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 **IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

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| IN RE THE MARRIAGE OF JOHN DOE AND JANE DOE |
| Upon the Petition ofJOHN DOE,Petitioner,And Concerning,JANE DOE,Respondent. | CASE NO. \*\*\*\*\*\*\*\* **MOTION TO DISMISS APPLICATION FOR RULE TO SHOW CAUSE** |

COMES NOW Petitioner (hereinafter “John”), by and through counsel, and in support of his Resistance to Application for Appointment of Custody Evaluator, states as follows:

1. On or about June 1, 2016, the Iowa District Court for Polk County entered a Dissolution of Marriage Decree (“Decree”).
2. Pursuant to the Decree, John was granted primary physical care of the parties’ minor child, J.J.D. (2006).
3. Further, Respondent (“Jane”) was ordered to pay John $500.00 per month in child support.
4. Despite earning $80,00.00 as a regularly practicing attorney in 2015, Jane didn’t make a single ordered child support payment. Further, Jane did not make a single ordered child support payment in 2016 until this case was filed.
5. On or about September 8, 2016, John caused to have filed with this court and Application to Modify Dissolution of Marriage Decree. Specifically, John requested that Jane’s child support be increased.
6. John filed his Modification action in part with the hopes that it would get Jane to comply with the child support obligation.
7. On or about September 15, 2016, Jane filed a Counter-Application for Modification requesting in pertinent part shared physical care and an elimination of her child support obligation.
8. The modification case is set to come before the court for trial on December 28-29, 2017.
9. Pursuant to Iowa Code § 598.12 (2016), “[t]he court may require that an appropriate agency make an investigation of both parties regarding the home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children. …”
10. In the matter at hand, neither party alleges that the other’s home condition is inadequate in any way. Further, neither party is disputing the other’s parenting capabilities. Rather, this is a case involving two high functioning professionals. There are no exceptional or special circumstances present that require the appointment of a professional to complete a custody evaluation.
11. John further objects to the request given Jane’s employment as a family law attorney. She believes he may be able to influence the thoughts and opinions of a professional custody evaluator. Given this he believes the case is best left to be decided solely by the judiciary.
12. In addition, John notes that Jane’s request is untimely. There are currently approximately two months before trial in this matter. Discovery closes on or about November 28th. Ordering an evaluation at this juncture will preclude John from conducting any discovery upon the issuance of any reports. Further, it will preclude him from obtaining potential rebuttal witnesses.
13. Finally, the parties are not situated to spend $3,500.00 on a custody evaluation. Jane currently has a past due child support obligation in excess of $40,000.00. Any money she has available for an evaluation would be better spent getting caught up on her past due child support obligation.

WHEREFORE, Petitioner respectfully requests that this Court deny Jane’s Application for the appointment of a custody evaluation and grant such further relief as the court deems just in the premises.

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