the University of Pittsburgh and UPMC had no standing in Family Court, and that the genuine goal of trying to seize the laptop was to destroy evidence of serious crimes, I reasonably and respectfully refused to comply with Judge Flaherty's order that I allow my original work and data to be destroyed.

73. Atty. Patrick Noonan, of the University Office of General Counsel, then had several private phone conversations with my counsel, Atty. Beck, after which Atty. Beck falsely called in "sick" on 02/02/09, the day he was scheduled to take a sensitive deposition from Dr. Rubin.

74. That was the last time I heard from Atty. Beck.

75. I was scheduled to give a sworn deposition before Judge Flaherty by telephone two days later on 02/04/09.

76. Instead, on 02/03/09 I submitted complaint with the duty officer of my local F.B.I. office, then on 02/04/09 I phoned in to the deposition and reasonably and respectfully repeated under oath my reasons for refusing to surrender my laptop, then declined to answer any further questions.

77. I was later informed that the Court kept no records, notes or transcripts of those proceedings.

78. Subsequently, on 02/26/09 Judge Flaherty permitted my counsel to withdraw from my case against my objections, and I was falsely found to be obstructing the process of discovery.

79. As a consequence of that spurious obstruction order, I was forbidden from presenting any evidence of my contributions to Dr. Rubin's career or my own earning capacity, thereby further suppressing facts which would be damaging to Dr. Rubin and her superiors within the Starzl Institute and University of Pittsburgh Department of Pathology.

80. I followed through at the state level on 12/09/08 with an updated complaint to Pa. Attorney General Tom Corbett, Allegheny County District Attorney Stephen Zappala, Jr., and the Pa. Dept. of Health.

81. I received a tepid response and no actions were taken.

82. Meanwhile, I followed through at the federal level with an updated complaint to the NIH.

83. Also, on 01/09/09 I initiated complaint with the United Network of Organ Sharing (UNOS), which is a private contractor to the DHHS responsible for human organ transplant oversight.

84. The NIH took no actions, but I was contacted by UNOS and asked to provide information to their Liver Committee, which was investigating the Starzl Institute.

85. I was told that the results of their investigation would be confidential.

86. However, it was reported after the fact that the pathology standards for grading liver transplant viability, or MELD scores, had been changed.

87. Also after the fact, Pa. Title 28 §158 Vital Organ Transplant Services was crudely altered.

88. Prior to being altered, §158.18 required that UPMC's failure to meet UNOS standards would automatically trigger a Pa. Dept. of Health compliance and quality assurance investigation of their entire transplant program.

89. The "existing standards" criteria was narrowed to "survival rate," thereby excluding serious complications as a trigger.

90. Further, it was added that a larger investigation could be circumvented if the institution could provide a clinical account of any deviations from UNOS standards.

91. UPMC complied with the revised law by persuading Drs. J. Wallis Marsh and Thomas Starzl to submit a 04/15/09 clinical study to the Journal of Hepatology in which:

Our aims were to ensure full disclosure to donors and recipients of the risks and benefits of this procedure in a large University center and to help explain reporting inconsistencies.

92. Thus, the exposed fraud was transformed into a “clinical discovery,” UNOS standards were circumvented, and a larger investigation was averted.

93. Even though UPMC was employing a brazen, consistent, systematic pattern of force, fraud and corruption to protect its market share of DHHS funded human organ transplants as well as research funding, both the NIH and UNOS again let the fox guard the henhouse.

94. And so, I then took further reasonable and appropriate steps which have, nevertheless, had far reaching and inadvertently damaging effects on UPMC.

95. Reasoning that my safety was best preserved by “hiding out in the open,” from 04/09/09-04/21/09 I emailed detailed allegations of systemic corruption and abuse within the human liver transplant program of the Starzl Institute to every publicly listed member of the clinical staff of UPMC.

96. I believe that there were more than 1500 recipients.

97. Every mention of Dr. Rubin’s name was scrupulously deleted from those allegations, and I attempted to understate salacious details, to focus on systemic institutional issues and to shield Dr. Rubin and our daughters from retaliation.

98. In the middle of this heated drama, including a series of blog posts in the New York Times, the Hon. Ralph Cappy suddenly dropped dead.

99. With no counsel, I prepared for the scheduled divorce trial with the intention of entering a then current version of this account with supporting documentation into the Court's records on the basis of Pa. Title 23 §3701(b)14 regarding marital abuse.

100. Meanwhile, Attys. Vertz and Pollock simply rebuffed all of my discovery requests and refused to disclose necessary financial documents until the week before trial.

101. When I returned to Pittsburgh on 06/09/09, my own former counsel of Gillotti, Capristo & Beck, as well as Dean Anne Thompson were included in the plaintiff's list of witnesses.

102. However, when I showed up, no witnesses were present.

103. I consented to proceed *pro se*, and Atty. Vertz began a suspiciously facile case.

104. Then, Judge Flaherty called a recess, went off record and left the room.

105. At that point the strategy became clear.

106. In the middle of the courtroom, I was arrested for "indirect criminal contempt of a PFA" for having made reasonable, appropriate, justified true assertions to the UPMC community.

107. The timing of the arrest was clearly intended to prevent my giving testimony which would be damaging to UPMC.

108. It didn't work. The trial transcripts speak for themselves. I stood up in manacles and handcuffs and told the truth to the best of my ability, although my capacity to present an effective case was critically impaired.

109. Upon resuming the proceedings, Judge Flaherty set aside conscience, common sense, and his sworn obligations to facilitate an unbiased disclosure of the facts and to protect the rights of a destitute, abused, *pro se* dependent spouse.

110. Turning deaf and blind to this catalogue of horrors, while selectively applying the rules of evidence and civil procedure, his conduct of the trial vividly demonstrates how a weak judiciary rewards predatory abuse by wealthy, well connected and thoroughly corrupt private interests.

111. These issues were examined in exhaustive detail in the argument section of my later Pa. Superior Court brief.

112. After the trial I was taken to the Allegheny County Jail, where I refused to sign medical release forms, which I feared would have allowed them forcibly to medicate me.

113. As punishment, I was thrown naked into a filthy prison cell, with no contact with the outside world.

114. Without counsel, clothes, or even my necessary glasses, in a cold, bare cell where the lights never dimmed, my only means of resistance was to refuse to

eat, while also refusing to be interviewed by a series of WPIC physicians contracted by the facility.

115. After a week in those dire conditions, Dr. Christine Martone, Chief Psychiatrist of the Behavioral Assessment Unit, informed me that my repeated allegations of systemic corruption and abuse within the Starzl Institute, and refusal to eat, constituted clinical and legal proof that I was “delusional and dangerous.”

116. In the end, friends on the outside became concerned by my disappearance, and secured counsel through Meyer, Darragh, Buckler, Bebenek & Eck, who negotiated my release through persuading me to sign a PFA barring direct contact with Dr. Rubin, UPMC or my own daughters until 2012.

117. Even after the coerced agreement, Dr. Martone continued to insist before a lower court judge, whom I never saw, that I should be involuntarily committed to Torrance State Hospital for an indefinite “visit.”

118. Quite literally, in the middle of the night, the door to my cell was opened, I was handed my clothes and glasses, and told “Get out, and don’t come back.”

119. And so, after more than 3 months of deliberation, on 09/14/09 Judge Flaherty returned a findings of fact which were brazenly fictitious.

120. Most blatant were false assertions that Dr. Rubin’s father, rather than I, supported us through her pathology specialty training, that I had made no contributions to her career or research, and that my

repeated allegations after separation were false and maliciously intended to jeopardize her career.

121. On the other hand, there were only passing references to the fact that I had given up my career for our mutual benefit and to the events surrounding my involuntary hospitalization, near fatality and subsequent flight from Pittsburgh.

122. The final order concerning allocation which followed from those fictitious findings were overtly punitive and made a mockery of allocation guidelines.

123. All marital credit card debt was to be left to me, even though Dr. Rubin had made the chilling confession in direct examination: "It is yours. It was my gift."

124. I was not to be reimbursed for legal or medical expenses, even though I had by then spent more than \$25,000 and owed more than \$25,000 to defend myself and to retain a qualified MD psychiatrist in San Francisco in compliance with the spurious PFA conditions for contact with my daughters.

125. I was to be granted a paltry \$60,000 in retirement savings via Qualified Domestic Relief Order (QDRO), even though there had been no disclosure of the true value of our marital assets, which I had estimated at more than \$350,000.

Unchecked corruption increases by nature.

126. I was also to receive an amount of alimony for 2 years which is inadequate either to complete

necessary education, or to maintain a minimal standard of living.

127. After that time I will be required to pay a level of childcare expenses which I cannot meet or face further incarceration or forced hospitalization.

128. Worst of all, Judge Flaherty ordered that our \$600,000 home for autistic adults in the Bronx be listed for sale by Dr. Rubin for \$1.2 million.

129. If it did not sell in one year, then she could have it reappraised and buy my rights for 55% of the newly determined net value.

130. The fraud was compounded by Atty. Vertz filing a motion for reconsideration requesting that Judge Flaherty order me to sign a deed of general warrant relinquishing all rights to the property for \$1.00.

131. This was purportedly to protect Dr. Rubin's share of profits from my creditors.

132. So, I duly filed and served a cogent, though amateur, reply to that motion on 09/30/09, followed by a 10/11/09 notice of appeal of the 09/14/09 findings of fact and final order concerning allocation.

133. Nevertheless, Judge Flaherty signed that spurious order on 10/01/09.

134. I duly filed a notice of appeal to that order on 11/03/09.

135. That notice of appeal was rejected by the prothonotary for spurious reasons and my subsequent written request that it be re-entered was simply ignored.

136. Next, on 10/21/09, Atty. Vertz filed a notice of intention to request entry of a Pa. Title 23 §3301(c) no-fault divorce, which was soon followed by Judge Flaherty filing an order concerning Pa. R.A.P. 1925(b) directing the filing of a statement of errors complained of on appeal.

137. I responded by filing both a counter-affidavit *per* Pa. Title 23 §3301(c) and a concise statement of matters of complaint *per* Pa. R.A.P. 1925(b).

138. I used the counter-affidavit as an opportunity to enter the legal invoices into the record which I had, through inexperience, omitted at trial, and also to examine Dr. Rubin's financial documents, which Attys. Vertz and Pollock had refused to turn over before the trial.

139. Then, on 12/01/09, I filed a formal complaint with Pa. Attorney General Tom Corbett, Allegheny County District Attorney Stephen Zappala, Jr., and the Pa. Dept. of Health, correlating Dr. Rubin's financial fraud with my false imprisonment and mistreatment in WPIC.

140. I argued that the actions of Dr. Rubin, her counsel and her colleagues constituted criminal conspiracy as defined by Pa. Title 18 §903 and causing or

aiding suicide as attempted murder as defined by Pa. Title 18 §2505.

141. When I did not give in to pressure by Atty. Vertz to sign the spurious deed of general warrant, he filed another motion for special relief requesting power of attorney for Dr. Rubin to sign the deed on my behalf.

142. Meanwhile, he simply rebuffed my requests to transfer the pittance assigned to me via QDRO, thereby effectively preventing me from hiring counsel for the appeal.

143. In my 12/22/09 reply I more vigorously argued that this motion for special relief was spurious since my debt was entirely due to the combination of Dr. Rubin's fraudulent 10/11/06 transfer of marital credit card debt and Judge Flaherty's refusal to reimburse me for legal expenses.

144. I also pointed out that this was a violation of the Pa. Uniform Fraudulent Transfer Act (PUFTA), regarding the transfer of property to defraud creditors.

145. Nevertheless, on 12/24/09, Judge Flaherty signed that spurious order just prior to his being promoted to criminal court and turning this extremely complex and contentious case over to inexperienced incoming Judge Arnold Klein.

146. In his later opinion, Judge Flaherty admitted that, even though he knew that my reply had been filed and served, he did not read it prior to disposing

of my 11 bed inner-city ambulatory care facility for autistic adults for \$1.00 on Christmas Eve 2009.

147. Two weeks later, on 01/10/10, he got around to dismissing my 12/22/09 reply and denying my request that he order Dr. Rubin to turn over my QDRO pit-tance.

148. I responded on 01/21/10 by filing and serving notices of appeal to Judge Flaherty's 12/24/09 and 01/10/10 orders.

149. I then initiated a 01/28/10 formal complaint against Judge Flaherty with the Pa. Judicial Conduct Board and 02/03/10 complaint against Attys. Vertz and Pollock with the Disciplinary Board of the Pa. Supreme Court.

150. On 01/21/10 Judge David Wecht, quite literally, rubber-stamped a divorce decree, to which I filed yet another notice of appeal on 02/09/10.

151. That notice was also spuriously rejected by the prothonotary.

152. Meanwhile, on 02/01/10, Judge Flaherty issued an opinion in response to my Pa. R.A.P. 1925(b) statement in which he made the simply incredible claim:

This Court finds that while Husband truly believes the facts he set forth at trial and in his Statement of Matters Complained of on Appeal, his version is not reflective of reality and is wholly without credibility.

153. On that same day, I included my Pa. R.A.P. 1925(b) statement in an updated complaint to Pa. Attorney General Tom Corbett, Allegheny County District Attorney Stephen Zappala, Jr., and the Pa. Dept. of Health.

154. Having received no response, whatsoever, I submitted the same material to the duty officer of my local F.B.I. office on 02/08/10.

155. I was later informed that the F.B.I. had forwarded my information to the Department of Health and Human Services Office of Inspector General (DHHS OIG).

156. Two weeks later, from 03/08/10-03/12/10, the DHHS Centers for Medicare and Medicaid Services (DHHS CMMS) finally ordered the recalcitrant Pa. Dept. of Health to conduct an unannounced investigation of the Starzl Institute.

157. They uncovered 30 systemic violations of human organ transplantation regulations, including failure to report patient deaths, failure to obtain proper patient consent, and deficiencies in post-operative care.

158. Their later report listed three deficiencies as "condition-level," which must be corrected or the facility risks decertification from federally funded Medicare and Medicaid programs.

159. These findings strongly corroborated my consistent, repeated allegations of systemic corruption and abuse within the Starzl Institute and belied the

assertions that my actions were directed toward harming Dr. Rubin's career.

160. As I later told DHHS Inspector General Daniel Levinson, "In other words, you found the bodies right where I said they would be."

161. While these federal actions were taking place, Atty. Vertz brazenly filed a motion under Pa. R.A.P. 1926 requesting that he be allowed to remove trial exhibits from Judge Flaherty's office and carry them unsupervised to the prothonotary for transmission to the Pa. Superior Court as a true and accurate record of the exhibits submitted at trial.

162. He also requested that those exhibits containing identifiable financial account numbers not be publicly viewable on the prothonotary website.

163. This is despite the fact that "Trial Exhibits" were already listed as an item on the inventory of the certified record on the Pa. Superior Court docket.

164. At that point I was forced to conclude that Judge Flaherty was knowingly and actively railroad-ing the victim, that nothing which I said or submitted would be regarded as evidence of my veracity, and that Atty. Vertz was being allowed to strip me of my little remaining rights and property and brazenly to alter the certified record.

165. I also began to suspect that there was a *quid pro quo* between Judge Flaherty's complicity and his promotion, and was informed that UPMC had

interfered in other cases by placing sympathetic court masters and fact finders.

166. Once again reasoning that my safety was best preserved by “hiding out in the open,” I decided that subsequent motions should be addressed, not only to Judge Flaherty, but also to the other judges who indirectly, ingenuously and passively contributed to railroading the victim, including Judges Kim Berkeley-Clark, David Wecht and incoming Judge Arnold Klein.

167. Since I had lost all confidence in the perspicacity of the Allegheny County Court of Common Pleas and the integrity of the process, I thought it prudent to include Senior Judge R. Stanton Wettick, jr..

168. So, on 02/17/10 I filed my own emergency motion for special relief, in which I restated my position, drew attention to outstanding issues and attached salient documents which had come to light after the trial.

169. I also voiced my concerns to the Pa. Superior Court via special motion on 02/19/10.

170. This was followed by my own motion under Pa. R.A.P. 1926 on 02/24/10, correcting a number of *errata* which I found on the lower court prothonotary website.

171. Despite my stated objections, on 02/24/10 Judge Flaherty granted Atty. Vertz’s brazen request to submit an altered version of his trial exhibits into the certified record, as well as to include the small

portion of my trial exhibits which he falsely claimed was the total of admissible evidence which I had presented at trial.

172. As I had anticipated, the portion of Dr. Rubin's trial exhibits not viewable on the prothonotary site contained material with no identifiable financial information, while the viewable portion contained much material which does contain such information.

173. Instead, what Atty. Vertz concealed was such material as Dr. Rubin's commissioned appraisal of the Bronx property, her own exhibits which documented my repeated refusal to sell the property in 2007, my copyright, patent and original manuscript documentation, as well as letters from the University of Pittsburgh IRB, Office of General Counsel and the Chairman of the Department of Pathology, Dr. George Michalopoulos.

174. Of course, I duly filed and served a notice of appeal.

175. On 03/11/10 Judge Flaherty filed another opinion in which he drew attention to Pa. Title 23 §3332, which states that a divorce decree may be appealed within 30 days if there is evidence of internal fraud, and vacated within 5 years if there is evidence of external fraud.

176. As the foregoing demonstrates, there is overwhelming *prima facie* evidence of both.

177. On 03/29/10 Judge Flaherty rejected, out of hand, both my emergency motion for special relief as well as my motion to amend the record.

178. I mistakenly submitted a single notice of appeal for both of those orders on 03/30/10.

179. My mistake was corrected on 04/08/10, but resulted in the Superior Court prothonotary assigning 3 more docket numbers: 603, 604, 605 WDA 2010.

180. On 06/09/10, Judge Flaherty issued a third opinion in which he concluded:

Husband's last request was to afford Husband and the parties' children all available protections through the witness protection program. The basis for this request [was] Husband's misguided and delusional belief that UPMC has, in some fashion, become involved in this litigation. Again, this Court considers these allegations to be baseless and wholly without credibility. As such, this Court denied Husband's request.

181. On the next day I received a letter dated 06/08/10 from Chief Disciplinary Counsel Joseph A. Massa, Jr., dismissing my complaint to the Judicial Conduct Board.

182. Meanwhile, even though Dr. Rubin and her counsel had been ordered on 09/14/09 to transfer \$60,000 to me via QDRO as the total of my share of the marital assets, they took no actions, whatsoever, to effectuate the transfer.

183. I was therefore compelled to hire Philadelphia Appellate Atty. Tony Vetrano to effectuate the transfer on my behalf in order to raise funds for the appellate process.

184. Dr. Rubin signed Atty. Vetrano's stipulations, but Judge Klein refused to effectuate the QDRO unless Atty. Vetrano or I made a personal appearance.

185. Instead, I submitted the stipulations to Judge Flaherty, who signed them on 04/14/10.

186. Half of the funds were processed and transferred to me.

187. However, on 05/17/10 TIAA-CREF returned their portion for revision.

188. This left me with a total of \$30,000 from the marital estate, less more than \$60,000 in marital and legal debt.

189. At which point I had insufficient funds to continue Atty. Vetrano's services and undertook the appellate process *pro se*.

190. On 07/12/10 I filed a brief with the Pa. Superior Court in which I included a then current version of this account meticulously correlated with material from the certified record as well as my best, though amateur, understanding of the Pa. Code, and argued that these circumstances constituted both internal and external fraud as defined at Pa. Title 23 §3332.

191. On 10/25/10 that Pa. Superior Court made facile and disingenuous excuses to ignore these

overwhelming facts and to quash my appeal based upon over-broad interpretations of Pa. R.A.P. 2101, *Giant Food Stores, LLC v. THF Silver Spring Development, L.P.*, 959 A.2d 438, 443 (Pa. Super. 2008), and *Branch Banking Trust v. Gesiorski*, 904 A.2d at 942-943 (Pa. Super. 2006).

192. I duly submitted an application for reargument on 11/03/10, in which I argued that the Pa. Superior Court had disregarded the entirety of the facts before them, while also pointing out that several members of the panel had substantial private interests in the institutions and persons named in this account which might reasonably raise questions about their impartiality.

193. Nevertheless, that application was denied on 12/27/10.

194. A then current account of these events was compiled and submitted within a petition to the Pa. Supreme Court within 30 days of that denial.

195. On 11/29/10 I began a new series of motions before the same 5 judges in the lower court, in which I compared the documentation of actions involving the QDRO and the disposition of 631 Pelham Parkway North.

196. I argued that:

Stepping back and comparing these two trails of actions originating in the same 09/14/09 Order, we find that Judge Flaherty has, on the one hand, actively impeded my

collecting the pittance due to me, while at the same time taking extraordinary measures to enable Dr. Ochoa and her counsel to “cut and run” with my most valuable property.

197. In their 12/21/10 answer, Atty. Vertz admitted that they had taken no action to turn over my remaining QDRO funds, and that the property which they had been ordered to sell was not listed with any real estate agency or listing service.

198. On 01/19/11 Judge Flaherty signed the revised QDRO and found that the property was not listed for sale and that “Wife has not elected to purchase Husband’s interest in the property by engaging a licensed real estate appraiser to value the property.”

199. He then ordered her either to list the property or to hire an appraiser, and also to cooperate with any further actions required to effectuate the QDRO.

200. Judge Flaherty entirely disregarded my argument regarding his ongoing pattern of biased behavior as well as the overt pattern of fraud by the party of the plaintiff.

201. On 01/27/11 I filed a notice of appeal to that order, which eventuated as Pa. Superior Court 214 WDA 2011.

202. Most unfortunately, on 01/28/11 TIAA-CREF again rejected my amateur attempts to revise the QDRO which Attys. Vertz and Pollock had been ordered to effectuate on 09/14/09.

203. On 02/17/11 I filed a new motion for enforcement and sanctions arguing that the party of the plaintiff was brazenly circumventing the clear intent of Judge Flaherty's 01/19/11 order by hiring an appraiser fraudulently to value the property as a single family home rather than as an income producing, NY OMRDD backed, 11 bed ambulatory care facility for autistic adults subject to a renewable 20 year lease.

204. I also attached yet another QDRO revision and complained of brazen obstructionism.

205. Their 03/18/11 answer consisted in blanked denials, brazen falsehoods, and the production of a fraudulent appraisal for \$595,000.

206. On 04/18/11 Judge Flaherty issued an order giving me the right to hire my own appraiser and gave them 10 days to sign my revised QDRO, but he again disregarded my request for long overdue sanctions.

207. This was followed on 04/20/11 by a fourth opinion in which he attempted to narrow the scope of my complaints to the Pa. Superior Court by misstating my argument and omitting all the key facts.

208. I responded by filing a notice of appeal to his 04/19/11 order, which eventuated as Pa. Superior Court 740 WDA 2011.

209. Dr. Rubin did, however, finally sign the revised QDRO, which was also signed by Judge Flaherty on 04/28/11 and finally accepted by TIAA-CREF.

210. This gave me a total net distribution of \$55,000 from the marital estate, which does not include \$40,000+ in unreimbursed legal fees.

211. I followed through on 05/13/11 with a motion for reconsideration, which was sent to every senior judge of the Allegheny County Court of Common Pleas, in which I reluctantly concluded that Judge Thomas E. Flaherty is ignorant, incompetent, abusive, vindictive, corrupt, and a brazen liar.

212. Judge Flaherty simply denied that motion on 06/01/11.

213. I filed a notice of appeal on 06/03/11, which eventuated as 934 WDA 2011, but was quashed on 07/07/11 as “appeal will not lie from denial of reconsiderations motion.”

214. Meanwhile, on 06/02/11 I filed a motion for relief in Pa. Superior Court 214 WDA 2011, in which I requested consolidation with 740 WDA 2011, requested leave to proceed *in forma pauperis*, complained of a consistent, brazen pattern of misrepresentation and *ex parte* communication between Judge Flaherty and Attys. Vertz and Pollock, reminded the Pa. Superior Court that Judge Flaherty had allowed Atty. Vertz to make material deletions from the certified record, reported that the Pa. Judicial Conduct Board, Disciplinary Board of the Pa. Supreme Court, Pa. Attorney General, Allegheny County District Attorney and Pa. Dept. of Health were all actively denying honest services, and requested orders *mandamus* to initiate

appropriate criminal investigation of the Starzl Institute and UPMC.

215. On 06/07/11 the Pa. Superior Court granted consolidation, agreed to reconsider *in forma pauperis* if the trial court wouldn't, instructed me again to seek relief for the tampered certified records in the trial court under Pa. R.A.P. 1926, and denied the rest.

216. So, I returned to the lower court with a 06/16/11 motion for special relief to satisfy the Pa. Superior Court's instructions.

217. At the same time I informed all parties that I required financial and lease documentation for an accurate appraisal of 631 Pelham Parkway North.

218. Atty. Vertz served an answer on 06/22/11 and also turned over a signed copy of the lease, which had been omitted in their fraudulent appraisal.

219. However, he brazenly omitted lease exhibits which detail more than \$700,000 in building improvements paid for by the NY OMRDD.

220. That answer was never docketed.

221. Instead, I received a handwritten letter from Dr. Rubin begging me to discontinue legal actions lest our daughters suffer harm.

222. So, on 07/01/11 I replied to the missing answer, requested productions of the missing lease exhibits and complained of overt extortion, conspiracy and corruption.

223. More than 5 weeks later, there has been no response from the lower court.

224. While these actions were taking place in the lower court, on 03/24/11 I filed updated complaints to the Pa. Judicial Conduct Board and Disciplinary Board of the Pa. Supreme Court.

225. On 03/29/11 Disciplinary Counsel Samuel Napoli simply refused to consider my complaint, while there was no response, whatsoever, from the Judicial Conduct Board.

226. So, on 04/05/11 I escalated complaints to every member of the Judicial Conduct Board as well as to Chief Counsel of the Disciplinary Board.

227. On 04/08/11 Disciplinary Counsel Napoli reiterated his blunt refusal to act, while on 04/14/11 Chief Counsel Massa claimed that he had never received my complaint.

228. I then discovered that some months prior to this, a Pa. Interbranch Commission led by Judge Cleland had found that Chief Counsel Massa had been acting as a “gatekeeper” to block serious complaints to the Board, including those which eventuated as the now infamous “kids for cash” federal racketeering convictions of two Pa. Judges.

229. So, on 04/29/11 I submitted formal complaint against Chief Counsel Massa to every member of the Judicial Conduct Board and a 05/02/11 complaint against Disciplinary Counsel Napoli to every member of the Disciplinary Board alleging brazen violation of

my Article 1 §11 Pa. Constitutional right to justice administered without sale denial or delay.

230. My complaints were acknowledge on 05/05/11 by the Judicial Conduct Board and 05/06/11 by the Disciplinary Board.

231. To the best of my knowledge no further action has been taken by either.

232. Meanwhile, on 06/20/11 the Pa. Supreme Court denied my petition to appeal.

233. I filed a 06/24/11 application for reargument in which I argued that the Pa. Supreme Court had disregarded the entirety of the facts.

234. I concluded that “. . . racketeering can now be seen as a Pa. Supreme Court sanctioned way of life in Allegheny County, Pa.”

235. That petition was served on the Pa. Superior Court, every senior member of the Allegheny County Court of Common Pleas, the Judicial Conduct Board, Pa. Disciplinary Board, now Gov. Tom Corbett, Pa. Atty. General Linda Kelly, Allegheny County District Atty. Stephen Zappala, Jr., and the Pa. Dept. of Health.

236. That petition was denied 07/18/11.

237. None of the served Pa. officials responded.

238. At the federal level, on 03/24/11 I forwarded a copy of my Pa. Supreme Court petition to the DHHS OIG, drawing particular attention to my

documentation of how Pa. Title 28 §158 Vital Organ Transplant Services had been altered in order to circumvent UNOS and CMMS oversight.

239. On 05/26/11 the local newspapers reported that UPMC's live donor liver and kidney programs had been suspended on 05/09/11 pending federal investigation.

240. On 07/09/11 it was reported that pediatric kidney success rates were significantly lower than previously reported.

241. Only 85.7% succeeded, compared to the 95.7% national average.

242. On 07/17/11 it was also reported that UPMC's one-year survival rate for adult liver transplants from 01/08 to 06/10 was significantly lower than previously reported, with 43 rather than the expected 29 fatalities.

243. On 07/19/11 it was reported that several members of the liver transplant team had been suspended, and that the CMMS had reported more "condition level" errors.

244. I followed up with the DHHS OIG with a generalizable method for calculating the percentage of UPMC's organ transplant market share which was the result of systematically under-reporting mortality and morbidity.

245. My informal tally indicates that since 2004 about 20% of UPMC's market share in liver and

kidney transplants alone can now be shown to have depended upon systematic fraud.

246. At least half of this was funded directly by the DHHS CMMS.

247. This does not include similar fraud involving other organ systems, the costs of DHHS NIH research fraud or irreparable damage to the Prometheus Project.

248. I have repeatedly requested that the DHHS OIG extend all available federal witness/victim protections to me and my daughters, bring federal criminal conspiracy and racketeering charges against the named individuals and institutions and recognize my right to whistleblower compensation from any federal funds recovered.

249. To the best of my knowledge federal action is ongoing.

250. I have not been permitted to see my beloved Jael and Esther since 11/07/06, for whose sakes I have endured all this.



REASONS FOR GRANTING THE PETITION

Due to inexperience, I am not competent to present technical legal argument. If I must, I will attempt to advance the theory that the circumstances of this case fall within the intended scope of both Pa. Constitution Article 1 §11 and 18 U.S.C. §1346, but

outside of the narrower scope attributed by *Skilling v. United States*, No. 08-1394, thereby demonstrating that the majority was in error in *Skilling v. United States*.

The circumstances of this case convincingly demonstrate systemic denial of honest services as unequivocally defined at Article 1 §11 of the Pa. Constitution and plausibly intended by 18 U.S.C. §1346. This denial has had the effect of concealing serious crimes including criminal conspiracy and causing or aiding suicide. This deception has served the larger interest of concealing ongoing racketeering offenses by a global leader in non-profit healthcare aimed at defrauding the DHHS CMMS of funding for human organ transplants as well as defrauding the DHHS NIH of funding for research into the molecular basis of human liver regeneration.

The best cure for endemic corruption is for its victims to tell the truth effectively to those who hold power. This remedy is not available when the powerful cannot be moved by reason. It is of vital public importance that the silenced victims have further recourse when denied honest hearing. It is to provide such recourse that Pa. Constitution Article 1 §11 and 18 U.S.C. §1346 were both enacted. Unfortunately, *Skilling v. United States* mistakenly thwarts this intent.



CONCLUSION

The petition for a writ of *certiorari* should be granted.

Respectfully submitted,

MICHAEL R. OCHOA

Date: October 18, 2011

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APPENDIX A

J. S64010/10

ERIN RUBIN, : IN THE SUPERIOR
Appellee : COURT OF
v. : PENNSYLVANIA
MICHAEL RAMON OCHOA, :
Appellant : No. 1821 WDA 2009

Appeal from the Order entered September 14, 2009
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD 07-000190-016

ERIN RUBIN, : IN THE SUPERIOR
Appellee : COURT OF
v. : PENNSYLVANIA
MICHAEL RAMON OCHOA, :
Appellant : No. 155 WDA 2010

Appeal from the Order entered January [10]** 2010
In the Court of Common Pleas of Allegheny County
Family Court at No(s): 07-000190-016

** Dates have been corrected to conform with the convention of referencing documents by date signed rather than date docketed.

ERIN RUBIN, : IN THE SUPERIOR
Appellee : COURT OF
 : PENNSYLVANIA
v. :
MICHAEL RAMON OCHOA, :
Appellant : No. 156 WDA 2010

Appeal from the Order entered December 24, 2009
In the Court of Common Pleas of Allegheny County
Civil at No(s): FD-07-000190

ERIN RUBIN, : IN THE SUPERIOR
Appellee : COURT OF
 : PENNSYLVANIA
v. :
MICHAEL RAMON OCHOA, :
Appellant : No. 540 WDA 2010

Appeal from the Order entered [February 24], 2010
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD07-000190

ERIN RUBIN, : IN THE SUPERIOR
Appellee : COURT OF
 : PENNSYLVANIA
v. :
MICHAEL RAMON OCHOA, :
Appellant : No. 603 WDA 2010

Appeal from the Order entered March 29, 2010
In the Court of Common Pleas of Allegheny County
Civil at No(s): 07-000190-016

ERIN RUBIN, : IN THE SUPERIOR
Appellee : COURT OF
 : PENNSYLVANIA
v. :
MICHAEL RAMON OCHOA, :
Appellant : No. 604 WDA 2010

Appeal from the Order entered March 29, 2010
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD-07-000190

ERIN RUBIN, : IN THE SUPERIOR
Appellee : COURT OF
 : PENNSYLVANIA
v. :
MICHAEL RAMON OCHOA, :
Appellant : No. 605 WDA 2010

Appeal from the Order entered March 29, 2010
In the Court of Common Pleas of Allegheny County
Family Court at No(s): 07-000190-016

BEFORE: PANELLA, SHOGAN and CLELAND*, JJ.

JUDGMENT ORDER: FILED: OCTOBER 25, 2010

Appellant, Michael Ramon Ochoa, appeals *pro se*
from the orders entered on September 14, 2009,
December 24, 2009, [January 10, 2010], [February 24,

* Retired Senior Judge specially assigned to the Superior
Court.

2010], and March 29, 2010, by the Honorable Thomas E. Flaherty, Court of Common Pleas of Allegheny County. We quash.

There are substantial defects in the brief Appellant has submitted to this Court. We need not catalog them here, but note the following: Appellant's brief contains no coherent Statement of the Scope and Standard of Review; there is no discernible corresponding argument devoted to each of the 22 issues raised in the Statement of Questions Involved; and in its *entirety*, the brief contains *no* citation to pertinent legal authority or supporting case law. Correspondingly, there is no developed legal argument in the 64 pages devoted to Appellant's brief.

“When a party's brief fails to conform to the Rules of Appellate Procedure and the defects are substantial, this Court may, in its discretion, quash or dismiss the appeal pursuant to Rule 2101.” ***Giant Food Stores, LLC v. THF Silver Spring Development, L.P.***, 959 A.2d 438, 443 (Pa. Super. 2008) (citing Pa.R.A.P., Rule 2101, 42 PA.CON.S.STAT.ANN.), ***appeal denied***, 601 Pa. 697, 972 A.2d 522 (2009). Furthermore, “[w]hen issues are not properly raised and developed in briefs, when the briefs are wholly inadequate to present specific issues for review[,] a Court will not consider the merits thereof.” ***Branch Banking and Trust v. Gesiorski***, 904 A.2d 939, 942-943 (Pa. Super. 2006).

We are therefore compelled to quash this appeal as the numerous and serious defects in the brief

prevent us from conducting a meaningful review.¹ Appellee's Petition to Quash Appeal is denied as moot.

Appeal quashed. Jurisdiction relinquished.

¹ "While this court is willing to liberally construe materials filed by a *pro se* litigant, we note that appellant is not entitled to any particular advantage because [he] lacks legal training. As our supreme court has explained, any layperson choosing to represent [himself] in a legal proceeding must, to some reasonable extent, assume the risk that [his] lack of expertise and legal training will prove [his] undoing." *Gesiorski*, 904 A.2d at 942 (citation omitted). In the present case, even a liberal construction of Appellant's brief cannot remedy the serious inadequacies. As Appellant has chosen to proceed *pro se*, he cannot now expect this Court to act as his attorney.

APPENDIX B

[SEAL]

The Superior Court of Pennsylvania
Office of the Prothonotary
GRANT BUILDING
310 GRANT STREET, SUITE 600
PITTSBURGH, PA 15219-2297

KAREN REID BRAMBLETT, (412) 565-7592
ESQUIRE
PROTHONOTARY FAX: (412) 565-7711
WEBSITE:
ELEANOR R. VALECKO www.superior.pacourts.us
DEPUTY PROTHONOTARY

December 27, 2010

Mr. Michael Ramon Ochoa
58 West Portal, #218
San Francisco, CA 94127

In Re: Erin Rubin v. Michael Ramon Ochoa
No. 1821 WDA 2009, Nos. 155, 156, 540, 603,
604 & 605 WDA 2010

Dear Mr. Ochoa:

The following Order has been entered on the Application for reargument that was filed in the above-captioned matter:

“ORDER OF COURT

The Court hereby DENIES the application filed November 3, 2010, requesting reargument or reconsideration of the decision dated October 25, 2010.

Date: December 27, 2010 **PER CURIAM**

App. 7

Very truly yours,

Deputy Prothonotary

ERV/ssm

CC: Brian C. Vertz, Esquire
Honorable Thomas E. Flaherty
Reporter

APPENDIX C

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

FAMILY DIVISION

(Filed Jun. 9, 2010)

ERIN RUBIN,	FD No. 07-000190-016
Plaintiff,	Superior Court Nos:
v.	1821 WDA 2009
MICHAEL RAMON	155 WDA 2010
OCHOA,	156 WDA 2010
Defendant.	540 WDA 2010
	603 WDA 2010
	604 WDA 2010
	605 WDA 2010

MEMORANDUM OPINION

JUDGE THOMAS E. FLAHERTY

Copies to:

Counsel for Appellee/Plaintiff:
Brian Vertz, Esquire
Pollock Begg Komar & Glasser LLC
501 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Appellant/Defendant (Pro Se):
Michael Ramon Ochoa
58 West Portal Avenue #218
San Francisco, CA 94127

MEMORANDUM OPINION

FLAHERTY, J.

Erin Rubin Ochoa (“Wife”) and Michael Ramon Ochoa (“Husband”) are former husband and wife, having been married on August 19, 1995, separated on November 7, 2006, and divorced by decree dated January 21, 2010. The parties were before this Court on June 9-10, 2009 for a hearing on the economic issues that arose during the parties’ marriage.

Husband has filed a total of seven appeals in this matter. The issues raised in the first three appeals, those being 1821 WDA 2009, 155 WDA 2010, and 156 WDA 2010, were addressed in this Court’s two previous opinions. This opinion will address the remaining four appeals.

On March 29, 2010, Husband filed a Notice of Appeal from an order dated March 2, 2010, however, a review of the docket reveals that no orders were dated March 2, 2010. This Court believes that Husband intended to appeal the Order dated February 24, 2010 regarding Wife’s Motion to Amend Certified Record on Appeals that was docketed on March 2, 2010. As such, this Court will address the February 24, 2010 Order in this opinion.

Husband also filed one notice of appeal on March 30, 2010 and two notices of appeal on April 8, 2010 regarding two orders dated March 29, 2010. Although there are three (3) notices of appeal, there are only two March 29, 2010 Orders. Husband’s March 30,

2010 notice of appeal was rejected, as it attempted to appeal two orders. This Court believes that once Husband filed two separate appeals on April 8, 2010, the original March 30, 2010 notice of appeal should have been discontinued.

The first March 29, 2010 Order pertained to this Court denying Husband's request to Amend Certified Record on Appeal. The second March 29, 2010 Order resolved Husband's February 17, 2010 Emergency Motion for Special Relief.

As both the February 24, 2010 Order and March 29, 2010 Order concern this Court's application of Pennsylvania Rule of Appellate Procedure 1926 entitled "Correction or Modification of the Record," they will be addressed together.

On February 18, 2010, Wife presented a Motion to Amend Certified Record on Appeals so as to include the exhibits presented and admitted into the record at trial. This Court granted her request on February 24, 2010 so as to ensure that the record is complete. On February 24, 2010, Husband filed a Motion to Amend the Certified Record on Appeal wherein he requested that certain pre-trial exhibits be included in the record. This Court denied Husband's request. This Court had authority to entertain both of these Motions pursuant to Pennsylvania Rule of Appellate Procedure 1926, which states as follows:

If any difference arises as to whether the record truly discloses what occurred in the lower court, the difference shall be submitted

to and settled by that court after notice to the parties and opportunity for objection, and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the lower court either before or after the record is transmitted to the appellate court, or the appellate court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted . . .

Pa.R.A.P. 1926.

This Court granted Wife's request because none of the exhibits offered and admitted into the record at trial were contained in the Department of Court Records file. Without these exhibits, the record is incomplete. In Allegheny County Family Division, for matters such as the one at issue here, the trial court retains the original trial exhibits so as to utilize them when issuing its orders after the conclusion of the trial. Thus, the original trial exhibits are not made part of the Department of Court Records file at the conclusion of the trial. When an appeal is filed to an order where the trial court has retained the original trial exhibits, one party, generally the appellant, retrieves the exhibits and files them as a pleading so that the original trial exhibits are available to the appellate court for review. Husband, appellant, did not request to do so in this matter.

Counsel for Wife presented a Motion so as to have the original trial exhibits incorporated into the record and to request that the contents of the exhibits were not available on the internet docket due to sensitive information contained therein such as social security numbers and account numbers of the parties and their children. As Wife's request was reasonable, appropriate and necessary, this Court granted the request.

However, Husband, in his Motion, wanted several exhibits included in the record that were not presented at trial. To the extent that exhibits were presented at trial, they were previously included in the exhibits submitted with Wife's Motion. In addition, Husband had requested that the Superior Court take action in creating the record. This Court does not have authority to direct that the Superior Court act in any manner. This Court does not believe that inclusion of documents not formally presented at trial creates a record that "truly discloses what occurred in the lower court" as is required by Pa.R.A.P. 1926, as the Court did not rely on or utilize any documents not submitted at trial in rendering its decision. As such, this Court denied Husband's Motion to Amend Certified Record on Appeal.

The second March 29, 2010 Order from which Husband appealed denied Husband's Emergency Motion for Special Relief. On February 17, 2010,

Husband filed an Emergency Motion for Special Relief wherein he requested the following:

1. A new Judge be assigned to his case;
2. His November 3, 2009 Notice of Appeal be transmitted to the Superior Court;
3. There be no sale of the Bronx, NY property;
4. Wife pay Husband \$56,440.45 in counsel fees;
5. Husband be permitted to proceed *in forma pauperis*;
6. No funds be transferred to Wife;
7. The June 17, 2009 PFA order be vacated; and
8. Husband and children shall be afforded all witness and victim protections available by Pennsylvania.

Although Husband did not follow proper Motions' procedure as per the Allegheny County local rules for serving and presenting his Motion, this Court waived the oral argument requirement and set a responsive pleading schedule that permitted Wife to file an Answer to Husband's Motion no later than March 3, 2010 and Husband to file a Reply to Wife's Answer no later than March 10, 2010. After receipt, review, and careful consideration of all three pleadings, this Court denied Husband's Motion on March 29, 2010.¹

¹ The March 29, 2010 Order also outlined which Common Pleas Court Judge would hear future matters in this case. This
(Continued on following page)

Initially, Husband's request for reassignment of this matter to one judge, specifically former Administrative Judge of the Civil Division Senior Judge R. Stanton Wettick, Jr., is inappropriate and misplaced. Husband first argues that there are five (5) different judges deciding his case, and this is in contrast to the "one judge, one family" rule in effect in Allegheny County. A review of the docket reveals that Judge Kim Berkeley Clark's and Judge David N. Wecht's involvement in this matter was purely in their capacity as Administrative Judge of Family Division and Judge Lawrence W. Kaplan's involvement was solely to enter the temporary Protection from Abuse Order on February 9, 2007. All final, non-consent orders entered in this matter were entered by this judge. This matter was transferred to Judge Arnold I. Klein due to this Court's transfer to Criminal Division in January 2010. As such, all matters going forward will be heard by Judge Arnold I. Klein. This is in compliance with the "one judge, one family" rule.

The remainder of Husband's request that Senior Judge R. Stanton Wettick be specially assigned this matter is based upon the ridiculous assertion that

judge was transferred from Family Division to Criminal Division in January 2010. As a result, this matter was reassigned to Judge Arnold Klein. As Husband's Motion addressed matters pertaining modification and enforcement of the equitable distribution order entered by this judge as well as future modification of custody and protection from abuse matters, the March 29, 2010 Order detailed which judge should hear each particular matter going forward.

UPMC is involved with the outcome of this matter. As this allegation is baseless, unfounded, and wholly without credibility, it will not be addressed.

As of the date of authoring this Opinion, this Court has received seven (7) notices of appeal. As of March 29, 2010, there were three (3) notices of appeal filed and the issues raised therein were addressed in opinions filed on February 1, 2010 and March 11, 2010. This Court was unaware of any notices of appeal being filed and rejected. As such, this Court denied Husband's Motion.

Husband's February 17, 2010 Emergency Motion also requested that this Court stay any attempts to market, sell or transfer the parties' property located in New York. This Court denied this request. The terms of the sale and disposition of the proceeds thereof for the New York property was detailed in this Court's equitable distribution order dated September 14, 2009. On December 24, 2009, Wife was granted Power of Attorney so as to transfer the deed to Wife's name alone so as to protect the property from Husband's creditors. The basis for entering the December 24, 2009 Order was addressed in this Court's second opinion filed in this matter on March 11, 2010. As such, it will not be addressed here. Husband's February 17, 2010 request was denied primarily because there was no allegation that there was a pending sale and/or that the sale was not for value. Essentially, Husband requested that the New York property be taken off of the market until the appeals have been resolved. This is inappropriate. If a ready, willing,

and able buyer were to make a reasonable offer on the New York property, given the current real estate market, it would be fiscally irresponsible for the parties not to act. As such, this Court denied Husband's request to stay any and all attempts to market, sell, or transfer the property pending appeal.

Husband's request that Wife pay him \$56,440.45 in legal fees is essentially a request for reconsideration of this Court's September 14, 2009 Order of Court wherein his request for legal fees was denied. As Husband is beyond the time period to file a Motion for Reconsideration to the September 14, 2009 Order, this request was denied.

Husband included in his Emergency Motion a request to proceed *in forma pauperis*. This was denied, as Husband has an earning capacity and is receiving alimony. Husband is a physically fit, intelligent individual capable of self-support. Husband elects not to be employed. As such, his request was denied.

Husband also asked for this Court to vacate the Protection from Abuse ("PFA") Order entered against him on March 13, 2007. This PFA Order was a Consent Order and signed by Husband on that date. As both parties agreed in March 2007 that there was a factual foundation for entry of this PFA, this Court does not intend to disturb it. In addition, Husband violated the PFA in April 2009 and was subject to indirect criminal contempt proceedings in June 2009. The parties again entered into a consent order to

continue generally the contempt matter and extend the PFA by an additional fourteen (14) months. Thus, the total supervision pursuant to the March 13, 2007 PFA will be approximately five (5) years. This Court believes that the protection is necessary and, as such, denied Husband's request to vacate the March 13, 2007 Order.

Husband's last request was to afford Husband and the parties' children all available protections through the witness protection program. The basis for this request Husband's misguided and delusional belief that UPMC has, in some fashion, become involved in this litigation. Again, this Court considers these allegations to be baseless and wholly without credibility. As such, this Court denied Husband's request.

For the foregoing reasons, this Court's February 24, 2010, and March 29, 2010 Orders should be affirmed.

BY THE COURT,

/s/ Thomas E. Flaherty, J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

ERIN RUBIN OCHOA,)
Plaintiff,)
v.) No. FD07-000190
MICHAEL RAMON OCHOA,)
Defendant.)

ORDER OF THE COURT

AND NOW, to wit, this [29th] day of [March] 2010, upon presentation of the Defendant’s Motion to Amend Certified Record on Appeal, it is ORDERED:

1. ~~This Order and the foregoing Petition shall be certified by the Allegheny County Department of Court Records and transmitted to the Superior Court No. 1821 WDA 2009 consolidated with 155 and 156 WDA 2010, including the hearing exhibits which are attached to this petition.~~

[Denied, as none of the attached exhibits were presented & admitted into the record at trial. /s/ TF]***

BY THE COURT:

/s/ Tom Flaherty, J.

*** The text of the Order was stricken and the bracketed text was handwritten below.

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

ERIN RUBIN OCHOA,

Plaintiff,

v.

FD No. 07-000190-016

MICHAEL RAMON OCHOA,

Defendant.

ORDER OF THE COURT

AND NOW, this [29th] day of [March], 20[10], after consideration of Michael Ochoa's Emergency Motion for Special Relief; Erin Rubin, M.D.'s Answer to Emergency Motion for Special Relief; and Michael Ochoa's Reply to Answer to Emergency Motion to Special Relief; it is hereby ORDERED, ADJUDGED, and DECREED, as follows:

1. Mr. Ochoa's Emergency Motion for Special Relief is denied.
2. Any future proceedings pertaining to matters pending on appeal or addressed in the September 14, 2009 Findings of Fact and Order of Court shall be heard before the undersigned. Motions or other pleadings regarding these issues shall be sent directly to the office of the undersigned.
3. Any future matters pertaining to custody/visitation, protection from abuse, child support, and enforcement thereof, shall be heard

before Judge Klein. All motions or other pleadings shall be submitted in accordance with the Pennsylvania Rules of Court, Local Rules, and Judge Klein's Standard Operating Procedures.

4. Mr. Ochoa is free to submit directly to the undersigned the Qualified Domestic Relations Orders prepared in this matter.

BY THE COURT,

/s/ Tom Flaherty, J.
Thomas E. Flaherty

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

FAMILY DIVISION

(Filed Mar. 11, 2010)

ERIN RUBIN OCHOA,	FD No. 07-000190-016
Plaintiff,	Superior Court Nos:
v.	1821 WDA 2009
MICHAEL RAMON OCHOA,	155 WDA 2010
Defendant.	156 WDA 2010

OPINION

JUDGE THOMAS E. FLAHERTY

Copies to:

Counsel for Appellee/Plaintiff:

Brian Vertz, Esquire
Pollock Begg Komar & Glasser LLC
501 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Appellant/Defendant (Pro Se):

Michael Ramon Ochoa
58 West Portal Avenue #218
San Francisco, CA 94127

OPINION

FLAHERTY, J.

Erin Rubin Ochoa (“Wife”) and Michael Ramon Ochoa (“Husband”) are former husband and wife,

having been married on August 19, 1995, separated on November 7, 2006, and divorced by decree dated January 21, 2010. The parties were before this Court on June 9-10, 2009 for a hearing on the matters of equitable distribution of the marital estate, alimony, counsel fees, child support, and contempt. This Court entered a detailed Findings of Fact and disposed of the parties' economic claims via Order of Court on September 14, 2009. On October 1, 2009, Counsel for Wife presented a Motion for Reconsideration wherein Wife requested that the deed to the New York property be transferred into her sole name pending sale so as to insulate the property from Husband's various creditors once a Decree in Divorce was entered.. This needed to be done prior to issuance of a Decree in Divorce so that Husband's creditors could not attach the property prior to sale. This Court granted this request, as all of Husband's rights and property awarded to him via the September 14, 2009 Order of Court were preserved.

Husband had refused to comply with this Order, thus on December 24, 2009, Counsel for Wife presented a Motion for Special Relief wherein he requested that Wife be granted limited power of attorney to sign the deed to the New York property on behalf of Husband, that the Decree in Divorce not be entered until such time as the deed was transferred, that the alimony *pendente lite* order be converted to alimony retroactive to October 14, 2009, and that Husband pay Wife counsel fees for the preparation and presentation of the Motion.

Counsel for Wife was the sole person to appear on this matter at argument on the Motion. Counsel for Wife apprised this Court that he received an Answer to his Motion for Special Relief from Husband contesting the Motion. Counsel for Wife advised the Court that Husband deny [sic] Wife's Motion. Although electronically filed, this Court did not receive a copy of Husband's Answer to the Motion for Special Relief prior to the argument date set for December 24, 2009. After consideration of Wife's Motion for Special Relief, this Court granted Wife's request.

Shortly thereafter, this Court received a copy of Husband's Answer to Wife's Motion for Special Relief. In his Motion, Husband requested that the Prothonotary be directed not to issue a Decree in Divorce, that there be no transfer of the parties' New York property until his first appeal was decided, that Wife be directed to execute a Qualified Domestic Relations Order ("QDRO") to transfer those monies owed to him under the September 14, 2009 Order of Court, and that Wife pay counsel fees for the attorneys he hired in California to prepare the QDRO. Based upon the exhibits attached to his Motion, it appeared that Wife was willing to sign the QDRO once Husband complied with the deed transfer. Thus, on January 10, 2010, this Court denied his request, but permitted him to present another Motion to this Court if Wife did not execute the QDRO once the New York property was transferred into her name.

On January 21, 2010, upon the request of Wife, a Decree in Divorce was issued.

Husband filed two Notices of Appeal on January 29, 2010 – one for the December 24, 2009 Order of Court and one for the January 10, 2010 Order of Court. On February 9, 2010, Husband sent a Notice of Appeal for the entry of the January 21, 2010 Decree in Divorce. As of the date of this Opinion, the official docketing of the third Notice of Appeal had not occurred. However, this Court will address all three appeals in this Opinion. This Court did not direct Husband to file a 1925(b) statement for these three (3) appeals, as the issues contained therein are narrow.

The Legislative intent behind the divorce code is to “[e]ffectuate economic justice between parties who are divorced or separated . . . and insure a fair and just determination and settlement of their property rights.” 23 Pa.C.S.A. §3102(a)(6). To that end, Pennsylvania Courts have broad equity powers when dealing with matters of equitable distribution both before and after entry of the equitable distribution order. *See*, 23 Pa.C.S.A. §3104, 23 Pa.C.S.A. §3502, Pa.R.C.P. 1920.43, and *Wagoner v. Wagoner*, 538 Pa. 265 (1994).

On October 1, 2009, Wife presented a Motion for Reconsideration wherein she requested that the September 14, 2009 Order of Court for equitable distribution be reconsidered so as to require Husband to convey to Wife his interest in the New York property pending sale as provided for in the September 14, 2009 Order. Wife argued that the title to the New York property was held as tenants by the entirety.

Once a Decree in Divorce is entered, this title is automatically converted into a tenancy in common. The significant debt held in Husband's name jeopardized the property, as once the parties Decree in Divorce is entered, creditors may attach the property, thus divesting any remaining equity.

This Court found Wife's request to be reasonable, as it operated to preserve the marital asset. The underlying equitable distribution order was not disturbed, and Husband retained all rights he was awarded pursuant to the equitable distribution scheme. Thus, on October 1, 2009, this Court granted Wife's request. Husband did not file an appeal, nor did he comply with this Order. Thus, on December 24, 2009, Wife was required to seek enforcement of the October 1, 2009 Order. Wife requested that she be granted limited power of attorney to sign the deed on behalf of Husband so as to effectuate the October 1, 2009 Order. This Court granted this request.

Husband's Answer was denied without prejudice to represent if Wife refused to execute the QDRO once the New York property was conveyed. This Court did not believe it was necessary to compel Wife to execute the QDRO, as Husband attached email correspondence from Counsel for Wife wherein Counsel indicated that Wife would execute the QDRO once the property transfer was complete. Furthermore, this Court denied Husband's request that Wife pay for the attorney he hired to draft the QDRO, as he was not required to prepare the QDRO. In this Court's September 14, 2009 Order, Counsel for Wife was required

to prepare the QDRO to transfer funds to Husband. Husband did not request enforcement of this provision prior to incurring these fees. As such, his request for reimbursement was denied.

Furthermore, this Court denied Husband's request to prohibit entry of the Decree in Divorce until his appeal was resolved. Without a Decree in Divorce, the equitable distribution order is not final, thus his appeal to the equitable distribution order would be interlocutory. Prohibiting entry of the Decree in Divorce would cause his appeal of the equitable distribution order to be quashed. *Wilson v. Wilson*, 828 A.2d 376 (Pa.Super. 2003). Thus, this action would merely delay the appellate process and prolong final resolution of this matter.

Lastly, Husband filed an appeal to the entry of the Decree in Divorce. Pursuant to 23 Pa.C.S.A. §3332, within thirty (30) days from entry of the Decree in Divorce, a party may file a motion to open the Decree in Divorce on the basis of intrinsic fraud or new evidence relating to the cause of action that would sustain an attack on the validity of the Decree in Divorce. 23 Pa.C.S.A. §3332. After this thirty (30) day period and prior five (5) years, a motion may be filed requesting to vacate the Decree in Divorce based upon "extrinsic fraud, lack of jurisdiction over the subject matter, or a fatal defect apparent upon the face of the record." 23 Pa.C.S.A. §3332. Section 3332 presupposes that a Motion be presented to this Court specifically alleging the basis for the challenge the entry of the Decree in Divorce and requesting action.

Husband did not do this, thus, there was no ruling as to whether the Decree in Divorce should be opened or vacated. As such, this Court believes that an appeal on this matter would be improper at this time. However, it is significant to note that §3332 states, “[i]ntrinsic fraud relates to a matter adjudicated by the judgment, including perjury and false testimony, whereas extrinsic fraud relates to matters collateral to the judgment which have the consequence of precluding a fair hearing or presentation of one side of the case.” 23 Pa.C.S.A. §3332. A careful review of the record indicates that all statutory requirements were met and all rules of procedure were followed. All claims of the parties that had been raised were heard at the trial and appropriate disposition occurred. Both parties were given a full and fair opportunity to raise and litigate any and all economic claims rising from the marriage. As such, this Court believes that entry of a Decree in Divorce was appropriate.

For the foregoing reasons, this Court’s December 24, 2009, January 10, 2010, and January 21, 2010 Orders should be affirmed.

BY THE COURT,

/s/ Thomas E. Flaherty, J.

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

ERIN RUBIN OCHOA, FD No. 07-000190-016

Plaintiff

v.

MICHAEL RAMON OCHOA,

Defendant

ORDER OF COURT

AND NOW, this [24th] day of [February], 20[10], upon receipt of Erin Rubin's Motion to Amend Certified Record on Appeals, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED.
2. This Order and the foregoing petition shall be certified by the Allegheny County Department of Court Records and transmitted to the Superior Court of Pennsylvania as a supplemental record in the appeals filed at Superior Court No. 1821 WDA 2009 (consolidating Nos. 155 and 156 WDA 2010), including the hearing exhibits which are attached to the Petition as Group Exhibit "A."
3. None of the documents in Group Exhibit "A" shall be posted to the Internet on the website of the Department of Court Records.
4. Husband's opposition to the entry of this Order is noted. However, this Court grants the

Motion on the basis of Pa.R.A.P. 1926 regarding completeness of the record. The documents contained in Exhibit "A" are the exhibits presented and admitted into the record at trial. Although Mr. Ochoa filed all of his exhibits concurrently with his pre-trial statement, some of those documents may not have been offered at trial or admitted into the record. The documents contained in Exhibit "A" are those considered by the Court in entry of its September 14, 2009 Findings of Fact and Order of Court.

BY THE COURT,

/s/ Tom Flaherty, J.
Thomas E. Flaherty, Judge

[Exhibit A Omitted In Printing]

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

(Filed Feb. 1, 2010)

ERIN RUBIN OCHOA, FD No. 07-000190-016
 Plaintiff, Superior Court No:
 1821 WDA 2009
v.

MICHAEL RAMON OCHOA,
 Defendant.

OPINION

JUDGE THOMAS E. FLAHERTY

Copies to:

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501 Frick Building
437 Grant Street
Pittsburgh, PA 15219

Appellant/Defendant (Pro Se):
Michael Ramon Ochoa
58 West Portal Avenue #218
San Francisco, CA 94127

OPINION

FLAHERTY, J.

Erin Rubin Ochoa (“Wife”) and Michael Ramon Ochoa (“Husband”) are former husband and wife, having been married on August 19, 1995, separated on November 7, 2006, and divorced by decree dated January 21, 2010.¹ The parties were before this Court on June 9-10, 2009 for a hearing on the matters of equitable distribution of the marital estate, alimony, counsel fees, child support, and contempt.

This Court entered a detailed Findings of Fact and disposed of the parties’ economic claims via Order of Court on September 14, 2009. This Court incorporates its findings of fact as if fully set forth herein. A brief synopsis of the relevant facts are as follows:

Wife is forty (40) years of age, in good physical health, and gainfully employed as an Assistant Professor in the Department of Pathology at the University of Pittsburgh and the University of Pittsburgh Medical Center in the division of Transplantation Pathology. During the parties’ marriage, Wife’s salary was the sole source of support for the family. Wife received the NIH Mentored Scientific Teaching Award

¹ This Court notes that Husband’s October 11, 2009 appeal of the September 14, 2009 Order was premature, as the Order of Court was not final until the Decree in Divorce had been entered. However, as the Decree in Divorce has now been entered, the procedural error has been cured, and this Court believes that his appeal is ripe fore [sic] review.

(K08) while she was an Assistant Professor of Pathology at Albert Einstein College of Medicine in New York. She transferred this grant to the University of Pittsburgh in 2004. Husband did not perform any of the basic science research or develop the medical hypothesis that garnered Wife her NIH grant.

After the parties separated, Husband engaged in a massive letter writing campaign that has jeopardized Wife's career. It is unknown what the lasting impact this will have on Wife's career. As of the date of trial, Wife had already been asked to voluntarily relinquish her tenure track position at the University of Pittsburgh School of Medicine.

Wife is the primary custodian of the parties two (2) minor children. Husband has little to no contact with the children.

Husband is currently forty-two (42) years of age and in good physical health. Although receiving psychiatric treatment, Husband has no mental health condition that would prevent him from obtaining gainful employment. Husband has been institutionalized on several occasions following separation, and it was recommended that he have continuing psychiatric treatment. He terminated this treatment. Husband is well educated, having received a B.A. in philosophy from Amherst College and an M.A. in philosophy from Tulane University. When the parties married, he was working on his doctoral dissertation. He did not complete this program. Husband has not engaged in a job search since his relocation to California. Husband

is a very articulate and bright individual. This Court finds that while Husband truly believes the facts he set forth at trial and in his Statement of Matters Complained of on Appeal, his version is not reflective of reality and is wholly without credibility.

Husband filed his Notice of Appeal on October 11, 2009. Husband filed his Concise Statement of the Matters Complained of on Appeal on November 18, 2009 pursuant to Pa. R.A.P. 1925(b). Husband's Concise Statement does not enumerate any specific allegations of error as is required by the Rules of Appellate Procedure. After reviewing Husband's concise statement this Court notes that Husband has not challenged any of the values this Court placed on each marital asset or debt. As such, this Court considers any issue pertaining to the valuation of the marital estate to be waived.

This Court further notes that Husband alleges that this Court was improperly influenced in this matter by the University of Pittsburgh Medical Center ("UPMC") in that UPMC allegedly contacted this Court to sway the ultimate disposition of this matter in favor of Wife so as to conceal the alleged evils perpetrated by UPMC in the treatment of its patients. This Court considers these assertions to be baseless and wholly without credibility. As such, this Court will not address this matter.

However, this Court will address Husband's assertion that he "stood up in manacles and handcuffs and told the truth to the best of [his] ability."

(Statement of Matters page 7, paragraph 2). After the beginning of the first day of trial, this Court was contacted by the Allegheny County Sheriff's Office and informed that there was an outstanding bench warrant for Husband for allegedly violating the Protection from Abuse Order entered in this matter. This Court instructed the Sheriff's Deputies to refrain from arresting Husband until the first court recess. At that point, Husband was detained. When brought back to Court, this Court directed the Sheriff's Deputy who was escorting Husband to remove Husband's shackles. The Sheriff's Deputy indicated his objection to removal of the manacles. Despite being against the standard operating procedure of the Sheriff's Office, this Court ordered the Sheriff's Deputy to remove the manacles. Thus, Husband was permitted to proceed without any physical restraint on his person and was permitted to freely move about the courtroom throughout the trial. As such, Husband's ability to represent himself was not jeopardized.

Although not specifically enumerated, this Court believes that the following are Husband's allegations of error:

1. The trial court improperly applied the factors contained in 23 Pa.C.S.A. §3502 when fashioning the equitable distribution award entered in this matter.
2. The trial court improperly applied the factors contained in 23 Pa.C.S.A. §3701(b) when

fashioning the alimony award entered in this matter.

This Court found that a skewed distribution in favor of Husband was appropriate. Given the facts as presented in this matter, this Court found that 55% was the appropriate percentage to award to Husband. This Court found as persuasive 23 Pa.C.S.A. §3502(a)(3), (4), (5), (6), (7), (8), (9), (10), and (11). The parties' marriage was of average duration, that being eleven (11) years between marriage and separation. Both parties are relatively young, in good physical health, and are employable. Wife's earnings are significantly higher than Husband's, however, Husband has the ability to become employed and increase his earnings. Husband was awarded a minimum of \$60,000 in retirement assets, plus 55% of the proceeds of the parties' Bronx property when sold in addition to the assets already received and/or liquidated by Husband.

The parties married shortly prior to Wife's graduation from medical school. Husband contributed as a homemaker to facilitate Wife's career. After separation, Husband attempted to ruin Wife's career and terminate her employment. It is unknown what the lasting impact of Husband's actions will be. Despite Husband's actions, Wife has a higher earning potential than Husband and, therefore, has an increased ability to obtain capital assets. Husband created all of the marital debt in this matter, and did so without Wife's knowledge. The parties had a modest standard

of living during marriage. Wife has primary custody of the parties' minor children.

Husband was awarded 55% of the net marital estate. He was assigned to pay the debts in [sic] held his name and, as such, received a greater amount of assets. This Court believes that while most of the factors weigh in favor of Husband, some factors weigh in favor of Wife. At trial, Husband requested in excess of 100% of the marital estate. Such a proposal is not equitable, as Wife's marital indiscretions are not to be considered as part of an equitable distribution award and equitable distribution awards are not to be punitive. As such, this Court found that Husband should receive a slightly skewed distribution.

The second allegation of error that this Court assumes was raised by Husband pertains to Husband's alimony award. This Court entered an award of alimony for a period of two (2) years following entry of the Decree in Divorce. This Court considered the following factors to be persuasive in making its determination: 23 Pa.C.S.A. §3701(b)(1), (2), (3), (5), (6), (9), and (17). As this Court has previously stated, Wife was the primary wage earner in this marriage. Husband ceased employment during the parties' marriage so as to care for the parties' minor children. However, Husband is a highly educated man, is very articulate, and is able to provide for himself through appropriate employment. He has not maintained a diligent job search despite relocating shortly after the parties' separation. This Court believes that within two (2) years of the parties' divorce, Husband should

be able to seek and find employment that will provide for his reasonable needs.

This Court believes that the facts of this case support a brief period of alimony in this matter.

For the foregoing reasons, this Court's September 14, 2009 Order should be affirmed.

BY THE COURT,

/s/ Thomas E. Flaherty, J.

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY, PENNSYLVANIA
FAMILY DIVISION

ERIN RUBIN OCHOA, M.D.,)
Plaintiff)
vs.) No. FD07-000190-016
MICHAEL RAMON OCHOA,)
Defendant)

DECREE

AND NOW, this [21st] day of [January, 2010] 2009, it is ordered and decreed that Erin Rubin Ochoa, MD, Plaintiff and Michael Ramon Ochoa, Defendant are divorced from the bonds of matrimony.

ANY EXISTING spousal support order shall hereafter be deemed an Order for alimony pendente lite if any economic claims remain pending.

THE COURT retains jurisdiction of any claims raised by the parties to this action for which a final order has not yet been entered.

BY THE COURT:

/s/ David N. Wecht
J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

ERIN RUBIN OCHOA)	
Plaintiff)	
vs.)	No. FD07-000190-16
MICHAEL RAMON OCHOA)	
Defendant, <i>pro se</i>)	

ORDER OF THE COURT

AND NOW, this [10th] day of ~~December, 2009~~
[January, 2010] upon considerations of *pro se* Defen-
dant, Michael Ramon Ochoa's Reply to Plaintiff's
Motion for Special Relief, it is hereby ORDERED as
follows:

~~1. The Allegheny County Office of Court Rec-
ords (Prothonotary) shall not issue a Decree in Di-
vorce until this and any subsequent outstanding
issues involving this case before this and the Superior
Court have been resolved.~~

~~2. There shall be no transfer or sale of 631
Pelham Parkway North until this and any subse-
quent outstanding issues have been resolved by this
and the Superior Court.~~

~~3. Plaintiff is ordered to comply with the above
described QDRO transfer immediately.~~

~~4. Plaintiff, Erin Rubin Ochoa, shall pay to the
law firm of Vetrano & Vetrano the amount of \$2650 in~~

~~legal fees for the preparation and execution of said QDRO.~~

~~5. The Plaintiff and Counsel shall refrain from further vexatious, unethical, illegal, and contentious actions which can serve no purpose other than attempting to take advantage of Defendant's lack of Counsel, to subvert Defendant's lawful attempts to defend his rights and property, to subvert Allocation guidelines and the stated intent of the Final Order, and to retaliate for his making serious claims before the Superior Court.~~

[Denied. If Wife fails to execute the QDRO after the deed to the Pelham Parkway Property is transferred to her name, Husband may re-present this Petition. /s/ TF]*

BY THE COURT,

/s/ Tom Flaherty, J.

* The text of the Order was stricken and the bracketed text was handwritten into the margin.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

ERIN RUBIN OCHOA, M.D.,)
Plaintiff)
vs.) No. FD07-000190-16
MICHAEL RAMON OCHOA,)
Defendant)

ORDER OF COURT

AND NOW, this 24th day of December, 2009, upon consideration of Plaintiff Erin Rubin Ochoa's Motion for Special Relief, it is hereby ORDERED as follows:

1. The Allegheny County Office of Court Records (Prothonotary) shall not issue a Decree in Divorce until Wife shall file an Affidavit confirming that the Pelham Parkway residence has been conveyed into her sole name. A copy of this Order, along with the said Affidavit, shall be provided to Linda Strock when the Praecepto to Transmit is filed.

2. This Court hereby grants a power of attorney to Erin Rubin Ochoa and appoints her as agent and attorney-in-fact on behalf of Michael Ramon Ochoa to sign, execute and deliver a deed conveying all of Michael Ramon Ochoa's right, title and interest in and to their jointly-titled real property located at 631 Pelham Parkway, Bronx, New York into the sole name of Erin Rubin Ochoa, such property being more

particularly described in the Deed dated March 23, 2003 from Jacob Esses MD and Ruth Esses, his wife, to Michael R. Ochoa and Erin Rubin Ochoa, recorded on June 24, 2003 in the City Register of the City of New York, Document ID No. 2003033102204003, Block 4337, Lot 85, and to execute and deliver all other such instruments for the conveyance and transfer of said real property as might be required at the time of recording.

3. The alimony pendente lite is converted to alimony as of ~~October 14,~~ [T.F. December 24,] 2009 pursuant to the September 14, 2009 Order of Court.

4. This Order is valid pursuant to § 236(B) of the Domestic Relations Law of the State of New York.

5. Defendant Michael Ramon Ochoa shall pay to the law firm of Pollock Begg Komar Glasser LLC the sum of \$750 in legal fees for the preparation and presentation of this Motion.

BY THE COURT,

/s/ Tom Flaherty, J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

ERIN RUBIN OCHOA, M.D.,)
Plaintiff)
vs.) No. FD07-[0]00190-016
MICHAEL RAMON OCHOA,)
Defendant)

ORDER OF COURT

AND NOW, this [1st] day of [October], 2009, upon consideration of Plaintiff's Motion for Special Relief in the Nature of Reconsideration, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Reconsideration of the Order dated September 14, 2009 is hereby granted.
2. This Court shall issue an Amended Order of Court with the following changes to its September 14, 2009 Order of Court:
 - a. Plaintiff Erin R. Ochoa shall retain 100% of her Gerstein Fisher Roth IRA [Number Omitted];
 - b. Plaintiff Erin R. Ochoa shall transfer to Defendant Michael R. Ochoa the sum of \$30,000 gross from her Gerstein Fisher Traditional IRA [Number Omitted]; and
 - c. the Pelham Parkway residence shall be immediately conveyed by general warranty deed to Wife

pending sale or distribution as provided by paragraph
3 of the 9/14/09 Order.

BY THE COURT:

/s/ Tom Flaherty, J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

ERIN RUBIN OCHOA,
Plaintiff

v.

MICHAEL RAMON
OCHOA,
Defendant

FD No. 07-000190-016

**FINDINGS OF
FACT AND ORDER
OF COURT**

(Filed Sep. 16, 2009)

COPIES SENT VIA FIRST CLASS MAIL

TO:

COUNSEL FOR PLAINTIFF:

BRIAN C. VERTZ, ESQUIRE
POLLOCK BEGG KOMAR GLASSER LLC
437 GRANT STREET, SUITE 501
PITTSBURGH, PA 15219

DEFENDANT, PRO SE:

MICHAEL RAMON OCHOA
58 WEST PORTAL AVENUE #218
SAN FRANCISCO, CA 94127

FINDINGS OF FACT

AND NOW, this [14th] day of [September], 200[9], after a hearing on the matters of equitable distribution of the marital estate, alimony, counsel fees, child support and contempt, this Court issues the following Findings of Fact:

1. Michael Ramon Ochoa (“Husband”) and Erin Rubin Ochoa (“Wife”) are husband and wife, having been married on August 19, 1995 in Atlanta, Georgia.
2. The parties separated on November 7, 2006.
3. Wife is age 40, having been born on [Date Of Birth Omitted].
4. Husband is age 42, having been born [Date Of Birth Omitted].
5. This is the first marriage for both parties.
6. Wife is in good health and has no physical or mental conditions which impairs [sic] her earning capacity.
7. Husband is in good health and has no physical condition which impairs his earning capacity. Husband has been under the care of a psychiatrist since his relocation to California, however, this Court finds that he does not suffer from a mental condition which impairs his earning capacity.
8. The parties are the parents of two (2) minor children, J. (age 12) and E. (age 10) (hereinafter collectively referred to as “Children”). Wife currently lives in Pittsburgh with Children.
9. Wife is currently employed as an Assistant Professor in the Department of Pathology at the University of Pittsburgh and the University of Pittsburgh Medical Center in the Division of Transplantation Pathology.

10. Wife received her B.A. degree in biology and anthropology in 1990 from Emory University and her M.D. degree in 1996 from Emory University School of Medicine. Wife did not incur any loans for tuition or living expenses for this schooling.
11. In 1996, Wife began her residency in Anatomic and Clinical Pathology at Massachusetts General Hospital (MGH) of Harvard University. She concluded her residency in 2000.
12. The salary Wife received from her residency was the sole source of support for the family, as Husband did not work outside the home at this time. Children were born during her residency, and Wife did not take a significant maternity leave during this time.
13. The parties purchased a condominium in Boston with a loan from Wife's father. The parties repaid Wife's father and sold the condominium.
14. Following her residency, Wife became a Clinical Fellow in Gastrointestinal and Hepatic Pathology at MGH and joined the Department of Surgery to work on tissue engineering of the liver.
15. This position concluded in 2002 when Wife became an Assistant Professor of Pathology at the Albert Einstein College of Medicine in New York.
16. During her tenure at Albert Einstein College of Medicine, Wife performed research and wrote a grant proposal that was awarded an NIH Mentored Scientific Teaching Award (K08). Husband never performed any of the basic science research or developed the medical hypotheses that garnered Wife her NIH grant.

17. Wife transferred her NIH-funded grant and professorship to the University of Pittsburgh in 2004, where she joined the Division of Transplantation Pathology, the Starzl Transplantation Institute, and the McGowan Institute for Regenerative Medicine. This is her current employment.
18. During all of Wife's post-medical school training, Husband was not employed outside the home.
19. Wife's salary is paid by two separate entities, the University of Pittsburgh Physicians and the University of Pittsburgh Medical Center ("UPMC").
20. Wife has experienced an involuntary reduction in income due to a reduction in her supplemental pay.
21. Wife's 2009 gross annual income from her employment at the University of Pittsburgh Physicians and UPMC is as follows:
 - a. University of Pittsburgh Physicians Salary: \$19,999
 - b. UPMC: \$144,996
 - c. University of Pittsburgh Physicians Supplemental: \$1,600
 - d. Total income: \$166,595**
22. In addition to Wife's salaries, she has income from interest/dividends and Schedule E income from the Bronx rental property. This totaled \$2,984 in 2008 and is anticipated to be the same for 2009.

23. Thus, Wife's total income for support purposes is \$169,579
24. To calculate her net income for support purposes, this Court deducts from the gross pay Wife's obligation for federal taxes, state taxes, local taxes, social security, and Medicare. Pa.R.C.P. 1910.16-2(b). This Court accepts Wife's calculation of her 2009 tax obligations as follows:
 - a. Federal Tax: \$32,150
 - b. State Tax: \$5,206
 - c. Local Tax (3%): \$5,087
 - d. Social Security: \$6,622
 - e. Medicare: \$2,416
25. Thus, Wife's net income for support purposes is: \$118,098/year and \$9,842/month.
26. Husband requests that several items be added onto Wife's income. This Court declines to do this. The items requested to be added are items that are deducted by Wife's employer from her gross pay. This Court calculated Wife's salaried income using her gross wages and deducted only those items permitted by the Rules of Civil Procedure and did not rely on Wife's employer's calculation of Wife's net income.
27. In May 2009, Wife was asked to consent to being permanently removed from the tenure track at the University of Pittsburgh School of Medicine. This was most likely due to Husband's massive letter writing campaign that targeted Wife's current and former employers, colleagues, and

professional organizations. Husband sent more than 250 emails and letters and initiated several telephone calls during the parties' separation in an attempt to falsely discredit Wife's professional accomplishments. Husband utilized University of Pittsburgh data contained on the marital computer that he had no authority to access or use in an effort to obtain patents and copyrights in his name. All of these vexatious and inappropriate actions compromised Wife's promising career in Pittsburgh. It is unknown at this time what the lasting impact of Husband's letter-writing campaign will be on Wife's career.

28. Husband relocated to California on March 14, 2007 and is currently unemployed.
29. Wife's vocational expert credibly testified that Husband was qualified to become employed as a Self-Enrichment Teacher, Adult Literacy Teacher, or Social and Community Service Manager with no further training or education. In San Francisco, the median entry-level wage for these fields is \$36,774 per year. She further testified that there were over 4,000 job vacancies in these three occupations in 2008. Once Husband accumulates three to four years' experience, the median earnings increase to \$47,860 per year.
30. Prior to trial, Husband refused to cooperate with Wife's vocational expert by making himself unavailable for an interview. As a result, this Court prohibited him from offering any evidence contrary to the expert report of Wife's vocational expert concerning his educational background, work history, job search, and earning capacity.

31. Husband graduated from Amherst College in 1989 with a B.A. in philosophy. He received his M.A. degree in philosophy from Tulane University in 1993.
32. Husband was working on his doctoral dissertation at Tulane when the parties married, but did not finish his dissertation or obtain his degree. He qualified for tuition remission at the University of Pittsburgh and began to resume his education in 2005, but did not finish this degree.
33. This Court does not believe that Husband has the necessary qualifications to become a technical writer and, therefore, declines to hold him at that earning capacity.
34. Husband has not engaged in a thorough job search in the San Francisco area since moving there.
35. As such, this Court finds that Husband has a current earning capacity of \$36,744 gross per year. Husband's net income is calculated as follows:
 - a. Gross Income: \$36,744
 - b. Federal Tax: \$3,696
 - c. State Tax (California): \$1,258
 - d. Local Tax: \$0
 - e. Social Security: \$2,280
 - f. Medicare: \$533
 - g. **Net Income: \$28,977/year or \$2,415/month**

36. Although Husband should have immediately conducted a thorough employment search in San Francisco upon moving there, this Court declines to find that his earning capacity will automatically increase in March 2010 because he should have had three years' work experience.
37. Husband home schooled the parties' children upon relocating to Pittsburgh in 2005. When the parties' [sic] separated and were enrolled in public school, Children required substantial tutoring to meet the basic standards of education for other children their age.
38. In November 2006, following the parties' separation, Husband voluntarily admitted himself into Western Psychiatric Institute and Clinic (WPIC). In December 2006, Husband was involuntarily hospitalized due to threats of suicide. Husband was treated on a mostly inpatient basis until February 2007. Following his final release, he was supposed to receive out-patient care, but terminated the treatment.
39. The following are the marital assets of the parties:
 - a. Real Property located at 631 Pelham Parkway North, Bronx, NY. **Value for equitable distribution:\$81,732**

This is the net value of the property after deducting the two encumbrances. The stipulated fair market value of this property is \$600,000. There are two encumbrances on the property: 1) EMC Mortgage, with a principal loan balance of \$459,892.29; and

2) Citizen's Bank Mortgage, with a principal loan balance of \$58,375.53. This property is subject to a 20 year lease to a non-profit service organization, Community Resource Center for the Developmentally Disabled, Inc. Wife has been collecting the rent, which has been included in her monthly net income.

Wife requested that the value of this property be reduced for costs of sale, but this Court finds that no evidence was presented as to the cost of sale in New York. As such, the value of the property will not be reduced for cost of sale.

Given that neither party intends to retain the residence for their own use post-divorce, this Court is not going to include a value for this asset in the marital estate. Rather, this Court elects to order that the residence be listed for sale and that the net proceeds be divided consistent with the overall distribution scheme set forth in this Court's Order of Court below.

- b. Gerstein Fisher Roth IRA [Number Omitted]. **Value for equitable distribution: \$11,510.67**

This account is held in Wife's name and the parties agree as to value.

- c. Gerstein Fisher IRA [Number Omitted]. **Value for equitable distribution: \$55,852.18**

This account is held in Wife's name and the parties agree as to value.

- d. TIAA/CREF Retirement Plan: Value for equitable distribution: \$34,019.61

This account is held in Wife's name and the parties agree as to value.

- e. University of Pittsburgh 403(b) through Vanguard: **Value for equitable distribution: \$14,766.79**

This account is held in Wife's name and the parties agree as to value.

- f. UPMC Savings Plan: **Value for equitable distribution: \$5,718.77**

This account is held in Wife's name and the parties agree as to value.

- g. UPMC Cash Balance Pension Plan: **Value for equitable distribution: \$1,583.87**

This account is held in Wife's name and the parties agree as to lump sum value. This is a pension plan that will pay Wife a monthly benefit upon retirement. As of the November 7, 2006, Wife had accrued a monthly benefit of \$10.81/month. The value for equitable distribution purposes is the lump sum value, as this Court finds that there are sufficient assets available for an immediate offset distribution.

- h. Gerstein Fisher Roth IRA [Number Omitted]: **Value for equitable distribution: \$10,700**

This account was held in Husband's name during the marriage and liquidated

post-separation. Husband is credited with having received the value of this account as his share of equitable distribution without a reduction for early withdrawal penalties or taxes.

- i. PNC Bank Checking [Number Omitted]:
Value for equitable distribution: \$0

This was consumed by the parties post-separation for marital purposes.

- j. Gerstein Fisher Account [Number Omitted]:
Value for equitable distribution: \$0

The parties agree to this value.

- k. Citizen's Bank Checking [Number Omitted]:
Value for equitable distribution: \$1,986

This account was held in Wife's name and had a date of separation balance of \$2,486.45 of which \$500.45 was used for marital purposes and \$1,986 used as an advance against equitable distribution to Wife.

- l. Citizen's Bank Checking [Number Omitted]:
Value for equitable distribution: \$448.47

This is the date of separation balance that was advanced to Husband post-separation.

- m. Citizen's Bank Savings [Number Omitted]:
Value for equitable distribution: \$0

This account balance was consumed by the parties post-separation for marital purposes.

- n. Nationwide Variable Universal Life Insurance Policy: **Value for equitable distribution: \$8,752.33**

The parties agree to this value. This policy is owned by Wife.

- o. William Penn Life Insurance Policies: **Value for equitable distribution: \$0**

The parties agree as to value. Each party had one life insurance policy with William Penn Life Insurance Company with no cash surrender value.

- p. UPMC Life Insurance Policies: **Value for equitable distribution: \$0**

These policies are incident to Wife's employment and do not have any cash surrender value. As such, their value for purposes of equitable distribution is zero.

- q. Wells Fargo Account [Number Omitted]: **Value for equitable distribution: \$1,000**

Wife does not list a value for this account, and Husband submits its value for equitable distribution purposes is \$1,000. As such, this Court accepts Husband's value.

- r. Gerstein Fisher Account [Number Omitted]: **Value for equitable distribution: \$0**

Wife does not list this account as being marital; Husband asserts it is a marital account with a \$0 value. This Court accepts Husband's value.

- s. Gerstein Fisher IRA: **Value for equitable distribution: \$0**

This account was held in Husband's name. The parties agree as to value.

- t. Wife's Interest in Perry and Evelyn Rubin Family Trust: **Value for purposes of equitable distribution: No value**

This Court does not place a value on Wife's interest in the Rubin Family Trust, as there was no evidence presented to quantify her interest. Further, this Court does not believe that her interest, if any, is a marital asset subject to distribution. Any interest Wife has will be considered with the distribution factors in 23 Pa.C.S.A. §3502, however, it will not be considered to be an asset subject to distribution.

- u. Steinway Piano: **Value for purposes of equitable distribution: No value**

In his Findings of Fact, Husband asserts that the Steinway Piano has a value of \$20,000. This Court finds that there was no testimony concerning the value of the piano, and declines to place a value on this alleged asset.¹

¹ This Court notes that in Wife's Exhibit N (Pretrial Tab 22) there are payments made for a piano to GE Norey Bank in the amount of \$206/month. As such, this Court does not know whether the piano was purchased and encumbered or leased. Therefore, this Court does not believe it is appropriate to place

(Continued on following page)

v. Household goods and furnishings: **Value for purposes of equitable distribution: Nominal**

Husband asserts that all of the household goods and furnishings are in the possession of Wife and have a value of \$30,000. There was no testimony presented that the value of the household goods and furnishings had such a substantial value. This Court acknowledges that Wife is in possession of all household goods and furnishings, however, Husband did not request that he be awarded any of the marital furnishings that remained in Wife's possession. This Court believes that Husband's value was based upon the fact that Wife was in possession of the furnishings and not on their actual value. As such, this Court declines to place a specific dollar value on the household goods and furnishings.

w. Intellectual Property: **Value for purposes of equitable distribution: No value**

Husband asserts that certain documents and the like are solely his intellectual property and should be excluded from the marital estate. In addition, he asserts that other scientific manuscripts and intellectual property in Wife's possession are marital property and should be included in the distribution. This

a value on the piano in the amount of \$20,000 as was requested by Husband.

Court finds that all scientific research and writings conducted during the marriage were the fruits of Wife's occupation, education, and training. This Court further finds that Wife does not receive any financial compensation from this work other than her salary and compensation package through her employment. As her salary and compensation package are utilized for support purposes, they cannot be added here as a marital asset.

40. Custodial Accounts: This Court finds that the parties had a total of six (6) custodial accounts held in Husband's name for the benefit of the parties' children. In June 2008, the two American Funds custodial accounts had approximately \$16,000 each. In June 2007, the two New York State 529 accounts had less than \$200 each. In December 2006, the two PNC UTMA accounts had less than \$400 each. This Court finds that these accounts are not marital property and are excluded from the marital estate. However, this Court finds that Husband should no longer be the named owner on these accounts and that they should be transferred to Wife to hold for the benefit of the children.
41. The following are the marital debts of the parties:
 - a. Chase Mastercard [Number Omitted]: **Value for purposes of equitable distribution: \$24,500**

Wife avers that Husband did not provide proof that the debts incurred on this credit card were incurred during the marriage. It

is noted that Wife's Exhibit J contains is [sic] a statement dated January 23, 2007 wherein the outstanding balance as of December 4, 2007, the opening date on the account, was \$24,500. There was a payment made to this account, but no charges made during the billing cycle. The parties separated on November 7, 2007. From the date of separation to the opening date on the statement, Husband was receiving inpatient psychiatric care. As such, this Court finds that this debt is marital. Wife has made payments toward this account post-separation in the amount of \$2,352. Husband avers that the penalties that accrued after his release from the hospital that were due to his failure to pay toward this balance is a marital debt subject to distribution. This Court disagrees and declines to include the penalties as a marital debt.

- b. Citibank Visa [Number Omitted]: **Value for purposes of equitable distribution: \$3,476.87**

Wife avers that Husband did not provide proof that this debt was incurred during the marriage. In Wife's Pretrial Tab 22 (Trial Exhibit N), she submits a statement from this account with a closing date of November 17, 2006. This exhibit clearly indicates that all but \$786.13 of these charges were incurred during the marriage. As such, this Court finds that \$3,476.87 of this debt is marital (\$4,293-\$786.13). Wife paid a total of \$4,611 toward this debt.

c. Husband's Unpaid Psychiatric Expenses:
Value for equitable distribution: \$0

Husband requests that his ongoing psychiatric treatment be considered to be a marital debt. This Court finds that this expense was incurred post-separation and is not a marital debt subject to distribution.

d. Husband's Unpaid Legal Fees: **Value for equitable distribution: \$0**

Husband requests that his legal fees incurred in conjunction with this divorce be considered to be a marital debt. This Court finds that these debts were incurred post-separation and are not marital debts subject to distribution. However, these legal fees will be further addressed in conjunction with his request for counsel fees below.

42. Advances:

a. Husband received a total of \$8,963 from Wife as an advance against his share of equitable distribution as follows:

- i. \$2,000 paid by Wife on May 14, 2007 to Husband's Wells Fargo Account.
- ii. \$2,352 paid by Wife toward Husband's Chase Mastercard [Number Omitted]
- iii. \$4,611 paid by Wife toward Husband's Citibank Visa [Number Omitted]

43. Wife had requested that the value of her retirement accounts be reduced by the amount of income tax due for use of these funds post-retirement.

However, this Court declines to do this, as there was no evidence submitted at trial to quantify the amount of tax that would be owed.

44. Given the factors enumerated in 23 Pa.C.S.A. §3502 and the factual findings made above, this Court finds that an overall distribution of the net marital estate skewed 55% in favor of Husband is appropriate in this matter.
45. After full consideration of the factors contained in 23 Pa.C.S.A. §3701(b) and the factual findings made above, this Court believes that a limited period of alimony is appropriate. As such, Husband shall be awarded alimony for a period of two (2) years from the date of entry of the Decree in Divorce.
46. The current Order of Court for support in this matter was entered on April 3, 2008. In that Order, this Court set Wife's monthly alimony *pendente lite* ("APL") obligation to Husband at \$4,045 and Husband's monthly child support obligation to Wife at \$2,373. This left a net APL award to Husband in the amount of \$1,672. Husband has received this amount every month since entry of the support order.
47. Due to direct payments, and the cross captioned cases, this Court referred the calculation of arrears to the financial unit who issued their calculation on April 9, 2008.
48. The April 9, 2008 Order of Court found Wife had made an APL overpayment in the amount of \$4,571.66. Wife has never received reimbursement of this overpayment.

49. The original date for the equitable distribution trial in this matter was scheduled for March 10 and 12, 2009. In February 2009, Husband discharged his attorney. During argument on the Motion to Withdraw and Continue presented by Husband's former counsel, Wife requested that she be given permission to "seek recoupment of the additional alimony *pendente lite* paid subsequent to the original hearing dates as a result of Defendant's request for a continuance." This Court granted her request.
50. This Court finds that Wife paid \$4,045 per month (in actual payments and the child support offset) for the three (3) months between the original trial date and newly scheduled trial date. Thus, she paid a total of \$12,135 in APL during the continuance period.
51. This Court declines to award Wife reimbursement of these funds. However, this Court has taken this additional period of APL into consideration when calculating the appropriate duration of alimony.
52. The April 3, 2008 support order also required Husband to pay 42% of the unreimbursed medical expenses for the children after payment of \$250 per child per calendar year. Husband has not paid any amount toward the unreimbursed medical expenses for either child for 2007 or 2008.
53. Wife paid a total of \$1,936.07 in unreimbursed medical expenses for both children in 2007 (Pre-trial Tab 23; Trial Exhibit P). Wife's Exhibit lists a total of \$1,951.07, however it includes a \$15.00

charge from 2006 which is not includible in the 2007 medical expense reimbursement request. Segregated for each child as follows:

- a. J.: \$419.79; Husband's responsibility: $\$419.79 - \$250 = \$169.79 * 0.42 = \71.31
- b. E.: \$1,536.28; Husband's responsibility: $\$1,536.28 - \$250 = \$1,286.28 * 0.42 = \540.24
- c. *Husband's total obligation for 2007 unreimbursed medical expenses: \$611.55*

54. Wife paid a total of \$1,119.73 in unreimbursed medical expenses for both children in 2008 (Pre-trial Tab 23; Trial Exhibit P). Segregated for each child as follows:

- a. J.: \$735.86; Husband's responsibility: $\$735.86 - \$250 = \$485.86 * 0.42 = \204.06
- b. E.: \$383.87; Husband's responsibility: $\$383.87 - \$250 = \$133.87 * 0.42 = \56.23
- c. *Husband's total obligation for 2008 unreimbursed medical expenses: \$260.29*

55. Thus, Husband's total outstanding obligation for unreimbursed medical expenses is \$871.84. It is noted that Husband agrees that he owes Wife an obligation for unreimbursed medical expenses. This Court believes that Husband has the ability to pay this amount but has willfully failed to do so. As such, Husband is in contempt of the support order. Husband's obligation for unreimbursed medical expenses shall be deducted from any obligation Wife would owe to Husband via equitable distribution.

56. Husband was and is in possession of the marital laptop computer that contained scientific/medical data which had been licensed to Wife for use in her medical research. Wife had been requested by her employer to take all reasonable steps to ensure that the information on the computer was recovered and to determine whether Husband had copied it or shared it illegally.
57. On January 27, 2009, this Court entered an Order requiring Husband to ship the laptop computer at Wife's expense to Husband's own counsel, where it could be examined and tested by Wife's computer forensic experts.
58. Husband admits that he has the computer and has offered no explanation why he is unable to comply with the January 27, 2009 Order.
59. This Court finds that Husband has the ability to comply with the January 27, 2009 Order but is willfully failing to do so. Therefore, Husband is in Contempt of this Court's Order of January 27, 2009.
60. Wife has incurred counsel fees in connection with Husband's aforementioned contempt of the support order and the January 27, 2009 order in the amount of \$5,353. This Court finds these fees to be reasonable and awards same to Wife. These fees shall be offset against Husband's share of equitable distribution.

BY THE COURT:

/s/ Tom Flaherty _____, J.
Thomas E. Flaherty, Judge

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

ERIN RUBIN OCHOA, FD No. 07-000190-016

Plaintiff

v.

MICHAEL RAMON OCHOA,

Defendant

ORDER OF COURT

(Filed Sep. 16, 2009)

AND NOW, this [14th] day of [September], 200[9], after hearing on the matter of equitable distribution of the marital estate, alimony, counsel fees, child support, and contempt, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. Erin Rubin Ochoa (“Wife”) is awarded the following as her share of equitable distribution:
 - a. 100% of her Gerstein Fisher Roth IRA [Number Omitted], valued at \$11,510.67.
 - b. All remaining funds in the Gerstein Fisher IRA [Number Omitted] after distribution to Husband as set forth below.
 - c. All remaining funds in the TIAA/CREF retirement plan after distribution to husband as set forth below.

- d. 100% of her University of Pittsburgh 403(b) Plan.
 - e. 100% of her UPMC Savings Plan.
 - f. 100% of her UPMC Cash Balance Pension Plan.
 - g. 100% of the proceeds of her Citizen's Bank Checking [Number Omitted].
 - h. 100% of the proceeds of her Nationwide Variable Universal Life Insurance.
 - i. 45% of the net proceeds from the sale of the property located at 631 Pelham Parkway North, Bronx, NY as set forth in paragraph 3 below.
 - j. Any personal property in her possession.
2. Michael Ramon Ochoa ("Husband") shall receive the following as his share of equitable distribution:
- a. The sum of \$30,000 gross as of April 30, 2009 plus or minus investment experience from Wife's Gerstein Fisher Roth IRA [Number Omitted] to be transferred to Husband via Qualified Domestic Relations Order ("QDRO"). Said QDRO shall be prepared by Counsel for Wife and forwarded to Husband within sixty (60) days from the date of this Order.
 - b. The sum of \$31,000 gross as of December 31, 2008 plus or minus investment experience from Wife's TIAA/CREF retirement account to be transferred via

QDRO. Said QDRO shall be prepared by Counsel for Wife and forwarded to Husband within sixty (60) days from the date of this Order.

- c. 100% of the proceeds of his Gerstein Fisher Roth IRA [Number Omitted]. Husband has already liquidated this account and is credited as having received the date of separation balance.
- d. 100% of the proceeds of his Citizen's Bank Checking [Number Omitted].
- e. 100% of the proceeds of his Wells Fargo Account [Number Omitted].
- f. 55% of the net proceeds from the sale of the property located at 631 Pelham Parkway North, Bronx, NY as set forth in paragraph 3 below.
- g. Any and all personal property in his possession.
- h. Credit as having received the following:
 - i. \$8,963 in advances from Wife.
 - ii. \$4,571.66 in the APL overpayment from Wife
 - iii. \$871.84 from his share of the 2007 and 2008 unreimbursed medical expenses paid by Wife
 - iv. \$5,353 in counsel fees as a sanction for his willful contempt of two Orders

of Court as discussed in paragraph 7 below.

- i. 100% of the balance on the following marital credit cards that are held in his name:
 - i. Chase Mastercard [Number Omitted]
 - ii. Citibank Visa [Number Omitted].
3. *631 Pelham Parkway North, Bronx, NY Distribution*: Husband and Wife shall list this property for sale through a licensed real estate broker to be selected by Wife within thirty (30) days from the date of this Order. The initial asking price shall be \$1.2 million. Wife has the authority to adjust the listing price every 6 weeks if recommended by the broker and if no offers are received. Wife shall advise Husband via e-mail of her intent to adjust the list price no later than seven (7) days prior to the proposed adjustment so as to give Husband the opportunity to discuss this action with the broker. Husband shall cooperate with the execution of the listing agreement, sales agreement, deed, and all other conveyance documents promptly. Pending sale, Wife shall make all payments on the existing encumbrances and ensure that the taxes and utilities due on the property are current. Neither party shall be permitted to encumber this property without the express written consent of the other party.

If the property is sold, the net sales proceeds shall be distributed 55% to Husband and

45% to Wife. For purposes of this paragraph, “net sales proceeds” is defined as the purchase price minus the balance due on any encumbrances and all ordinary and necessary costs of sale in New York.

If, after a period of one (1) year from the date the property is listed for sale, the property has not sold, Wife shall have the option of either purchasing Husband’s interest in the property or continuing to list the property for sale. If Wife elects to purchase Husband’s interest, she shall obtain a licensed real estate appraiser in New York to provide a current appraisal of the value of the property. She shall then pay Husband 55% of the net equity in the property. For purposes of this paragraph, “net equity” is defined as the appraised value of the property minus the balance due on the encumbrances.

4. Custodial Accounts for Children: Husband shall take all reasonable steps to transfer the New York 529 College Savings accounts, American Funds college savings accounts, and PNC Bank custodial savings accounts to Wife for the benefit of the children.
5. Alimony and Child Support.
 - a. Husband’s claim for alimony is granted. Wife shall pay to Husband the amount of \$2,970 per month as modifiable alimony. Alimony shall terminate upon the death of either party, or the remarriage or cohabitation of Husband. This alimony shall continue for a period of two (2)

years from the date of issuance of the Decree in Divorce.

- b. Upon issuance of a Decree in Divorce and commencement of alimony, Husband shall pay \$1,472 per month as child support to Wife for support of the parties' minor children. This amount includes his base child support obligation, child care, and extracurricular activities. Husband shall be responsible for 42% of each child's unreimbursed medical expenses exceeding \$250 per year.
- c. This Court declines to order Father to contribute to J.'s tuition at Falk School for the 2009-2010 school year. This Court finds that it is a reasonable expense, however, this Court does not believe Father has the financial wherewithal to fund the cost of this private school this academic year. This provision shall not be construed to preclude Father from contributing to private school tuition in the future.
- d. So long as Wife owes alimony to Husband, Wife's alimony obligation shall be offset by Husband's child support obligation. Thus, once a Decree in Divorce is issued, Wife's net obligation to Husband will be \$1,498.
- e. Wife shall maintain health insurance coverage on the minor children.

- f. Wife shall maintain health insurance coverage on Husband until issuance of a Decree in Divorce.
 - g. Any arrears that should accrue shall be repaid at a rate of \$5/month.
 - h. As Wife's overpayment of APL was deducted from Husband's share of equitable distribution, the overpayment in the amount of \$4,571.66 shall be set at zero.
6. Counsel fees.
- a. Husband's claim for counsel fees is denied. Husband failed to present evidence as to the exact amount of his outstanding counsel fees. In addition, it is not clear whether Husband intends to pay his counsel fees.
7. Contempt.
- a. Husband is found to be in contempt of the following orders:
 - i. Support Order dated April 3, 2008: Husband has willfully failed to pay his share of the unreimbursed medical expenses of Children despite having the ability to do so. Husband's share of these expenses shall be offset from his award of equitable distribution in paragraph 2 above.

- ii. Order of Court dated January 27, 2009: Husband has willingly failed to produce the marital laptop computer despite having the present ability to do so.
 - b. Wife's claim for counsel fees in conjunction with Husband's contempt is granted. Wife is awarded \$5,353 in counsel fees to be offset against share of equitable distribution in paragraph 2 above.
- 8. This is a Final Order.
 - 9. A Decree in Divorce shall be issued forthwith.

BY THE COURT,

/s/ Tom Flaherty, J
Thomas E. Flaherty, Judge

APPENDIX D

**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

ERIN RUBIN,	:	Nos. 61-67 WAL 2011
	:	
Respondent	:	Petition for Allowance of
	:	Appeal from the Order of
v.	:	the Superior Court
	:	
MICHAEL RAMON	:	
OCHOA,	:	
	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 20th day of June, 2011, the
Petition for Allowance of Appeal is hereby **DENIED**.

A True Copy Patricia Nicola
As Of 6/20/2011

Attest: /s/ Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX E

**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

ERIN RUBIN,	:	Nos. 61-67 WAL 2011
Respondent	:	Application for
v.	:	Reconsideration
MICHAEL RAMON OCHOA,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 18th day of July, 2011, the Application for Reconsideration is hereby **DENIED**.

A True Copy Patricia Nicola
As Of 7/18/2011

Attest: /s/ Patricia Nicola _____
Chief Clerk
Supreme Court of Pennsylvania
